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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 43

HARRIS (JAMIEN),

Appellant.

20 Eagle Street
Albany, New York
April 15, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Harris.

3 MR. TEXIDO: Good afternoon, Your Honors.
4 Nicholas Texido, appearing for the appellant, Ms. Harris.
5 I would like to reserve two minutes for rebuttal, if
6 possible.

7 CHIEF JUDGE WILSON: Yes.

8 MR. TEXIDO: Your Honors, the dismissal of the
9 indictment here - - - the murder indictment pursuant to CPL
10 40.40(2) was proper. The Appellate Division found that the
11 possession of this firearm in the immediate aftermath of a
12 murder using that same firearm were not part of the same
13 criminal transaction.

14 JUDGE SINGAS: Why is that wrong?

15 MR. TEXIDO: Well, this weapon had two spent
16 cartridges inside of it. There were two - - - there was at
17 least one bullet found inside the house that was ultimately
18 determined to match the firearm. There was no break in
19 possession following - - -

20 JUDGE SINGAS: Well, but the indictment itself
21 breaks the possession because they - - - the date for the
22 gun possession is the day after the murder. So if you look
23 just at the indictment - - - the four corners of the
24 indictment, it appears to be separate.

25 MR. TEXIDO: Yes. However, I don't think for

1 this analysis we can look just at the four corners of the
2 indictment because, for instance, one of the prongs is that
3 the prosecution possessed legally sufficient evidence at
4 the time. I think we need to look at what evidence there
5 was - - - what was available at the time.

6 JUDGE SINGAS: Okay. To that point, what about
7 the evidence that she said her grandfather had gotten the
8 gun or she - - - that was the gun that she played with
9 months earlier. Can we look at that evidence?

10 MR. TEXIDO: You could look at that evidence. I
11 don't - - - what she's charged with is possessing the
12 firearm after the murder. There was no break in
13 possession. And I think the - - - my opponent will
14 acknowledge that.

15 JUDGE RIVERA: Why is it part of the same
16 criminal transaction if the murder is complete?

17 MR. TEXIDO: Because they overlap temporally the
18 - - - the possession of the gun - - -

19 JUDGE RIVERA: It's constructive possession,
20 correct?

21 MR. TEXIDO: The grand jury was charged on both.
22 So in this case, the - - - because the possession was
23 continuous before the shooting, during the shooting, and
24 after the shooting because what she was indicted for and
25 what she pled guilty to was possessing it on November 21st.

1 The other point with the date is - - - well, two points.
2 One, they do say on or about. Number two, the prosecution,
3 at the time they secured the murder indictment, they knew
4 what the issue was here.

5 JUDGE SINGAS: But what if they didn't know which
6 gun it was? There were two guns recovered. Let's say it's
7 the same facts, and they don't know which gun. Can you
8 make the same argument?

9 MR. TEXIDO: It would be a tougher argument if -
10 - -

11 JUDGE SINGAS: But according to you, you could
12 make it, right? Because we know that one of those guns
13 killed him - - - her grandmother. But we don't know which
14 one, correct?

15 MR. TEXIDO: Yes. And I - - - I think, actually,
16 under those circumstances, it would be the same argument if
17 we knew that one of the guns did. I don't - - -

18 JUDGE SINGAS: So then you can't decide which one
19 is the murder weapon and which one they just possessed?

20 MR. TEXIDO: I don't know how you'd know that one
21 of them did, which - - - without knowing which one did.

22 JUDGE SINGAS: So then in that case, they can
23 stand as a separate weapons possession and as a separate
24 homicide because you can't figure out what the murder
25 weapon is?

