

People v Williams

2019 NY Slip Op 32395(U)

June 18, 2019

Supreme Court, Columbia County

Docket Number: 19-009

Judge: Richard M. Koweek

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT : COUNTY OF COLUMBIA

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 19-009

-against-

DECISION AND ORDER

JERMAINE E. WILLIAMS,

Defendant.

The Defendant was indicted by the Columbia County Grand Jury with one count of Criminal Possession of a Weapon in the Third Degree, a Class D Felony, in violation of Penal Law §265.02(1). He was arraigned on March 25, 2019, and a Scheduling Order was issued that required Omnibus Motions to be filed no later than May 9, 2019.

The Defendant filed such a motion seeking various forms of relief, which included a challenge to the constitutionality of Penal Law §265.01(1), which prohibits the possession of a variety of weapons, including a “metal knuckle knife”, the weapon this Defendant is charged with possessing. The Indictment further alleges that because the Defendant has a prior criminal conviction, his possession of this weapon is elevated to a felony, pursuant to Penal Law §265.02(1).

DISMISSAL OF INDICTMENT UPON THE GROUNDS THAT THE STATUTORY
SCHEME VIOLATES THE SECOND AMENDMENT

The Defendant argues that knives constitute “bearable arms” for purpose of Second Amendment analysis. He argues that under District of Columbia v. Heller, 554 U.S. 570 (2008), the Second Amendment confers upon its citizens the right to bear arms, not firearms. He then argues that knives constitute arms, for they may be borne for defense or offense, citing Heller at 581. He contends that for an arm to be prohibited, it must be both dangerous and unusual. Since knives are less deadly than firearms, which are constitutionally protected, the statute criminalizing the possession of various weapons, including certain classes of knives, is unconstitutional, citing Avitable v. Beach, 368 F.Supp. 3d 404 (U.S. District Court N.D.N.Y.2019). He also cites cases in other states that purport to adopt such analysis.

Pursuant to Executive Law §71 and CPLR 1012(b), the Attorney General was notified of this constitutional challenge. The office advised the Court that they would not be participating but, nevertheless, forwarded some arguments. First, she argues that the Defendant lacks standing because he has a prior conviction, citing People v. Knight, 169 A.D.3d 493 (1st Dept. 2019) and People v. Johnson, 111 A.D. 3d 469 (1st Dept. 2013).

Substantively, she asserts that the Defendant's arguments must also fail. A statute such as this (PL 265.01) that does not ban all knives but only certain ones determined by the legislature to be dangerous, such as metal knuckle knives, does not infringe upon a persons's Second Amendment rights. People v. Perkins, 62 A.D.3d 1160, 1161 (3d Dept. 2009). The legislative history concerning the enactment of this bill in 1995 supports the view that metal knuckle knives have been identified as dangerous and unusual weapons, which exist solely for violent purposes. N.Y. State Archives, NYS Bill and Veto : Jackets 1995.

The District Attorney also opposes. He also argues that the Defendant lacks standing by virtue of his prior criminal conviction from challenging the constitutionality of this section. People v. Knight, *supra*. He distinguishes the case of Avitable v. Beach, *supra*, because that case found that the prohibition of stun guns was unconstitutional. Here, the prohibition is against a particular kind of knife, not all knives.

He also argues that the prohibition against possession of gravity knives, also part of the list of prohibited weapons in Penal Law 265.01(1), has been upheld, citing Copeland v. Vance, 230 F.Supp. 232, *aff'd* 893 F.3d 101 (2017). Finally, he cites a series of miscellaneous criminal cases from New York City that ruled that because this section

does not prohibit all weapons or even all knives, it does not run afoul of Heller's holding.

