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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,  
  
Respondent,  
  
-against-  
  
AKEEM WALLACE,  
  
Appellant.  
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No. 49

20 Eagle Street  
Albany, New York  
March 28, 2018

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Number 49, the People of  
2 the State of New York v. Akeem Wallace.

3 MR. KEMP: Good afternoon, Your Honors; Robert  
4 Kemp on behalf of Akeem Wallace.

5 CHIEF JUDGE DIFIORE: Counsel, may I ask you to  
6 wait one moment?

7 JUDGE FAHEY: Excuse me. I'm sorry.

8 CHIEF JUDGE DIFIORE: I'm sorry. Continue.

9 MR. KEMP: Good afternoon.

10 CHIEF JUDGE DIFIORE: I didn't realize my  
11 colleague was here.

12 MR. KEMP: Robert Kemp on behalf of Akeem  
13 Wallace. I'm requesting two minutes rebuttal time.

14 CHIEF JUDGE DIFIORE: Yes, of course.

15 MR. KEMP: May it please the court. I think we  
16 can all agree that this is not your typical weapons  
17 possession case. It was an unfortunate circumstance where  
18 an employee at a McDonald's with no criminal history  
19 whatsoever accidentally shot himself in the leg at a - - -  
20 while sitting in a table in the - - - in the restaurant.  
21 But based upon the record of this case and the statute as  
22 written, he should have only been convicted of the lesser  
23 included - - -

24 JUDGE STEIN: So are you saying that any employee  
25 at any establishment is entitled to carry a concealed



1           weapon without a permit?

2                   MR. KEMP:  Yes, Your Honor.  As the statute is  
3           written, the Penal Law gives two mitigating circumstances  
4           for - - - where a person deserves a greater expectation of  
5           security in a place where a person spends most of his time,  
6           and that's the home or place of business.

7                   JUDGE STEIN:  Or is it - - - or is it that those  
8           are - - - are two places when someone is the proprietor of  
9           a business or the owner of a home, are those places where  
10          one would feel the need to defend that business or that  
11          home more - - -

12                   MR. KEMP:  Well, the - - - the First Department  
13          in Buckmire and the Second in Francis and the Fourth  
14          Department in Fearon have said that.  They put out these  
15          qualifiers that are not in the statute, that you must have  
16          a proprietary interest in the property.

17                   JUDGE STEIN:  Well, but it doesn't say place of  
18          employment.  It says place of business.  So is there - - -  
19          is there some - - - any distinction there at all?

20                   MR. KEMP:  Well, it - - - it's unclear what the  
21          statute really - - - what the intent of the legislation  
22          really means.  This is from 1964, so who knows in 1964 they  
23          meant place of employment?  It's just not sure.  It's not  
24          defined.  There's no legislative history that says what a  
25          place of business is - - -



1 CHIEF JUDGE DIFIORE: How is your - - - counsel,  
2 how is your argument consistent - - - consistent with the  
3 intent and purposes of the overall scheme of New York  
4 State's gun control laws and Penal Law? How - - - I'm not  
5 following.

6 MR. KEMP: Well, I - - - I understand there's a  
7 need for firearms regulation and crime prevention and the  
8 carrying of unlicensed weapons. But it's just not clear  
9 from the statute what they meant. They - - - from - - -  
10 even from some of the cases they say there's mitigating  
11 circumstances of a greater enhancement of personal security  
12 and where a person spends most of their time because people  
13 - - - even absent from your waking hours you spend a lot of  
14 time at your work so there's no real distinction of - - -

15 JUDGE FAHEY: The - - - the logic of it is though  
16 if you equate the two they would naturally have similar  
17 interests. And of course a homeowner has a possessory  
18 interest in his home, but an employee has no possessory  
19 interest in their place of business. So I - - - I  
20 understand the logic there, and so they're not - - - if  
21 they're strictly equivalent, if the words mean the same  
22 thing in the same circumstances then that will work against  
23 your argument, wouldn't it?

