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No. 34  
The People &c.,  
Respondent,  
v.  
Mazin Assi,  
Appellant.

Jan Hoth, for appellant.  
Peter D. Coddington, for respondent.  
Anti-Defamation League, amicus curiae.

GRAFFEO, J.:

This case requires us to determine when the Hate Crimes Act of 2000 (L 2000, ch 107) took effect and whether it applies to certain property crimes, such as an attempted arson at a Jewish synagogue.

The term "hate crimes" refers to criminal acts against

"victims [who] are intentionally selected, in whole or in part, because of their race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation" (Penal Law § 485.00). The rise in the occurrence of these types of offenses led to a legislative determination that existing criminal statutes did "not adequately recognize the harm to public order and individual safety that hate crimes cause" (id.). As a result, the Legislature passed the Hate Crimes Act in 2000 (L 2000, ch 107), emphasizing that hate crimes "inflict on victims incalculable physical and emotional damage and tear at the very fabric of free society . . . [by] send[ing] a powerful message of intolerance and discrimination to all members of the group to which the victim belongs" (Penal Law § 485.00). The Act requires enhanced sentences for dozens of specified offenses committed under circumstances that satisfy the definition of hate crimes (see Penal Law §§ 485.05, 485.10). Chapter 107 was to take effect 90 days after it was enacted (see L 2000, ch 107, § 9), which meant that Penal Law article 485 was scheduled to take effect on October 8, 2000.

At approximately 3:00 A.M. on that day, New York City police officers saw a red Honda parked on a service road near the Henry Hudson Parkway. The car was about 250 feet away from the synagogue of the Conservative Congregation Adath Israel of Riverdale. Shortly after the officers noticed the Honda, the vehicle departed but returned a short time later and dropped off

three passengers who walked toward the synagogue. After about 10 minutes, the officers observed the passengers walking away from the synagogue. The officers did not approach them, however, because there was nothing to indicate they had committed any crime.

Several hours later, a congregant arrived at the synagogue to find that the front door glass panel had been shattered. The police discovered a broken bottle of vodka on the ground, along with several rocks, purple-stained latex gloves, and another bottle containing a purple liquid. Both bottles were plugged with charred wicks and had been fashioned into "Molotov cocktails."

Eventually, the police determined the identity of the individuals who had been near the synagogue that evening, resulting in defendant and the driver of the Honda being arrested. A search of the automobile uncovered latex gloves and a towel that had been torn to make a Molotov cocktail wick. Defendant waived his Miranda rights and admitted that he had participated in the attempted arson of the synagogue because he was angry that a Palestinian child had been shot by the Israeli Army. Using an expletive to refer to the congregants of the synagogue, defendant stated that the "rich Jews in Riverdale send money over there and they buy guns and they are killing people." The attempted arson, defendant explained, was intended to "make a statement" that would "stop the violence in the Middle East."

Defendant then gave a detailed account of what he and two acquaintances had attempted to do at the synagogue and he later repeated his confession on videotape.

Defendant and the driver were indicted as codefendants for numerous offenses, including two counts of attempted arson in the third degree as hate crimes and two counts of criminal mischief in the third degree as hate crimes. Following jury selection, defense counsel moved to dismiss the hate crime charges, arguing that defendants' conduct occurred before the effective date of the Hate Crimes Act. Defense counsel contended that although the Legislature specified that the law would take effect 90 days after it was enacted (i.e., October 8, 2000), that date fell on a Sunday and the following Monday was a public holiday; the effective date of the Act was therefore postponed under General Construction Law §§ 20 and 25-a until Tuesday, October 10, 2000 -- two days after the incident at the synagogue. An argument was also presented that the Hate Crimes Act did not apply to property crimes, such as those defendants were charged with. Supreme Court rejected both arguments, concluding that the General Construction Law statutes were inapplicable and that Penal Law § 485.05 applied to an arson that was motivated by religious hatred.

Defendant was subsequently convicted of several offenses, including attempted arson in the third degree and criminal mischief in the third degree as hate crimes. He was

sentenced to an aggregate term of imprisonment of 5 to 15 years.<sup>1</sup> The Appellate Division affirmed (63 AD3d 19 [1st Dept 2009]) and a Judge of this Court granted leave to appeal (12 NY3d 912 [2009]).

Defendant claims that his hate crimes convictions should be reversed because article 485 of the Penal Law applies only to crimes against persons, not property, and that the attempted arson of a building, such as a synagogue, cannot qualify as a hate crime. In our view, this argument is inconsistent with both the text of the relevant statutes and the legislative intent of the Hate Crimes Act.

A hate crime can be committed in two different ways. First, by intentionally selecting the "person" who will be the victim of the crime "in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct," and committing a specified offense (Penal Law § 485.05 [1] [a]). Second, by intentionally committing a specified offense "in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of

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<sup>1</sup> The driver was convicted of criminal mischief in the third degree and sentenced to 1½ to 4 years' imprisonment.

whether the belief or perception is correct" (Penal Law § 485.05 [1] [b]).

Defendant believes that the statutory reference to "person" restricts the statute's reach to crimes against individuals. The Penal Law, however, defines "person" to mean "a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality" (Penal Law § 10.00 [7]). The congregation that owned the synagogue would fall under the category of an association of individuals or a religious corporation, and therefore, it qualified as a "person" within the meaning of Penal Law § 10.00 (7).