See e.g. People v. Taylor, 63 Misc.3d 897, 900-01 (N.Y. Crim. Ct. 2019)

DISCUSSION

With regard to the issue of lack of standing, the only cases advanced by the People are People v. Johnson, 111 A.D.3d 469 (1st Dept. 2013) and People v. Knight, 169 A.D.3d 493 (1st Dept. 2019). Johnson is inapposite. In Knight, Defendant, who had previous multiple felony convictions, was charged with possessing a gravity knife. He argued that his conviction for that offense (PL 265.02(1)) violated his Second Amendment right to bear arms. The First Department found that he lacked standing to claim that the Section's absolute prohibition of possession of gravity knives by anyone violates the Second Amendment. No reference was made to any of the outstanding Federal cases discussing the subject, and, unlike him, this Defendant has one prior misdemeanor conviction, even though it is enough to raise the charge from a misdemeanor to a felony. The Court distinguishes that case and elects to treat the matter on its merits.

There is no doubt that this particular section of the Penal Law has been criticized

judicially by some courts, and that certain weapons have been found to be improperly banned.¹ Although not directly relevant to the charge against this Defendant, none of the attorneys to this litigation express an awareness that a bill was signed by Governor Cuomo decriminalized possession of a gravity knife, PL 265.01 (1) effective May 30, 2019.

On the other hand, several Courts have found the prohibition as it relates to particular weapons under this section to be constitutional.²

Any discussion about the constitutional infirmities of any section of the Penal Law starts with the strong presumption of constitutionality that must be overcome by the challenger. People v. Stuart, 100 N.Y.2d 412, 422 (2003); Brady v. State of New York, 80 N.Y.2d 596; People v. Scalza, 76 N.Y.2d 604, 607 (1990). This Defendant argues, by analogy, that because of the holding in Avitable v. Beach, *supra*, at 416, which declared that a statewide ban on civilian possession of tasers and stun guns is a functional ban on

¹See Avitable v. Beach, *supra* (stun guns and tasers), Maloney v. Singas, 351 F. Supp3d 222 (U.S. Dist. Ct. E.D. N.Y. 2018) blanket ban on possession of nunchaku or chauka sticks violates Second Amendment.

²People v. Herbin, 86 A.D.3d 446 (1st Dept. 2011); Copeland v. Vance, 892 F.3d 101 (2d Cir. 2018); People v. Taylor, 63 Misc.3d 897 (Criminal Court N.Y. 2019); People v. Perkins, 62 A.D.3d 1160 (3d Dept. 2009).

the entire class of these arms, it prohibited his right to possess these weapons in his own home for self defense violating of the Second Amendment. Therefore, this Court should conclude that the prohibition against possession of a metal knuckle knife is also improperly banned.

Such an argument fails for many reasons. First, no showing has been made that metal knuckle knives are commonly utilized by the populous at large, as required by Heller.³ In Avitable v. Beach, it was conceded by the defendant that stun guns and tasers were in common use. Beach at 411. Nor has there been any showing that a metal knuckle knife is a “bearable arm” such as to be protected by the Second Amendment.⁴ The section challenged does not prohibit the possession of all knives, but rather certain specific knives that the legislature has determined to be dangerous.⁵ Indeed, the Third Department, in the case of People v. Perkins, 62 A.D.3d 1160, 1161 (2009), addressed this very point.

³“...the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes...” 554 U.S. at 625.

⁴Penal Law §265.00 5-b defines Metal Knuckle Knife as “a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.”

⁵Automatic knife, pilum ballistic knife, gravity knife and switchblade knife, Penal Law §265.00 (4), (6), (5-a), (5-b) and (5-c). See also Penal Law 10.00 (12).

While the United States Supreme Court concluded in that case that the Second Amendment confers a constitutionally protected individual right to keep and bear arms as a means of self-defense within the home, it also held that the right conferred by the Second Amendment- and, by extension, Civil Rights Law § 4 (see *Chwick v. Mulvey*, 2008 N.Y. Slip Op. 22486(U), 2008 WL 5478802, *19 [2008])-is not absolute and may be limited by reasonable governmental restrictions (see *District of Columbia v. Heller*, 128 S.Ct. at 2816).