24 MR. KEMP: No, it won't. Because it was - - -  
25 it's the Second Department and Fourth Department that have



1 put on this qualifier that it's a possessory interest, and  
2 it's not in the statute. It's not in the legislative  
3 history that there must be a possessory interest.

4 JUDGE FAHEY: So - - - so a McDonald's employee  
5 would have a possessory interest in a place of business?

6 MR. KEMP: No, no. What I'm saying is it's not  
7 in the statute that it's a person or an employee has to  
8 have a business interest.

9 JUDGE FAHEY: No, I agree with you there. But  
10 what - - - what the statute does say is it equates those  
11 two phrases. It - - - it says a person in a place of  
12 business or - - - or a place - - - or in your home you can  
13 have it. So that says to me that those are similar  
14 circumstances, similar types of situations and that there's  
15 a rational - - - go ahead.

16 MR. KEMP: I - - - I would disagree, Your Honor.

17 JUDGE FAHEY: Okay.

18 MR. KEMP: It doesn't say your home or your place  
19 of business. It says a person's home or place of business.  
20 It doesn't - - - it doesn't - - - I don't mean to split  
21 hairs but it doesn't say a person's home and a person's  
22 place of business.

23 JUDGE FAHEY: So is the logic, as Judge Stein  
24 said then, or was I think making reference to it then so I  
25 work at a Walmart and every employee in the Walmart can



1 bring a gun to work?

2 MR. KEMP: That's - - - according to the statute  
3 as written. It's not delineated what exactly is - - -

4 JUDGE FEINMAN: So - - - so where are you getting  
5 this place of business is a synonym for place of employment  
6 argument from? Like how - - - how do you get that out of  
7 this?

8 MR. KEMP: How to get - - - how do I get to that  
9 point? Unfortunately, the legislation from 1964 does not  
10 say that - - -

11 JUDGE FEINMAN: Right. If they defined it - - -  
12 if they defined in the definition section we wouldn't be  
13 here.

14 MR. KEMP: That's correct.

15 JUDGE FEINMAN: So - - - so I want to know how  
16 you get to business equals employment.

17 MR. KEMP: The - - - the actual intent of the  
18 legislature is not really clear but based upon the actual  
19 wording of the statute that's what it says. It says a  
20 person's home or place of business. It doesn't say place  
21 of employment. And what I've said previously it - - - from  
22 the legislation it's not clear what they meant. They could  
23 have meant place of employment. Place of business back in  
24 1964 - - -

25 JUDGE FEINMAN: So - - - so if we track it back



1 when it was - - - and we look at the Penal Law Section 400,  
2 the licensing statute, doesn't that give us some guidance  
3 and - - - and when we look at the legislative history  
4 behind that?

5 MR. KEMP: Well, I don't know if you could look  
6 at that because this is regarding the lesser included  
7 offenses because Criminal Possession of a Weapon in the  
8 Fourth Degree is a lesser included offense, and that's what  
9 the statute says that there's two mitigating circumstances  
10 where there was a lesser offense. And that's where - - -  
11 where a person spends most of their time and where a person  
12 deserves an enhanced right of security is basically where  
13 they spend most of their time.

14 JUDGE STEIN: Well, so for - - - if I'm a student  
15 at a university that's where I spend most of my time. Does  
16 that mean - - -

17 MR. KEMP: But that's - - -

18 JUDGE STEIN: - - - can I consider that my place  
19 of business since I'm not working but my - - - my work is  
20 going to school? So does that mean that all the students  
21 can bring concealed weapons to school with them?

22 MR. KEMP: But that's not what the - - - the  
23 Penal Law states. It states a person's home or place of  
24 business. It's - - - it's - - -

25 JUDGE STEIN: Well, I know, but we're - - - we're



1 interpreting what place of business means.

