

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-4

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THE PEOPLE OF THE STATE OF NEW YORK :
: BY: WILLIAM M. ERLBAUM, J.
:
-against- : DATE: May 27, 2004
:
EMMANUEL CHAMBERS, : INDICT. NO. 1309/2002
DEFENDANT. :
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On February 7, 2002, the defendant unlawfully entered the house of the complainant, his ex-girlfriend, when she was not at home. Upon her return, the defendant jumped out of a closet, surprised the complainant, and dragged her into a bedroom. He then threatened her with a knife and asked if she was "ready to die". During this altercation, the complainant's phone rang. After answering the phone, the complainant was able to grab the knife away from the defendant. The defendant then fled from the residence.

The defendant was arrested on April 21, 2002, and in May, 2002 he was indicted for two counts of Burglary in the Second Degree, one count of Menacing in the Second Degree, and one count of Criminal Possession of a Weapon in the Fourth Degree. On January 31, 2003, after the conclusion of a bench trial, the

defendant was convicted of Criminal Trespass in the Second Degree, Criminal Trespass in the Third Degree, Menacing in the Second Degree, and Criminal Possession of a Weapon in the Fourth Degree. The trespass convictions were lesser included offenses of the burglary charges. The Court was convinced beyond a reasonable doubt that the defendant menaced the complainant with a knife and was unlawfully inside her home. However, the Court gave the defendant the benefit of the doubt as to whether he had the intent, at the very moment he unlawfully entered into the home, to commit a separate crime therein. Accordingly, the People were unable to sustain the burglary counts of the indictment.¹ The Court found, instead, that the defendant unlawfully entered the complainant's home, committing the crime of trespass thereby, and after the crime of criminal trespass was completed, he formed the intent to commit, and then consummated the crime of menacing.

On February 24, 2003, the defendant was sentenced to one year incarceration for Criminal Trespass in the Second Degree, and one year incarceration for Menacing in the Second Degree, these sentences to run consecutive to each other. He was also

¹ Had the defendant been convicted of Burglary in the Second Degree, the Court would have had to sentence him to a mandatory minimum term of incarceration of 5 years with a potential maximum of 25 years.

sentenced to concurrent terms of incarceration of 90 days for Criminal Trespass in the Third Degree, and one year for Criminal Possession of a Weapon in the Fourth Degree.

The defendant has submitted the instant motion, dated April 1, 2004, seeking to vacate his consecutive definite sentences under indictment 1309/2002, pursuant to CPL 440.20[1], and be re-sentenced to concurrent definite sentences. CPL 440.20[1] states that at "any time after the entry of a judgement, the court in which the judgement was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law". The defendant submits that pursuant to PL 70.25[3], the sentence imposed upon him in this case is illegal. PL 70.25[3] states, "where consecutive definite sentences of imprisonment are . . . imposed on a person for offenses which were committed as parts of a single incident or transaction, the aggregate of the terms of such sentences shall not exceed one year". The defendant alleges that the offenses he was convicted of are part of a single incident or transaction, and therefore he should have been sentenced to concurrent terms of incarceration, so that his aggregate sentence would not exceed one year. He therefore is seeking re-sentence to concurrent terms of incarceration.

The crimes committed by the defendant in the instant case were extremely serious. The underlying nature of these crimes, as well as the circumstances under which they were committed, were extremely disturbing to the complainant, as well as to the Court. The complainant's residence was invaded and she was subsequently threatened with death in her own home. The Assistant District Attorney who tried this case made quite an impassioned plea to this Court at sentencing conveying her thoughts as to the gravity of these crimes and the effect they had on the complainant.² The complainant also spoke at sentencing and expressed her feelings of fear and worry to the Court. The trial Assistant sought, and strenuously argued for, a consecutive sentence to be imposed on the defendant in this case. Undoubtedly, she was convinced that the sentence she sought, and which was ultimately handed down, was appropriate and legal.

