

**People v Santiago**

2016 NY Slip Op 33009(U)

August 9, 2016

Supreme Court, New York County

Docket Number: 0643-2010

Judge: Roger S. Hayes

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CRIMINAL TERM: PART 85

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THE PEOPLE OF THE STATE OF NEW YORK

: Indictment No.  
0643-2010

-against-

: Motion:  
CPL § 330.30

KAREEM SANTIAGO,

Defendant.

-----X  
Cyrus Vance Jr., Esq., District Attorney, New York County (Rafaella Belizaire, Esq.,  
of counsel) for the People.

Richard Siracusa, Esq., for defendant.

Honorable Roger S. Hayes:

On April 21, 2016, defendant was convicted after a jury trial of Criminal Possession  
of Stolen Property in the Fourth Degree (Penal Law § 165.45[2]), and acquitted of two  
counts of Robbery in the Second Degree (Penal Law §§ 160.10[1] & 160.10[2][a]). On May  
12, 2016, counsel filed a motion to set aside the verdict, pursuant to Criminal Procedure  
Law § 330.30, on the grounds that the verdict was repugnant, and that there was insufficient  
evidence to support a conviction.

On July 21, 2016, the People responded, opposing defendant’s motion.

**Conclusions of Law**

**CPL § 330.30**

The Criminal Procedure Law provides that upon motion of the defendant after a  
guilty verdict and before sentence, defendant may request the Court set aside or modify the  
verdict or any part thereof on “any ground appearing in the record which, if raised upon an

appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court” (*see* CPL § 330.30[1]).<sup>1</sup>

### Repugnant Verdict

A claim of a repugnant verdict must be raised before the jury is discharged (*see People v Alfaro*, 66 NY2d 985, 987 [1985]; *see also People v Satloff*, 56 NY2d 745, 746 [1982]). The People assert that defendant failed to preserve a claim of repugnancy because he failed to object in a timely manner – that is, he failed to object prior to the discharge of the jury. The Court agrees. In order to preserve the issue, defendant had to have raised this prior to the discharge of the jury. Defendant did not do so. Therefore, the Court is precluded from addressing the matter (*see Satloff*, 56 NY2d at 746 [noting an inconsistent verdict “must be registered prior to the discharge of the jury properly to preserve the issue for review in this court”]).

In the interests of judicial economy, the Court has reviewed the merits of the claim and finds even if preserved, no relief is warranted.

A verdict as to a particular count “shall be set aside as repugnant ‘only when it is inherently inconsistent when viewed in light of the elements of each crime as charged to the jury’” (*People v Muhammad*, 17 NY3d 532, 539 [2011], *citing People v Tucker*, 55 NY2d 1, 4 [1981]). The “purpose of this rule is to ensure that an individual is not convicted of ‘a crime on which the jury has actually found that the defendant did not commit an essential

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<sup>1</sup> The Court notes there are two other grounds under CPL § 330.30 which provide relief, but defendant is not raising juror misconduct or newly discovered evidence. Accordingly, the Court focuses solely on the CPL § 330.30(1) grounds for relief.

element, whether it be one element or all” (*id.*). “A verdict is repugnant only if it is legally impossible – under all conceivable circumstances – for the jury to have convicted the defendant on one count but not the other” (*id.* at 539-540). However, where “there is a possible theory under which a split verdict could be legally permissible, [a verdict] cannot be repugnant . . . because factual repugnancy – which can be attributed to mistake, confusion, compromise or mercy – does not provide a reviewing court with the power to overturn a verdict” (*People v Bharath*, 134 AD3d 483 [1<sup>st</sup> Dept 2015] citing *Muhammad*, 17 NY3d at 540).

In this instance, defendant was acquitted of – acting alone or in concert with another, forcibly stealing property with another, and forcibly stealing property causing physical injury. The crime of conviction – Criminal Possession of Stolen Property in the Fourth Degree, required that this jury found beyond a reasonable doubt that the defendant – acting alone or in concert with another, knowingly possessed stolen property with the intent to benefit himself or a person other than the owner. Comparing elements of these offenses, this Court cannot say it was legally impossible – under all conceivable circumstances – for the jury to have convicted the defendant of Criminal Possession of Stolen Property, but not either of the counts of Robbery in the Second Degree (*see People v DeLee*, 24 NY3d 603, 608 [2014]). There is a possible theory in which the jury found all elements of the possession charge, but not the elements of the robbery count. For example, someone could abstain from “forcibly stealing” (either alone or in concert with another), but still possess stolen property.

Therefore, the Court concludes it is legally possible for the jury to have convicted defendant on the possession charge, but acquitted him on robbery charges (*see People v DeLee*, 24 NY3d 603, 608 [2014]).

#### Insufficient Evidence

Defense also asserted on the record, “[t]here’s nothing in the record which would indicate that my client acted in concert with either of the two individuals, nor did he have any knowledge or recent knowledge of the stolen property” (July 8, 2016, Trial Transcript p.5).

“The standard for reviewing the legal sufficiency of evidence in a criminal case is whether ‘after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt’” (*People v Contes*, 60 NY2d 620, 621 [1983], citing *Jackson v Virginia*, 443 US 307, 319 [1979]). Evidence is legally sufficient if it is “competent evidence which, if accepted as true, would establish every element of the offense charged and the defendant’s commission thereof” (*People v Simon*, 157 AD2d 508, 512 [1<sup>st</sup> Dept 1990]).

In this case, there was evidence a police officer was handed the complaining witness’s credit card when he was standing where defendant and his two co-defendants were found following the robbery – inside a locked room in a parking garage (*see People v Garcia*, 272 AD2d 189 [1<sup>st</sup> Dept 2000]). The evidence, taken in the light most favorable to

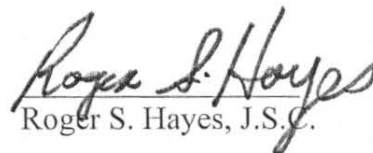
the People, is legally sufficient and if accepted as true, would establish every element of the offense charged and the defendant's commission of that offense (*see Simon*, 157 AD2d at 512). There is no basis for disturbing the jury's credibility determinations (*see People v Ramirez*, 140 AD2d 545 [1<sup>st</sup> Dept 2016]).

**Conclusion**

Based on the above-stated reasons, defendant's motion to set aside the verdict, is denied.

This constitutes the decision and order of the Court.

New York, New York  
August 9, 2016

  
Roger S. Hayes, J.S.C.

**HON. ROGER S. HAYES**