1 MR. TEXIDO: Well, if it was a weapon that was
2 not used in the homicide, I'll put it that way.

3 JUDGE SINGAS: Well, you don't know is my point.

4 MR. TEXIDO: Well, in this case, we do know.

5 JUDGE SINGAS: I'm - - - I know. We have to
6 decide this case.

7 MR. TEXIDO: I'm sorry.

8 JUDGE SINGAS: But we're also making rules for
9 lots of cases.

10 MR. TEXIDO: Right. And if you didn't know
11 whether the firearm - - - it - - - I - - - it would go to
12 whether it's so closely related and connected in terms of
13 circumstance, the definition of criminal transaction. It
14 would be a tougher case than this one, I think, would be
15 the best answer that I can give. But in this case, there's
16 just so much that leads you to believe that this possession
17 and the use were part of the same criminal transaction. It
18 should be noted that, really, proof of one proved the other
19 under these circumstances. If you proved she possessed
20 this gun - - -

21 JUDGE SINGAS: Which gun?

22 MR. TEXIDO: The one that - - - the one that
23 fired the bullets, the revolver. If you prove that she
24 possessed that gun, you're proving - - - under these
25 circumstances where no one else was in the house by her own

1 admission, you are proving that she committed the murder.
2 Similarly, if you proved - - -

3 JUDGE SINGAS: Well, why aren't you just proving
4 that she possessed the gun?

5 MR. TEXIDO: Because it necessarily follows just
6 by the circumstances of the case that if she possessed the
7 gun and no one else was in the house, by her own admission,
8 she committed the murder. And she also admitted at ECMC to
9 police that she fired a shot in that direction, so - - -

10 JUDGE CANNATARO: So are you arguing that under
11 the unique facts of this case, possession is the only
12 element that's really up for debate, and if you establish
13 possession, you've also established murder? Is that what I
14 heard you say?

15 MR. TEXIDO: Under the unique circumstances of
16 this case, with the other facts that were known at the
17 time. I wouldn't say in a normal case or in most cases,
18 no. But given what we knew at the time or what the
19 prosecution knew at the time, proof of possession of that
20 firearm, especially once they got the lab report on June
21 27th of '22, indicating that that particular firearm fired
22 the bullet that killed the grandmother, that has to be
23 related, especially - - -

24 JUDGE RIVERA: Is that the report that matches
25 her DNA - - -

1 MR. TEXIDO: No. That - - -

2 JUDGE RIVERA: - - - to - - - that establishes
3 physical possession?

4 MR. TEXIDO: Yes. The - - - the DNA report, no.
5 That came after she pleaded guilty. But all that really
6 shed further light on was possession of the firearm which
7 they had already warranted they had sufficient evidence of
8 in May of '22 when they certified ready for trial.

9 JUDGE SINGAS: What if it was a week later?

10 MR. TEXIDO: If it was a week later - - -

11 JUDGE SINGAS: Would you say it's the same
12 transaction? It's the same facts. You know that's the
13 murder weapon.

14 MR. TEXIDO: Right. So the Fourth Department
15 last year, in 2025, did decide two weeks later that because
16 it was the same weapon that was used and there was no
17 evidence of any break in possession, that it was part of
18 the same criminal transaction because the - - - the
19 possession being a continuing offense, it spans from the
20 time of the murder on. And it continues. So the two
21 overlapped temporally. And it should be noted that the
22 Huntley hearing on the date of - - - that the appellant
23 ended up taking the plea, the statements that were going to
24 be litigated were - - - a lot of them were relevant to the
25 murder. And that just shows how closely related the

1 possession of this weapon was to the use of the weapon.

2 JUDGE TROUTMAN: What would happen if we were to
3 reject your proposition and allow the People to do what
4 they're asking?

5 MR. TEXIDO: So there were a couple things.
6 Number one is, I think this court's aware that certain
7 attorneys are qualified to handle certain levels of crimes.
8 Here, this was charged as a class E nonviolent felony. And
9 the statements that were part of the murder case that was
10 ultimately going to be brought were being litigated.
11 That's number one.