Unlike the statute at issue in Heller, Penal Law Article 265 does not effect a complete ban on handguns and is, therefore, not a “severe restriction” improperly infringing upon defendant's Second Amendment rights”.

Similarly, this statute does not impose a comprehensive ban against all knives, but only certain specific ones. Therefore, it cannot be said to violate the Second Amendment under the reasoning of Heller and its progeny.⁶

Defendant’s Motion to Dismiss the Indictment, upon this ground, is denied.

INSPECTION OF GRAND JURY MINUTES

Defendant requests that the Court inspect the Grand Jury minutes and, upon such

⁶A picture of the offending weapon is annexed to this Decision and Order for the reader’s edification.

inspection, to dismiss the Indictment upon the grounds that the evidence before the Grand Jury was insufficient to make out a prima facie case. The People consent that the Court review the Grand Jury minutes in camera to determine the legal sufficiency of the evidence to support the Indictment and the adequacy of legal instructions to the Grand Jury.

The Court has made an in camera inspection of the Grand Jury minutes pursuant to CPL §210.30 and determines that release of the minutes is not necessary to assist the Court in determining the legal sufficiency of the evidence. The Court finds that the evidence presented to the Grand Jury was legally sufficient to support the charges contained in the Indictment. (CPL §210.20).

In addition, the Court finds that the instructions of the Grand Jury were sufficient, the Grand Jury was lawfully constituted, and that there were no other defects in the Grand Jury proceedings warranting dismissal. (CPL §§210.20, 210.35).

REQUEST FOR A HUNTLEY HEARING

Defendant requests a hearing to determine the voluntariness of statements alleged

to have been made by him. The People consent to a Huntley hearing.

A hearing will be held on August 8, 2019, at 1:00 p.m.

PRECLUSION OF PHYSICAL EVIDENCE

Defendant moves to suppress controlled substances and knife claimed to have been seized from his person without a warrant. In support thereof, he supplies his Attorney's Affirmation asserting, if true, a possible lack of probable cause to search and arrest. The People oppose but offered no Affidavits from any person having first-hand knowledge of the circumstances surrounding his arrest and search.

CPL §710.60 requires the moving party to state the grounds for the Motion containing sworn allegations of fact based upon personal knowledge or upon information and belief, provided that in the latter event, the sources of such information and the grounds of belief are stated. Subdivision 4 of said Section requires the Court to conduct a hearing if the Motion is not summarily granted or denied.

In this case, a hearing will be held in conjunction with the hearing for the suppression of statements.

SANDOVAL, VENTIMIGLIA and MOLINEAUX

Defendant's request for a hearing to consider use of Defendant's prior record against him in cross examination as well as uncharged crimes, if any, as part of their case in chief is consented to by the People. A hearing will be held prior to the trial.


LEAVE TO FILE ADDITIONAL MOTIONS

The Defendant seeks permission to file additional motions or discovery demands as a result of the instant motions outcome. The People oppose.

The request is denied except to the extent that the Defendant can show a particularized need, at which point the same may be considered.

This is the Decision and Order of this Court.

DATED: June 18, 2019
Hudson, New York



RICHARD M. KOWEEK
County Court Judge

Papers Considered:

1. Notice of Motion of Dominic J. Cornelius, Esq., dated May 7, 2018; Affirmation of Dominic J. Cornelius, Esq., affirmed May 7, 2019; Affidavit of Service
2. Affirmation in Response to Omnibus Motion of James A. Carlucci, Esq., Assistant District Attorney, dated May 21, 2019; Affidavit of Service
3. Letter of Nikki Kowalski, Esq., Deputy Solicitor General for Criminal Matters, dated June 6, 2019
4. Affirmation of Trevor O. Flike, Esq., Assistant District Attorney, dated June 5, 2019