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1. [People v. Robbins, 5 N.Y.3d 556](#)

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## [People v. Robbins](#)

Court of Appeals of New York

October 20, 2005, Argued ; November 22, 2005, Decided

No. 162

### Reporter

5 N.Y.3d 556 \*; 840 N.E.2d 1020 \*\*; 807 N.Y.S.2d 7 \*\*\*; 2005 N.Y. LEXIS 3308 \*\*\*\*

The People of the State of New York, Respondent, v. [James Robbins](#), Appellant.

**Prior History:** [\*\*\*\*1] Appeal, by permission of an Associate Judge of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered September 28, 2004. The Appellate Division affirmed a judgment of the Supreme Court, New York County (Lewis Bart Stone, J.), which had convicted defendant, upon a jury verdict, of criminal sale of a controlled substance in the third degree and criminal sale of a controlled substance in or near [school](#) grounds.

[People v. Robbins](#), 10 A.D.3d 570, 782 N.Y.S.2d 80, 2004 N.Y. App. Div. LEXIS 11009 (1st Dept 2004), affirmed.

**Disposition:** Order affirmed.

## Core Terms

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measurement, [feet](#), [school](#) grounds

## Case Summary

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### Procedural Posture

Defendant appealed an order by the Appellate Division (New York) that convicted him of selling a controlled substance within 1000 [feet](#) of a [school](#), in violation of [N.Y. Penal Law § 220.44\(2\)](#); defendant claimed that evidence was insufficient to support the conviction because the requisite distance had to be calculated by the "pedestrian method."

### Overview

It was undisputed that defendant sold drugs to an undercover police officer within 1000 [feet](#) of the [school](#) when measured in a straight line between the sale and the [school](#)'s boundary line, but that existing buildings made it impossible to walk in a straight line between those two points. The shortest actual distance that a pedestrian would have to travel in order to walk from the scene of the crime to the [school](#) using city streets and publicly accessible locations exceeded 1000 [feet](#). The appellate court held that guilt under [§ 220.44\(2\)](#) could not depend on whether a particular building in a person's path to a [school](#) happened to be open to the public or locked at the time of a drug sale. As the trial court properly held, the statutory distance was to be measured "as the crow flies."

### Outcome

The order was affirmed.

## LexisNexis® Headnotes

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Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > General Overview

### [HN1](#) [↓] **Controlled Substances, Delivery, Distribution & Sale**

It is a class B felony to sell drugs within 1000 feet of a school.

Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > General Overview

### [HN2](#) [↓] **Controlled Substances, Delivery, Distribution & Sale**

[N.Y. Penal Law § 220.44\(2\)](#) proscribes the third-degree criminal sale of a controlled substance when such sale takes place upon school grounds. "School grounds," in turn, means not only in or on or within school buildings or school property, but also any area accessible to the public located within 1000 feet of the real property boundary line of a school, as well as any vehicle parked within 1000 feet of such line. [N.Y. Penal Law § 220.00\(14\)](#).

Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > General Overview

### [HN3](#) [↓] **Controlled Substances, Delivery, Distribution & Sale**

In the context of a criminal sale of a controlled substance within 1000 feet of a school, the proper method of measurement under [N.Y. Penal Law § 220.00\(14\)](#) is the "straight-line method."

Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > General Overview

### [HN4](#) [↓] **Controlled Substances, Delivery, Distribution & Sale**

By defining school grounds to encompass both the school property itself and the entire area "within" 1000 feet of the property boundary line, the New York Legislature effectively extended the boundaries of school grounds outward in order to encompass all public areas within a 1000-foot radius of the school. Indeed, the 1000-foot measurement was chosen because of the high number of narcotics-related arrests that had occurred within a two-block "radius" of elementary school grounds. Thus, the intent of the statute was to circumscribe a fixed geographical area, without regard to whether that area might contain obstacles around which people might have to detour.

Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > General Overview

### [HN5](#) [↓] **Controlled Substances, Delivery, Distribution & Sale**

The federal schoolyard law--which prohibits distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within 1000 feet of, the real property comprising a school ([21 U.S.C.S. § 860](#))--has been universally interpreted to contemplate the straight-line method of measurement.

## Headnotes/Summary

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### Headnotes

#### **Crimes -- Controlled Substances -- Criminal Sale in or Near School Grounds -- Measurement of 1,000-Foot Distance from School Property Line**

In the prosecution of defendant pursuant to [Penal Law § 220.44 \(2\)](#) for third-degree criminal sale of a controlled substance within 1,000 feet of a school, the People properly calculated the requisite distance by measuring in a straight line between the point of sale to the real property boundary line of the nearest school. Although existing buildings made it impossible to walk in a straight line between those points, and the shortest

actual distance that a pedestrian would have had to travel in order to walk between those points using city streets and publicly accessible locations exceeded 1,000 **feet**, the "straight-line method," and not the "pedestrian method," is the appropriate method of measurement under the statute. [Section 220.00 \(14\)](#) defines **school** grounds to encompass both the **school** property itself and any publicly accessible area located "within one thousand **feet** of the real property boundary line" of the **school**. The **school**-grounds law was enacted in order to create a drug-free buffer zone of protection for children coming to and from **school**, and the intent of the statute was to circumscribe a fixed geographical area, without regard to whether that area might contain obstacles around which people might have to detour.