12 Number two, as any attorney, when you're
13 litigating admissibility of evidence and you're running
14 hearings, you are looking at what the charges are, and what
15 do I want to contest? What statements matter more to me
16 than others? What am I looking to litigate when the
17 prosecution does it in this manner, where they want to have
18 the suppression hearing on a case when we don't know what
19 the charges are ultimately going to be - - -

20 JUDGE SINGAS: Hold on. Is your argument that
21 you would have assigned a more senior defender had you
22 known what? Because you did know it was a murder. Are you
23 saying that - - -

24 MR. TEXIDO: No. The - - - Ms. Harris was
25 arraigned on a class E felony.

1 JUDGE SINGAS: I get that, but you knew the
2 underlying facts of it. I mean, that's your whole
3 argument, right? That the - - -

4 MR. TEXIDO: Yeah. The attorney who was assigned
5 ultimately did call and get a more experienced attorney put
6 on, but that was just by his own - - -

7 JUDGE SINGAS: But that - - - you think that's a
8 consideration for us?

9 MR. TEXIDO: The only reason I raise it is
10 because the prosecution raises policy arguments. And here,
11 I think the - - - this particular legislation is - - -

12 JUDGE RIVERA: But at the plea, I thought the
13 judge said, you - - - you realize - - - during that
14 colloquy - - - allocution, you realize that there may be
15 other charges.

16 MR. TEXIDO: You - - - that they may because on
17 that date and I think the - - -

18 JUDGE RIVERA: But I mean, then that does suggest
19 there's an awareness by - - -

20 MR. TEXIDO: Well - - -

21 JUDGE RIVERA: - - - counsel.

22 MR. TEXIDO: Yes. There - - -

23 JUDGE CANNATARO: Some kind of notice is - - -

24 MR. TEXIDO: There was an awareness of counsel.

25 I - - -

1 JUDGE RIVERA: Right.

2 MR. TEXIDO: That's clear. The issue is she was
3 permitted to plead guilty to that weapon possession. And I
4 can say that this isn't something that the prosecution is
5 just at risk of all the time. They filed the indictment
6 charging the weapon possession and put themselves in that
7 position. That won't happen absent prosecutorial action.
8 So it's not going to cause statewide problems. Thank you,
9 Your Honors.

10 CHIEF JUDGE WILSON: Thank you.

11 MS. HEALY: Good afternoon, Your Honors. May it
12 please this court. Harmony Healy, on behalf of the People.
13 Reversal in this case of the Appellate Division's
14 reinstatement of the indictment would not be aligned with
15 the equitable intent of CPL 40.40. And it would - - - CPL
16 40.40 was enacted to prevent gamesmanship in the criminal
17 justice system.

18 JUDGE TROUTMAN: What about gamesmanship that's
19 argued with the People? If you allow for piecemeal
20 prosecutions, how could one properly represent someone?
21 You think you've resolved all the cases, and then they come
22 back, and they divide it all up, and you can have multiple
23 indictments for one person - - -

24 MS. HEALY: Right.

25 JUDGE TROUTMAN: - - - if we accept what you're



1 arguing.

2 MS. HEALY: So I think that if you accept what
3 I'm arguing, it is in a limited set of circumstances. I
4 think that the cases - - -

5 JUDGE TROUTMAN: How is it limited?

6 MS. HEALY: Because in this case, the defendant
7 was always on notice that the homicide charges were coming.
8 That was never a question.

9 JUDGE TROUTMAN: Well, why didn't the - - -
10 weren't the People then - - - how could you - - - let me
11 say it this way. How could you argue, if they knew that
12 the homicide charges were already coming, that there was
13 not legally sufficient evidence?

14 MS. HEALY: So - - - okay. On the legally
15 sufficient evidence prong, I think that the issue in this
16 case was that - - - I know that we had the ballistics
17 report before - - -

18 JUDGE TROUTMAN: You had circumstantial evidence.

19 MS. HEALY: We had circumstantial evidence, but
20 this court just recently held in People v. Tyson that when
21 proceeding to the grand jury, you should always endeavor to
22 have evidence that you know can establish guilt beyond a
23 reasonable doubt at trial. And with the - - -

24 CHIEF JUDGE WILSON: That's a little - - - that's
25 a little different from legally sufficient, right? So - -

1 -

2 MS. HEALY: It is. I understand that's a similar
3 issue, and this is - - - this - - -

4 CHIEF JUDGE WILSON: So suppose that the DNA test
5 on the gun had produced nothing. No evidence, no DNA on
6 the gun, could you have not prosecuted her?

7 MS. HEALY: I think we could have prosecuted it
8 if it produced no evidence. But I think we may be in a
9 different boat if it produced alternative evidence of
10 another individual, and she was not on there. And I think
11 that's part of the issue. We wanted to make sure we had
12 the right part.

