



THE POLICE WITNESSES AT THE SUPPRESSION HEARING WERE NOT CREDIBLE; THEREFORE DEFENDANT’S SUPPRESSION MOTION SHOULD HAVE BEEN GRANTED AND THE INDICTMENT DISMISSED (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Miller, determined defendant’s motion to suppress should have been granted because the People’s witnesses at the suppression hearing were not credible. Therefore the People did not meet their burden to show the legality of the police conduct. The indictment was dismissed. The police witnesses offered conflicting versions of the stop of the car in which defendant was a passenger and the ability to determine, from outside the car, that a credit card on the console was forged:

“Given the severely undermined credibility of the arresting officer[s], it is unclear exactly what happened during the encounter between the officer[s] and the defendant, and the hearing court was confronted with choices of possible scenarios” Under similar circumstances, this Court has stated that, “where credibility is in issue, multiple choice questions are neither desirable nor acceptable,” and the fact-finder should refuse to “select a credible version based upon guesswork”... . . .

... [W]e decline to credit any of the testimony of the People’s witnesses Accordingly, “[u]pon scrutiny of the People’s evidence at the suppression hearing, we can only conclude that they failed to carry their burden of going forward and demonstrating the legality of the police conduct in the first instance[,]” including the legality of the stop In view of this failure, “all further actions by the police as a direct result of the stop were illegal . . . [and] the evidence recovered as a result of the unlawful stop must be suppressed” Accordingly, “exercising our independent power of factual review, we conclude that the defendant’s motion to suppress . . . should have been granted”... . Without the suppressed evidence, there would not be legally sufficient evidence to prove the defendant’s guilt. Accordingly, the indictment must be dismissed [People v Harris, 2020 NY Slip Op 08079, Second Dept 12-30-20](#)