30 Misc.3d 1237(A)
Unreported Disposition
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Supreme Court, Rockland County, New York.

The PEOPLE of the State of New York
v.
Spencer LAURORE, Defendant.

No. 10–252. | Feb. 15, 2011.

Attorneys and Law Firms

Thomas P. Zugibe, Esq., District Attorney of Rockland County.

Daniel E. Bertolino, Esq.

Opinion

WILLIAM A. KELLY, J.

***1** Defendant is charged with Criminal Possession of a Weapon in the Third Degree and Criminal Mischief in the Fourth Degree. Defendant made a motion to suppress evidence which was denied after a hearing. At the close of the People's case the Court dismissed the charge of Endangering the Welfare of a child since a prima facie case had not been made with respect to that count. The defendant made statements admitting that he did damage the jeep in question which established the crime of Criminal Mischief in the Fourth Degree. The main issue in the case at trial focused on the first count, Criminal Possession of a Weapon in the Third Degree. The resolution of that issue revolves around whether or not a metallic object recovered from defendant pursuant to a search incidental to his arrest, is whether that item constitutes "metal knuckles" as that term is defined in Penal Law 265.02(1).

There is no **definition** of "metal knuckles" in the statute. The legislative history is silent as well and there is no appellate authority directly on point. There are two cases from the Criminal Court of the City of New York which address the issue of whether the property recovered in those cases constitutes "metal knuckles".

In *People v. Laguna,* 124 Misc.2d 182 (Crim. Ct. New York 1984). The Court found that an instrument with three leather straps worn on the hand with metal spikes attached to it did not fit the **definition** of "metal knuckles" as contemplated in the statute. One year later, a Court of the same jurisdiction found that the same type of item was in fact "metal knuckles". *People v. Singleton,* 127 Misc.2d 735 (Crim. Ct. New York 1985.)

In *Laguna,* supra the Court relied upon the common dictionary **definition** of "metal knuckles". Both Webster's dictionary online and online dictionary.com define "brass knuckles" as follows:

> Brass knuckles: a small metal weapon; worn over the knuckles on the back of the hand.

In *People v. Singleton,* supra the court held that whether a particular item qualified as "metal knuckles" should not be determined by reference to a dictionary **definition** but rather by a three factor test. In *Singleton,* supra the Court found that the same instrument the Court in *Laguna,* said did not constitute "metal knuckles in fact qualified as "metal knuckles".

The *Singleton* Court held that the determination of whether an object constitutes "metal knuckles" prohibited by statute is not determined by dictionary reference but by reference to the three factors, the factors i.e.,

1. Whether a blow by a fist wearing the instrument in question causes metal to come into contact with the victim's body.

2. Whether the instrument is designed so that it readily can be used offensively against the human body and

3. Whether the design is such that it cannot reasonably be put to any use otherthan to enable the wearer to inflict a blow with a fist covered by metal or pieces of metal.

***2** Counsel for defendant contends that the object recovered from the defendant's pocket is in fact "a cat key chain" which does not qualify as "metal knuckles".

The recovered item has two holes for the fingers to slide into and two metal pointed spikes that, when the knuckles are worn, protrude from the back of the hand where the fist could strike an individual. However, defendant contends the primary use of the object is as a key chain. He argues that it may be used defensively but says that would be a secondary,

not the primary use of the object which he says is a key chain. He says the "cat key chain" fails to meet the three prong test articulated in *Singleton* test because the item is designed such that it can be put to use other than as a weapon.

Counsel attached an internet search under "Google" using the work "brass knuckles" which contained a variety of instruments generally referred to as "brass knuckles but that none of them looks like the "cat key chain" here. He also supplied an internet search from "Wikipedia" depicting items he contends are "brass knuckles" in which the "cat key chain" is not depicted.

The *Singleton* three prong test is certainly not binding on this court but the reasoning utilized by that court appears to be sound and may be of assistance in this case. The court has examined the weapon as well as a photograph of the "metal knuckles" recovered from the defendant.

The People contend that an individual wearing this "cat key chain/metal knuckles who strikes another would inflict substantially more injury than if one were struck by a bare fist alone. The knuckles, by their appearance, satisfy the first prong readily. Should a person be struck by an individual wearing these "metal knuckles", they would suffer substantially more injury than when struck by a bare fist. In fact, the "metal knuckles" the defendant possessed in this case would cause greater injury than what one might consider "traditional metal knuckles" which have a less pointed striking surface.

The People contend the second and third prongs of the test are satisfied by a quick internet search which reveals that this very weapon is designed to be worn on the knuckles for the purpose of causing greater damage should the person wearing it strike a blow, which is the very **definition** of "metal knuckles".

