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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 92

LANCE WILLIAMS,

Appellant.

20 Eagle Street
Albany, New York
November 19, 2020

Before:

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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Karen Schiffmiller
Official Court Transcriber



1 JUDGE RIVERA: The last case on today's calendar,
2 number 92, People v. Lance Williams.

3 Counsel?

4 MR. BRIGGS: Good afternoon, John Briggs from
5 Davis, Polk & Wardwell, on behalf of appellant Lance
6 Williams. I'd like to request two minutes for rebuttal.

7 JUDGE RIVERA: Two minutes, thank you.

8 MR. BRIGGS: May it please the court, the trial
9 court should have charged temporary lawful possession. The
10 evidence viewed in the light most favorable to the
11 defendant showed, first, the temp - - - the possession was
12 temporary. It lasted less than a minute. Second - - -

13 JUDGE STEIN: Why - - - how was it lawful?
14 Because there they were, they're in this stairwell, and his
15 friend gives him the gun. Why couldn't he have just said I
16 don't want it? Or turned around and gone back up the
17 stairs? What - - - I mean, what - - - what was occurring
18 at that moment that made his possession lawful?

19 MR. BRIGGS: Your Honor, this was a rapidly
20 unfolding situation where the defendant was in imminent
21 danger, and he reasonably believed that he was in imminent
22 danger.

23 JUDGE STEIN: Well, didn't he place himself in
24 that imminent danger? Foe opened the door, looked out, saw
25 the - - - saw the other guy, and he barges in. I mean - -



1 -

2 MR. BRIGGS: Well, for - - - for the - - -

3 JUDGE STEIN: - - - how is that lawful?

4 MR. BRIGGS: Judge, for the entire time of this
5 encounter, the defendant was trying to escape to a place of
6 safety. He went upstairs to Foe's apartment. He asked if
7 he could stay there. Foe and his girlfriend refused that.
8 Foe and his girlfriend - - -

9 JUDGE STEIN: It's a twenty-one-story building,
10 right? And there were a lot of other places, presumably -
11 - - did - - - was there any indication that this guy was
12 coming up to look for him or anything?

13 MR. BRIGGS: Well, the defendant didn't know
14 whether Carson was coming up to look for him. The only
15 thing that he knew was that Carson had followed him in the
16 direction of the building, had pulled out a gun upon seeing
17 him, and I would suggest to Your Honor that the question is
18 not whether there is anything else that Williams could have
19 done at some pervious point, but the question is, at the
20 moment that he accepts possession of the weapon, was it - -
21 - at that point, was he in imminent danger? Did he
22 reasonably believe he was in imminent danger?

23 JUDGE FEINMAN: But how are you - - - I mean, to
24 her - - - Judge Stein's point - - -

25 JUDGE STEIN: Judge Feinman.



1 JUDGE FEINMAN: How are you - - - over here,
2 sorry.

3 To Judge Stein's point, how are you in imminent
4 danger if you're behind a closed door, in a stairwell, with
5 a route of escape?

6 MR. BRIGGS: Well, he was in imminent danger
7 because Foe was leaving into the lobby. At that time, they
8 knew that Twin was in the lobby. The believed and had
9 every reason to believe that Carson was likely in the
10 lobby. And I think it parses it too finely to say that
11 there would be no imminent danger if Foe opened the door,
12 and somehow Williams didn't perceive that - - -

13 JUDGE STEIN: Are - - - but aren't you - - -
14 aren't you essentially arguing that it - - - that he had it
15 for his protection, before he went into that area, self-
16 protection? And haven't we said that that's not a basis
17 for legal possession?

18 MR. BRIGGS: Your Honor, we don't disagree with
19 the cases about arming oneself for one's protection, but we
20 don't believe that that's applicable here. Those cases,
21 including the Carrion case that my adversary cited, are
22 cases in which there is a period of time when the defendant
23 was in the safe position, and then perceived that there
24 would be some future time when they would they get into an
25 altercation with an adversary; they were worried about some



1 future event.