13 CHIEF JUDGE WILSON: But I guess the question is,
14 before you had the DNA evidence, did you have legally
15 sufficient evidence to prosecute her?

16 MS. HEALY: So I think when you're looking at the
17 legal sufficiency, I understand that the statute says you
18 have to have legally sufficient evidence. But I think when
19 you're looking at it in the context of a 40.40 issue, you
20 need to be looking at it in what is - - - what should the
21 prosecution be preparing for grand jury and - - -

22 JUDGE TROUTMAN: Okay. What - - - but still,
23 looking at it in legally sufficient view, the defendant was
24 the only person found in the house with her grandmother's
25 dead body and with the firearm used to shoot her, correct?

1 MS. HEALY: Correct.

2 JUDGE TROUTMAN: And the People had a ballistics
3 report that the gun the defendant was accused of possessing
4 was also the gun used to kill her, correct? The
5 grandmother.

6 MS. HEALY: After they indicted on the weapons
7 possession, correct.

8 JUDGE TROUTMAN: And at a minimum, you do have
9 some spontaneous statements by the defendant that
10 inculcates her.

11 MS. HEALY: You have some spontaneous statements
12 that inculcate her, but you have some equivocal,
13 spontaneous statements. The equivocal statements are - - -

14 JUDGE TROUTMAN: Pe - - - the People indict all
15 the time when you have contradictory statements.

16 MS. HEALY: We indict when there are
17 contradictory statements. But I think that we need to make
18 sure that we have the right person, especially in a case
19 where we have a homicide.

20 JUDGE TROUTMAN: The only person in the house.
21 Was there any evidence that there's an intruder, that there
22 was anyone else there other than she and the dead
23 grandmother?

24 MS. HEALY: Her own statements were that other
25 people had come in that - - - during the night. That was

1 her - - -

2 JUDGE TROUTMAN: Besides her statements, what did
3 the police find? They did an investigation when they
4 arrived there, correct?

5 MS. HEALY: Correct.

6 JUDGE TROUTMAN: They noted her manner and the
7 circumstances as they existed. Did they support a claim
8 that someone other than she was in that house?

9 MS. HEALY: They did not support that claim. If
10 we're talk - - - if we're going outside of the context of
11 what was before the grand jury, certainly - - -

12 JUDGE TROUTMAN: You don't necessarily have to
13 wait until you have a perfect case, correct?

14 MS. HEALY: You don't have to have a perfect
15 case, but - - -

16 JUDGE TROUTMAN: But circumstantial evidence is
17 in fact, evidence, correct?

18 MS. HEALY: It is.

19 JUDGE TROUTMAN: Is it any less than direct
20 evidence?

21 MS. HEALY: It's not less - - -

22 JUDGE TROUTMAN: Have the People secured
23 prosecutions on circumstantial evidence before?

24 MS. HEALY: Yes.

25 JUDGE RIVERA: The - - - just to go back to

1 something you were saying before, is your position and
2 perhaps the rule you're asking us to adopt that for 40.40
3 purposes, legal sufficiency means something different than
4 it usually means?

5 MS. HEALY: Well, I think that, again, when
6 you're - - - when - - - especially in light of this court's
7 - - -

8 JUDGE RIVERA: Because circumstantial evidence
9 can be legally sufficient.

10 MS. HEALY: Yes. It can be legally sufficient.

11 JUDGE RIVERA: Right. Okay.

12 MS. HEALY: But I - - -

13 JUDGE RIVERA: To convict. Okay.

14 MS. HEALY: I think that when you're looking at
15 what the People need to move forward on a homicide
16 indictment, in the context - - -

17 JUDGE RIVERA: That's different for a homicide
18 versus something else?

19 MS. HEALY: Well, I think the homicide is the
20 most serious charge on - - -

21 JUDGE HALLIGAN: But we're trying to grapple with
22 what rule, right? And so is it not legally sufficient? Is
23 it something more than that? If so, how would we
24 articulate it? Is it homicides only? We're - - - I'm
25 trying to understand what you're asking us to do here.