The People say an internet search of the knuckles recovered from the defendant in this case shows that the knuckles he possessed were in fact designed specifically for the purpose of being placed on the hand and inflicting more damage when striking.

Knivesdeal.com, a website that boasts of selling weaponry of the finest quality, sells the knuckles that were recovered from the defendant in this case. In advertising this very item, Knivesdeal.com tells the buyer:

This unusual Golden Cat Defense key chain packs quite a punch. The eyes of the cat become finger holes and the ears become spikes when clutched in the hand to create an excellent means of self defense against an attacker.

***3** Swordsswords.com also sells the knuckles recovered from the defendant and sells them under the general heading of "Brass Knuckles, Knuckle Weights. This website, selling these items under this ver heading, defines brass knuckles as:

> These are weapons that are used in hand-to-hand combat.

The brass knuckles can be best described as pieces of metal that is mostly steel. It is shaped in such a way that it is a perfect fit around the knuckles. It has been designed in such a way to both preserve and focus the punch's forces when it is directed at the intended surface with a heavy impact. Not only is it very lethal but can also inflict temporary damage to the victim's bones. The brass knuckles have an extended grip that just spread across the assailant palm.

Swordsswords.com goes on to define the knuckles recovered from the defendant in a manner identical to the description utilized by Knivesdeal.com..

The People note that Knivesdeal.com and Swordsswords.com, in addition to selling the knuckles recovered from the defendant as well as other metal knuckles, also sell items such as **switchblades**, stun guns, gravity knives and kung fu stars, all items enumerated as deadly weapons under the Penal Law. The People point this out in light of defense counsel's argument that one can buy items such as these or, say, a knuckle knife letter opener, in magazines, etc. They further contend that unlawful items can be readily procured by otherwise lawful means on the internet in any event.

It appears from the exhibit in evidence that "metal knuckles come in all different shapes, sizes and designs. Some have spikes, some have ridges and some appear to have dual functions. In defendant's exhibit B in evidence, pages 1, 6 and 7, the knuckles can be seen attached to the heel of a stiletto boot. On page 9, 10 and 11 in the same exhibit, the knuckles can be seen worn as part of a necklace.

In response to the defense claim that the knuckles recovered from the defendant were a key chain, that had perhaps an incidental ability to be used as a weapon, the People

state defense counsel can point to no advertisement which actually describes this item as merely a key chain. The People argue that the knuckles possessed by the defendant are sold, purchased and advertised as a weapon that can also be used a key chain, ostensibly to hide the fact that it is, in fact, a weapon.

The People contend that the fact that these knuckles can double as a key chain and therefore by **definition** are not a "deadly weapon" is without merit. For example they say a gun with a loophole attached for carrying keys is still a gun; a **switchblade** attached to a necklace in the guise of "accessorizing" is still a **switchblade**. They maintain that a set of "metal knuckles" that is simultaneously used as a key chain is still a set of "metal knuckles for purposes of the statute.

I agree with their contention. I find that the metallic object is in fact "metal knuckles" whether one references the dictionary **definition** of "metal knuckles" or the three factor test in *Singleton,* supra. The object has two holes for the fingers and two pointed metal spikes which when worn protrude from the back of the hand and which are obviously designed to enable one to inflict a blow from a fist enclosed by metal spikes for the purpose of enhancing the injury to be inflicted on contact.

***4** Counsel also contends that the statute [Penal Law 265.01(1)] which proscribes the possession of "metal knuckles" as a per se weapon is void for vagueness.

It is true that statutes which create crimes must be definite in specifying conduct which is condemned or prohibited. They must afford some comprehensible guide, rule, or information as to what must be done and what must be avoided, to the end that an ordinary member of society may know how to comply with its requirements.

The legislature must spell out the elements of an offense in explicit words "so that the citizen may receive unequivocal warning before conduct otherwise innocent may be made the cause of fine or imprisonment" *People v. Munoz,* 9 N.Y.2d 51.In *People v. Munoz,* supra, the Court of Appeals struck down a New York City Administrative Code provision which made it unlawful for persons under 21 years of age to possess "knives and sharp pointed or edged instruments in public places". The Court said that the statute was invalid because it was too vague and too general to indicate what persons are included or what items are prohibited.

The Court said that the language of the statute would include such innocuous items as knitting needles, fountain pens, safety razors and nail files.

In *People v. Bright,* 71 N.Y.2d 376, 526 N.Y.S.2d 66, the Court struck down as unconstitutionally vague, a loitering statute which required a suspect to provide a "satisfactory explanation for his or her presence" in order to avoid arrest. The Court said that whether a particular explanation by a citizen was a "satisfactory explanation" was left entirely up to the arresting officer. The Court said that the statute did not sufficiently inform ordinary citizens of what conduct was prohibited, and therefore, it could not survive a challenge on the grounds that it was unconstitutionally vague.

