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# Double Jeopardy, Supreme Court, Appellate Division Second Department: People v. Quamina

In conclusion, New York State courts have adhered to a two-prong test set forth by the federal courts when assessing whether an administrative suspension of a driver's license followed by a prosecution for an underlying crime of driving while intoxicated violates double jeopardy.[183] New York State cases are replete with citations to federal cases which have held that a driver's license suspension followed by prosecution for the underlying crime is not violative of double jeopardy.[184] Hence, the state position is analogous to the federal position and the prompt suspension law is consistent with both the Federal and New York State Constitutions.

## People v. Quamina[185]
## (decided February 3, 1997)

Defendant appeals his conviction of the charge of criminal possession of a weapon in the third degree, claiming a violation of his constitutional rights[186] and statutory protections against double jeopardy.[187] "The defendant had moved to dismiss the

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[183] *Id.*

[184] *Id.*

[134] 653 N.Y.S.2d 612 (2d Dep't 1997). In his first trial, defendant, Kellon Quamina, was charged with two counts of criminal possession of a weapon in the second degree and two counts of criminal possession of a weapon in the third degree. *Id.* at 613. He was acquitted of the charges in the second degree, but the jury could not reach a verdict for the charges in the third degree. *Id.* A new trial was ordered as to theses charges. *Id.* Defendant was convicted at the subsequent trial and appealed. *Id.*

[186] *Id.* *See* U.S. CONST. amend. V. The Fifth Amendment provides "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." *Id.* Similarly, N.Y. CONST. Article I § 6 states: "No person shall be subject to be twice put in jeopardy for the same offense." *Id.*

[187] *Id.* *See also* N.Y. CRIM. PROC. § 40.20. (McKinney 1989). Section 40.20 provides the following:

> (1) A person may not be twice prosecuted for the same offense (2) A person may not be separately prosecuted for two offenses based upon the same act or criminal based on the same transaction unless: (a) The offenses as defined have substantially different elements and the acts establishing one

indictment under the collateral estoppel doctrine,"[188] seeking to bar the introduction of evidence by the People that was used at a prior trial in which he was acquitted of criminal possession of a weapon in the second degree.[189] The court denied this motion,[190] and defendant was subsequently convicted.[191] The Appellate Division, Second Department, affirmed the lower court's ruling, holding that there was "no violation of defendant's constitutional rights or statutory protections against double jeopardy."[192] The court, relying on People v. Goodman,[193] found that "defendant failed to carry his burden of establishing that the jury in the first trial, by acquitting him of the second degree weapons possession counts, 'necessarily' resolved the issues which the defendant sought to foreclose in the retrial for criminal possession of a weapon in the third degree."[194]

In Goodman,[195] the court permitted evidence from a prior trial to be introduced in the subsequent trial.[196] The defendant in Goodman was originally charged with several crimes, arising from a homicide.[197] Testimony of defendant's alleged

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> offense are in the main clearly distinguishable from those establishing the others; or (b) Each of the offenses as defined contains an element which is not an element of the other, and the statutory provisions defining such offenses are designed to prevent very different kinds of harm or evil.

*Id.* Additionally, section 310.70 provides in pertinent part: "[A] defendant may be retried for any submitted offense upon which the jury was unable to agree unless [a] verdict of conviction thereon would have been inconsistent with a verdict, of either conviction or acquittal, actually rendered with respect to some other offense." *Id.*

[188] *Id.*

[189] *Quamina*, 653 N.Y.S.2d at 613.

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] 69 N.Y.2d 32, 503 N.E.2d 996, 511 N.Y.S.2d 565 (1986).

[194] *Quamina,* 653 N.Y.S.2d at 613.

[195] *Goodman*, 69 N.Y.2d at 32, 503 N.E.2d at 996, 511 N.Y.S.2d at 565.

[196] *Id.* at 43, 503 N.E.2d at 1004, 511 N.Y.S.2d at 573.

[197] *Id.* at 35, 503 N.E.2d at 998, 511 N.Y.S.2d at 567. Defendant was charged with murder, robbery, grand larceny, burglary and criminal possession of a weapon in connection with the death of Elodie Henschel. *Id.*

accomplices linked defendant to the crime.[198] This testimony was admitted at trial,[199] and the jury was instructed that "the testimony of any accomplice had to be corroborated by independent evidence tending to connect defendant with the commission of the offenses charged."[200]

Ultimately, there was insufficient evidence presented to convict on the other charges,[201] and the jury convicted defendant only of grand larceny and acquitted him of the other charges.[202] The conviction for grand larceny was subsequently reversed,[203] and a new trial was ordered pertaining to the grand larceny charge.[204] On retrial, the People introduced evidence that the victim had been beaten to death[205] as well as statements made by defendant to alleged accomplices.[206] Defendant appealed, contending that admission of the evidence in the second trial "violated the principles of double jeopardy and collateral estoppel,"[207] but the court affirmed the lower court's ruling,[208] relying on Ashe v. Swenson.[209] The Goodman court explained that: "A defendant

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[198] *Id.* at 36, 503 N.E.2d at 999, 511 N.Y.S.2d at 568.

