

Judge rules gun cannot be used as evidence against Riccobene

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A Philadelphia Municipal Court Judge ruled yesterday that a gun crucial to the prosecution of a weapons charge against reputed organized crime figure Harry Riccobene could not be introduced as evidence in the case.

Judge Ronald Merriweather, who watched a re-enactment of Riccobene's arrest Wednesday, said he ruled against admitting the gun as evidence because he did not believe a police account of how the gun was found.

Officers who arrested Riccobene for carrying a weapon without a permit in January 1983 had said they had seen a .25-caliber revolver on the floor of the front seat of the car Riccobene was in.

But after the re-enactment, Merriweather said, he concluded that police could not have seen the gun through the car window as they had contended.

Riccobene's attorney, A. Charles Peruto, Jr., had said it was impossible for police to see the gun through the car window because Riccobene, who's is 4 foot 10, kept the car seat so far forward that a gun on the floor would be hidden from view.

Riccobene was charged last month with conspiring or attempting to slay five of Philadelphia's leading organized-crime figures. When he was arrested on the weapons charge, Riccobene was released on bail on a 1982 federal racketeering conviction.

As a result of the charge a federal judge revoked bail on the racketeering conviction and Riccobene was confined to the Philadelphia Detention Center.

Between his arrest on the gun charge and yesterday's ruling, Riccobene has made at least 15 court appearances in the matter.

In fact, the entire case was tried before, Judge Mitchell Lipschutz discharged the case in October on the ground that Riccobene had been improperly arraigned.

When Lipschutz heard the case, Peruto arranged for the crime scene to be recreated with the car Riccobene was driving brought to City Hall.

During the re-enactment last April, Lipschutz looked into the car from the outside and tried to see the gun – which had been placed where police said they found it.

On Wednesday, Lipschutz testified that he could not see the gun. But when he discharged the case against Riccobene last year, Lipschutz did not rule on whether the gun was visible. Lipschutz discharged the case then because a two-way television system that was used to arraign Riccobene had not been worked properly. Riccobene testified that he had been unable to see the judge who conducted the arraignment.

Merriweather ruled yesterday that police had searched Riccobene's car without probable cause and therefore the gun, seized during the search could not be used as evidence.

Riccobene, 73, said after Merriweather's decision that he thought the ruling was fair and "justice was done." He predicted that he would prevail in the other case and be back out on the street.

He, along with four others, are accused in the murder of Fran Monte and the attempted murders of Nicodemo Scarfo, Salvatore Testa, Salvatore Merlino and Raymond Martorano.

Deputy District Attorney Arthur Shuman said the District Attorney's Office would appeal Merriweather's ruling.