**Counsel:** *Sheila Fernandez*, New York City, *Laura R. Johnson* and *Martin M. Lucente* for appellant. The evidence of sale in or near **school** grounds was legally insufficient, where the court allowed the People to prove the requisite proximity by use of the Pythagorean theorem, instead of the "pedestrian" method that is based on the actual distance travelled in going from one point to the other. ([People v Gaines](#), 167 Misc. 2d 923, 640 N.Y.S.2d 734; [United States v Henderson](#), 320 F.3d 92; [United States v Clavis](#), 956 F.2d 1079; [United States v Ofarril](#), 779 F.2d 791; [People v Zelaya](#), 232 A.D.2d 261, 648 N.Y.S.2d 93; [People v Andujas](#), 79 N.Y.2d 113, 588 N.E.2d 754, 580 N.Y.S.2d 719; [People v Kitching](#), 78 N.Y.2d 532, 583 N.E.2d 944, 577 N.Y.S.2d 231; [People v Doshi](#), 93 N.Y.2d 499, 715 N.E.2d 113, 693 N.Y.S.2d 87; [People v Baghai-Kermani](#), 84 N.Y.2d 525, 644 N.E.2d 1004, 620 N.Y.S.2d 313; [People v Cohen](#), 50 N.Y.2d 908, 409 N.E.2d 921, 431 N.Y.S.2d 446.)

*Robert M. Morgenthau*, District Attorney, New York City (*Deborah L. Morse* and *Gina Mignola* of counsel), for respondent. The evidence plainly established that the drug sale occurred within 1,000 **feet** of a **school**. ([Jackson v Virginia](#), 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560; [People v Norman](#), 85 N.Y.2d 609, 650 N.E.2d 1303, 627 N.Y.S.2d 302; [People v Malizia](#), 62 N.Y.2d 755, 465 N.E.2d 364, 476 N.Y.S.2d 825; [People v Kennedy](#), 47 N.Y.2d 196, 391 N.E.2d 288, 417 N.Y.S.2d 452; [People v Robinson](#), 95 N.Y.2d 179, 733

[N.E.2d 220](#), 711 N.Y.S.2d 148; [People v Ryan](#), 82 N.Y.2d 497, 626 N.E.2d 51, 605 N.Y.S.2d 235; [People v Duggins](#), 3 N.Y.3d 522, 821 N.E.2d 942, 788 N.Y.S.2d 638; [People v Versaggi](#), 83 N.Y.2d 123, 629 N.E.2d 1034, 608 N.Y.S.2d 155; [People v Perez](#), 277 A.D.2d 1, 715 N.Y.S.2d 398; [People v Gaines](#), 167 Misc. 2d 923, 640 N.Y.S.2d 734.)

**Judges:** Opinion by Chief Judge Kaye. Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

**Opinion by:** KAYE

## Opinion

[\*557] [\*\*\*8] [\*\*1021] Chief Judge Kaye.

**HN1**<sup>1</sup> It is a class B felony to sell drugs within 1,000 **feet** of a **school**. Because we agree with the courts below that this distance is to be measured in a straight line between the nearest **school** and the point of sale, we uphold defendant's conviction.

**HN2**<sup>1</sup> [Penal Law § 220.44 \(2\)](#) proscribes the third-degree criminal sale of a controlled substance "when such sale takes place upon **school** grounds." **School** grounds, in turn, means not only "in or on or within" **school** buildings or **school** property, but also "any area accessible to the public located within one thousand **feet** of the real property boundary line" of a **school**, as well as any vehicle [\*558] parked within 1,000 **feet** of such line ([Penal Law § 220.00 \[14\]](#)).<sup>1</sup>

[\*\*\*\*2] Defendant was charged with selling drugs to an undercover police officer at the northeast corner of 40th Street and Eighth Avenue in Manhattan. At trial, the People offered proof that the nearest **school** was the Holy Cross grade **school**, located on 43rd Street between Eighth and Ninth Avenues. It is undisputed that the sale took place within 1,000 **feet** of the **school** when measured in a straight line between the sale and the

<sup>1</sup> An "area accessible to the public" means "sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants" (*id.*).

school's boundary line, but that existing buildings made it impossible to walk in a straight line between those two points. It is further undisputed that the shortest actual distance that a pedestrian would have to travel in order to walk from the scene of the crime to the school using city streets and publicly accessible locations exceeded 1,000 feet.

Defendant contends that the statute mandates that the requisite distance be calculated by the "pedestrian method," and that the evidence was therefore legally insufficient to support his conviction. We are unpersuaded, and hold that [HN3](#)<sup>↑</sup> the proper method of measurement under the statute is the "straight-line method."