[199] *Id.*

[200] *Id.* at 37, 503 N.E.2d at 999, 511 N.Y.S.2d at 569.

[201] *Id.* at 41, 503 N.E.2d at 1002, 511 N.Y.S.2d at 572. The trial court instructed the jury that testimony of accomplices must be corroborated by evidence independent of the testimony. *Id.* No corroborating evidence was introduced by the People. *Id.* Thus, the jury had to acquit on all charges except larceny as this charge was sufficiently proved by the Prosecution. *Id.*

[202] *Id.*

[203] *Id.* at 35, 503 N.E.2d, at 998, 511 N.Y.S.2d, at 567. Defendant appealed the conviction of larceny, and the court reversed the conviction, ordering the suppression of statements made by defendant to the police. *Id.* The matter was remanded for a new trial. *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] *Id.*

[208] *Id.* at 35, 503 N.E.2d at 999, 511 N.Y.S.2d at 568.

[209] *Id.* at 38, 503 N.E.2d at 1001, 511 N.Y.S.2d at 570. *See* Ashe v. Swenson, 397 U.S. 436 (1969) In Ashe, six individuals were robbed while playing a poker game. The defendant was acquitted of robbing one of six victims, due to insufficient evidence. *Id.* at 439. The People then charged defendant with robbing a second victim of the poker game and defendant was

claiming the benefit of estoppel carries the burden of identifying the particular issue on which he seeks to foreclose evidence and then establishing that the fact finder in the first trial, by its verdict, necessarily resolved that issue in his favor."[210]

Applying the principles set forth in *Ashe*, the *Goodman* court found that the jury had a rational basis for reaching the verdict in the first trial while not necessarily finding the facts objected to in favor of the defendant.[211] Therefore, this evidence was admissible in the second trial.[212] There have been instances when the court has found previous testimony inadmissible on retrial. In *People v. Acevedo*,[213] the court reversed a lower court's robbery conviction of defendant,[214] holding that the People's use of a witness in the second robbery trial was foreclosed by the collateral estoppel doctrine.[215] In acquitting the defendant in a previous trial, the jury found the testimony of a witness implausible.[216] Subsequently, in defendant's trial for robbery, the

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convicted. *Id.* at 439-40. Defendant appealed. *Id.* at 440. The Supreme Court reversed, finding that the collateral estoppel doctrine was embodied in the Fifth Amendment of the United States Constitution, and that the prosecution was precluded from bringing subsequent charges against defendant for the armed robbery of the other victims at the poker game. *Id.* at 445-46.

[210] *Id.* at 40, 503 N.E.2d at 1002, 511 N.Y.S.2d at 571 (citing Ashe v. Swenson, 397 U.S. 436 (1969)).

[211] *Id.* at 43, 503 N.E.2d at 1002, 511 N.Y.S.2d at 571.

[212] *Id.* at 43, 503 N.E.2d at 1004, 511 N.Y.S.2d at 573.

[213] 69 N.Y.2d 478, 508 N.E.2d 665, 515 N.Y.S.2d 753. (1987). Defendant was charged with two counts of robbery involving two robberies of two different victims on the same day, at the same approximate time, and in the same area of Buffalo. *Id.* at 480, 508 N.E.2d at 667, 515 N.Y.S.2d at 755. Defendant was acquitted in the first trial as the crucial testimony of the alleged victim was found unconvincing by the jury. *Id.* at 483, 508 N.E.2d at 668, 515 N.Y.S.2d at 757. The prosecution produced this witness in the second trial, and defendant was convicted. *Id.* at 483-84, 508 N.E.2d at 669, 515 N.Y.S.2d at 757-58. Defendant appealed, alleging a violation of the double jeopardy protections. *Id.* at 484, 508 N.E.2d at 669, 515 N.Y.S.2d at 758.

[214] *Id.* at 489, 508 N.E.2d at 672, 515 N.Y.S.2d at 760.

[215] *Id.*

[216] *Id.* at 488, 508 N.E.2d at 672, 515 N.Y.S.2d at 760. Both the prosecution and defense argued, in their closing statements, that if the alleged victim's story was to be believed, the jury must convict. *Id.* at 482, 508

prosecution attempted to admit the testimony which had been found implausible in the earlier case.[217] Thus, a reintroduction of this evidence in the second trial was tantamount to relitigation of an issue that had previously been determined in favor of the defendant.[218] This is precisely what double jeopardy protections seek to prevent.

