

<b>People v Abdullah</b>
2013 NY Slip Op 34229(U)
October 4, 2013
County Court, Broome County
Docket Number: 12-209
Judge: Joseph F. Cawley Jr
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STATE OF NEW YORK  
COUNTY COURT : : BROOME COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK

-vs-

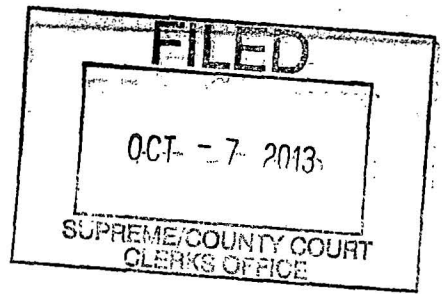
**DECISION AND ORDER**

Indictment No. 12-209

RAMAL ABDULLAH,

Defendant.

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**JOSEPH F. CAWLEY, J.**



On or about April 15, 2013, this *pro se* defendant began trial on Indictment 12-209. On or about April 29, 2013, a partial verdict was returned, convicting the defendant of Criminal Possession of a Controlled Substance in the Fifth Degree (PL 220.06), Resisting Arrest (PL 205.30), Reckless Driving (VTL 1212) and two counts of Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (VTL 511 (1)(a)). The jury was unable to reach a unanimous verdict on counts charging Criminal Possession of a Controlled Substance in the Third Degree (PL 220.16(1)), Criminal Possession of a Weapon in the Second Degree (PL 265.03(3)) and Criminal Possession of a Weapon in the Third Degree (PL 265.02(1)), and the court declared a mistrial as to those counts.

The re-trial was conducted between September 3, 2013 and September 16, 2013, at which time a partial verdict was taken, acquitting defendant of Criminal Possession of a Controlled Substance in the Third Degree but convicting him upon the lesser included offense of Criminal Possession of a Controlled Substance in the Seventh Degree. No verdict was reached upon the counts charging Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree, and again, a mistrial was declared as to those counts of the Indictment.

Re-trial upon the remaining charges (Criminal Possession of a Weapon in the Third Degree and Criminal Possession of a Weapon in Second Degree) is scheduled to begin October 15, 2013.

Defendant has filed an "Affidavit in Fact: In the Nature of Writ of Preclusion of Prosecution Under Double Jeopardy Clause...", which states, *inter alia*, "For and on the record; let it be clearly understood that affiant/defendant's pleading in this matter is not a motion, *and cannot be ruled on by this court* as such." (Affidavit at para. 3, *emphasis added*). Defendant nevertheless requests "[t]his court to preclude the re-prosecution of count's [sic] - three (3), [&] four (4) of the indictment #12-209". The People oppose the requested relief.

## FACTS

The most recent trial began with jury selection on Wednesday, September 4, 2013. Testimony was taken on September 5, and an adjournment of the trial for the date of Friday, September 6th was granted at defendant's request. Trial testimony resumed on Monday, September 9, and continued through Wednesday, September 11. On Thursday, September 12, 2013, the parties summed up, the jurors were charged, and deliberations began at or about 2:00 p.m.. Questions from the jury were received by the Court at 2:21 and 2:35, both of which were answered. No verdict was reached, and the jury was discharged for the evening. Although directed to return to continue their deliberations the following day (Friday, September 13), one juror was unable to attend due to illness, so deliberations were suspended and resumed on Monday, September 16 at 9:15 a.m..

On Sept. 16, at 10:10 a.m., a note was received from the jury indicating that a decision had been reached on the "drug charge", but that they were "[d]eadlocked on the weapons charge". After consulting with the parties, *no* partial verdict was taken; rather, an *Allen* charge was given. After a question at 10:34 a.m., a note was received from the jury at 12:05 p.m., stating: "We are 11-1 decision on the weapons charge. This is how it's been since the beginning. No one is changing their minds. How do we proceed." After consulting with the parties, *no* partial verdict was taken; instead, another *Allen* charge was given, and a luncheon recess declared.

Deliberations continued until 4:10 p.m., when a jury note stated: "We are finished deliberating. No verdict on weapons charge. We would like to leave at 4:30." In response to this note, the jury was brought into the courtroom and asked if they were done deliberating *for the day*, or if they were stating that no further deliberations on the weapons charge would be fruitful. The jury returned to the jury deliberation room and at 4:40 p.m., two notes were received from the jury, one stating "No further deliberations are necessary on weapons charge" and the second stating "Verdict".

At that time, defendant objected to a partial verdict being taken, and requested that a mistrial be granted on all charges submitted. Over defendant's objection, a partial verdict was taken, wherein defendant was acquitted of the charge of Criminal Possession of a Controlled Substance in the Third Degree, and found guilty of the lesser included charge of Criminal Possession of a Controlled Substance in the Seventh Degree. No verdict was reported on the weapons charges.

## DISCUSSION

CPL 310.60 provides, *in pertinent part*, that a deliberating jury may be discharged by the Court without having rendered a verdict when: (a) the jury has deliberated for an extensive period of time without agreeing upon a verdict with respect to any of the charges submitted and the court is satisfied that any such agreement is unlikely within a reasonable time. The

determination as to the length of time jurors will be required to deliberate necessarily is factual and rests in the broad discretion of the trial court (*see, Plummer v. Rothwax*, 63 N.Y.2d 243 (1984) [mistrial after 4 ½ hours]).

With respect to Criminal Possession of a Controlled Substance in the Third Degree, defendant was charged with possessing a quantity of crack cocaine with intent to sell. There was no dispute that crack cocaine was found on defendant's person, or that it was in fact cocaine. The only issue at trial involved whether the defendant possessed the cocaine for personal use, or with the intent to sell it.

With respect to the weapons charges, although defendant disputed the type of search that disclosed the aforesaid weapon [inventory versus narcotic search], the only contested issue at trial was defendant's knowledge, or lack thereof, of its presence in the trunk of the vehicle that he was operating.

Each of the crimes charged therefore presented straightforward, uncomplicated fact patterns.

Based upon their notes, after approximately three hours of deliberations, the jury was deadlocked 11-1 with respect to the charges of Criminal Possession of a Weapon (from 2:00 p.m. on September 12 thru 10:00 a.m. on September 16). The jury continued their deliberations for another six hours, through two separate *Allen* charges, before declaring that no verdict had been reached on the weapons charge and stating that "no further deliberations are necessary".

Under the circumstances presented, it was and remains this Court's opinion that the jury had deliberated for an extensive period of time with respect to all charges submitted, and was satisfied that unanimity was unlikely. This opinion is supported by the jury note(s) indicating that, "since the beginning" their vote was "11-1", that "[n]o one is changing their minds", and further that "no further deliberations are necessary". Having decided that ultimate agreement with respect to the weapon charges was so unlikely that had they been the only charged offenses, discharge of the jury pursuant to CPL 310.60 would have been authorized, deliberations were terminated and the jury was directed to return a partial verdict with respect to the drug charge(s) (see CPL 310.70(1)(a)).

Following the rendition of the partial verdict, defendant may be re-tried for the unresolved weapons charges (see, CPL 310.70(2)). Defendant's application to preclude prosecution on the charges of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree based upon Double Jeopardy is denied.

This constitutes the Decision and Order of the Court.

It is So Ordered.

DATED: October 4, 2013  
Binghamton, NY



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HON. JOSEPH F. CAWLEY  
Broome County Court Judge

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