S T A T E O F N E W Y O R K

4519

2011-2012 Regular Sessions

I N S E N A T E

April 8, 2011

Introduced by Sen. SALAND -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the law of agency

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 40.20 to read as follows:

S 40.20 AGENCY.

1. A PERSON WHO ACTS SOLELY AS AN AGENT OF THE BUYER IN A SALE OF A CONTROLLED SUBSTANCE CANNOT BE CONVICTED OF THE CRIME OF SELLING THAT CONTROLLED SUBSTANCE OR OF POSSESSING IT WITH INTENT TO SELL.

2. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUBDIVISIONS THREE OR SIX OF SECTION 300.40 OF THE CRIMINAL PROCEDURE LAW, WHEN THE DEFENDANT PLACES IN ISSUE AT TRIAL THAT HE OR SHE LACKS CULPABILITY FOR SELLING, OR POSSESSING WITH INTENT TO SELL, A CONTROLLED SUBSTANCE, AND THERE IS A REASONABLE VIEW OF THE EVIDENCE TO SUPPORT THE CLAIM, AS PROVIDED FOR IN THE PRECEDING SUBDIVISION, THAT THE DEFENDANT, WHEN HE OR SHE POSSESSED THE CONTROLLED SUBSTANCE SOLD, WAS ACTING SOLELY AS AN AGENT OF THE BUYER:

(A) THE DEFENDANT IS ENTITLED, UPON REQUEST, TO HAVE THE JURY CONSIDER THE CRIME OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE DURING ITS DELIBERATION. IF THE DEFENDANT FAILS TO REQUEST SUCH A CHARGE BEFORE THE JURY RETIRES TO BEGIN ITS DELIBERATION, THE RIGHT TO HAVE THE JURY CONSIDER IT IS WAIVED AND ANY RESULTING CONVICTION MAY NOT THEREAFTER BE CHALLENGED ON THE GROUND THE JURY DID NOT CONSIDER CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE.

(B) THE PROSECUTOR IS ENTITLED, UPON REQUEST, TO HAVE THE JURY CONSIDER THE CRIME OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE. IF THE PROSECUTOR FAILS TO MAKE A REQUEST BEFORE THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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JURY RETIRES TO DELIBERATE, THE RIGHT TO HAVE THE JURY CONSIDER THE SEVENTH DEGREE POSSESSION CHARGE IS WAIVED.

(C) WHEN THE COURT SUBMITS CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE PURSUANT TO THIS SECTION, THE OFFENSE SHALL BE CONSIDERED A LESSER INCLUDED OFFENSE WITH REGARD TO THE GREATER OFFENSE UNDER WHICH IT IS CHARGED.

3. A PERSON WHO ACTS SOLELY AS AN AGENT OF THE BUYER IN THE SALE OF MARIHUANA CANNOT BE CONVICTED OF THE CRIME OF SELLING THAT MARIHUANA.

4. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUBDIVISIONS THREE OR SIX OF SECTION 300.40 OF THE CRIMINAL PROCEDURE LAW, WHEN THE DEFENDANT PLACES IN ISSUE AT TRIAL THAT HE OR SHE LACKS CULPABILITY FOR SELLING, OR POSSESSING WITH INTENT TO SELL, MARIHUANA AND THERE IS A REASONABLE VIEW OF THE EVIDENCE TO SUPPORT THE CLAIM, AS PROVIDED IN THE PRECEDING PARAGRAPH, THAT THE DEFENDANT, WHEN HE OR SHE POSSESSED THE MARIHUANA SOLD, WAS ACTING SOLELY AS AN AGENT OF THE BUYER:

(A) THE DEFENDANT IS ENTITLED, UPON REQUEST, TO HAVE THE JURY CONSIDER THE APPROPRIATE LESSER OFFENSE OF CRIMINAL POSSESSION OF MARIHUANA AS DEFINED BY SECTION 221.10, 221.15, 221.20 OR 221.25 OF THIS CHAPTER DURING ITS DELIBERATIONS. THE TRIAL COURT SHALL IN ITS DISCRETION SUBMIT THE MOST APPROPRIATE CLASSIFICATION OF THE MARIHUANA CHARGE BASED UPON A REASONABLE VIEW OF THE EVIDENCE ADMITTED DURING THE TRIAL. IF THE DEFENDANT FAILS TO REQUEST A MARIHUANA POSSESSION CHARGE BEFORE THE JURY RETIRES TO BEGIN ITS DELIBERATION, THE RIGHT TO HAVE THE JURY CONSIDER IT IS WAIVED AND ANY RESULTING CONVICTION MAY NOT THEREAFTER BE CHALLENGED ON THE GROUND THE JURY DID NOT CONSIDER SUCH A CHARGE.

(B) THE PROSECUTOR IS ENTITLED, UPON REQUEST, TO HAVE THE JURY CONSIDER THE APPROPRIATE LESSER OFFENSE OF CRIMINAL POSSESSION OF MARIHUANA AS DEFINED BY SECTION 221.10, 221.15, 221.20 OR 221.25 OF THIS CHAPTER DURING ITS DELIBERATIONS. THE TRIAL COURT SHALL IN ITS DISCRETION SUBMIT THE MOST APPROPRIATE CLASSIFICATION OF THE MARIHUANA CHARGE BASED UPON A REASONABLE VIEW OF THE EVIDENCE ADMITTED DURING THE TRIAL. IF THE PROSECUTOR FAILS TO MAKE A REQUEST BEFORE THE JURY RETIRES TO DELIBERATE, THE RIGHT TO HAVE THE JURY CONSIDER THE SEVENTH DEGREE POSSESSION CHARGE IS WAIVED.

(C) WHEN THE COURT SUBMITS CRIMINAL POSSESSION OF MARIHUANA PURSUANT TO THIS SECTION, THE OFFENSE SHALL BE CONSIDERED A LESSER INCLUDED OFFENSE WITH REGARD TO THE GREATER OFFENSE UNDER WHICH IT IS CHARGED.

S 2. This act shall take effect thirty days after it shall have become a law and shall apply to all pending trials where jury deliberations have not yet commenced.