State of New York Court of Appeals

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To be argued Thursday, October 20, 2005

No. 162   People v James Robbins

James Robbins was arrested in March 2002 after allegedly selling crack cocaine to an undercover officer in a buy-and-bust operation at West 40th Street and Eighth Avenue in Manhattan, roughly three blocks from the Holy Cross grade school on West 43rd Street. He was convicted of third degree criminal sale of a controlled substance and criminal sale of a controlled substance in or near school grounds which, under Penal Law § 220.00(14), requires proof the sale occurred in "any area accessible to the public located within 1,000 feet" of school property. Now serving concurrent prison terms of 6 to 12 years in prison, Robbins argues in this appeal that there was insufficient evidence the sale occurred within 1,000 feet of Holy Cross.

The statute does not declare whether the distance is to be measured as the crow flies or as a pedestrian would have to travel. Because buildings stand in the way, a detective was unable to directly measure the bee-line distance from the point of sale to Holy Cross; he measured one pedestrian route to be 1,294 feet and another route to be 1,091 feet. However, Supreme Court ruled the distance should be measured "in a direct line" from drug sale to school and it allowed the prosecution to employ geometry to figure it out, taking judicial notice of the Pythagorean theorem. The detective was sent back out to measure the two sides of the right triangle: up Eighth Avenue from 40th to 43rd street (764 feet) and then along 43rd Street to the school (490 feet). Calculating the hypotenuse in accordance with the theorem produced a distance of 907.63 feet from the drug sale corner to the school.

The Appellate Division, First Department affirmed the conviction, ruling that the distance should be determined "by a straight-line or 'as the crow flies' method" and that the detective's measurements "provided enough information to make a reliable calculation." The court said, "The statute provides for a 1,000-foot radius without regard to whether the geographic area is occupied by any obstructions to pedestrian traffic. A direct line measurement furthers the purpose of the statute which is to provide a corridor of safety for children coming to and from school."

Robbins argues that, because "crows do not sell drugs" and the purpose of the statute is "keeping school children a safe distance from drug activity," the distance from drug sale to school should be determined by the route a pedestrian would have to take. "[T]he People actually proved, through more than one attempt to walk the distance, that the school children in question had the 1000 foot protection -- and more (1294 feet, or 1091 feet). No drug dealer or school child could have walked or driven to the schoolyard from the point of sale without travelling more than 1000 feet. Thus, the pedestrian method would have directly effectuated the clear purpose of the statute in this case, while the straight line method did not."

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