2 MR. KEMP: That's true.

3 JUDGE STEIN: And - - - and - - -

4 MR. KEMP: It could be a church or could be a  
5 volunteer - - -

6 JUDGE STEIN: So if you're talking about personal  
7 security, I'm just - - -

8 MR. KEMP: Correct.

9 JUDGE STEIN: - - - I'm just - - - I'm - - - I  
10 can see a parallel. My suggestion is that maybe there's a  
11 parallel between where you go to - - - you know, to serve  
12 hamburgers and where you go to study, that being your job.  
13 I mean - - -

14 MR. KEMP: I think that's a big distinction.  
15 It's not a place of business. I mean it's - - - I don't  
16 think that's what the statute - - -

17 JUDGE WILSON: What if - - - what if I'm a crack  
18 dealer and I'm in an abandoned home and that's my place of  
19 business? It's a misdemeanor?

20 MR. KEMP: I wouldn't consider that a traditional  
21 place of business. It must be some - - - some cases talk  
22 about - - -

23 JUDGE WILSON: Well, okay. How about a taxi cab  
24 or a hot dog stand or an Uber driver?

25 MR. KEMP: That - - -





1 JUDGE WILSON: How do we know what a - - - I mean  
2 now you're saying I think that we can't attribute place of  
3 business - - - we can't interpret it literally. But now  
4 you're back to traditional place of business, and I'm not  
5 sure what that is.

6 MR. KEMP: Well, cases have held that a taxi  
7 driver or a - - - the cab actually is a place of business.

8 JUDGE WILSON: And some have held no.

9 MR. KEMP: Pardon?

10 JUDGE WILSON: And some have held no, right?

11 MR. KEMP: Where they've been outside I guess on  
12 the street corner. Some cases have said no where they're  
13 outside or whatever happens - - - I would assume that a hot  
14 dog vendor would be - - - because that's in an unlimited  
15 public access area. Some of the cases speak of - - - of  
16 somewhat limited public access area as opposed to a hot dog  
17 vendor on a street - - -

18 JUDGE RIVERA: What I see - - -

19 MR. KEMP: - - - or on a street corner or on a  
20 playground or - - -

21 JUDGE RIVERA: In addition to all the problems  
22 that I - - - I think you hear people asking you about,  
23 somewhat going back to what the Chief Judge asked you  
24 about, it does seem that this is an exception, right?

25 MR. KEMP: That's true.



1 JUDGE RIVERA: That - - - okay. An exception  
2 that seems to somewhat go against the - - - the general  
3 public policy, although it's still a crime.

4 MR. KEMP: That's true. It's still a crime.  
5 It's still a misdemeanor.

6 JUDGE RIVERA: It's not an exemption from  
7 criminal liability. But nevertheless, shouldn't this  
8 exception be read narrowly because your position is to read  
9 it in a rather sweeping form which seems to me to then  
10 completely undermine the public policy.

11 MR. KEMP: I understand, Your Honor. But it's  
12 the statute as written, and it does make exception - - -

13 JUDGE RIVERA: And that's the problem. It says  
14 business, not where - - - it actually says: "In such  
15 person's home or place of business." It doesn't say in  
16 such person's home or where they work.

17 MR. KEMP: That's true. Again, I - - - we keep  
18 going back to the legislation.

19 JUDGE RIVERA: And if the focus was going to be  
20 employment and work - - -

21 MR. KEMP: That's true.

22 JUDGE RIVERA: - - - one would think that it  
23 would say work.

24 MR. KEMP: Who knows back in 1964 if that's  
25 really what they meant. Unfortunately, that's the way it's



1           been written.

2                   JUDGE RIVERA: Well, I guess in part we're going  
3           to figure that out, right?

4                   MR. KEMP: I understand that.

5                   CHIEF JUDGE DIFIORE: Thank you, counsel.

6                   MR. KEMP: Thank you.

7                   CHIEF JUDGE DIFIORE: Counsel.

8                   MR. PUNCH: May it please the court, Daniel Punch  
9           for the People.

10                   CHIEF JUDGE DIFIORE: Counsel, what constitutes a  
11           place of business within the meaning of the statute?