[\*\*\*9] [\*\*1022] The school-grounds law was enacted in order to create a drug-free buffer zone of protection--"a corridor [\*\*\*\*3] of safety for children coming to and from school" (Mem of State Exec Dept, 1986 McKinney's Session Laws of NY, at 2892). [HN4](#)<sup>↑</sup> By defining school grounds to encompass both the school property itself and the entire area "within" 1,000 feet of the property boundary line, the Legislature effectively extended the boundaries of school grounds outward in order to encompass all public areas within a 1,000-foot radius of the school.

Indeed, the 1,000-foot measurement was chosen because of the high number of narcotics-related arrests that had occurred within a two-block "radius" of elementary school grounds<sup>2</sup> (*id.*; see also Governor's Mem approving L 1986, ch 280, 1986 McKinney's Session Laws of NY, at 3161 [because many, if not most, sales of drugs to children occur near but not inside school buildings, the bill defines school grounds to include "the area" within 1,000 feet of the real property boundary line, providing a "zone of safety" for school children]). Thus, the intent of the [\*559] statute was to circumscribe a fixed geographical area, without regard to whether that area might contain obstacles around which people might have to detour.

[\*\*\*\*4] Other jurisdictions with similar statutes have construed their laws to require a straight-line measurement (see e.g. [Commonwealth v Spano](#), 414 Mass. 178, 181, 605 N.E.2d 1241, 1244 [1993]; [State v Georgetown](#), 1995 WL 866838, 1995 La. App. LEXIS 3878 [La Ct App, Dec. 15, 1995]; [State v Wimbs](#), 74 Wn. App. 511, 515, 874 P.2d 193, 195 [Ct App 1994]; [State v Vigh](#), 871 P.2d 1030, 1035 [Utah Ct App 1994];

[Howard v State](#), 591 So. 2d 1067, 1068 [Fla Dist Ct App 1991]; [State v Ogar](#), 229 N.J. Super. 459, 465, 551 A.2d 1037, 1040-1041 [App Div 1989]; see also [Taylor Drug Stores, Inc. v Indiana Alcoholic Beverage Comm.](#), 497 N.E.2d 932, 936 [Ct App 1986] [proximity between a church and a premises seeking a permit to distribute alcoholic beverages should be measured along the shortest straight line connecting the church and the proposed premises, regardless of intervening obstacles]).

Similarly, [HN5](#)<sup>↑</sup> the federal schoolyard law--which prohibits "distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within [\*\*\*\*5] one thousand feet of, the real property comprising" a school (21 USC § 860)--has been universally interpreted to contemplate the straight-line method of measurement (see e.g. [United States v Henderson](#), 320 F.3d 92, 103 [1st Cir 2003], cert denied 539 U.S. 936, 123 S. Ct. 2597, 156 L. Ed. 2d 620 [2003]; [United States v Johnson](#), 46 F.3d 1166, 1169-1170, 310 U.S. App. D.C. 249 [DC Cir 1995]; [United States v Clavis](#), 956 F.2d 1079, 1088 [11th Cir 1992], cert denied sub nom. [Edwards v United States](#), 504 U.S. 990, 112 S. Ct. 2979, 119 L. Ed. 2d 597 [1992]; [United States v Watson](#), 887 F.2d 980, 980-981 [9th Cir 1989]; [United States v Ofarril](#), 779 F.2d 791, 792 [2d Cir 1985], cert denied 475 U.S. 1029, 106 S. Ct. 1231, 89 L. Ed. 2d 340 [1986]; see also Mem of State Exec Dept, 1986 McKinney's Session Laws of NY, at 2892 [characterizing the federal schoolyard law as "similar legislation" to the proposed New York statute]).

Defendant's contrary reading would introduce uncertainty and open the statute to a charge of vagueness. Plainly, guilt under the statute cannot depend on whether a particular building in a [\*\*\*\*6] person's path to a school happens to be open to the public or locked at the time of a drug sale. At a minimum, "[r]equiring speculation about pedestrian routes would create uncertainty [\*\*\*10] [\*\*1023] in a statute which was meant to establish clear lines of demarcation" ([Watson](#), 887 F.2d at 980-981).

[\*560] Further, if the pedestrian method of measurement were used, a drug dealer could take deliberate steps to evade the reach of the statute by putting up obstructions to render the footpath to a nearby school beyond the 1,000-foot limit (see [Clavis](#), 956 F.2d at 1088). But the intent of the legislation would be defeated "if dealers were allowed to escape prosecution by creating circuitous routes to their narcotic transactions" ([Watson](#), 887 F.2d at 981). Thus,

<sup>2</sup>One thousand feet is "the equivalent of two city blocks" (*id.*).

as the courts below properly held, the statutory distance is to be measured "as the crow flies."

Defendant's remaining contention is without merit.

Accordingly, the order of the Appellate Division should be affirmed.

Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

Order affirmed.

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