

NEW YORK COURT OF APPEALS

People v. Jackson

18 N.Y.3d 738, 967 N.E.2d 1160 (2012) · Decided March 27, 2012

OPINION

GRAFFEO, J.

OPINION OF THE COURT Graffeo, J. After he was found with marihuana during a traffic stop, defendant Samuel Jackson pleaded guilty to criminal possession of marihuana in the fifth degree. On appeal, he argued that the accusatory instrument charging him with that crime was jurisdictionally deficient because it failed to adequately allege that he was in a “public place” and that the marihuana was “open to public view”—two elements of the fifth degree possession offense.

Rejecting defendant’s argument, the Appellate Term affirmed defendant’s conviction (27 Misc 3d 5 [2010]) as do we. *741While operating his vehicle on a public street in Brooklyn, defendant committed a traffic infraction that was witnessed by a police officer. When the officer pulled him over and approached his vehicle, she detected a strong odor of marihuana and saw defendant holding a ziplock bag of marihuana in his hand.

Other items of contraband were subsequently discovered as a consequence of the motor vehicle stop, including more than a dozen bags of marihuana. Defendant was ultimately charged with one count of criminal possession of marihuana in the fifth degree, two counts of unlawful possession of marihuana and other offenses. He pleaded guilty to criminal possession of marihuana in the fifth degree in satisfaction of all the charges and was sentenced to five days in jail.

Despite the guilty plea, defendant appealed his conviction to the Appellate Term, arguing that the accusatory instrument charging him with the fifth-degree possession offense was jurisdictionally deficient. Defendant contended that, because he was in a private vehicle, he was not in a public place when he was found in possession of marihuana. He further asserted that the police officer’s allegation that he was holding the marihuana in his hand exposed to public view was too conclusory to satisfy that element of the offense.

The Appellate Term rejected these arguments and declined to disturb defendant’s conviction. A Judge of this Court granted defendant leave to appeal (16 NY3d 832 [2011]). By pleading guilty, defendant forfeited most appellate claims but he retained the right to challenge the jurisdictional sufficiency of the accusatory instrument because “[a] valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution” (People v Dreyden, 15 NY3d 100, 103 [2010], quoting People v Case, 42 NY2d 98, 99 [1977]).

Since defendant did not waive the right to be tried for this misdemeanor offense by information, we must assess his claim based on the standards governing an information (see *People v Kalin*, 12 NY3d 225, 228 [2009]). An information is valid for jurisdictional purposes if it contains nonconclusory factual allegations that, if assumed to be true, address each element of the crime charged, thereby affording reasonable cause to believe that defendant committed that offense (*People v Konieczny*, 2 NY3d 569, 575 [2004]; see CPL 100.40 [1] [c]).

Although an information should also be based on nonhearsay allegations, we have clarified that “a purported hearsay defect in an accusatory instrument is nonjurisdictional and, thus, *742forfeited by a guilty plea” (*Konieczny* at 575, quoting *People v Keizer*, 100 NY2d 114, 121 [2003]).

Here, defendant does not rely on hearsay deficiencies, but argues that the accusatory instrument failed to include sufficient nonconclusory factual allegations relating to two elements of the charged offense. Thus, if meritorious, the claim he raises would be jurisdictional in nature, as the People concede.

To resolve defendant’s challenge to the accusatory instrument we must review the elements of criminal possession of marihuana in the fifth degree, which is defined in Penal Law § 221.10 (1). This offense was created in 1977 when the Legislature added article 221 to the Penal Law (L 1977, ch 360).

The new article restructured marihuana possession offenses with the intent to reduce criminal culpability for the possession of a small quantity of marihuana for personal use in a private place (such as in the home), making such conduct a violation when it had previously been a misdemeanor (Mem of Assembly Comm on Codes, Bill Jacket, L 1977, ch 360).

However, the Legislature did not alter its view that the possession or use of marihuana in public constituted a crime. Toward that end, Penal Law § 221.10 was enacted creating the misdemeanor offense of criminal possession of marihuana in the fifth degree.

Under the subsection at issue in this case, “[a] person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses... marihuana in a public place, as defined in section 240.00 of this chapter, and such marihuana is burning or open to public view” (Penal Law § 221.10 [1]). Defendant contends that the accusatory instrument was jurisdictionally deficient because it failed to allege that he was in a public place since he was in his vehicle when he was discovered with the marihuana and the allegations were too conclusory to support the inference that the marihuana was “open to public view.” We address each argument in turn.

Public Place When the Legislature made possession in a “public place” an element of criminal possession of marihuana in the fifth degree, it did not assign that term a specific meaning that would be unique to that offense (see e.g. Penal Law § 240.37 [“Loitering for the purpose of

engaging in a prostitution offense”]), nor did it leave the phrase undefined (see e.g. *People v McNamara*, 78 NY2d 626 [1991] [interpreting “public place” element in public lewdness statute where Legislature did not define that term or *743cross-reference a definition existing elsewhere in the Penal Law]).