The Court is astonished that the People have done an about face and submitted an affirmation, dated May 5, 2004, reflecting very little legal research beyond that cited by the defense, undermining the presentation of the very able Assistant District Attorney who tried the case, confessing error, and agreeing to

² Another Assistant District Attorney is handling this case for the purposes of this motion.

concurrent re-sentencing. Based upon its own research, the Court finds the issue involved to be real and substantial. Furthermore, contrary to the defendant's allegations, the case law leads to the conclusion that the crimes committed by the defendant were not part of a single transaction. The Court therefore fails to understand why the People did not research the issue more thoroughly and submit an argument to the Court in support of the position that the predecessor Assistant District Attorney took at the time of sentencing.

"Sentencing is solely within the court's discretion and even though the People and defendant agree to a sentence, the agreement is not binding upon the court." (See, People v. Rawdon, 296 AD2d 599 [3rd Dept 2002], leave denied, 98 NY2d 771 [2002]). Despite the fact that both the defendant and the People are in agreement that the defendant should be re-sentenced to concurrent definite sentences of incarceration, the ultimate responsibility of sentencing the defendant falls to the Court. Based upon the discussion infra, the Court does not agree with the arguments set forth by the parties, and does not find that resentencing the defendant in this case is appropriate.

Although the Court will set forth its reasons for finding that the defendant should not be resentenced to concurrent terms of incarceration, in actuality this issue has been rendered moot.

While the instant motion filed by the defendant was sub judice in this Court, the defendant initiated a habeas corpus proceeding in the Appellate Division, Second Department. To this Court's surprise, and despite the fact that this Court had not rendered its decision on the defendant's motion, the Appellate Division apparently determined the issue on the merits, finding that the defendant should be released from custody, and that he was sentenced in violation of PL 70.25[3].³ (See, People ex rel. Mogal, o/b/o Chambers v. Squillanti, ___ AD3d ___, Decision, Order and Judgment, Appellate Division, Second Department, dated May 14, 2004). The decision was rendered by the Appellate Division apparently on the People's consent, thus without benefit of any opposing research, analysis, or argument by the People, and without this Memorandum which was in preparation at the time.

As stated earlier, the issue as to whether the defendant was sentenced in violation of PL 70.25[3] is not self-evident. After the submission of the parties' papers, the Court adjourned the matter for study, analysis, and the preparation of this Memorandum, well within its prerogative and not for any purpose of running the clock and causing the defendant to remain incarcerated-- a purpose which would have been unthinkable. Had

³ The defendant has been ordered released from custody.

the Court believed that the issue at hand was clear cut and that the defendant and the People were correct in their position that the defendant should be resentenced, the Court would have granted relief immediately. However, the Court did not, and does not, believe that to be the case.

With the utmost respect, this Court would note that had the Appellate Division been inclined to order the release of the defendant from incarceration while awaiting this Court's opinion, perhaps it would have been better had it done so without reaching the merits of the defendant's motion until this Court had the opportunity to decide the motion and put its findings and conclusions in writing. In effect, this Court's Memorandum opinion, rendered today, was reversed on May 14, 2004, thirteen days before it was made. In any event, the balance of this Memorandum sets forth this Court's findings and conclusions.

The defendant alleges that the occurrences of February 7, 2002, concerning the defendant, were part of a single incident⁴ or criminal transaction, and therefore PL 70.25[3] precludes an

⁴ An incident is defined by Black's Law Dictionary (7th ed. 1999) as "a discrete occurrence or happening". Though the term criminal transaction will be discussed fully in the body of this Memorandum, the Court does not find it necessary to have a separate discussion regarding the term incident. Though the term incident is used in PL 70.25[3], the discussion regarding criminal transaction will clearly demonstrate that the findings by the Court also apply to the term incident.

aggregate term of incarceration exceeding one year. CPL 40.10[2] defines the term criminal transaction as “. . . conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture”.

