State of New York
Court of Appeals

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To be argued Tuesday, January 4, 2022 (arguments begin at 2 p.m.)

No. 1 Hunters for Deer, Inc. v Town of Smithtown

Hunters for Deer, Inc., and its president, a licensed hunter, brought this action against the Town of Smithtown in 2017 to challenge the validity of chapter 160 of its Town Code, which prohibits the discharge of "firearms" within 500 feet of dwellings, schools or other occupied structures, and public spaces such as parks and playgrounds. Town Code § 160 defines "firearm" to include "a bow and arrow." The plaintiffs contended the 500-foot setback restriction for use of bows and arrows was preempted by the state Environmental Conservation Law (ECL) because it conflicts with ECL § 11-0931, which prohibits the discharge of "a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet" of houses, schools and playgrounds, and most other occupied structures. The ECL definition of "firearm" does not include a bow and arrow. The Town responded that its ordinance was a public safety measure it was expressly permitted to adopt under Town Law § 130(27), which states that certain towns, including Smithtown, may enact ordinances "prohibiting the discharge of firearms in areas in which such activity may be hazardous to the general public or nearby residents" and that those "ordinances, rules and regulations may be more, but not less, restrictive than any other provision of law."

Supreme Court granted the Town summary judgment dismissing the suit. While the 500-foot setback restriction for use of a bow and arrow in Town Code § 160 is more restrictive than the 150-foot setback in the ECL, the court ruled Smithtown's ordinance was authorized under the state's Town Law § 130. It said, "This section specifically allows the Town of Smithtown, among several other towns, to enact laws related to firearm discharge when 'such activity may be hazardous to the general public or nearby residents' and allows for those laws to 'be more, but not less, restrictive than any other provision of law.'" The court further held that "there is no conflict preemption within the state statutes and town code provisions since the state statutes do not specifically allow anything that the town code prohibits outside of Town Law § 130 specific language allowing the Town of Smithtown to enact firearm discharge laws."

The Appellate Division, Second Department reversed and ruled the Town's bow-and-arrow setback restriction is preempted by the ECL's 150-foot setback requirement. Town Code § 160 "defines a 'firearm' to include a bow and arrow, and the subject ordinance thereby purports to prohibit ... the discharge of a bow and arrow" within 500 feet of occupied buildings and public open spaces, it said. "Thus, the ordinance seeks to prohibit the discharge of a bow and arrow in circumstances where, under State law, discharge of a bow and arrow is allowed...." It rejected the Town's argument that it was authorized to regulate the discharge setback for bows and arrows by Town Law § 130(27), saying "that statute is premised upon a definition of the term 'firearm' that does not include a bow and arrow. The Town unpersuasively contends that it is free to define for itself the meaning of 'firearm,' as used in Town Law § 130(27), so as to include 'bow and arrow.' Although Town Law § 130(27) does not expressly define 'firearm,' it can be readily inferred that the term is used in the same manner as in ECL 11-0931(4), which explicitly distinguishes between firearms and bows in setting forth discharge setback requirements...."

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No. 2 People v Levan Easley

The primary issue here is whether Levan Easley was entitled to a Frye hearing to determine the admissibility of DNA evidence derived by the Office of the Chief Medical Examiner (OCME) by use of its proprietary forensic statistical tool (FST), which it developed to analyze trace samples of crime scene DNA that are too small for standard genetic testing. The FST is a computer program that was used in this case to assess the likelihood that Easley contributed to a mixed sample of DNA found on the trigger of a handgun. Frye hearings are held to determine whether novel scientific evidence is generally accepted as reliable by the relevant scientific community.

Easley was beaten and stabbed during a fight with several other men inside a Queens deli in November 2011. Police found a loaded handgun in the deli, on a shelf near where the fight occurred, and they said surveillance video showed Easley reaching in that area when he was being attacked. He was charged with criminal possession of the weapon. Before the prosecution presented expert testimony about the FST results linking Easley to the gun, he moved for a Frye hearing and sought disclosure of the source code, algorithm and validation studies of the FST.

Supreme Court concluded the FST is not a novel scientific technique and denied both requests. It relied on prior trial court decisions in People v Megnath (27 Misc 3d 405) and People v Garcia (39 Misc 3d 482), which it said "both agree" that the FST is "not even scientific. It's mathematics, and it's a statistical tool..., not some new and exciting DNA test." An OCME witness then testified that the FST analysis showed it was 4.57 million times more likely that Easley contributed to the DNA on the gun than that he did not. Easley was found guilty and sentenced to seven years in prison.

