

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

780

KA 24-00448

PRESENT: CURRAN, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TERRANCE BOYD, DEFENDANT-APPELLANT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (APRIL J. ORLOWSKI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Paul Wojtaszek, J.), rendered February 7, 2024. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him, upon a jury verdict, of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that Supreme Court erred in refusing to suppress a gun that was recovered from a sealed bag found under the driver's seat of the vehicle in which he had been a rideshare passenger because the search was constitutionally invalid. We affirm.

Preliminarily, we note that defendant did not have automatic standing to challenge the search of the vehicle inasmuch as "the People did not charge defendant with criminal possession of a weapon based on the statutory presumption in Penal Law § 265.15 (3)" (*People v Tillman*, 283 AD2d 944, 944 [4th Dept 2001], *lv denied* 96 NY2d 925 [2001]). As relevant here, "standing to seek suppression of evidence requires the defendant to establish, by [the] defendant's own evidence or by relying on the People's evidence . . . , that [they] had a legitimate expectation of privacy in the place or item that was searched" (*People v Ramirez-Portoreale*, 88 NY2d 99, 109 [1996]). "The suppression court must identify the object of [the] defendant's expectation of privacy, determine whether [the] defendant exhibited an expectation of privacy in it, and evaluate whether the circumstances would lead society to regard [the] defendant's expectation as reasonable" (*id.*), considering "such factors as whether the defendant took precautions to maintain privacy and whether the defendant had the

right to exclude other persons from access" (*id.* at 111 [internal quotation marks omitted]). "While the mere surrender of property to a third party will not always terminate a legitimate expectation of privacy . . . , the burden [i]s on [the] defendant to establish under the[] facts that [they] had such an expectation" (*People v Whitfield*, 81 NY2d 904, 906 [1993]; *see People v Febo*, 167 AD3d 451, 452 [1st Dept 2018], *lv denied* 33 NY3d 948 [2019]). "It is well settled that the suppression court's credibility determinations and choice between conflicting inferences to be drawn from the proof are granted deference and will not be disturbed unless unsupported by the record" (*People v Sylvester*, 129 AD3d 1666, 1667 [4th Dept 2015], *lv denied* 26 NY3d 1092 [2015] [internal quotation marks omitted]; *see People v Twillie*, 28 AD3d 1236, 1237 [4th Dept 2006], *lv denied* 7 NY3d 795 [2006]).

Here, defendant's "moving papers [were] devoid of any allegation that [he] had a legitimate expectation of privacy" in the bag from which the gun was recovered (*People v Clark*, 28 AD3d 1231, 1232 [4th Dept 2006] [internal quotation marks omitted]; *see People v Rodriguez*, 219 AD3d 1115, 1115 [4th Dept 2023], *lv denied* 40 NY3d 1013 [2023]) and, contrary to defendant's contention, the evidence introduced at the hearing failed to establish that defendant maintained any expectation of privacy in the bag after he handed it over to a backseat passenger (*see Whitfield*, 81 NY2d at 906; *Febo*, 167 AD3d at 452). The court thus properly determined that defendant failed to meet his burden of establishing standing to challenge the search of the subject bag (*see Whitfield*, 81 NY2d at 906; *Febo*, 167 AD3d at 452).