This Court finds that the crimes committed by the defendant under the instant indictment were not part of a single criminal transaction. Although it has been submitted by both parties that the People’s argument at trial was that the defendant unlawfully entered the complainant’s home with the intent to commit a crime therein, namely to menace and threaten the complainant, the Court reminds the parties that that argument was rejected by the fact finder in this case, the trial Court. Instead, this Court found that at the moment of the defendant’s unlawful entry into the complainant’s home, the defendant did not have any intent to commit a crime therein.

There was testimony at trial from the defendant that he had a key to the house and went into the complainant’s home to retrieve some of his belongings. Furthermore, the defendant testified that he believed he had the permission of the

complainant to enter the home whenever he chose. Though that may have been quite presumptuous of him, the complainant's testimony did establish that up until a certain point in time, the defendant did have her permission to do so. Though the defendant may have hoped to speak to the complainant about their deteriorated relationship if he saw her in the house, again, the People did not establish that the defendant had a criminal intent to menace at the very moment of entering the house.⁵

The crimes committed by the defendant were separate and distinct from one another. Trespass was a completed crime that ended once the defendant was inside the complainant's home. The menacing, for which the defendant was sentenced to a consecutive term of incarceration, was a crime of opportunity. The Court's verdict reflects that after the defendant completed the commission of the criminal trespass and was already in the complainant's home, he formed the intent to commit, and did commit, the menacing.

⁵ Though the Court was convinced beyond a reasonable doubt that the defendant menaced the complainant with a knife, it was not firmly established if the defendant entered the house with that knife, or picked it up while inside the house. Additionally, the knife in this case that the defendant used to menace the complainant after his intent to commit that crime arose, was conceded by the People not to be a per se weapon. Accordingly, the knife did not persuade the Court that the defendant entered the complainant's home with the intent to commit a crime therein.

Relating these facts, as found by the Court, to the definition of criminal transaction, the Court finds that they do not constitute one transaction. First, although the incidents did occur closely in point of time, they are not connected in the circumstances of commission. The essence of the trespass charge was the simple criminal entry by the defendant into the complainant's home. He had no other criminal intent at that time. The essence of the menacing charge however, was much more serious. The defendant's threatening to kill the complainant with a knife demonstrated his intent to exercise domination and control over her. This intent by the defendant was not present when he first entered the complainant's home. Second, the crimes committed by the defendant were not closely related in criminal purpose or objective, as each crime had a different intent and motive behind it. (See, People v Vesprey, 183 AD2d 212, 216 [1st Dept 1992], leave denied, 81 NY2d 894 [1993]).

Furthermore, when determining whether different crimes are part of the same criminal transaction, the nature of the crimes must be reviewed. (See, People v. Griffin, 137 AD2d 558 [2nd Dept 1988], appeal denied, 70 NY2d 1006 [1988]).⁶ In this case, it is

⁶ The Griffin case, 137 AD2d 558, at 559, additionally holds that the underlying facts of a case, concerning the victim, time, place, and date, must also be considered when determining if crimes are part of the same transaction. Although in this case the victim, place, and date of the instant crimes are the same,

clear that the nature of the trespass charges and the nature of the menacing charge were different. Whereas it was not proven that criminal trespass was committed with any other purpose on the part of the defendant than to enter the premises (apparently to remove his belongings from the complainant's home⁷), the defendant's intention to menace the complainant with a knife, arose afterward, in an effort to instill in her the fear of injury. Accordingly, this Court finds that the crimes committed by the defendant against the complainant are not part of the same criminal transaction.

This holding is mandated by the pertinent case law. Controlling is the Court of Appeals decision in People v. Almeida, 39 NY2d 823, 824 [1976]. In that case, the defendant was convicted of Criminal Possession of a Controlled Substance in the Seventh Degree and Criminal Possession of a Weapon. He was sentenced to consecutive terms of incarceration, one year for the drug offense and nine months for the weapon offense. The

and the time span between the crimes is less than an hour from the moment the defendant entered the complainant's home until he eventually fled after she answered the phone, this does not change this Court's holding that the crimes are not part of a single criminal transaction. This follows from the Court of Appeals holding in People v. Almeida, 39 NY2d 823 [1976], which will be discussed in the body of this Memorandum.