12                   MR. PUNCH: Your Honor, I believe the majority  
13           had it correct that a place of business is a place where a  
14           person has a possessory interest and a place to which the  
15           public has limited access. I would argue against the  
16           dissent that the place of business invariably means any  
17           place where - - -

18                   JUDGE FEINMAN: Well, the - - - the problem with  
19           using a possessory interest is - - - is that isn't it true  
20           that perhaps more than one employee of a particular  
21           establishment may have the right to exclude others? And so  
22           is that really a workable test?

23                   MR. PUNCH: Well, if not a possessory interest  
24           then - - - then a degree of control - - - a controlling  
25           interest in the fixed location where the business is I



1 believe would be a workable test. And I don't know if  
2 necessarily the - - -

3 JUDGE FEINMAN: I guess what I'm asking you to do  
4 is help me figure out what you think the rule should be. I  
5 know that in your brief you talk about a totality of the  
6 circumstances multi-factor test and that we should eschew  
7 some sort of bright-line rule. But it seems to me that if  
8 we're to give guidance to whether it's prosecutors who are  
9 making charging decisions, whether it's to judges  
10 inspecting grand jury minutes, or to jurors, that we need a  
11 definition and that that definition has to come from  
12 someplace.

13 MR. PUNCH: Your Honor, I - - - I believe it's up  
14 to this court to interpret the place of business exception,  
15 and I - - - I believe that it should be interpreted as one,  
16 it's not - - - it's not a place where there's unfettered  
17 access by the public, and, two, I believe either some  
18 controlling interest or whether the weapon can be used  
19 within the scope of the business which would be - - - which  
20 would mean that you have a duty to protect - - - an  
21 enhanced duty to protect that - - - that location or an  
22 enhanced right to protect that location.

23 JUDGE RIVERA: Can you explain what you mean by  
24 unfettered access to the public? What does that mean?

25 MR. PUNCH: Well, such as in this case, the



1 dining room of a - - - of a McDonald's where anyone can  
2 just go in. And this case is a good example of that  
3 because of the dangerousness of an unlicensed handgun with  
4 anyone not necessarily who knows - - -

5 JUDGE FEINMAN: So - - - so could he bring - - -  
6 Mr. Wallace bring the gun to the manager's office and then  
7 be guilty - - - you know, where - - - where perhaps they  
8 have the cash receipts on the other side of the counter,  
9 and then it's a misdemeanor?

10 MR. PUNCH: No, Your Honor. Because that's only  
11 one prong of the test. I - - - I think it has to be both,  
12 that he has a controlling interest and that he - - - it's  
13 not in public access.

14 JUDGE FEINMAN: So - - - so what do you mean by  
15 controlling interest?

16 MR. PUNCH: An expectation of privacy, the same  
17 as he would in his home.

18 JUDGE RIVERA: Okay. So are you saying that in  
19 the McDonald's no - - - that is no one's place of business?

20 MR. PUNCH: Not as - not as interpreted - - - not  
21 as it should be interpreted in the statute, yes.

22 JUDGE STEIN: What about the franchise owner?

23 MR. PUNCH: If - - - if somebody owns the - - -  
24 that particular McDonald's then that could be his place of  
25 business. Franchise - - -



1 CHIEF JUDGE DIFIORE: So the franchise manager,  
2 the person who is physically in charge of that building  
3 every day, that restaurant every day, and he lords over all  
4 of the employees there, he's in charge of the cash, he's in  
5 charge of schedules, what about that person? What would -  
6 - -

7 MR. PUNCH: Then he likely would be entitled to  
8 the - - -

9 JUDGE RIVERA: Can - - - can that person  
10 authorize someone else if - - - let's say they're the  
11 manager of the three McDonald's and they can't be there all  
12 the time. Can they authorize someone else?

13 MR. PUNCH: The Second Department would say yes.  
14 I would say no, I don't think the applicability of the - -  
15 - of the Penal Law - - -

16 JUDGE RIVERA: Why not? Is it less their place  
17 of business because they've got three and they're a very  
18 good business person?