1 MS. HEALY: It's not that it's homicides only.
2 And I don't mean to infer that. I'm just - - -

3 JUDGE HALLIGAN: What is the rule you're asking
4 for?

5 MS. HEALY: So I think that when you're looking
6 at the term legal sufficiency in the context of the - - -
7 of the People obtaining a grand jury indictment, as you
8 noted in People v. Tyson, you should be positive that that
9 is - - - that you have the evidence and that you can secure
10 a conviction beyond a reasonable doubt.

11 JUDGE RIVERA: But if you could - - -

12 MS. HEALY: And in this case - - -

13 JUDGE RIVERA: If it's legally sufficient to
14 convict on the circumstantial evidence, why wouldn't that
15 be enough for the grand jury?

16 MS. HEALY: Because I - - - I don't - - - legally
17 sufficient is - - - when you're looking at the evidence in
18 - - - in a legally sufficient matter, I don't know that
19 that's the same as when you're looking at something beyond
20 a reasonable doubt. I think that's a higher burden of
21 proof.

22 JUDGE CANNATARO: Yeah. But that runs up against
23 the reality that charges are brought all the time, you
24 know, where the prosecution is not convinced that they're
25 going to be able to prove it beyond a reasonable doubt.

1 They just need to have sufficient evidence to get the
2 indictment.

3 MS. HEALY: I think, ethically, we should be
4 pretty convinced that we have - - -

5 JUDGE TROUTMAN: But the standard - - -

6 JUDGE RIVERA: But then, wouldn't the statute
7 have said that?

8 MS. HEALY: So - - -

9 JUDGE RIVERA: It says legal - - - legally
10 sufficient.

11 MS. HEALY: It - - - it says legally sufficient.

12 JUDGE RIVERA: It doesn't say beyond a reasonable
13 doubt.

14 MS. HEALY: It does, but it's legally sufficient
15 to proceed to the grand jury. And again, the case law from
16 this court says that. And it wasn't just in People v.
17 Tyson. There's other case law that I cited in my brief
18 that talks about - - -

19 JUDGE TROUTMAN: But here, again, this case, what
20 stopped the People from indicting on all the charges at one
21 time?

22 MS. HEALY: So he didn't - - - he couldn't indict
23 on the - - - or he didn't want to - - - I don't think that
24 he could indict on the weapon possession without the
25 ballistic report. He was under a 30.30 time constraint

1 that didn't - - -

2 JUDGE TROUTMAN: When you talk about time
3 constraints, there are 180 motions. The People go to the
4 grand jury and indict within the 180 time span all the time
5 even without the weapon in a murder case.

6 MS. HEALY: Oh, I'm not talking about the - - -
7 I'm talking about the time constraints in the possession.
8 He - - - she was charged with the possession by way of a
9 complaint, a complaint that was filed with this court. So
10 he was in that six-month 30.30 that - - -

11 JUDGE TROUTMAN: But even - - -

12 MS. HEALY: - - - on the possession charges.

13 JUDGE TROUTMAN: Even with an initial charge,
14 knowing that murder, as you said, is one of the most
15 serious charges, the People did have capabilities of going
16 to a grand jury even after the initial arrest, but
17 certainly before this plea was taken.

18 MS. HEALY: But I mean, again, I don't think that
19 he ever intended to not go back in and do a superseding
20 indictment.

21 JUDGE TROUTMAN: Okay. Well, could you explain
22 the delay then?

23 MS. HEALY: The delay in?

24 JUDGE TROUTMAN: There were reports that were
25 obtained. Still there was no indictment. There was a

1 discussion about what could happen during the plea
2 colloquy. Why was this done like this?

3 MS. HEALY: So I think during the plea colloquy,
4 if you read his explanation as to why he wasn't moving
5 forward, it was because he wanted to determine whether or
6 not the statements were going to be voluntary because some
7 of them were made at a psychiatric facility. And he didn't
8 want to taint a grand jury with inadmissible statements.

9 JUDGE TROUTMAN: So what about the risk that you
10 get people to plead guilty to one charge. You get their
11 admissions on the record as to that charge? Then you get
12 to go back and indict them for a more serious charge. Is
13 that the rule you're asking for?

