

People v Jeffries

2010 NY Slip Op 33910(U)

February 25, 2010

Supreme Court, New York County

Docket Number: 5203/09

Judge: Michael J. Obus

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 51

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THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

DECISION AND ORDER

ANTHONY JEFFRIES and SHANITA LYONS, :

Ind. No. 5203/09

Defendants. :

----- X
MICHAEL OBUS, J.:

Defendants' motion to dismiss or reduce the charges for legal insufficiency of the evidence before the Grand Jury or defects in those proceedings is granted to the extent of reducing counts five through eight, criminal possession of a weapon in the second degree pursuant to PL 265.03(3), and counts twelve through fifteen, criminal possession of a weapon in the third degree pursuant PL 265.02(5)(ii), to criminal possession of a weapon in the fourth degree pursuant to PL 265.01(1), and is otherwise denied. Upon review of the Grand Jury minutes, the Court finds that reduction of those eight counts is compelled by the prosecutor's inaccurate legal instructions at the Grand Jury presentation, but that the evidence is otherwise legally sufficient and the proceedings properly conducted.

Defendants are charged in a twenty four-count indictment with a variety of weapon and narcotics offenses arising from the execution of a search warrant in a Manhattan apartment on October 20, 2009. Specifically, upon execution of the warrant at 11:40 PM, the police encountered both defendants in the apartment and recovered four loaded firearms, two large capacity ammunition devices, more than one eighth ounce of cocaine, drug paraphernalia and marijuana. They also recovered and vouchered twelve pieces of mail addressed to defendant Jefferies at the target location and a credit card in his name,

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and seven pieces of mail addressed to defendant Lyons at that location, as well as clothing, keys and a credit card in her name. The police also observed furnishings and another fifteen to twenty pieces of mail in the defendants' names.

Both defendants were charged, inter alia, with four counts of criminal possession of a weapon in the second degree pursuant to PL 265.03(3), and defendant Jeffries, who had a prior felony conviction, was also charged with four counts of criminal possession of a weapon in the third degree pursuant to 265.02(5)(ii). Both of those crimes require that the People prove that the defendants possessed firearms outside of their "home or place of business." Instructing the Grand Jury on the second degree counts, the prosecutor formerly assigned to the case stated:

Now, the home and place of business exception is intended to provide mitigation where there is a quasi-respectable intent to the possessor suggesting that he has the gun to protect himself or his property at home or in the workplace. The home exception does not apply if the defendant possessed the weapon in his residence in order to execute some illicit or illegal purpose. Similarly, the place of business does not apply if the business is an illegal one. Thus, if you found that the defendant possessed a particular gun in connection with gun or drug dealing, or other illicit activity, you may find that the defendant, that he was not in his home or place of business.

On the other hand, if you determine that the place – gun was kept in the defendant's residence or place of employment to protect himself and property, and not to protect or accomplish some illicit or illegal activity, you may not indict on all counts.

(Transcript pp. 70-71, emphasis supplied). Turning to the third degree counts against defendant Jefferies, the prosecutor stated that "the same home or place of business language that I read to you before applies to this one as well" (id. At 74).

The prosecutor's instruction that the place of business exception to criminal liability "does not apply if the business is an illegal one" was a correct statement of law. People v. Roman, 149 M3d 971, 976 (S. Ct., Bx. Co. 1991)(Marcus, J.). However, the critical issue was whether the defendants possessed the firearms in their "home." Notwithstanding defendant Jeffries' Grand Jury denial of connection to the apartment, the Grand Jurors easily could have concluded that both defendants resided in that premises: when the police entered at 11:40 PM, they found not only the two defendants, but also multiple pieces of mail addressed to them there, and credit cards belonging to both. The apartment was apparently furnished, and Lyons had clothing and keys. That the defendants may have possessed weapons in their "home" to defend themselves, their alleged stash of narcotics or any narcotics transactions does not deprive them of the home exception to liability. People v. Melville, 19 M3d 1101(A)(S. Ct., N. Y. Co. 2008)(Farber, J.)(“A right of privacy is a right of privacy, and it exists in one’s home whether one is conducting illegal activity in one’s home or not.”); People v. Roman, supra, 149 M3d at 977 (“because the Legislature did not condition the exception on the possessor’s having exclusively a noncriminal purpose, there is no basis on which to conclude that a mixed purpose disqualifies him from invoking it”). Indeed, in Melville – in which the defendant was likewise charged with possession of drugs and weapons in his home – the Court noted that a 2007 bill “to prevent individuals who conduct illegal activity within their homes from taking advantage of the home exception [to a charge of weapon possession] was not enacted.”

By repeatedly charging that the “home exception does not apply if the defendant possessed the weapon in his residence in order to execute some illicit or illegal purpose,” the prosecutor herein misled the Grand Jury on a critical concept. These instructions were

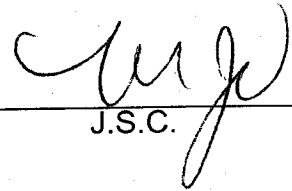
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so "incomplete and misleading as to undermine [the Grand Jury's] essential function," and impaired the integrity of the proceedings as to the affected counts. People v. Calbud, 49 NY2d 389, 396 (1980); accord People v. Caracciola, 78 NY2d 1021 (1991); People v. Batashure, 75 NY2d 306 (1990); People v. Ramos, 223 AD2d 495 (1st Dept.), lv. denied, 87 NY2d 1024 (1996); CPL 210.35(5).

Accordingly, counts five through eight, and twelve through fifteen, are reduced to criminal possession of a weapon in the fourth degree, PL 265.01(1), with leave to re-present should the People be so advised.

This opinion is the decision and order of the Court.

Dated: February 25, 2010
New York, New York



J.S.C.