2 Here, in contrast, it was mere moments between
3 when Foe handed Williams the weapon and when Williams was
4 confronted, as he was expected to be, by Carson in the
5 lobby. There's no - - -

6 JUDGE STEIN: But if the - - -

7 MR. BRIGGS: - - - period of time involving - - -

8 JUDGE STEIN: Don't most of the cases that find
9 that there is temporary and legal possession, don't they
10 relate more to a situation where there's already an ongoing
11 attack, where there's a justification defense and the
12 defendant grabs the weapon from the attacker? That kind of
13 situation, where they're really in the midst of it, not
14 where there is, as Judge Feinman indicated, an opportunity
15 to walk away before the danger is even there?

16 MR. BRIGGS: Well, Judge, I would submit that a
17 reasonable view of the evidence was that this was an
18 ongoing emergency. It was a situation where the defendant
19 was trying to escape from imminent danger. And I would
20 also suggest that the cases do not require that the source
21 of the danger be the source of the weapon. There are
22 numerous cases where a defendant has - - - had temporary
23 lawful possession, and they've obtained it from, you know,
24 somebody else, as in this case, or it's in the environment,
25 they take a weapon off the floor, and that's entirely



1 consistent with temporary lawful possession.

2 JUDGE FAHEY: The problem is because - - - the
3 problem with that analysis, just to follow up on Judge
4 Stein's question, is the way I understand the CJI charge on
5 temporary lawful possession is it maintains possession - -
6 - it's two parts and - - - obtains possession in an
7 excusable manner, and maintains possession only long enough
8 to dispose of it safely. Well, it clearly doesn't meet
9 the-dispose-of-it-safely prong of it. But in a self-
10 defense analysis, you know, where the charge is given for
11 justification, I guess I'm struggling with the difference
12 between having the gun legally and - - - or else having an
13 illegally obtained gun that you used in a legal manner.

14 Do you see a distinction there in what should be
15 charged?

16 MR. BRIGGS: Well, Your Honor, I'll try to
17 address that. And first, to one of your earlier arguments,
18 you know, I would say that, actually, there was safe
19 disposal, or at least there was disposal here that was
20 consistent with the manner in which the weapon was lawfully
21 obtained.

22 And to the point about the whether the weapon was
23 lawfully obtained, you know, we believe that it was. This
24 was a situation where at the moment he receives the weapon,
25 he - - - events were rapidly unfolding, and he had every



1 reason to believe that if he did not take that weapon, he
2 would be a sitting duck for Carson.

3 So you know, we think that it was completely
4 appropriate and lawful under the circumstances, and under
5 this court's cases involving situations where a weapon is
6 obtained in self-defense, or at a moment where self-defense
7 is, you know, imminent and it's about to happen. And
8 that's what happened here.

9 You know, we would add that the First
10 Department's rationale that the weapon was not used in a
11 lawful manner, you know, is simply, inconsistent with the
12 undisputed fact that everybody agreed that the jury got a
13 justification charge here. So there was a reasonable view
14 of the evidence that this supposedly dangerous use here was
15 consistent with justification, and we don't think that
16 there's any support in the case law for a justified use of
17 the weapon being the type of use that deprives a jury from
18 considering temporary lawful possession.

19 JUDGE FEINMAN: But you don't know that having -
20 - - I mean, I understand that they got the charge. But you
21 don't - - - you can't read into the verdict anything about
22 whether it's because they didn't think the - - - had been
23 disproved beyond a reasonable doubt, as they have to, you
24 know, the prosecution has to do, or because they accepted
25 that, or there some other - - - and this - - - you know,



1 there aren't specific verdicts or specialized verdicts in
2 criminal cases. So we have no idea why they acquitted on
3 these other charges.

4 MR. BRIGGS: Well, you know, it's - - - we don't
5 need to know why the verdict of acquittal happened on the
6 other charges. What we need to know and what we do know is
7 that the evidence, a reasonable view of it, based on the
8 defendant's testimony, and corroborated by other evidence
9 at the trial, was in support of justification. So a jury
10 reasonably could find justification.

11 JUDGE STEIN: I guess my question would be
12 certainly the fact that there was a reasonable basis - - -
13 view of the evidence to support that charge, the charge of
14 justification doesn't mean that automatically - - - that
15 the separate question of whether the - - - not the use of
16 the weapon, but the obtaining and the possession of the
17 weapon was voluntary - - -

18 MR. BRIGGS: I - - -

19 JUDGE STEIN: - - - or in - - - I'm sorry.

20 MR. BRIGGS: I agree that the justified use in
21 dispositive of the issue of whether it was lawfully
22 obtained at the beginning, but we do think that under these
23 circumstances, the situation was very much akin to other
24 situations where a defendant is under attack, and receives
25 a weapon, you know, at a time of imminent danger, and then



1 uses the weapon lawfully.