The Court said that a legislative enactment is presumed to be valid, and the burden is on the party challenging the statute to demonstrate it is unconstitutionally vague *Brady v. State of New York,* 80 N.Y.2d 596, 602. The Court said that: In a challenge to the constitutionality of a penal law on the grounds of vagueness, it is well settled that a two pronged analysis is required. First the statute must provide sufficient notice of what conduct is prohibited; second, the statute must not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement (see *Kolender v. Lawson,* 461 U.S. 352, 357; *Grayned v. City of Rockford,* 408 U.S. 104, 108–109; *Papachristou v. City of Jacksonville,* 405 U.S. 156; *People v. Nelson,* 69 N.Y.2d 302; *People v. Smith,* 44 N.Y.2d 613, 618; *Matter of Sussman v. New York State Organized Crime Task Force,* 39 N.Y.2d 227, 234; *People v. Paul Stewart,* 100 N.Y.2d 412. The Court said that with respect to he first prong the statute must provide sufficient notice of what conduct is prohibited.

***5** Turning to the second prong of the test (that a statutory enactment not permit arbitrary or discriminatory enforcement), which the Court said is the more important aspect of the vagueness doctrine, the Court held as follows: The legislature must include in a penal statute minimal guidelines to govern law enforcement (*id.*) Quoting *Smith v. Goguen,* 415 U.S. 566, 574, 94 S.Ct. 1242, 1248, supra). The absence of objective standards to guide those enforcing the laws permits the police to make arrests based upon their own personal, subjective idea of right and wrong. A vague statute "confers on police a virtually unrestrained power to arrest and charge persons with a violation.

Even though the *Bright* Court spent time on the portion of the loitering statute that purported to require a person to give a "satisfactory explanation" of his or her presence, the Court said that "Even if the statute did not contain a satisfactory explanation requirement, however, we would still be compelled to conclude that, as applied, the statute is unconstitutionally vague."

In *People v. New York Trap Rock Corp.,* 57 N.Y.2d 371, 456 N.Y.S.2d 711, the Court of Appeals struck down a town noise ordinance as being void for vagueness. The Court said that the town noise control ordinance was unconstitutionally void for vagueness because the vague **definitions** of the conduct prohibited failed to provide a person with adequate warning of what the law required, which rendered the ordinance susceptible to arbitrary and discriminatory enforcement.

The noise ordinance in the *New York Trap Rock* case, did include ten standards to be considered in determining whether "unnecessary noise" existed in any particular case. However the Court said that even the ten "specific" standards of the ordinance could not save it from its vagueness. The Court found the standards were nothing but abstract lines of inquiry, none of which provided a guideline for the perplexed would be noisemaker.

In reply the People argue that Penal Law § 265.01(1) enumerates numerous items that are unlawful to possess in the State of New York as a matter of law. Many of the items, such as "stun gun," "gravity knife" "**switchblade** knife," "pilum ballistic knife" and "metal knuckle knife," to name a few, are defined within the statute. However, the following fourteen items enumerated in the statute are not defined in the Penal Law: pistol, revolver, dagger, dirk, razor, stiletto, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, sand bag, sandclub and slungshot. The question is, does the fact that the statute does not specifically define "metal knuckles" render the statute unconstitutionally vague in that respect.

The People say that the cases cited by defense counsel merely state that a law must provide sufficient notice to the average citizen of the outlawed conduct or it will be deemed unconstitutionally vague.

The People claim that the Court of Appeals has addressed this very issue, albeit for a different weapon. See *People v. Persce,* 204 N.Y. 397 (1912). Specifically, the Court In *Persce* held that mere possession of an item known as a "slungshot" was criminal and that proof of intent to use the same was unnecessary In so holding, the Court state "..the well understood character of slungshots, billies, sandbags and brass knuckles make it evident that the legislature were entirely justified in regarding them as dangerous and foul weapons seldom used for justifiable purposes but ordinarily the effective and illegitimate implements of thugs and brutes in carrying out their unlawful purposes." (emphasis added) *Id.* at 402. Thus the Court of Appeals has already recognized that brass knuckles have "well understood" characteristics. It is further important to note that all of the weapons referenced by the court as having "well understood character," including brass knuckles, lack a specific Penal **definition**. In fact, the Court of Appeals goes on to cite to the dictionary when defining a slungshot' in its decision.

