

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 50 SSM 8
The People &c.,
Respondent,
v.
Nathaniel Mabry,
Appellant.

Submitted by Denise M. Fabiano, for appellant.
Submitted by Hannah X. Scotti, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and the case remitted to Supreme Court for further proceedings in accordance with this memorandum.

The People failed to establish that the warrantless search of defendant's backpack was a valid search incident to arrest (*see People v Jimenez*, 22 NY3d 717, 721-722 [2014]). The record does not contain evidence supporting a determination that the backpack was in defendant's "immediate control or 'grabbable area'" (*People v Gokey*, 60 NY2d 309, 312 [1983]; *see People v Wheeler*, 2 NY3d 370, 373 [2004]). There is a lack of testimony in the record indicating where the bag was in relation to defendant immediately prior to the search. Because Supreme Court denied defendant's suppression motion without reaching the People's alternative argument raised in opposition, we remit the matter to Supreme Court (*see People v Garcia*, 20 NY3d 317, 324 [2012]; *People v LaFontaine*, 92 NY2d 470, 476 [1998]; *People v Turriago*, 90 NY2d 77, 87 [1997]).

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to Supreme Court, Queens County, for further proceedings in accordance with the memorandum herein. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

Decided May 27, 2021