19 MR. PUNCH: I'm sorry? Could you say - - -

20 JUDGE RIVERA: Why - - - why isn't it their place  
21 of business simply because they've got a couple more and  
22 they may have to authorize someone during their absence?

23 MR. PUNCH: Well, it would still be that person's  
24 place of business, but I don't think that they should be  
25 the - - - the decisive factor on whether or not the - - -



1 the exception should apply. And there's - - - I mean if  
2 they need somebody to protect - - -

3 JUDGE FAHEY: Well, I guess the question really  
4 boils down to is someone in managerial and supervisory  
5 control allowed to - - - an employer as opposed to an  
6 employee allowed to give the place of business exception to  
7 one of their employees. That's the question that  
8 inevitably will come up.

9 MR. PUNCH: Right. And I - - - I don't think it  
10 - - - that should be the case. If they want to hire  
11 somebody to protect their business, they can hire someone  
12 with - - - who has a handgun license.

13 JUDGE WILSON: So you're saying the franchise  
14 owner can - - -

15 CHIEF JUDGE DIFIORE: I guess the problem is not  
16 so much with the charging decision by the prosecutor's  
17 office or the police but the rule, the instruction to the  
18 jury. How do we instruct the jury or to Judge Feinman's  
19 point, how does the trial judge review the grand jury  
20 minutes? And I think that's where the issue really - - -  
21 the rub is, not charging decisions of the prosecutor who  
22 can look at all of the facts that tend to that arrest and  
23 make an appropriate decision?

24 MR. PUNCH: Well, I think the - - - the judge  
25 would have to instruct that it's a person with a



1 controlling interest or an expectation of privacy in the  
2 area as well as a unlimited - - - an area of unlimited  
3 public access. It's - - -

4 JUDGE RIVERA: So - - - so do you agree that  
5 there could be more than one person per business that has -  
6 - - for whom that is their place of business?

7 MR. PUNCH: Yes, the same as there could be more  
8 than one person in a home.

9 JUDGE RIVERA: So it could be whoever was the - -  
10 - let's say there's a franchise owner, it's his McDonald's  
11 who - - - for whom this is their place of business, but it  
12 could also be Mr. Wallace at - - - at the time that he's  
13 working there, no?

14 MR. PUNCH: Well, I don't think it could be Mr.  
15 Wallace because in this case we have - - - under the facts  
16 of this case that's not his duty. We - - - that's - - -  
17 that came out in the testimony. It's possible that he  
18 could have - - - it could be someone else in the - - - in  
19 the - - -

20 JUDGE RIVERA: Why is it not - - - what was  
21 missing from his work that you think takes him out of the  
22 ambit of this particular category?

23 MR. PUNCH: He - - - they specifically testified  
24 that he had no duty of protection. His job was to make  
25 sure that the other employees were - - - were doing their





1 job and that the customers were taken care of. It's - - -  
2 I don't think there's - - - there's any reason to think  
3 that he had any - - -

4 JUDGE RIVERA: So how much managerial experience  
5 or obligation and duty do you have to have to fit within  
6 the statute - - - that exception?

7 MR. PUNCH: You would have to be of the - - - it  
8 - - - I don't think the title of manager would be  
9 controlling. It would be whether or not you have a  
10 controlling interest in the property.

11 JUDGE FAHEY: Well, you're really back on - - -  
12 you're really back on your totality of the circumstances  
13 test, right?

14 MR. PUNCH: Yes, Your Honor.

15 JUDGE FAHEY: Yeah. That - - -

16 JUDGE FEINMAN: Well, then how does - - - how  
17 does a defendant or - - - I mean not necessarily a  
18 defendant - - - how does a citizen or a resident know  
19 whether it's okay - - - you know, I mean obviously it's  
20 illegal whether it's a misdemeanor or a felony. But how do  
21 they know what they're - - - they're facing in terms of  
22 making a decision when arrested to plead guilty if they  
23 don't know what the rule is because you're going to just  
24 charge a jury about all these factors and - - - and who  
25 knows how it's going to come out?



