

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

687

KA 23-00336

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HARVEY ALEXANDER, JR., DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (SABRINA BREMER OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II,
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered April 29, 2022. The judgment convicted defendant upon a jury verdict of criminal possession of a weapon in the second degree and criminal possession of a weapon on school grounds.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reversing that part convicting defendant of criminal possession of a weapon on school grounds under count 2 of the indictment and dismissing that count and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of, inter alia, criminal possession of a weapon on school grounds (Penal Law § 265.01-a). The conviction arises from defendant's possession of a firearm at Strong Memorial Hospital (Hospital). Defendant contends that Supreme Court erred in denying his motion for a trial order of dismissal because section 265.01-a does not apply to the Hospital, even if it is affiliated with the University of Rochester (U of R). We reject that contention. Subject to exceptions not relevant here, "[a] person is guilty of criminal possession of a weapon on school grounds when [they] knowingly [have in their] possession a . . . firearm in or upon a building or grounds, used for educational purposes, of any school, college, or university" (*id.*). The evidence established that the Hospital is used by U of R as a teaching hospital in which students perform clinical work and that U of R's School of Dentistry and School of Nursing is located within the Hospital. We conclude from the language used in the statute as construed "according to its natural and most obvious sense" (*Kirshtein v AmericU Credit Union*, 65 AD3d 147, 150 [4th Dept 2009] [internal quotation marks omitted]), that the Hospital is a building used for educational purposes and is encompassed by section 265.01-a.

We agree with defendant, however, that the evidence is legally insufficient to support the conviction under section 265.01-a because there is no evidence that defendant knew he was in a building used for educational purposes (*see generally People v Ryan*, 82 NY2d 497, 502-503 [1993]). "A verdict is legally sufficient when, viewing the facts in a light most favorable to the People, there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt" (*People v Danielson*, 9 NY3d 342, 349 [2007] [internal quotation marks omitted]). "A sufficiency inquiry requires a court to marshal competent facts most favorable to the People and determine whether, as a matter of law, a jury could logically conclude that the People sustained its burden of proof" (*id.*). As relevant here, a person is guilty of criminal possession of a weapon on school grounds when the person knows that the building is used for educational purposes (*see Penal Law § 265.01-a; see generally Ryan*, 82 NY2d at 502-503; *People v Nesmith*, 231 AD2d 941, 941 [4th Dept 1996], *lv denied* 89 NY2d 1039 [1997]). The only evidence presented by the People regarding defendant's knowledge that the Hospital was a building used for educational purposes was two photographs of signs at the Hospital that could have alerted defendant that the Hospital was used by U of R for educational purposes. The People produced no evidence that defendant actually saw the signs at the Hospital, and "a jury cannot be allowed to make inferences which are based not on the evidence presented, but rather on unsupported assumptions drawn from evidence equivocal at best" (*People v Taylor*, 158 AD3d 1095, 1100 [4th Dept 2018], *lv denied* 32 NY3d 941 [2018], *reconsideration denied* 32 NY3d 1178 [2019] [internal quotation marks omitted]; *see generally People v Szurgot*, 239 AD3d 1444, 1447 [4th Dept 2025]). Given the lack of evidence that defendant knew the Hospital was a building used for educational purposes, we conclude that the conviction of criminal possession of a weapon on school grounds under count 2 of the indictment is not supported by legally sufficient evidence, and we therefore modify the judgment accordingly.

In light of our determination, defendant's further contention that the verdict with respect to criminal possession of a weapon on school grounds is against the weight of the evidence is moot (*see People v Desius*, 188 AD3d 1626, 1628 [4th Dept 2020], *lv denied* 36 NY3d 1096 [2021]; *People v Terry*, 169 AD3d 938, 940 [2d Dept 2019], *lv denied* 33 NY3d 1109 [2019]).

We decline defendant's request, however, to vacate the remaining sentence and remit the matter to Supreme Court for resentencing inasmuch as there is nothing in the record demonstrating that the court was influenced by the conviction for criminal possession of a weapon on school grounds when it sentenced defendant on count 1 of the indictment (*cf. People v Camilloni*, 92 AD2d 745, 746 [4th Dept 1983]).

Finally, contrary to defendant's contention, we conclude that the sentence imposed on the remaining count is not unduly harsh or severe.

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court