

People v Goetz

Court of Appeals of New York
Argued May 28, 1986;
decided July 8, 1986

OPINION OF THE COURT

Chief Judge Wachtler.

A Grand Jury has indicted defendant on attempted murder, assault, and other charges for having shot and wounded four youths on a New York City subway train after one or two of the youths approached him and asked for \$5. The lower courts, concluding that the prosecutor's charge to the Grand Jury on the defense of justification was erroneous, have dismissed the attempted murder, assault and weapons possession charges. We now reverse and reinstate all counts of the indictment.

I.

The precise circumstances of the incident giving rise to the charges against defendant are disputed, and ultimately it will be for a trial jury to determine what occurred. We feel it necessary, however, to provide some factual background to properly frame the legal issues before us. Accordingly, we have summarized the facts as they appear from the evidence before the Grand Jury. We stress, however, that we do not purport to reach any conclusions or holding as to exactly what transpired or whether defendant is blameworthy. The credibility of witnesses and the reasonableness of defendant's conduct are to be resolved by the trial jury.

On Saturday afternoon, December 22, 1984, Troy Canty, Darryl Cabey, James Ramseur, and Barry Allen boarded an IRT express subway train in The Bronx and headed south toward lower Manhattan. The four youths rode together in the rear portion of the seventh car of the train. Two of the four, Ramseur and Cabey, had screwdrivers inside their coats, which they said were to be used to break into the coin boxes of video machines.

Defendant Bernhard Goetz boarded this subway train at 14th Street in Manhattan and sat down on a bench towards the rear section of the same car occupied by the four youths. Goetz was carrying an unlicensed .38 caliber pistol loaded with five rounds of ammunition in a waistband holster. The train left the 14th Street station and headed towards Chambers Street.

It appears from the evidence before the Grand Jury that Canty approached Goetz, possibly with Allen beside him, and stated "give me five dollars". Neither

Canty nor any of the other youths displayed a weapon. Goetz responded by standing up, pulling out his handgun and firing four shots in rapid succession. The first shot hit Canty in the chest; the second struck Allen in the back; the third went through Ramseur's arm and into his left side; the fourth was fired at Cabey, who apparently was then standing in the corner of the car, but missed, deflecting instead off of a wall of the conductor's cab. After Goetz briefly surveyed the scene around him, he fired another shot at Cabey, who then was sitting on the end bench of the car. The bullet entered the rear of Cabey's side and severed his spinal cord.

All but two of the other passengers fled the car when, or immediately after, the shots were fired. The conductor, who had been in the next car, heard the shots and instructed the motorman to radio for emergency assistance. The conductor then went into the car where the shooting occurred and saw Goetz sitting on a bench, the injured youths lying on the floor or slumped against a seat, and two women who had apparently *101 taken cover, also lying on the floor. Goetz told the conductor that the four youths had tried to rob him.

While the conductor was aiding the youths, Goetz headed towards the front of the car. The train had stopped just before the Chambers Street station and Goetz went between two of the cars, jumped onto the tracks and fled. Police and ambulance crews arrived at the scene shortly thereafter. Ramseur and Canty, initially listed in critical condition, have fully recovered. Cabey remains paralyzed, and has suffered some degree of brain damage.

On December 31, 1984, Goetz surrendered to police in Concord, New Hampshire, identifying himself as the gunman being sought for the subway shootings in New York nine days earlier. Later that day, after receiving *Miranda* warnings, he made two lengthy statements, both of which were tape recorded with his permission. In the statements, which are substantially similar, Goetz admitted that he had been illegally carrying a handgun in New York City for three years. He stated that he had first purchased a gun in 1981 after he had been injured in a mugging. Goetz also revealed that twice between 1981 and 1984 he had successfully warded off assailants simply by displaying the pistol.

According to Goetz's statement, the first contact he had with the four youths came when Canty, sitting or lying on the bench across from him, asked "how are you," to which he replied "fine". Shortly thereafter, Canty, followed by one of the other youths, walked over to the defendant and stood to his left, while the other two youths remained to his right, in the corner of the subway car. Canty then said "give me five dollars". Goetz stated that he knew from the smile on Canty's face that they wanted to "play with me". Although he was certain that none of the youths had a gun, he had a fear, based on prior experiences, of being

"maimed".

Goetz then established "a pattern of fire," deciding specifically to fire from left to right. His stated intention at that point was to "murder [the four youths], to hurt them, to make them suffer as much as possible". When Canty again requested money, Goetz stood up, drew his weapon, and began firing, aiming for the center of the body of each of the four. Goetz recalled that the first two he shot "tried to run through the crowd [but] they had nowhere to run". Goetz then turned to his right to "go after the other two". One of these two "tried to run through the wall of the train, but he had nowhere to go". The other youth (Cabey) "tried pretending that he wasn't with [the others]" by standing still, holding on to one of the subway hand straps, and not looking at Goetz. Goetz nonetheless fired his fourth shot at him. He then ran back to the first two youths to make sure they had been "taken care of". Seeing that they had both been shot, he spun back to check on the latter two. Goetz noticed that the youth who had been standing still was now sitting on a bench and seemed unhurt. As Goetz told the police, "I said ' [y]ou seem to be all right, here's another' ", and he then fired the shot which severed Cabey's spinal cord. Goetz added that "if I was a little more under self-control I would have put the barrel against his forehead and fired." He also admitted that "if I had had more [bullets], I would have shot them again, and again, and again."

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III.

Penal Law article 35 recognizes the defense of justification, which "permits the use of force under certain circumstances" One such set of circumstances pertains to the use of force in defense of a person, encompassing both self-defense and defense of a third person sets forth the general principles governing all such uses of force: "[a] *106 person may use physical force upon another person when and to the extent he *reasonably believes* such to be necessary to defend himself or a third person from what he *reasonably believes* to be the use or imminent use of unlawful physical force by such other person" (emphasis added).