14 MS. HEALY: I am asking for this court to adopt
15 more of a flexible, case-by-case basis. I think that in -
16 - -

17 JUDGE TROUTMAN: So state specifically what that
18 rule would be.

19 MS. HEALY: So I think that when you have - - -
20 first of all, I know that we're talking about legal
21 sufficiency. But if I could go back to the same criminal
22 transaction for just a minute, I think that when CPL 40.40
23 was enacted and they were talking about the same criminal
24 transaction, that was to deter the prosecution - - -

25 JUDGE TROUTMAN: So again, just tell me what your

1 rule is.

2 MS. HEALY: So I think you'd have to look
3 carefully at the facts and circumstances of each case.

4 JUDGE TROUTMAN: So the rule changes depending on
5 the case.

6 MS. HEALY: I mean, I think that you're always
7 reviewing facts and circumstances depending on what your
8 facts are in your case and what the law is.

9 JUDGE RIVERA: So your white light is on. Could
10 you address what - - - your position that it's not part of
11 the same criminal transaction?

12 MS. HEALY: Yes. So I think that when the
13 legislation was enacted, it was enacted to prevent the kind
14 of scenario that was - - - for example, a defendant going
15 out and making a drug transaction, getting charged and
16 tried for a criminal sale of a controlled substance.
17 People don't get the result that they want, and then they
18 go back and indict on a criminal possession. That is the
19 kind of thing that I think is at issue with 40.40. That
20 was the intent. It was an equitable statute to prevent
21 gamesmanship.

22 CHIEF JUDGE WILSON: So then - - -

23 MS. HEALY: That would be the gamesmanship that
24 they were seeking to deter.

25 CHIEF JUDGE WILSON: So let me ask - - -

1 MS. HEALY: And that's what not what happened
2 here.

3 CHIEF JUDGE WILSON: Let me ask you this then.
4 Suppose they had actually indicted first only on the
5 murder, and the defendant had taken a plea to the murder.
6 Could they then have indicted on the weapons charge?

7 MS. HEALY: I think you could because I do still
8 think that it was a separate criminal transaction. Because
9 I don't think that the possession of the firearms charged
10 in the capacity of a simple possession was so closely
11 connected in time and circumstance to the homicide. She
12 had possessed those firearms for months. She had possessed
13 them in a knowing unlawful - - -

14 JUDGE RIVERA: But the indictment is not for the
15 months before, right?

16 MS. HEALY: The indictment is not, no. And so if
17 you're looking at the - - -

18 JUDGE RIVERA: Can I just clarify because he made
19 a statement before, were they charged under both
20 constructive and actual possession?

21 MS. HEALY: They were charged on both
22 constructive and actual, and I - - -

23 JUDGE RIVERA: And the plea is to actual or
24 constructive, or does it matter?

25 MS. HEALY: I don't think that matters.

1 JUDGE RIVERA: Okay. I'm sorry. You - - -

2 MS. HEALY: Okay.

3 JUDGE RIVERA: I interrupted what you were
4 describing about the charge on the actual and constructive.

5 MS. HEALY: Oh, I'm not - - - so he didn't
6 specifically say which instruction related to which
7 firearm. So I don't know whether or not he was referring
8 to the actual possession for the gun that killed the
9 defendant's grandmother because that was located directly
10 beneath her feet. And the other firearm was located
11 upstairs.

12 So the charging instructions weren't as clear as
13 they could have been in this case. But I think regardless,
14 if you're looking at the entirety of the motion paperwork
15 that was before this court, then you have all of the
16 statements that say she had possessed them knowingly and
17 unlawfully for at least three months before this happened.

18 If you're looking to the four corners of what was
19 presented to the grand jury, what was presented to the
20 grand jury is an officer who came in and observed the
21 defendants in possession with a firearm directly by her
22 feet, and the homicide was completed the day before. And
23 so that - - - those are two distinct arguments. But
24 whichever way you look at it, I think that you end up with
25 that as it's not the same criminal transaction, and it's

1 not the kind of case that - - - that was complicated.

2 JUDGE TROUTMAN: Despite the fact that she said
3 she was playing with a gun and she may have shot the
4 grandmother, it's not the same transaction?