2 JUDGE STEIN: So, what if I'm in my house, and I
3 see someone directly across the street, or maybe at the end
4 my driveway, that I have some history with, and maybe the
5 person has threatened me in the past. I don't know. And
6 I have no evidence that he's trying to get into my house,
7 or that he's approaching my house, or anything of that
8 nature.

9 And I have a gun, and I don't own it legally.
10 It's - - - I don't have a permit for it. And I decide, you
11 know what? I'm afraid this guy is going to do something
12 bad to me, and I'm just going to go out. I'm going to open
13 my door, and he's there, and I'm going to shoot him.

14 MR. BRIGGS: Well, I - - -

15 JUDGE STEIN: Isn't that - - - isn't - - - how is
16 that different from self-protection?

17 MR. BRIGGS: Well, I think that hypothetical, you
18 know, maybe would have some problems with temporary lawful
19 possession.

20 JUDGE STEIN: Okay. So what's different - - -

21 MR. BRIGGS: We have - - - what - - -

22 JUDGE STEIN: - - - between that hypothetical and
23 - - -

24 MR. BRIGGS: I - - -

25 JUDGE STEIN: - - - and the situation here?



1 MR. BRIGGS: I think there are at least two
2 things that are different, Your Honor. I think, first,
3 that's a situation where you have the ability to safely
4 retreat, and in that scenario - - -

5 JUDGE STEIN: Okay. So we may disagree on
6 whether the defendant here had that ability, but if we find
7 that he did have that ability, is that dispositive?

8 MR. BRIGGS: Well, I think that finding should
9 have been a question for the jury, you know. But this is a
10 situation - - -

11 JUDGE STEIN: Well, it wasn't. I mean, so the -
12 - - could the jury have reasonably found that there was an
13 opportunity to retreat. But my question to you now is, if
14 that is the conclusion we reach, is that dispositive?

15 MR. BRIGGS: Well, the question for Your Honor
16 should be whether there's any reasonable view of the
17 evidence, you know, that shows a reason to deprive - - -

18 JUDGE STEIN: Okay. So it's - - -

19 MR. BRIGGS: - - - the instruction of temporary
20 lawful possession.

21 JUDGE STEIN: - - - better - - - you're - - -
22 you're right. It's better phrased that way. So if we find
23 that there is no reasonable view of the evidence that he
24 did not have the ability to retreat, then is that
25 dispositive?



1 MR. BRIGGS: Well, I think that would be - - -
2 that would be a substantially harder case, you know. But
3 this is a case where the question of the ability to retreat
4 was actually before the jury on justification. And this is
5 a case where viewing the evidence in total, at the time
6 that the weapon is received, the - - - a jury could
7 reasonably find that his option, you know, was either to
8 take the weapon, or to be in the stairwell in an unfamiliar
9 building when Foe is about to open the door and does
10 immediately open the door and enter the lobby, where he
11 knows that Twin is, and reasonably believes that Carson is.

12 So you know, we think, that at least as a matter
13 of law, this court cannot reasonably - - -

14 JUDGE FEINMAN: So, I just want to, you know, to
15 close this up. You're suggesting that because the weapon
16 is used in a justified manner, that the weapon cannot also
17 be used in a dangerous manner, which is, you know, this
18 other part of the Appellate Division's rationale. But
19 can't you be justified in acting and using force in self-
20 defense, and at the same time be handling the weapon in a
21 reckless manner?

22 MR. BRIGGS: Well, you know, I suppose there
23 might be circumstances, you know, in which that would be
24 the case, but we don't think that that's the circumstances
25 here, and we do think that the fact that a justification -



1 - -

2 JUDGE FEINMAN: So you don't think that that
3 conclusion by the Appellate Division has any support in the
4 record?

5 MR. BRIGGS: No, we don't. The Appellate
6 Division selectively parsed the record in a way that a jury
7 viewing the evidence in the light favorable to Williams
8 would not have had to conclude.

