State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

March 23 thru 25, 2021

State of New York
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To be argued Tuesday, March 23, 2021 (arguments begin at 2 p.m.)

No. 21 Protect the Adirondacks! Inc. v NYS Department of Environmental Conservation

Protect the Adirondacks! Inc. brought this lawsuit against the Department of Environmental Conservation (DEC) and Adirondack Park Agency (APA) in 2013 to halt the construction of 11 new snowmobile trails on designated Forest Preserve land in the Adirondack Park, contending the work violated the "forever wild" clause of the State Constitution (article XIV, section 1). It states that the Forest Preserve "shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged ... nor shall the timber thereon be sold, removed or destroyed." The snowmobile trails are Class II Community Connector trails, which are generally 9 feet wide on straight stretches and 12 feet wide on some curves and steep slopes. The project would result in the creation of 27 miles of new Class II trails and require the removal of 25,000 trees, including more than 6,100 trees measuring at least 3 inches in diameter at breast height (DBH). The new trails would be located near the periphery of the Forest Preserve and some existing snowmobile trails in the interior of the Preserve and in sensitive areas would be redesignated for non-motorized use or for abandonment.

Supreme Court dismissed the suit, finding the trails would neither impair the wild nature of the Forest Preserve nor result in an unconstitutional destruction of timber. It said tree cutting would not "occur to a substantial extent or material degree" and the trails "are constructed for the proper use of and access to the Preserve, and are no more out of harmony with forest lands in their wild state than the foot, horse and bicycle trails throughout the Preserve."

The Appellate Division, Third Department reversed on a 4-1 vote, ruling the tree cutting violated the timber destruction prohibition in the forever wild clause. The court said the plaintiff "failed to demonstrate how the construction of Class II trails, which have similar aspects to foot trails and ski trails and have less impact than roads or parking lots, impairs the wild forest qualities of the Forest Preserve," but held the cutting of 25,000 trees for the trials "constitutes an unconstitutional destruction of timber." Rejecting the defense argument that the word "timber" does not apply to trees smaller than three inches in diameter, it said the term "refers to all trees, regardless of size. Although tree size and maturity may be considered in determining whether a proposed project's tree cutting is substantial or material, plaintiff presented expert testimony debunking the assumption that smaller trees are necessarily young or immature; some forest trees measuring less than three inches DBH can be more than 100 years old, and smaller mature trees play an important role in the continuing ecology of the forest.... It would be anomalous to conclude that destroying 925 trees per mile of trails, or approximately 25,000 trees in total, does not constitute the destruction of timber 'to a substantial extent' or 'to any material degree'...."

The dissenter argued that "the removal of approximately 25,000 trees ... over a system of trails covering 27 miles is neither substantial nor material in the context of NY Constitution, article XIV, § 1.... With respect to the large number of seedlings and other small trees, an ecologist who testified on defendants' behalf explained that the survival rate of such trees is low in view of the closed forest canopy." He said, "Implementation of the Class II trails is also 'reasonable' in the context of" the provision because the advantages of preserving wild forest "are for everyone within the [s]tate and for the use of the people of the [s]tate.... Although these trails are designed for snowmobile use during the winter season, the State Land Master Plan points out that the trails ... 'may double as a foot trail at other times of the year.' These trails effect a reasoned balance between protecting the Forest Preserve and allowing year-round public access."

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To be argued Tuesday, March 23, 2021 (arguments begin at 2 p.m.)

No. 22 People v Howard Powell

Howard Powell was arrested in Queens in March 2010 while in possession of crack cocaine and a pipe. He was 51 years old and had an intellectual disability, a history of psychiatric illnesses and seizures which he treated with several prescribed medications, and also a history of drug abuse. Officers took him to the 114th Precinct and questioned him about several recent robberies. Powell denied any involvement and was detained at Central Booking for the night. He was returned to the precinct the next morning and ultimately admitted in signed statements that he robbed two women at knife-point in separate incidents days before his arrest. Both victims then identified him in lineups. He was charged with two counts of first-degree robbery. Contending at a pre-trial hearing that his confessions were false, Powell said he had not taken his prescription medications on the day of his arrest, but had used cocaine and heroin. He also testified that officers retrieved his medications from his home after his arrest, but refused to give him access to them until after he confessed the next day.

At trial, Powell sought to introduce testimony of Dr. Allison Redlich, a research psychiatrist, as an expert on "the phenomena of false confession." Supreme Court denied the request after a Frye hearing, saying, "Dr. Redlich's testimony did not convince this court that an expert's testimony on the issue of false confessions is scientifically reliable." Further, the court said, "Dr. Redlich never personally examined this defendant.... [T]his court will not allow the defendant to call a witness in the area of false confessions to testify about the general nature of and situations where an individual is likely to render a false confession. This court will only permit a witness in this area to testify who has personal knowledge of this case, the circumstances under which the defendant made these alleged confessions, and this defendant's mental infirmities." The jury convicted Powell of one count of first-degree robbery, he pled guilty to the second count a short time later, and he was sentenced to 25 years to life in prison.