Like *Goodman* [219] and *Acevedo*,[220] the court in *Quamina*[221] scrutinized the evidence that defendant objected to in order to determine if the issues were necessarily resolved in the first trial.[222] In the first trial, defendant was charged with two counts of criminal possession of a weapon in the second degree.[223] Defendant was acquitted of this charge.[224] To be guilty of the charge, a person must possess the weapon and intend to use it against another.[225] Defendant was also charged with two counts of criminal possession of a weapon in the third degree.[226] To be guilty of this charge, a person merely has to "possess any loaded firearm."[227]

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N.E.2d at 668, 515 N.Y.S.2d at 756. Thus, that the jury acquitted defendant, the alleged victim's story was not believed. *Id.*

[217] *Id.* at 483-84, 508 N.E.2d at 669, 515 N.Y.S.2d at 757.

[218] *Id.* at 489, 508 N.E.2d, at 672, 515 N.Y.S.2d, at 760.

[219] People v. Goodman, 69 N.Y.2d 32, 503 N.E.2d 996, 511 N.Y.S.2d 565 (1986).

[220] *Acevedo*, 69 N.Y.2d 478, 508 N.E.2d 665, 515 N.Y.S.2d 753 (1987).

[221] People v. Quamina, 653 N.Y.S.2d 612, 613 (2d Dep't 1997).

[222] *Id.*

[223] *Id.* In the first trial, defendant was charged with two counts of criminal possession of a weapon in the second degree and two counts of criminal possession of a weapon in the second degree. *Id.* at 613. Defendant was acquitted of the charges in the second degree, but the jury was unable to reach a verdict in the charges in the second degree. *Id.* A new trial was ordered as to the charges in the second degree. *Id.*

[224] Quamina, 653 N.Y.S.2d at 613.

[225] *See* N.Y. PENAL LAW § 265.02 (McKinney 1989). This section provides in pertinent part: "A person is guilty of criminal possession of a weapon in the second degree when he possesses a machine-gun or loaded firearm with intent to use the same unlawfully against another." *Id.*

[226] *Id.*

[227] *See* N.Y. PENAL LAW § 265.02 (McKinney 1989). This section provides in pertinent part: "A person is guilty of criminal possession of a weapon in the

In sum, as the Fifth Amendment of the United States Constitution protects against being tried twice for the same offense, the Supreme Court in *Ashe v. Swenson*[228] also found that the doctrine of collateral estoppel is "embodied in the Fifth Amendment guarantee against double jeopardy."[229] A defendant may avail himself of this doctrine if he proves that the issues involved have, necessarily been determined in his favor in a prior trial.[230] Similarly, in addition to its constitutional protections, New York State has statutes[231] prohibiting a party from being tried separately for two offenses based on the same transaction unless the elements of each charge are substantially different and distinguishable,[232] and contrary verdicts would be consistent.[233] In *Quamina*, since there existed "substantially different elements" in each count, the court found no double jeopardy violation.[234]

## SUPREME COURT, APPELLATE TERM

## SECOND JUDICIAL DEPARTMENT

People v. Steele[235]
(decided April 4, 1997)

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third degree when . . . he possess any explosive incendiary bomb, bombshell, firearm, silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use." *Id.*

[228] Ashe v. Swenson, 397 U.S. 436 (1970).

[229] *Id.* at 445.

[230] *See* People v. Acevedo, 69 N.Y.2d 478, 485, 508 N.E.2d 665, 669, 515 N.Y.S.2d. 753, 758 (1987). *See also* People v. Goodman, 69 N.Y.2d 32, 37, 503 N.E.2d 996, 999, 571 N.Y.S.2d 565, 568 (1986); People v. Berkowitz, 50 N.Y.2d 333, 344, 406 N.E.2d 783, 788-89, 428 N.Y.S.2d 927, 932 (1980); People v. LoCicero, 14 N.Y.2d 374, 380, 200 N.E.2d 622, 625, 251 N.Y.S.2d 953, 957 (1964).

[231] *See* N.Y. CRIM. PROC. LAW § 40.20, *supra* note 136. *See also* N.Y. CRIM. PROC. LAW § 310.70, *supra* note 3.

[232] *See* N.Y. CRIM. PROC. LAW § 40.20 (2) (a-b) *supra* note 136.

[233] *See* N.Y. CRIM. PROC. LAW § 310.70 (2) (a) *supra* note 136.

[234] People v. Quamina, 653 N.Y.S.2d at 612 (2d Dep't 1997).

[235] 172 Misc. 2d 860, 661 N.Y.S.2d 908 (Sup. Ct. App. T. 2d Dep't 1997).