9 JUDGE FEINMAN: So, when we look at that
10 conclusion by the Appellate Division, what standard do we
11 use to review that?

12 MR. BRIGGS: I think the evidence - - - whether a
13 reasonable view of the evidence, if the evidence is viewed
14 most favorably to the defendant, you know, is whether there
15 was some sort of dangerous use. But I would add, Your
16 Honor, that that would have to be some sort of use that is
17 separate from the issue of the action that was, you know,
18 justified under these circumstances.

19 JUDGE RIVERA: Thank you, Coun - - - thank you,
20 Counsel. You'll have your rebuttal.

21 Go ahead.

22 MR. SLOTT: Good afternoon, I'm David Slott from
23 the Bronx County District Attorney Office for the
24 respondent, and may it please the court.

25 This case is unlike many temporary lawful



1 possession cases, where a defendant either finds a gun or
2 disarms a would-be attacker. Here, the defendant initially
3 and unlawfully - - -

4 JUDGE WILSON: Is that necessary?

5 MR. SLOTT: No, Your Honor, it's not. I'm just -
6 - - in terms of the - - - the broad over - - - overlook of
7 all the case law, these are primarily the - - - the sort of
8 rules that we're looking at. And it boils down to two
9 things, two prongs, that the defendant must satisfy in
10 order to get this instruction.

11 First, there must be a lawful excuse for taking
12 possession, and second, it must not be used in a dangerous
13 manner, and I'll talk about both of those. Because here,
14 defendant initially and unlawfully armed himself in
15 anticipation of a potential confrontation, and then his
16 actions, once he obtained the possession, recklessly
17 entering a crowded building, blanking out, firing five
18 shots, shooting two people, these actions were utterly at
19 odds with the claim of innocent possession.

20 So turning to the lawful excuse. It requires an
21 actual imminent threat. That is key. And the possession
22 crime happens in the stairwell, if not earlier, and I
23 address that in the brief, but for - - -

24 JUDGE WILSON: So if he Foe had walked into the
25 lobby, he then had seen Carson and saw Carson reach for a



1 gun, he would have been justified, in your view, of
2 grabbing the gun from Foe and shooting?

3 MR. SLOTT: I believe you said "if", correct?

4 JUDGE WILSON: If, if, yes.

5 MR. SLOTT: Yes, I would agree, he would - - -
6 that would be a lawful temporary excuse - - -

7 JUDGE WILSON: That first prong.

8 MR. SLOTT: That first prong, yes.

9 JUDGE WILSON: Okay.

10 MR. SLOTT: But of course, that didn't happen.

11 JUDGE WILSON: That didn't happen.

12 MR. SLOTT: Of course.

13 So the defendant, when he did take possession of
14 the gun, and he was explicit in his testimony that he was
15 taking it for his protection, that he knew it was loaded,
16 and he planned on using it if he saw Leon. When he took
17 that, there - - - there's no inference to be drawn; there's
18 no competing set of facts. The defendant was crystal clear
19 at least a half dozen times during his testimony that he
20 did not know where Leon Carson was when he took that gun.

21 And it boils down to this.

22 JUDGE WILSON: Well, so let me ask about that
23 then.

24 MR. SLOTT: Yes, Your Honor.

25 JUDGE WILSON: Suppose what happened is Foe



1 sticks his head out, looks and sees Carson there, and sees
2 that Carson has a gun, ducks back in, and says, Carson's
3 out there and he's got a gun. Is that enough?

4 MR. SLOTT: That's a much closer - - -

5 JUDGE WILSON: Yeah, that's why I'm asking.

6 MR. SLOTT: That - - - I agree. That's much
7 closer. It - - - it leads to the question of - - -

8 JUDGE WILSON: What I'm pushing on is, is it
9 knowledge that you're focusing on? Knowledge of where - -
10 - of the threat, or can it be secondhand knowledge? How
11 much of an inference can it be?

12 MR. SLOTT: Knowledge is an important element.
13 I'm not sure I would say it's the end-all, be-all. But
14 there are many competing elements here. And it wasn't
15 reasonable for him to believe that Carson was in the lobby
16 because it boils down to this, that he, defendant, took
17 possession of this loaded weapon because he was told
18 there's a man in a blue jacket in the lobby. That's it.
19 That's it.