The Appellate Division, Second Department affirmed, saying a Frye hearing is not required when a court "can rely upon previous rulings in other court proceedings as an aid" in deciding admissibility. "At the time of the court's ruling, a court of coordinate jurisdiction had determined that the FST was not a new or novel scientific technique, but 'a computer software program that uses accepted mathematical equations based on Bayes' Theorem to calculate the likelihood ratio of obtaining a recovered mixture of DNA if the suspect is a contributor versus the probability of getting the same mixture if the suspect is not a contributor,'" it said, quoting Garcia. "The court of coordinate jurisdiction noted that the FST had been peer reviewed, accepted in professional journals, presented at numerous scientific conferences, and admitted in several criminal trials in this State." It also upheld the denial of Easley's request for the source code and other FST materials, saying they "were not required to be disclosed pursuant to Brady ... since they were not in the possession or control of the People, but of OCME...."

Easley argues, "The trial court's refusal to hold a Frye hearing before admitting FST-generated DNA evidence, over appellant's objection that FST's developer had never disclosed how the program worked and the People had never proved its general acceptance in the scientific community, was plainly incorrect under this Court's decisions in People v Williams [35 NY3d 24] and People v Foster-Bey [35 NY3d 959], and was not harmless where there was no other testimonial or physical proof of guilt. He also says the denial of his disclosure request for materials underlying FST "violated his constitutional rights to favorable evidence and confrontation, as well as CPL § 240.20's discovery requirements."

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To be argued Tuesday, January 4, 2022 (arguments begin at 2 p.m.)

No. 3 People v John Wakefield

John Wakefield was charged with murdering Brett Wentworth, who was strangled with a guitar amplifier cord in his Schenectady apartment in April 2010. As in Appeal No. 2, People v Levan Easley, DNA from the crime scene was subjected to analysis by a software program that uses statistical modeling to calculate the probability that a defendant contributed to a trace mixture of DNA from more than one person. The program used in this case was the TrueAllele Casework System, which was developed and owned by Cybergenetics, a private company. The TrueAllele analysis determined there was a high degree of probability that Wakefield's DNA was found on the amplifier cord and on the victim's forearm and T-shirt, with the likelihood of a match with Wakefield's DNA on different samples ranging from 56.1 million to 170 quintillion times more probable than a coincidental match to an unrelated person.

Before trial, Wakefield requested the source code for TrueAllele. Cybergenetics refused to disclose it, contending it was a trade secret, and prosecutors responded that the source code was neither discoverable nor within their possession or control. Wakefield then moved to preclude the DNA evidence or for a Frye hearing to determine whether the TrueAllele technology is generally accepted as reliable by the scientific community. He argued that access to the source code was necessary to assess the accuracy of TrueAllele. Supreme Court granted the Frye hearing, but not his demand for the source code, saying "scientists can, and have, validated the reliability of [TrueAllele] even though the source code underlying the process is not available to the public." After the hearing, the court ruled TrueAllele was generally accepted in the scientific community and admitted the DNA evidence at trial. Wakefield was convicted of first-degree murder and robbery and was sentenced to life without parole.

Wakefield argued on appeal that the trial court erred in its Frye ruling because prosecutors could not establish the reliability of TrueAllele when no one outside of Cybergenetics could review the source code; and that the source code, part of an artificial intelligence system that actually conducted the DNA analysis, was in effect an out-of-court declarant that he had the right to cross-examine.

The Appellate Division, Third Department affirmed the conviction, saying the trial court properly admitted the DNA evidence after the Frye hearing. It said "articles evaluating TrueAllele have been published in six separate forensics journals. In addition, at the time of the Frye hearing, TrueAllele had undergone approximately 25 validation studies, some of which appeared in peer-reviewed publications," and it had "been deemed admissible in Virginia, Pennsylvania and California." Rejecting Wakefield's argument that the Frye hearing was a "farce" because he was not allowed to review the source code, it said he waived the claim when "he proceeded with the Frye hearing in the absence of the source code and did not object in doing so." As for his claim that his right to confront witnesses was violated when he was denied access to the source code, it said, "This argument raises legitimate and substantial questions concerning due process as impacted by cutting-edge science. Given the exponential growth of technologies such as artificial intelligence, to embrace the future we must assess, and perhaps reassess, the constitutional requirements of due process that arise where law and modern science collide." However, while it found "the TrueAllele report is testimonial in nature," it said the source code is not a declarant due, in part, to the "human input" required in using the program. "Also key to our analysis is that [Cybergenetics CEO Mark] Perlin, the creator of TrueAllele and the individual who wrote the underlying source code, was present in court and testified.... Given the totality of the circumstances..., we find that Perlin was the declarant in the epistemological, existential and legal sense rather than the sophisticated and highly automated tool powered by electronics and source code that he created." Since Perlin testified, it said, "we find that there was no Confrontation Clause violation ... because [Wakefield] had the opportunity to confront his true accuser."

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