5 MS. HEALY: No. Because it's separated by time.
6 But also she did not - - - she wasn't charged with an
7 intent to use unlawfully. She was charged in a simple
8 possession - - - unknowing, unlawful possession. And she -
9 - -

10 JUDGE TROUTMAN: So as long as you separate it
11 out that way, the People can charge this type of thing on
12 the regular?

13 MS. HEALY: So I don't think that you can charge
14 it on - - -

15 JUDGE TROUTMAN: At least because I'm still not
16 clear as to what your rule is.

17 MS. HEALY: Right. So I think that - - - I think
18 that what distinguishes this case and what lends itself to
19 a different rule in this case is because we have the simple
20 possession of the weapon that spans in a cons - - - in a
21 continuing capacity over three months. And that is what
22 distinguishes this case. And so I think that when you're
23 looking at - - -

24 CHIEF JUDGE WILSON: So you could charge - - -
25 you could charge possession for every single day of those



1 three months separately?

2 MS. HEALY: No.

3 CHIEF JUDGE WILSON: Why not?

4 MS. HEALY: Because it's continuing. But - - -
5 but her purpose and intent is not to possess that weapon.
6 It never - - - at least it was not prior to when this
7 happened - - - was not to use it unlawfully against
8 another. It was just knowing unlawful. So that's why the
9 - - - the circumstances don't connect under that - - - the
10 transaction argument.

11 JUDGE TROUTMAN: And that which is used for
12 consecutive sentencing, it's not the same - - -

13 MS. HEALY: It's - - -

14 JUDGE TROUTMAN: - - - that you use for this.

15 MS. HEALY: Yes. It's not - - -

16 JUDGE TROUTMAN: Or are you suggesting that those
17 same rules apply - - -

18 MS. HEALY: No. But I'm - - -

19 JUDGE TROUTMAN: - - - for separate prosecutions?

20 MS. HEALY: Sorry. I am suggesting that the
21 logic apply. I'm suggesting that the underlying analysis
22 of Brown is that separate criminal acts, depending on mens
23 rea with respect to simple possession, it changes the way
24 that you're looking at gun cases. And so it changes the
25 way that you're looking at them in a consecutive

1 sentencing. And it changes the way that I think that you
2 should look at them in a case like this. But also, this
3 court noted the - - -

4 JUDGE RIVERA: Does our recent decision in
5 Billups at all inform that analysis?

6 MS. HEALY: I would - - - I haven't seen it. I'm
7 sorry.

8 JUDGE RIVERA: Okay.

9 MS. HEALY: I'd - - - I can look at it and submit
10 a post-argument submission if you would like. But I - - -
11 just one last thing in closing. I think that to reverse
12 this indictment runs afoul of every statute at issue here.
13 The legislature intended to keep guns off the street.

14 We shouldn't have police officers and law
15 enforcement walking into a crime scene where there are guns
16 and saying, okay, I can see the gun with my own eyes. I
17 can witness it, and I need to charge them, which is what
18 happened here. They charged what they knew that they could
19 prove, which was the simple, unlawful possession. And then
20 have somebody be up against the wall on a 30.30 issue, make
21 - - - trying to make sure that everything is aligned
22 because we will be prohibited from a successful prosecution
23 on a higher-level crime.

24 And the underlying intent of the 40.40 statute
25 was to make sure that things aren't piecemeal, but it is



1 also just to make sure that we are not coming to the court
2 and saying, hey, I didn't get what I wanted here. Now I
3 want to go back in and charge something else so I can get
4 it that way, or going through a jury trial and going back
5 and seeing what your holes are and where your deficits are,
6 and going into grand jury and charging on a depraved
7 indifference.

8 JUDGE RIVERA: If the officer comes into murder
9 scene and the defendant is holding the gun in her hand, is
10 it the same argument? Are you making the same argument?
11 Are they going to only charge them with possession?