***6** The People contend that in *People v. Talbert,* 116 Misc.2d 771 (Albany County 1982), THE Court specifically ruled that even though the Penal Law does not specifically define a "billy," the statute is not unconstitutionally vague. The weapon contemplated in Talbert was not manufactured as a "billy," but rather was a broom handle that was modified to possess the characteristics of a billy. The court nonetheless found the item to be a "billy." In determining what a billy was, the Court cited to the testimony of the policeman as well as the dictionary **definition**. The court's ruling was upheld by the Appellate Division, Third Department. See *People v. Talbert,* 107 A.D.2d 842 (3rd Dept.1985).

Websters–Dictionary–Online.com, OnlineDictionary.com and the Free Dictionary define brass knuckles as: a small metal weapon, worn over the knuckles on the back of the hand. Therefore the People argue that metal knuckles are thus commonly known object that do not require a Penal **definition** in order to escape unconstitutional vagueness. They say that basic human experience and common sense, make readily apparent to the common citizen the characteristics which render an item to be "metal knuckles" and thus unlawful to possess. They point out that there is no statutory **definition** of either "revolver" or "pistol" in the Penal Law but that does not render the statute unconstitutionally vague. They contend that when referring to them as firearms both the Court of Appeals in *Persce,* supra, and the Appellate Division, Third Department in *Talbert* supra, held that the actual physical attributes of the object are not as determinative as in the purpose of the object's design. The dispositive evidence is that these metal knuckles were designed specifically to be worn on the hand and over the knuckles for the specific purpose of increasing the injuries that would be caused by striking the person with a closed fist.

The mere fact that "metal knuckles" is not a term defined by the Penal Law does not render the statute unconstitutionally vague. The law does not require that every single term used in the Penal Law be defined. The mere fact that the legislature undertook to define some objects and not others is an indication that the legislature was well aware of the self-defining nature of "metal knuckles". The spirit and purpose of the statute and the objects to be accomplished must be considered when interpreting a stutute. *People v. Ryan,* 274 N.Y. 149.

In the *Matter of Jacqueline S,* 248 A.D.2d 398 a City administrative code provision making possession of a toy that substantially duplicates an actual pistol a crime was not found to be to be void for vagueness. The Court found the statute was sufficiently definite "to give a person fair notice" the contemplated conduct was forbidden by the statute. In *United States v. Ahmed Nadi et al* 996 F.2d 548 defendant contended that the statute in question (18 U.S.C. Section 1031) was void for vagueness because the statute failed to define the term "value of the contract" and therefore failed to specify with sufficient definiteness what conduct was prohibited. The Court rejected that contention and said that when the challenge is vagueness "as applied" the two part test invoking the classical notice doctrine and clear standards for enforcement applies.

***7** When a defendant challenges a statute as unconstitutionally vague he must carry the heavy burden of showing that the statute is impermissibly vague in all of its applications. Facial challenges to statutes are generally disfavored. *National Endowment for the Arts,* 524 U.S. at 580 since legislative enactments carry a strong presumption of constitutionality. *Brady v. State of New York,* supra.

Where the Court as here is presented with both a facial and as-applied argument the court must decide whether the statute is impermissibly vague as applied to the defendant *Hoffman Estates,* 455 U.S. at 495. I find that the statute is reasonably clear in its application to the defendant and therefore reject the as-applied challenge. In *Stuart,* 100 N.Y.2d 412, the Court of Appeals adapted this approach in finding New York's Anti–Stalking Statute not void for vagueness despite the fact the legislature failed to define the term "no legitimate purpose". The Court pointed out that a constitutional attack on an almost identical phrase, the term "legitimate" which defendant contended was incapable of precise **definition** was rejected in *People v. Shack,* 86 N.Y.2d at 533. The Court noted that the term should not be considered in isolation but as one element of a statute that fully defines the prohibited act (id at 539).

Also in re *Jonathan V,* 55 A.D. 3rd 273 the Court held that the absence of a **definition** in the Penal Law of the term "public "omnibus" did not render the statute impermissibly vague, since the term is given its legal meaning as defined in the jurisprudence of the State. *People v. Reed,* 265 A.D.2d 56.

I find that the statute is not unconstitutionally void for vagueness facially or as applied. I find that based upon all of the evidence that the People have proved beyond a reasonable doubt the defendant is guilty of Criminal Possession of a Weapon in the Third Degree and Criminal Mischief in the Fourth Degree.

This Decision shall constitute the Order of the Court.

Parallel Citations

30 Misc.3d 1237(A), 926 N.Y.S.2d 346 (Table), 2011 WL 903184 (N.Y.Sup.), 2011 N.Y. Slip Op. 50388(U)

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