1 MR. PUNCH: Well, Your Honor, again - - -

2 JUDGE FEINMAN: It just seems to me that  
3 everybody would be better served with some sort of a clear  
4 rule.

5 MR. PUNCH: I agree, Your Honor, but the - - - I  
6 think the legislature chose to use the place of business  
7 because they - - - it could - - - they didn't want to  
8 narrow it down to any place of employment.

9 JUDGE FEINMAN: So - - - so let's say you have a  
10 family jewelry business and they have three locations,  
11 three stores, all right. Does it matter whether, you know,  
12 the son is in one store running it, the daughter's in  
13 another store running it, and - - - and mom and dad go to  
14 the third store? But it's all incorporated, and the mom  
15 and dad really are the owners of the business. The son and  
16 the daughter don't get the benefit?

17 MR. PUNCH: Well, to make - - -

18 JUDGE FEINMAN: Or - - -

19 MR. PUNCH: To make the statute clearer, I think  
20 you would have to make it that way. I mean you can hire -  
21 - - you could hire someone to - - - to protect the store,  
22 if it's not your store, with a - - - with a licensed  
23 handgun, but I think it - - - I mean it would be difficult  
24 to narrow it down so the - - - the public would know that -  
25 - - what's legal and what's not.



1 JUDGE GARCIA: Because even ownership is a  
2 difficult test, right, ownership of the business?

3 MR. PUNCH: It can be.

4 JUDGE GARCIA: What if the person carrying the  
5 gun owned shares in Walmart and they bring it to Walmart?  
6 I mean technically they own part of Walmart.

7 MR. PUNCH: They own a part of it but they have  
8 no possessory interest - - -

9 JUDGE GARCIA: Right.

10 MR. PUNCH: - - - or no expectation of privacy I  
11 don't - - -

12 JUDGE GARCIA: So what - - - if we think that the  
13 best definition consistent with the legislative intent, and  
14 as the Chief Judge I think was alluding to earlier the  
15 overall gun control regime in New York State, what would  
16 your best definition of that possessory interest be?

17 MR. PUNCH: The best definition would be I  
18 believe it would come down to the expectation of privacy,  
19 whether or not you have it there.

20 JUDGE RIVERA: So - - - so how would one frame  
21 that? Let - - - let's say I work in a place where I have a  
22 permanent locker, does that give me an expectation of  
23 privacy in the locker and maybe I can have the gun at the  
24 locker?

25 MR. PUNCH: That's a good question, Your Honor.



1 CHIEF JUDGE DIFIORE: Well, doesn't this all  
2 relate to protection issues - - - to protection of your  
3 place - - - overall place of business? Isn't that what  
4 we're talking about?

5 MR. PUNCH: Yes, Your Honor. And I think the - -  
6 - the reason that expectation of privacy is - - - is  
7 relevant I think is because where you have an expectation  
8 of privacy you have a heightened duty or right to protect  
9 which I think is the basis of the - - - of the exception.

10 CHIEF JUDGE DIFIORE: Thank you - - -

11 JUDGE RIVERA: Let's say I've worked - - - I'm  
12 sorry, if I may. I've worked at a place for forty years  
13 and this is like my home. Everyone I work with, these are  
14 my closest, dearest friends. Have I got an expectation?  
15 Now am I interested in protecting the only place I know as  
16 my workplace and the only place I'm comfortable other than  
17 my home?

18 MR. PUNCH: No, Your Honor. I think that would  
19 just be too subjective. The - - - the fact that you feel  
20 that it is, I don't think we can make a law based on that.  
21 Thank you.