The Appellate Division, Second Department affirmed. "With regard to expert testimony on the phenomenon of false confessions, in order to be admissible, 'the expert's proffer must be relevant to the particular [defendant] and interrogation before the court,'" it said, citing People v Bedessie (19 NY3d 147). "Here, the defendant failed to establish that his proffered expert testimony was relevant to the specific circumstances of this case...."

Powell argues that the scientific reliability of research into false confessions was established in New York law by Bedessie, which said belief that "the phenomenon of false confessions is genuine has moved from the realm of startling hypothesis into that of common knowledge, if not conventional wisdom." Bedessie also said "in a proper case expert testimony on the phenomenon of false confessions should be admitted." Powell says Dr. Redlich established the relevance of her testimony by proposing "to testify that appellant ... exhibited a number of situational factors rendering him vulnerable to false confession: a lifelong history of psychiatric illness, profound ... cognitive impairments; and longstanding polysubstance abuse;" as well as "the 24-hour length of the custody and interrogation."

For appellant Powell: Kendra L. Hutchinson, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney Danielle M. O'Boyle (718) 286-7046

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To be argued Tuesday, March 23, 2021 (arguments begin at 2 p.m.)

No. 23 People v Kathon Anderson

Fourteen-year-old Kathon Anderson, a member of a gang called the Stack Money Goons, was sitting in the back of a city bus in Brooklyn when members of a rival gang surrounded and entered the bus in March 2014. As two of them rushed up the aisle toward him, Anderson took a gun from his backpack and fired a shot at them, which struck and killed an innocent passenger. He then chased his rivals off the bus and up the block, firing at them without hitting anyone. He was charged with murder of the passenger and attempted murder of the rival gang members.

Anderson raised a defense of justification at trial, contending he reasonably feared for his life when his rivals had him cornered on the bus. In support of his self-defense claim, he sought to admit expert testimony on the science of adolescent brain development to explain that the prefrontal cortex of adolescents is not fully developed, making them more sensitive to danger and more likely to react impulsively or aggressively to a perceived threat than would an adult.

Supreme Court denied the request, saying, "The only real relevance of this type of testimony is so the defendant, in essence, can argue that he is somehow less culpable because his brain is not fully developed and that, therefore, he should be held to a different standard than an adult because of his youth. However..., the legislature here in New York ... intended certain juveniles charged with violent crimes be treated as adults. And there simply is no juvenile standard for self-defense." The court also said "it's common knowledge that juveniles act more impulsively than adults and [are] more susceptible to peer pressure. And ... while the science might be new..., the concepts that the scientists are trying to convey that juveniles are more impulsive and not as deliberative are not beyond the ken" of jurors. Anderson was convicted of murder and attempted murder in the second degree and sentenced to 12 years to life in prison.

The Appellate Division, Second Department affirmed, saying, "The Supreme Court providently exercised its discretion in precluding the defendant from proffering expert testimony with regard to the topic of adolescent brain development, since the impulsiveness of adolescents is not a matter beyond the ken of the typical juror...."

Anderson argues that, while jurors might be aware of the impulsiveness of teenagers, "the neuroscience and psychological studies about which [the proposed expert] would have testified were beyond the typical juror's knowledge. Most people are unaware of the neuroscience research concerning adolescent brain development and also lack the understanding that an adolescent has limited ability to transcend this lack of brain development." He says the expert testimony would not have created a "juvenile self-defense standard.... Jurors are always asked to make determinations in self-defense cases that have subjective and objective components and take into account the defendant's attributes.... Unquestionably, rival gang members – who greatly outnumbered appellant – targeted and ambushed him as he rode the bus home. The primary trial issue was the reasonableness of appellant's belief that the gang members intended to use deadly physical force against him, the issue upon which [the expert] offered material expert testimony. By excluding this evidence, the court violated appellant's right to present a defense and due process."

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For respondent: Brooklyn Assistant District Attorney Solomon Neubort (718) 250-2514

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To be argued Wednesday, March 24, 2021 (arguments begin at 2 p.m.)

No. 24 Cutaia v Board of Managers of 160/170 Varick Street Condominium

Michael Cutaia, a plumbing mechanic, was injured in March 2012 while working for a subcontractor on a renovation of the offices of Michilli Construction, Inc., on the 11th floor of a condominium building at 160-170 Varick Street in lower Manhattan. Cutaia had been using a 10-foot A-frame ladder to reroute copper pipes above a 12-foot high bathroom ceiling until he came to a spot where he could not reach the work with the ladder in its open position. He closed the ladder, leaned it against a wall, and climbed to an upper rung to continue cutting and rerouting the pipes. Unaware that a pipe was in contact with a 110-volt electrical cable, he grabbed it to pull it into position and received a shock, fell to the floor, and suffered injuries to his spine and shoulders. He brought this suit against Michilli, which was acting as the general contractor, and the owner of the building, Trinity Church, under Labor Law § 240(1), which imposes strict liability on owners and contractors who fail to provide adequate safety devices to protect construction workers against gravity-related risks.