Instead, it incorporated by reference a preexisting definition of the phrase from article 240, a separate Penal Law article relating to a broad range of offenses against public order. Under Penal Law § 240.00 (1), a “public place” is “a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.” In this case, where defendant was found in possession of marihuana during a motor vehicle stop on a public street, the People alleged that defendant was in a “public place” because he was on a “highway”—a location that the Legislature specifically designated as a public place in Penal Law § 240.00 (1).^{*} Defendant does not dispute that a public street is a highway within the meaning of Penal Law § 240.00 (1).

Rather, he contends that he was not in a public place because he was situated inside his vehicle when the officer observed marihuana in his hand. Thus, defendant characterizes the issue as whether the interior of a car used for personal transportation is a “public place.” Although defendant acknowledges that a pedestrian walking on a public street would be in a “public place,” under his rationale a location would change from a public street to a private place if a person is in a private vehicle.

We disagree. With one exception, Penal Law § 240.00 (1) defines a “public place” in terms of fixed physical locations—highways, schools, parks and the like—declaring these spaces to be public no matter whether a person is standing still or moving through them and regardless of the particular means of locomotion in use, if any.

Thus, though certainly relevant to the second issue we address (the “open to public view” element), for purposes of the Penal Law § 240.00 (1) definition of “public place,” the fact that *744defendant was in his personal automobile does not alter the fact that he was on a highway—and was therefore in a public place— when he was seen in possession of marihuana.

Insofar as the “public place” element is concerned, his situation is no different than if he were riding a bicycle on a highway or walking on a public street. Focusing on the exception to the statute’s general rule that a “public place” is a fixed physical location, defendant notes that the provision also incorporates “transportation facilities” which are defined to include not only certain physical spaces (e.g. airports and train stations) but also vehicles used for public passenger transportation, such as “aircraft, watercraft, railroad cars, buses” and the like (see Penal Law § 240.00 [2]).

By referencing certain types of public transit in the definition of “public place,” defendant argues that the Legislature must have intended to exclude privately-owned automobiles used exclusively for personal transportation, intending such vehicles to be private. Again, the question is not whether a person’s automobile is “public” or “private” but whether defendant was in a public place when he was in his car on the street.

The People do not argue that a privately-owned vehicle used exclusively for personal transportation is a “public place” akin to a subway train or public bus. Rather, a driver of a personal automobile will be in a public place only when the vehicle is in a location that qualifies under the statute as a public place.

In contrast, by defining certain vehicles used for public transportation—such as a bus—as themselves constituting “public places,” the Legislature made the location of those vehicles at the time of the crime irrelevant; they are “public places” whether they are being driven on a highway or are parked in a private parking lot.

The Legislature’s decision to broadly incorporate public transit vehicles within the definition of “public place” regardless of their location in no way undermines our conclusion that a person is in a public place when located on a highway even if he or she is inside a personal automobile.

In fact, the contrary view of the statute propounded by defendant and the dissent would distinguish unfairly between those prosecuted for less serious violations and those subject to misdemeanor convictions. For example, under their rationale, because the “public place” element would be lacking, a person smoking marihuana while sitting in a parked personal vehicle on a public street with the windows open, readily observable to *745 anyone passing by, would be guilty of nothing more than a violation (the same offense that would apply were the person at home)—while a person standing just outside the vehicle in the same location engaged in the same behavior would be guilty of misdemeanor possession under Penal Law § 221.10 (1).

This would be true even though both hypothetical parties would have engaged in conduct that impacted the public in precisely the same manner. Although acknowledging that the marihuana possession offenses were restructured to reduce penalties for private marihuana possession or use in some circumstances, the dissent and defendant would extend the 1977 reforms well beyond the private conduct the Legislature intended to address, encompassing behavior that can fairly be described as occurring in public.

Moreover, given that the Penal Law § 240.00 (1) definition of “public place” applies to a wide variety of crimes, many involving conduct bearing little similarity to the marihuana possession offense to which defendant pleaded guilty, it would be imprudent to give the phrase the restricted reading urged by defendant and the dissent. A holding that a person in a private vehicle can never

be in a public place could have a far-reaching impact on the scope of other offenses—leading to results likely never intended by the Legislature.

For example, under Penal Law § 240.62, entitled “[p]lacing a false bomb or hazardous substance in the first degree,” it is a class D felony to position in a “public place any device or object that by its design, construction, content or characteristics appears to be... a bomb, destructive device, explosive or hazardous substance, but is, in fact, an inoperative facsimile or Imitation of such a bomb.” Were we to conclude that the interior of a private automobile is not a “public place” under the Penal Law § 240.00 (1) definition, then a person that put a convincing—though fake—bomb on the passenger seat of a private vehicle and parked it on the street in front of a government building would not be guilty of this offense, despite the significant public disruption, fear and even chaos that would likely ensue when the device was observed by the police or a passing civilian.

