

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 23
The People &c.,
Respondent,
v.
Kathon Anderson,
Appellant.

Cynthia Colt, for appellant.
Solomon Neubort, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant was 14 years old when he fired a revolver in the direction of rival gang members on a public bus and killed a bystander. He then pursued the rivals on the street, continuing to shoot at them. At his jury trial on charges that included murder in the second

degree, the defense was justification (*see* Penal Law § 35.15). A defendant is justified in using deadly physical force upon another person only if the defendant “reasonably believes that [the] other person is using or about to use deadly physical force” (Penal Law § 35.15 [2] [a]), and only “when and to the extent [the defendant] reasonably believes such [force] to be necessary to defend himself, herself or a third person” (Penal Law § 35.15 [1]; *see People v Goetz*, 68 NY2d 96, 106 n 5 [1986]).

Defendant sought to introduce testimony by an expert witness, concerning the science of adolescent brain development and behavior, to assist the jury in determining whether the People had met their burden of disproving justification. The trial court denied defendant’s request, without conducting a *Frye* hearing (*see Frye v United States*, 293 F 1013 [DC Cir 1923]; *People v Wesley*, 83 NY2d 417, 423-429 [1994]).

“[T]he admissibility and limits of expert testimony lie primarily in the sound discretion of the trial court” (*People v Lee*, 96 NY2d 157, 162 [2001]). The criterion to be applied is “whether the proffered expert testimony would aid a lay jury in reaching a verdict” (*id.*). Under the particular facts of this case, the trial court did not abuse its discretion in denying defendant’s request to permit the proposed expert witness testimony.

Defendant’s remaining contentions lack merit.

Order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

Decided May 4, 2021