20 And there's some presumption, and he starts to
21 presume in his own testimony that that man in the blue
22 jacket is the individual known as Twin. But defendant
23 doesn't know Twin. Foe doesn't know Twin. There was only
24 a mention of Leon being with - - - and whatever that means
25 - - - a dude in a blue coat, a hoodie. And then he's told



1 there's a man with a blue jacket in the lobby, and so
2 automatically thinks that must Twin, that Twin must be with
3 Leon, that Leon is lying in wait with this loaded weapon,
4 that - - - there's no imminent threat there. That's far
5 too low a threshold to permit somebody to take possession
6 of the weapon. There is no lawful excuse based on that.
7 So - - -

8 JUDGE RIVERA: But doesn't that - - - what you've
9 just described - - - have to be considered in light of the
10 history between these men?

11 MR. SLOTT: I agree - - -

12 JUDGE RIVERA: And - - - and what had been
13 observed before then?

14 MR. SLOTT: I - - -

15 JUDGE RIVERA: When - - - when he sees him, when
16 he's coming back, and then when he runs up, right?

17 MR. SLOTT: I agree the history is potentially an
18 element, and if you see somebody, you know, the
19 hypothetical that Judge Stein gave, that you see your
20 nemesis, if you will, out your window, it's a little
21 different, because you're seeing them out your window.

22 In this case, the defendant saw Carson. And this
23 is the first time he's seen him in five years, mind you.
24 He sees him outside the building for about five seconds, at
25 which point, the defendant goes back into the building, and



1 there's a period of seven minutes before he sees him. And
2 the next time the defendant sees Leon Carson, the defendant
3 has a gun in his hand, and he's shooting the gun, blanking
4 out, not recalling what's happening because he can't recall
5 whatever is on the video.

6 But there's - - - the defendant didn't even know
7 that Carson walked into the building. As the trial court
8 said, he could have been five miles away. It - - - seven
9 minutes had passed.

10 So yes, all these things are possible, but even
11 the light - - - in the most - - - even looking in the light
12 most favorable to the defendant, we can't stack inference
13 on top of inference on top of inference to get to whatever
14 logical conclusion defendant is looking for in order to get
15 this instruction.

16 The second prong - - -

17 JUDGE RIVERA: So just to be clear.

18 MR. SLOTT: Yes.

19 JUDGE RIVERA: - - - in your view, when the gun
20 is thrown to him - - - in your view - - - what is it he
21 understands is happening in that moment?

22 MR. SLOTT: He said - - -

23 JUDGE RIVERA: Based on the testimony, the
24 evidence, the position the People have taken.

25 MR. SLOTT: He says he believes Leon Carson is in



1 the lobby, that he needs to take this gun for protection.
 2 He's asked over and over again and admits, I do not know
 3 that Leon Carson is in the lobby; I believe he does, and so
 4 I'm taking this gun for my protection, and I'm going to use
 5 it, if I need to, if I see him. And so just based on that,
 6 his initial possession of this gun is unlawful. So - - -

7 JUDGE RIVERA: So your reading is that he
 8 actually, when he gets possession of the gun, is not
 9 committed to using the gun, doesn't know that he'll ever
 10 need the gun, because as you argue, he doesn't know that
 11 Carson is even there.

12 MR. SLOTT: He's arming himself - - -

13 JUDGE RIVERA: Is that - - - is that - - -

14 MR. SLOTT: Yes. And he's arming himself in
 15 anticipation of a potential confrontation. And it could be
 16 a scenario where Leon Carson's not in there, and the
 17 defendant just takes the gun for his protection out into
 18 the lobby, outside the building to his car, and then hands
 19 it to Foe. That, likewise, is not temporary lawful
 20 possession.

21 So the fact that he later uses the gun for self-
 22 defense can't retroactively excuse possession of the gun
 23 that was unlawful from - - - from its inception. And that
 24 brings me to the second prong, either of which, if we
 25 convince this court on either of those points, the appeal



1 should fail.