Supreme Court denied his motion for summary judgment, saying, "Typically, courts grant summary judgment where plaintiffs fall from an unsecured ladder.... However, the issue is more complicated when plaintiff's accident involves not only a fall from a ladder, but also an electrical shock which precedes the fall...." Even if the ladder "was inadequate to protect plaintiff against gravity-related dangers..., plaintiff has not shown, or even argued, that his injuries were caused by his fall, rather than the electrical shock he received," the court said.

The Appellate Division, First Department reversed in a 3-2 decision and granted the motion for summary judgment on liability, saying, "The 'safety device' provided to plaintiff was an unsecured and unsupported A-frame ladder that was inadequate to perform the assigned task.... It is undisputed that the ladder was not anchored to the floor or wall. There were no other safety devices provided to plaintiff.... It is well settled that the failure to properly secure a ladder and to ensure that it remain steady and erect is precisely the foreseeable elevation-related risk against which section 240(1) was designed to protect..... The fact that the fall was precipitated by an electric shock does not change this fact.... Plaintiff suffered not only electrical burns but injuries to his spine and shoulders that necessitated multiple surgeries and are clearly attributable to the fall, and not to the shock, presenting questions of fact as to damages, but not liability."

The dissenters said, "[I]t can be concluded from plaintiff's own testimony that he was propelled from where he had been located on the ladder by the force of the electrical charge rather than by the force of gravity, which was not a result of any defect in the ladder.... A claim under section 240(1) still requires proof that an injurious fall from a height, even when induced by an electrical shock, was proximately caused by the inadequacy of the safety devices provided. Here, there was no credible proof that the A-frame ladder was defective or an inadequate device for the plumbing work that plaintiff was performing.... When an electrical shock causes a worker to fall from an A-frame ladder in the absence of evidence that the ladder was defective or that another safety device was required, factual issues pertaining to causation and liability are presented for trial, precluding strict liability favoring the plaintiff."

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For respondent Cutaia: Louis Grandelli, Manhattan (212) 668-8400

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To be argued Thursday, March 25, 2021 (arguments begin at noon)

No. 27 People v Kenneth Slade
No. 28 People v Kieth Brooks
No. 29 People v Charo N. Allen

These appeals involve misdemeanor charges that were based on the statements of witnesses who were not fluent in English, raising the question of what prosecutors must do to provide the non-hearsay support needed to convert a misdemeanor complaint into a criminal information. Among other issues presented is whether a sworn statement of a translator is required to convert the hearsay allegations in a foreign language affidavit into a facially sufficient non-hearsay complaint; and whether such a certificate of translation must comply with CPLR 2101(b), which provides, "Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate."

Kenneth Slade was charged with assault after his Spanish-speaking wife swore to a statement in English that he physically and verbally abused her in their Bronx apartment. On the eve of trial more than two years later, when the prosecution first filed a certificate of translation attesting that the English statement had been translated into Spanish for the wife along with a warning that false statements were punishable as A misdemeanors, Slade moved to dismiss on speedy trial grounds. He argued that, in the absence of the certificate, the complaint had not been converted to an information and the prosecution had not actually been ready for trial. Criminal Court denied the motion and Appellate Term affirmed, saying Slade "waived any challenge to the purported hearsay defect in the accusatory instrument" by failing to challenge it within 45 days of arraignment, "a procedural bar that defendant could not avoid simply by placing his claim in a speedy trial context." It also said his wife's complaint "needed no certificate of translation for conversion to an information, since there was no indication on the face of the instrument that the complainant had not read and understood it or was incapable of doing so."

Kieth Brooks was charged with DWI, leaving the scene and related charges after a hit-and-run collision in the Bronx, based on a sworn affidavit by a Spanish-speaking eyewitness. The prosecutor submitted the affidavit along with a certificate of translation. Criminal Court dismissed the charges on speedy trial grounds, saying the certificate did not comply with CPLR 2101(b) because it did not provide the translator's qualifications. Appellate Term affirmed, holding that compliance with CPLR 2101(b) is required.

Charo Allen was charged with menacing another woman, a Spanish-speaking waitress, by chasing her around a Suffolk County restaurant with a steak knife. The waitress's statement, written in English, said it had been read to her in Spanish by a police officer and she swore to its truth. Allen moved to dismiss the charge because it lacked a certificate of translation. The prosecutor argued the waitress's sworn statement was sufficient, but also submitted an affidavit from the officer swearing that he understood English and Spanish, that he translated her original Spanish statement into English, then back into Spanish to obtain her confirmation of its accuracy. The District Court dismissed the charge when the prosecutor declined to submit a certificate of translation that complied with CPLR 2101(b). Appellate Term affirmed. It further held that if a certificate is not filed with the accusatory instrument, the prosecution must move for leave to amend the instrument or file a superseding instrument along with a certificate of translation.

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No. 28 For appellant: Bronx Assistant District Attorney Paul A. Andersen (718) 838-6667
For respondent Brooks: Elizabeth Isaacs, Manhattan (212) 577-3607
No. 29 For appellant: Suffolk County Assistant District Attorney Lauren Tan (631) 852-2469
For respondent Allen: Felice Milani, Riverhead (631) 852-1650