22 CHIEF JUDGE DIFIORE: Thank you, counsel.

23 Mr. Kemp.

24 MR. KEMP: Your Honors, I brought up some issues  
25 regarding an enhanced - - - or an inherent right of self-



1 defense when I talked about constitutional issues of Heller  
2 and McDonald and Kachalsky. And I think that relates to  
3 what you mentioned, too, about you having a right to  
4 protect yourself. It's not just the Penal - - - the Penal  
5 Law just doesn't say that you have a possessory interest.  
6 It doesn't say that. It doesn't say that you must be  
7 authorized to possess that weapon.

8 JUDGE RIVERA: Yeah, but in New York you've got  
9 to have - - - right? - - - you've got to have permission to  
10 carry the loaded weapon.

11 MR. KEMP: Yes, yes, for a licensed weapon, but  
12 under the circumstances of Penal Law, you know, 265.03, for  
13 the unlicensed, you're - - - there's two mitigating  
14 circumstances, at the home or place of business for - - -

15 JUDGE RIVERA: Right, and that was my point  
16 before.

17 MR. KEMP: Correct.

18 JUDGE RIVERA: Shouldn't we be - - - shouldn't we  
19 then be interpreting that narrowly as opposed to broadly?  
20 Under your rule many, many, many people - - -

21 MR. KEMP: That's true - - -

22 JUDGE RIVERA: - - - if they happen to be  
23 breaking this law would fit under the exception versus  
24 something much more narrower contains those individuals who  
25 might end up with a misdemeanor instead of the felony.



1 MR. KEMP: I - - - I understand that, Your Honor.  
 2 The - - - New York State has an interest - - - compelling  
 3 interest in firearms regulation. But the Penal Law just  
 4 doesn't say that. That would kind of create some kind of -  
 5 - - in this situation, that would create some kind of  
 6 economic disparity or economic discrimination regarding an  
 7 owner would only be liable for - - - or for a misdemeanor  
 8 and at the same time a worker could be liable for a - - -  
 9 for a felony. What if they both are - - - have unlicensed  
 10 weapons at the same time? So accordingly, the owner would  
 11 get a felony - - - I mean the owner would get a  
 12 misdemeanor. The - - - the - - -

13 JUDGE STEIN: Well, what - - - what about the  
 14 home, in the home, that - - - that provision of this  
 15 statute? Okay. So - - -

16 MR. KEMP: Yes.

17 JUDGE STEIN: - - - if I'm in my home I'm allowed  
 18 to have a weapon there. But if I invite you to my home,  
 19 does that mean you're entitled to have a weapon in my home?

20 MR. KEMP: I don't know if the cases would say  
 21 that. I mean that hasn't been really - - -

22 JUDGE STEIN: Well, but the - - - the two things  
 23 are the same in the statute. We're back to - - -

24 MR. KEMP: That's true.

25 JUDGE STEIN: So if it applies to one it seems to



1 me it would apply to the other.

2 MR. KEMP: I don't know if I can answer that  
3 question. We're - - - you know, because there - - - there  
4 really haven't been cases that have really addressed that.  
5 But - - -

6 JUDGE STEIN: But how would you answer the  
7 question?

8 MR. KEMP: Similarly, I would say that - - -  
9 well, it's not that person's home. In this circumstance,  
10 it is that person's place of business, and that's what the  
11 statute says. It is exactly that person's place of  
12 business, and there's - - - regardless of whether it's - -  
13 -

14 JUDGE RIVERA: So under - - - under your reading,  
15 the - - - the owner of the business - - - let's just say  
16 there really is only one owner, closely held, no shares, no  
17 partners, it's one individual. That person I assume you  
18 would say of course that's their place of business within  
19 the meaning of the exception.

20 MR. KEMP: Correct.

21 JUDGE RIVERA: But everyone that person hires,  
22 it's also their place of business?

23 MR. KEMP: Correct. I would say that, Your  
24 Honor, and it should be the lesser included offense of a  
25 misdemeanor. Thank you.



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CHIEF JUDGE DIFIORE: Thank you, counsel.  
(Court is adjourned)

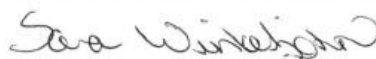




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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Akeem Wallace, No. 49 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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