2 The dangerous-manner element requires looking
3 beyond the mere use of the weapon. And the use of the
4 weapon in this case - - - I'm talking about the firing of
5 the weapon, right. This court's precedent has always
6 looked at the surrounding circumstances to determine
7 whether or not the defendant's actions are utterly at odds
8 at a claim of innocent possession. There's cases like
9 Snyder and Banks, where the weapon was not fired, yet this
10 court determined that concealment of the weapon, failure to
11 turn it into the police, that failed the dangerous-manner
12 prong.

13 So here, the use of the weapon is more than
14 simply firing it. It includes the circumstances before and
15 after shooting. You know, we can't simply say this
16 shooting was justified, which we don't argue it is, so the
17 dangerous element is satisfied, and appellant just agreed
18 to that.

19 So the taking - - - the dangerous act here, in
20 addition to shooting in a very small lobby that was crowded
21 with five other people, is simply taking this loaded weapon
22 into the lobby, where he believes his nemesis is, who's
23 armed and waiting for him. So simply - - -

24 JUDGE STEIN: Counsel, is there any - - - is
25 there any significance to the fact that he gave the weapon



1 back to Foe and then fled the scene? Does that fit into
2 this analysis at all?

3 MR. SLOTT: Yes. And that's sort of looking at
4 the surrounding circumstances after the use of the weapon.
5 Him throwing it to Foe after was to get rid of this gun
6 that was just used in a shooting, to ensure that the police
7 don't find it, to conceal it from any authorities, which
8 is, in fact, happened. This gun was never recovered; it
9 was presented in - - - into evidence at trial.

10 So, yes, throwing it - - - throwing your gun to a
11 co-illegal possessor is utterly at odds with a claim of
12 innocent possession of this weapon. Yes, absolutely.

13 So this this court - - - and I urge this court to
14 consider - - - when considering the surrounding
15 circumstances of defendant's conduct, we should look
16 whether or not, or factor whether or not, the defendant
17 recklessly or negligently placed himself in a situation
18 where it was probable that he had to use this weapon.

19 So the defendant armed himself for protection.
20 He could have - - - he could have arm - - - he could have
21 gotten help from anyone else. There was 170 apartments
22 about in this building. He could have knocked on other
23 doors seeking for protection.

24 JUDGE RIVERA: But since he doesn't know if he's
25 been followed up on any of the floors, it's possible he



1 might put himself in a very dangerous position, right?

2 MR. SLOTT: That - - -

3 JUDGE RIVERA: Going out hallway to - - - in the
4 hallway, knocking door to door.

5 MR. SLOTT: So - - -

6 JUDGE RIVERA: No - - - nothing suggests he knew
7 anybody else in the building, right?

8 MR. SLOTT: Nothing suggests he knew anybody else
9 in the building, but he's sitting there, fearful for his
10 life, you know. I'm a shy individual; sometimes you might
11 not know it, but I would - - - I would go ahead and knock
12 on a door in that situation, if my life was threatened. So
13 I think as Judge Stein said, if there is - - - if you find
14 there is a requirement, a duty to retreat, I would say that
15 is dispositive because it speaks towards the fact that
16 there was no lawful excuse to take this weapon.

17 And it is consistent with the public policy and
18 this court's president- - - precedent- - - underlying
19 temporary lawful protection - - - possession, excuse me,
20 for this court to affirm the judgment. And that's what we
21 ask.

22 JUDGE RIVERA: Thank you.

23 Counsel?

24 MR. BRIGGS: Yes, I'd like to address a few of
25 the points. You know, on the first issue of lawful



1 possession, when Williams initially obtains possession of
2 the weapon, you know, there was a question about what is
3 the standard of knowledge or belief.

4 You know, and I read counsel's brief to be saying
5 that the question is whether Williams had a reasonable
6 belief that he was in imminent danger, and I believe that a
7 jury could find that at the time, at the - - - in the
8 stairwell, not looking to, you know, earlier circumstances
9 before the possession, at the time the possession actually
10 takes place, which counsel says is the criminal event here,
11 a jury could find reasonably that there was imminent
12 danger, and an unavoidable conflict was about to happen,
13 and that's precisely why the possession was lawful from the
14 beginning.

15 There was a suggestion that there was a
16 possession of the weapon earlier; I believe that's
17 counsel's joint and constructive possession argument.
18 That's an argument that was never raised at the trial
19 court. It's inconsistent with the facts. It would have
20 required the defendant to have dominion or control of
21 Williams. The facts were to the contrary of that.