⁷ The complaint concedes that the defendant had a right to his possessions, but not the right to unlawfully enter her home.

defendant argued that the sentence violated PL 70.25[3], in that the aggregate of the sentences was more than one year. The Court disagreed with the defendant, holding that, "[a]lthough the defendant was discovered to be in possession of both the narcotics and the weapons at the same time, he committed two separate and distinct offenses. In no measure can these two dissimilar possessory offenses be construed as arising from the same criminal transaction". The Court went on to say, "[t]o extend the statute to such unrelated offenses would reduce the deterrent effect of the consecutive sentences". It must be noted, therefore, that the crimes in the instant matter should be considered part of two different criminal transactions despite the fact that they occurred at the same place, with the same victim, in a short time period. In fact, like in the Almeida case, the crimes in the instant case were separate and distinct offenses. Furthermore, this Court could not agree more with the Court of Appeals' fear of reducing the deterrent effect of consecutive sentences. This Court certainly hopes that the defendant will think twice before again breaking into someone's home and threatening violence.

In People v. Williams, 277 AD2d 508, 509 [3rd Dept 2000], the defendant was drinking alcoholic beverages with minors and then led them to an apartment in which he used to live. One of

the minors accused the defendant of sexually assaulting her while they were in the apartment. The defendant was convicted of trespass and various alcohol related offenses. The Appellate Division found a single criminal transaction due to the crimes at issue being part of a continuous incident with a single criminal purpose. The Court stated, "[t]he record reveals no evidence that defendant's entry into the apartment was accompanied by any culpable mental state significantly discrete from that associated with his criminal dealings with his young victims". Though both the defendant and the People cite to this case in support of their position, this Court can not agree with their analysis. In the case at bar, this Court did not find one mental state, but found two very discrete mental states. Furthermore, this Court found that the crimes were not continuous in nature, but separate and distinct. Accordingly, finding that the crimes at issue are not part of the same criminal transaction is appropriate.

The parties in this case have also cited to People v. Frazier, 212 AD2d 976 [4th Dept 1995] and People v. Judkins, 139 AD2d 792 [3rd Dept 1988] in support of their position. However, the Court finds that these cases as well do not support their argument. In Frazier, the defendant was convicted of possessing a rifle and firing that rifle. In Judkins, the incarcerated defendant refused and then physically resisted orders by

correction officers to return to his cell. He was convicted of assault and obstruction of governmental administration. It is no surprise that the Third and Fourth Departments found each pair of crimes to be part of a single transaction. Those findings were based on the fact that the actions of the defendants were continuous in nature. That is not the situation in the case at bar, as this Court found that the crimes committed by the defendant were not continuous in nature, but two crimes that each had its own beginning and ending.

Furthermore, this Court is aware of the Appellate Division cases, cited by the parties, purporting to support their position that the crimes committed by the defendant comprised one single criminal transaction. (See also, People v. Taylor, 197 AD2d 858 [4th Dept 1993]; People v. Griffin, 137 AD2d 558 [2nd Dept 1988], appeal denied, 70 NY2d 1006 [1988]). However, this Court is bound by the holding of the Court of Appeals in People v. Almeida, supra. That Court's reasoning leads inescapably to the conclusion that the crimes committed in this case are not part of a single criminal transaction and warrant consecutive sentencing.

If this issue were not moot, the defendant's motion to set aside his sentence and be re-sentenced to concurrent definite terms of incarceration would have been denied. However, under the circumstances herein, the decision of the Appellate Division

and the doctrine of stare decisis, the re-sentencing of the defendant is required.

The Clerk of the Court is directed to provide copies of this Memorandum to the attorney for the defendant and to the District Attorney.

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WILLIAM M. ERLBAUM, A.J.S.C.