Thus, consistent with most justification provisions, Penal Law § 35.15 permits the use of deadly physical force only where requirements as to triggering conditions and the necessity of a particular response are met. As to the triggering conditions, the statute requires that the actor "reasonably believes" that another person either is using or about to use deadly physical force or is committing or attempting to commit one of certain enumerated felonies, including robbery. As to the need for the use of deadly physical force as a response, the statute requires that the actor "reasonably believes" that such force is necessary to avert the

perceived threat.

Because the evidence before the second Grand Jury included statements by Goetz that he acted to protect himself from being maimed or to avert a robbery, the prosecutor correctly chose to charge the justification defense in section 35.15 to the Grand Jury (see, CPL 190.25 [6]; People v Valles, 62 NY2d 36, 38). The prosecutor properly instructed the grand jurors to *107 consider whether the use of deadly physical force was justified to prevent either serious physical injury or a robbery, and, in doing so, to separately analyze the defense with respect to each of the charges. He elaborated upon the prerequisites for the use of deadly physical force essentially by reading or paraphrasing the language in Penal Law § 35.15. The defense does not contend that he committed any error in this portion of the charge.

(1) When the prosecutor had completed his charge, one of the grand jurors asked for clarification of the term "reasonably believes". The prosecutor responded by instructing the grand jurors that they were to consider the circumstances of the incident and determine "whether the defendant's conduct was that of a reasonable man in the defendant's situation". It is this response by the prosecutor--and specifically his use of "a reasonable man"--which is the basis for the dismissal of the charges by the lower courts. As expressed repeatedly in the Appellate Division's plurality opinion, because section 35.15 uses the term "*he* reasonably believes", the appropriate test, according to that court, is whether a defendant's beliefs and reactions were "reasonable *to him*". Under that reading of the statute, a jury which believed a defendant's testimony that he felt that his own actions were warranted and were reasonable would have to acquit him, regardless of what anyone else in defendant's situation might have concluded. Such an interpretation defies the ordinary meaning and significance of the term "reasonably" in a statute, and misconstrues the clear intent of the Legislature, in enacting section 35.15, to retain an objective element as part of any provision authorizing the use of deadly physical force.

Penal statutes in New York have long codified the right recognized at common law to use deadly physical force, under appropriate circumstances, in self-defense. These provisions have never required that an actor's belief as to the intention of another person to inflict serious injury be correct in order for the use of deadly force to be justified, but they have uniformly required that the belief comport with an objective notion of reasonableness. The 1829 statute, using language which was followed almost in its entirety until the 1965 recodification of the Penal Law, provided that the use of deadly force was justified in self-defense or in the defense of specified third persons "when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being

accomplished".

In *Shorter v People* (2 NY 193), we emphasized that deadly force could be justified under the statute even if the actor's beliefs as to the intentions of another turned out to be wrong, but noted there had to be a reasonable basis, viewed objectively, for the beliefs. We explicitly rejected the position that the defendant's own belief that the use of deadly force was necessary sufficed to justify such force regardless of the reasonableness of the beliefs...

...Interpreting the statute to require only that the defendant's belief was "reasonable to *him*," as done by the plurality below, would hardly be different from requiring only a genuine belief; in either case, the defendant's own perceptions could completely exonerate him from any criminal liability.

We cannot lightly impute to the Legislature an intent to fundamentally alter the principles of justification to allow the perpetrator of a serious crime to go free simply because that person believed his actions were reasonable and necessary to prevent some perceived harm. To completely exonerate such an individual, no matter how aberrational or bizarre his thought patterns, would allow citizens to set their own standards for the permissible use of force. It would also allow a legally competent defendant suffering from delusions to kill or perform acts of violence with impunity, contrary to fundamental principles of justice and criminal law.

We can only conclude that the Legislature retained a reasonableness requirement to avoid giving a license for such actions. The plurality's interpretation, as the dissenters below recognized, excises the impact of the word "reasonably". ...

Statutes or rules of law requiring a person to act "reasonably" or to have a "reasonable belief" uniformly prescribe conduct meeting an objective standard measured with reference to how "a reasonable person" could have acted ...

Goetz also argues that the introduction of an objective element will preclude a jury from considering factors such as the prior experiences of a given actor and thus, require it to make a determination of "reasonableness" without regard to the actual circumstances of a particular incident. This argument, however, falsely presupposes that an objective standard means that the background and other relevant characteristics of a particular actor must be ignored. To the contrary, we have frequently noted that a determination of reasonableness must be based on the "circumstances" facing a defendant or his "situation". Such terms encompass more than the physical movements of the potential assailant. As just discussed, these terms include any relevant knowledge the defendant had

about that person. They also necessarily bring in the physical attributes of all persons involved, including the defendant. Furthermore, the defendant's circumstances encompass any prior experiences he had which could provide a reasonable basis for a belief that another person's intentions were to injure or rob him or that the use of deadly force was necessary under the circumstances.

(2) Accordingly, a jury should be instructed to consider this type of evidence in weighing the defendant's actions. The jury must first determine whether the defendant had the requisite beliefs under section 35.15, that is, whether he believed deadly force was necessary to avert the imminent use of deadly force or the commission of one of the felonies enumerated therein. If the People do not prove beyond a reasonable doubt that he did not have such beliefs, then the jury must also consider whether these beliefs were reasonable. The jury would have to determine, in light of all the "circumstances", as explicated above, if a reasonable person could have had these beliefs.

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Accordingly, the order of the Appellate Division should be reversed, and the dismissed counts of the indictment reinstated.

Judges Meyer, Simons, Kaye, Alexander, Titone and Hancock, Jr., concur.