12 MS. HEALY: I think you would have to look at - -
13 -

14 JUDGE RIVERA: Same statements. She's made the
15 same statements. We'll stay with that.

16 MS. HEALY: Yeah. I mean, it is the same - - -
17 it's the same argument. I guess, if you're coming into a
18 murder scene and you have an eyewitness or you have a
19 determination that that - - - your - - - in this case, the
20 officers were coming into a murder scene where the body was
21 decomposing. So we're not really talking about what you're
22 saying, where you could draw an inference that that had
23 just happened within the moments. We are talking about a
24 situation where the - - -

25 JUDGE RIVERA: But that's still circumstantial,



1 right?

2 MS. HEALY: It is circumstantial. You're
3 correct. But - - - and just my last point - - - I'm sorry,
4 if I could have just one more second. I think that the - -
5 -

6 CHIEF JUDGE WILSON: Take - - - quickly, because
7 you're way over time.

8 MS. HEALY: Yes. Okay. The underlying intent -
9 - - the legislature has also recognized that homicide
10 investigations are time-consuming and need to be done in
11 the right manner, and that is why it is exempt from the
12 speedy trial statute. And so I think that that is just
13 another consideration that you have to look at when we are
14 making these decisions.

15 CHIEF JUDGE WILSON: Thank you.

16 MS. HEALY: Thank you very much.

17 MR. TEXIDO: Thank you, Your Honors. Briefly - -
18 -

19 JUDGE TROUTMAN: Could you pick up on the, they
20 were up against a clock on the gun charge so they had to
21 prosecute that?

22 MR. TEXIDO: Yes, Your Honor. I would state that
23 if they know that they're going to be prosecuting a
24 homicide, the - - - there is no 30.30 clock, first off.
25 But second off, I would state, even after - - - if we

1 accept that as true, May 2nd, they declare readiness on the
2 gun charge. June 27th, they got the ballistics report. At
3 that point, I think it's beyond argument that they had
4 everything they needed, at least at that point.

5 JUDGE RIVERA: As of what day? I'm sorry. Say
6 that again?

7 MR. TEXIDO: June 27th of '22. And it's over
8 four months later that this plea happened. So they had
9 ample opportunity to go and seek this murder indictment if
10 that was what put them over the top as far as legally
11 sufficient evidence. However, it's not. She did - - - Ms.
12 Harris admitted to police at ECMC that she fired a so - - -
13 a shot in her grandma's direction.

14 CHIEF JUDGE WILSON: Was there any reason they
15 had to either offer or accept the - - - the plea offer when
16 they did? I mean, if they wanted to investigate the murder
17 further, could they have waited another few months or - - -

18 MR. TEXIDO: They could have if they would have
19 not indicted the case. Once Ms. Harris was indicted, she
20 had an absolute right to plead guilty to that indictment.

21 JUDGE SINGAS: That's right. So it was the
22 defendant who decided to plead guilty, not based on
23 anything that the People did. It was between the defendant
24 and the judge, right?

25 MR. TEXIDO: She - - - the defendant plead guilty

1 - - -

2 JUDGE SINGAS: Plead guilty to the indictment.

3 MR. TEXIDO: - - - with no sentence commitment
4 from the judge. She pled - - -

5 JUDGE SINGAS: Right.

6 MR. TEXIDO: - - - guilty because she had a right
7 to - - -

8 JUDGE SINGAS: So there was nothing the People
9 did to coerce a plea of guilty and engage in any
10 gamesmanship on that end, right?

11 MR. TEXIDO: Not coercing, no. But she was
12 indicted on the firearm possession. If she - - - in the
13 situation where someone is just charged because the police
14 want to charge - - -

15 JUDGE TROUTMAN: And her attorney was well aware
16 of all the facts and circumstances of the possession versus
17 a potential homicide, correct?

18 MR. TEXIDO: Correct.

19 JUDGE TROUTMAN: And made a decision with respect
20 to going forward for specific reasons, correct?

21 MR. TEXIDO: I believe so, Your Honor. Yes.

22 JUDGE TROUTMAN: And for an attorney, they make
23 those strategic decisions all the time.

24 MR. TEXIDO: Yes, Judge. Decisions on what type
25 of evidence to even contest and how to contest it as well.



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Thank you, Your Honors.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in this court of Appeals of People v. Harris (Jamien), No. 43 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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