22 Turning to the second point, the question of
23 there was dangerous use. You know, I'd like to step back.
24 The court's jurisprudence on use in a dangerous manner
25 comes back to the Lester Williams case. And that's a case



1 where the dangerous manner was playing with the weapon that
2 the defendant had had for a period of time. It was not a
3 self-defense circumstance.

4 So there's nothing in Lester Williams that says
5 that perceiving that you're in a situation where you're
6 about to be confronted with deadly force from a nemesis, as
7 we've been calling him, Carson, who you have, you know,
8 every good reason to be afraid of, you know, there's
9 nothing in Lester Williams that, you know, relates to this
10 case, and - - - and there's nothing in Lester Williams that
11 prevents the court from concluding that a jury could find
12 that the use of the weapon was consistent with a dangerous
13 use - - - what was consistent with lawful possession.

14 Now, as to the surrounding circumstances point,
15 you know, I think the surrounding circumstances here, you
16 know, are that the defendant was reasonably afraid that he
17 was about to be shot. And I think the other surrounding
18 circumstances that the court should look at is that the
19 defendant, a jury could reasonably find, was trying to
20 escape to a place of safety.

21 The way that he was going to do that was that
22 Foe, at the point that he received the weapon, was leading
23 him outside of the building. Foe was headed in that
24 direction. He said, follow me, and opened the door. And
25 under those circumstances, you know, Williams could



1 reasonably believe, again, that he was in imminent danger,
2 and that's consistent with temporary lawful possession.

3 Returning the gun to Foe - - -

4 JUDGE STEIN: Counsel, can I just ask you one
5 question? If I assume you will agree that the original
6 intent of the statute was to - - - or at least one of them,
7 the purposes - - - was to encourage people to turn in
8 weapons that have been, you know, are illegal weapons. How
9 would finding defendant's entitlement to the charge here,
10 further that purpose?

11 MR. BRIGGS: Well, you - - -

12 JUDGE STEIN: What circumstances would - - -
13 would promote that?

14 MR. BRIGGS: Your Honor, I think there are a few
15 different purposes to temporary lawful possession. It's a
16 judge-made doctrine. It's a doctrine that recognizes that
17 there are a number of public policies, including the policy
18 of self-defense, you know, that sometimes are consistent
19 with possession of an unlicensed weapon.

20 You know, and there are numerous cases that have
21 held - - - the First Department in Bonilla, the Second
22 Department has several cases - - - persuasively holding
23 that if disposing of the weapon is consistent with the
24 manner in which the weapon is received, that can be
25 consistent with temporary lawful possession.



1 I would also like to respond to counsel's
2 argument that this was concealment of the weapon. I think
3 a jury could easily reject that position. Concealment
4 might have been if Williams took the weapon, and took it
5 home with him, and disposed of the evidence. Some of the
6 cases involve throwing, you know, a weapon in the trash, or
7 the sewer system.

8 This is a case where the gun was received from
9 its owner - - - counsel characterizes that as a co-illegal
10 possessor. There's - - - that's certainly not something a
11 jury would be required to find. I think there's hardly any
12 evidence in the record of that. And it was returned to its
13 owner, as soon as Williams had reached a place of safety,
14 and it's not concealment. The owner stays on the scene.

15 So the fact that the police don't recover the
16 weapon. The police apparently don't investigate and search
17 Foe's apartment. You know, that's on the police. That
18 doesn't mean that Williams concealed the weapon.

19 So - - - and the other thing I would like to
20 point out is, you know, the argument that went to the trial
21 court, the one argument that was preserved at the trial
22 court was the argument that at the initial time of
23 possession, the possession was unlawful because as counsel
24 reported at the trial court statement, the defendant had no
25 way of knowing whether Carson was miles away.



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I think the defendant had many ways of reasonably believing that Carson was in the lobby, as he actually was. A jury could easily find, based on a reasonable view of the evidence, that that was consistent with lawfully accepting the possession at a time of imminent danger.

And those reasons, Your Honor, we would ask the court to reverse and you know, direct a trial with an appropriate instruction.

JUDGE RIVERA: Thank you, Counsel.

(Court is adjourned)



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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of People of the State of New York v. Lance Williams, No. 92 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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