

## Harry's Gun Still Inadmissible

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A judge refused yesterday to reconsider his decision to throw out the principal evidence against reputed mobster Harry "The Hunchback" Riccobene in a gun case.

Municipal Judge Ronald B. Merriweather ruled at a hearing last month that a .25 caliber pearl-handled automatic police said they found in Riccobene's car when they stopped him for a traffic violation could not be used as evidence against him.

Merriweather indicated then that he agreed with defense attorney A. Charles Peruto, JR. that police should have obtained a search warrant before going through the car.

Deputy District Attorney Arthur R. Shuman said he would appeal yesterday's ruling to Common Pleas Court. Without the gun, there is no case against Riccobene, Shuman said.

Riccobene, 73, already is serving a nine-year federal prison term for racketeering and recently was charged with murder in the slaying of another reputed crime figure, Frank John Monte.

"What makes this case so special? This is a simple, everyday gun case," Merriweather said.

Peruto said the prosecution was pushing the case because they insist Riccobene "Is a big Mafia guy."

Shuman said the DA's office was "not treating this case any different than all the others."

Merriweather said he was "concerned" about Riccobene's rights and told the defendant, "You have a right to have the matter disposed of in a timely way."

Riccobene was stopped by police January 10, 1983, for backing a tan 1982 Buick registered to a South Philadelphia hauling firm out of 8<sup>th</sup> Street onto Oregon Avenue. Police said Riccobene had violated a law against backing into a limited-access highway. The infraction carried a \$35 fine.

Riccobene was charged with carrying a gun without a permit after police said they spotted the weapon at his feet as they stood outside his car.

Riccobene, who survived two assassination attempts in 1982, has denied he knew the gun was in the car.

At the time of the traffic violation Riccobene was free on bail while appealing his racketeering conviction. Bail was subsequently revoked and Riccobene was committed to jail. Since then, Riccobene has lost his appeal to the U.S. Supreme Court and is now serving his sentence.

Last October, Municipal Judge Mitchell S. Lipschutz threw out the gun charge on the ground that Riccobene had not been properly arraigned. The DA's office had Riccobene rearrested.

Lipschutz testified before Merriweather that he had the Buick brought to City Hall and tried himself, standing on tiptoes, to spot the gun from outside the car. He said he could not.

Peruto had argued police could not have seen the weapon without entering the vehicle because Riccobene, who is under 5 feet tall, had to drive with the front seat all the way up.

Shuman noted Merriweather had conducted the same test as Lipschutz on a car similar to Riccobene's and had been able to see the gun.

The car Riccobene was driving when he was arrested was later sold, but Shuman traced it and had it brought yesterday to City Hall courtyard. He asked Merriweather to conduct another test using that car, but the judge refused.