Similarly, were we to conclude that a highway is not a public place as long as an individual remains inside a private vehicle, then someone who engaged in harassment by slowly traveling alongside a pedestrian walking on a secluded public street, thereby placing that person in reasonable fear of physical injury, might avoid prosecution for harassment in the first degree (Penal Law § 240.25). *746 Under the theory suggested by defendant and the dissent, by electing to follow the victim in an automobile rather than on foot, the offender would have negated the “public place” element of that offense.

Considered in this broader light, we are unpersuaded that the Legislature could have intended the definition of “public place” to have the narrow meaning they ascribe to it. For all of these reasons, we reject defendant’s argument that the accusatory instrument was deficient because it failed to adequately allege that defendant—seen in possession of marijuana while in his vehicle on a public street—was in a public place within the meaning of Penal Law § 240.00 (1).

Open to Public View Next, defendant contends that even if he was in a public place, the accusatory instrument was nonetheless deficient because the allegations that the marijuana was “open to public view” were too conclusory to establish a prima facie case.

The requirement that an accusatory instrument contain nonconclusory allegations is part of the prima facie case requirement. We have explained that “[s]o long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading” (Kalin, 12 NY3d at 230, quoting Konieczny, 2 NY3d at 575 [additional citation omitted]).

That being said, we have stressed that when an allegation involves a conclusion drawn by a police officer that involves the exercise of professional skill or experience, some explanation concerning

the basis for that conclusion must be evident from the accusatory instrument. Otherwise, the allegation will be deemed too conclusory to meet the reasonable cause requirement (see Kalin [where item that was observed by officer was described as a controlled substance without having been subjected to laboratory testing, officer was required to explain basis for that conclusion]; see also Dreyden [where officer identified a knife as a gravity knife without describing the knife's characteristics or otherwise explaining how he reached that conclusion, allegation was too conclusory to meet prima facie case requirement]).

In this case, defendant's claim of unduly conclusory allegations relates to the "open to public view" element, which is not defined either in Penal Law § 221.10 (1) or elsewhere. But in keeping with the policy underlying the 1977 restructuring of marihuana possession offenses, it is evident that the Legislature included this requirement to limit the criminal culpability of a party that possesses a small quantity of marihuana in a public place but does so in a manner that conceals the drug.

In many respects, this element speaks more directly to the legislative concern for personal privacy—whether an individual is in a private automobile or elsewhere—than the "public place" element. That marihuana must be "open to public view" (or burning) to support prosecution under Penal Law § 221.10 (1) ensures that a pedestrian walking on a public street carrying an inconsequential amount of marihuana secreted in a bag or pocket would not be subject to misdemeanor prosecution.

When considered in the context of this case, it is this element that recognizes that, although a vehicle may be located in a public place, this does not mean that its occupants and owners have relinquished privacy interests in items concealed inside.

Thus, it is the "open to public view" requirement—rather than the "public place" provision—that addresses the concern expressed by the dissent that personal automobiles are, in some respects, private in the sense that certain areas within the interior of an automobile are hidden from view (see dissenting op at 749). Defendant contends that the accusatory instrument in this case was too conclusory to provide reasonable cause to believe that the marihuana was open to public view.

Although not a model of specificity, we conclude that the allegations were jurisdictionally sufficient. A determination that a particular item is "open to public view" does not require the exercise of professional skill or experience on the part of a police officer warranting a specialized explanation.

Thus, in most cases the basis for such an allegation can be discerned by drawing reasonable inferences from all the facts set forth in the accusatory instrument. Here, the accusatory instrument alleges that, upon approaching the vehicle, the officer "smelled a strong odor of marihuana emanating from inside the... vehicle" and "observed the defendant holding a quantity of

marihuana in [his] hand, open to public view.” Additional allegations—in which the officer explains the basis for her conclusion that the substance was marihuana (see Kalin, 12 NY3d 225 [2009])—indicate that the contraband was in a ziplock bag.

Although the officer did not describe the precise location of defendant’s hand, since she was standing outside the vehicle when she saw the *748substance in the ziplock bag, these allegations support the inference that any other member of the public could also have seen the marihuana from the same vantage point—meaning that the marihuana was in an unconcealed area of the vehicle that would have been visible to a passerby or other motorist.

Indeed, the statute does not require that a member of the public (other than a law enforcement officer) have actually seen the contraband—it requires only that the substance have been “open” or unconcealed in a manner rendering it susceptible to such viewing.

The allegations were therefore sufficient to supply a jurisdictionally adequate accusatory instrument. Accordingly, the order of the Appellate Term should be affirmed. In concluding that defendant was not in a public place because he was in his car, the dissent relies exclusively on the first clause of Penal Law § 240.00 (1) which contains a general “catch-all” definition—“a place to which the public or a substantial group of persons has access.” Thus, the dissent overlooks the fact that the Legislature had previously determined that a highway is a public place, thereby obviating the need to resort to the catch-all provision.

In any event, it can hardly be argued that a public street is not accessible to a substantial number of persons.