In addition to this technical definition, subdivision (1) (b) of section 485.05 broadly applies to specified offenses -- including property crimes such as trespass, burglary, arson and grand larceny (see Penal Law § 485.05 [3]) -- that are motivated by a belief or perception of another person's religion. Consequently, the attempted arson of a house of worship that is motivated by religious animus is covered by Penal Law § 485.05 (1) (b) (see Donnino, Practice Commentary, McKinney's Cons Laws of NY, Book 39, Penal Law § 485.00, at 284 [noting that an example of a hate crime under subdivision (1) (b) "would be a perpetrator who, professing hatred against a particular religion, sets off a bomb in that religion's place of worship"]). As the Appellate Division noted, it is self-evident that, although the

target of defendant's criminal conduct was a building, the true victims were the individuals of Jewish faith who were members of the synagogue.

The history of the Hate Crimes Act confirms this conclusion. The legislative findings set forth in section 485.00 indicate that criminal acts involving the "destruction of property" can qualify as hate crimes. Similarly, New York City's memorandum in support of the bill specifically referred to the defacement of a synagogue or the desecration of a religious statue as examples of hate crimes (see Mem of Mayor of New York City, Bill Jacket, L 2000, ch 107, at 12). Other documents in the bill jacket similarly commented that a prime purpose of the legislation was to address the growing problem of bias-related property destruction (see Budget Rep on Bills, Bill Jacket, L 2000, ch 107, at 3; see also Mem of Attorney General, Bill Jacket, L 2000, ch 107, at 5).

For these reasons, we reject defendant's contention that religiously-motivated property crimes do not fall within the ambit of Penal Law article 485. The evidence in this case proved that defendant committed an attempted arson of the synagogue because of his anger toward a particular religious group. As defendant's conduct fit within the scope of the Hate Crimes Act, the motion to dismiss was properly denied.

Defendant also maintains that he could not be convicted of hate crimes because his conduct occurred prior to the

effective date of the Hate Crimes Act. According to defendant, General Construction Law §§ 20 and 25-a direct that new laws that become operational on a weekend or a public holiday are to become effective one day later. Hence, defendant asserts that the Hate Crimes Act went into effect on Tuesday, October 10, 2000, because its specified effective date, October 8th, was a Sunday and October 9th was Columbus Day. We disagree.

Under the common law, new laws took effect immediately upon their passage unless some other date was set forth in the legislation (see e.g. Matthews v Zane, 7 Wheat [20 US] 164, 211 [1822]; Real v The People, 42 NY 270, 276 [1870]). The reasonableness of this rule was questioned in certain situations because it was "impossible in any state, and particularly in such a wide-spread dominion as that of the United States, to have notice of the existence of the law, until some time after it has passed" (1 Kent's Commentaries, 12th ed, 458). Nevertheless, the common-law rule was "deemed to be fixed beyond the power of judicial control" in the absence of a legislative declaration that a new law would take effect at some other time (id.).

The Legislature altered this common-law principle in 1829 (see 1 Rev Stat of NY, part I ch VII, tit IV, § 12). That statute provided that "[e]very law, unless a different time shall be prescribed therein, shall commence and take effect, throughout the state, on and not before the twentieth day after the day of its final passage, as certified by the secretary of state" (id.



[emphasis added]). The 20-day rule is now found in Legislative Law § 43.

Section 43 and its common-law antecedent compel us to reject defendant's argument that the effective date of the Hate Crimes Act was delayed for two days beyond the date selected by the Legislature. The Legislature is authorized to prescribe an effective date of its choosing and we are aware of no limitation on its prerogative (see e.g. McKinney's Cons Laws of NY, Book 1, Statutes § 41 ["The Legislature has the right and duty to determine when an act is to take effect"]). Contrary to defendant's contention, General Construction Law §§ 20<sup>2</sup> and 25-a (1)<sup>3</sup> do not negate this principle. Section 25-a specifies that when "an act is authorized or required to be done" within a certain period of time and the last day of the period falls on a weekend or public holiday, the time period is extended to the

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<sup>2</sup> "A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. If such period is a period of two days, Saturday, Sunday or a public holiday must be excluded from the reckoning if it is an intervening day between the day from which the reckoning is made and the last day of the period. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning."

<sup>3</sup> "When any period of time, computed from a certain day, within which or after which or before which an act is authorized or required to be done, ends on a Saturday, Sunday or a public holiday, such act may be done on the next succeeding business day."

following business day. This provision applies to situations that involve the calculation of a deadline, such as the filing of legal papers or other documents. In these circumstances, the deadline will be extended if it falls on a weekend or holiday when the courts or government offices are closed for business. Similarly, General Construction Law § 20 simply provides a method for extending a two-day period to act if the period includes a weekend or a holiday. Neither statute has any bearing on this case because they do not alter the Legislature's exclusive power to determine when its legislation will become effective.

We therefore agree with the courts below that Penal Law article 485 became effective on Sunday, October 8, 2000. Because defendant's criminal conduct occurred several hours after the new statute took effect, he was properly arrested, prosecuted and sentenced under the Hate Crimes Act.<sup>4</sup>

Accordingly, the order of the Appellate Division should be affirmed.

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Order affirmed. Opinion by Judge Graffeo. Chief Judge Lippman and Judges Ciparick, Read, Smith, Pigott and Jones concur.

Decided March 30, 2010

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<sup>4</sup> Defendant's remaining contention regarding jury selection lacks merit.