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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

KIETH BROOKS A/K/A KEITH BROOKS,

Respondent.

No. 28

20 Eagle Street
Albany, New York
March 25, 2021

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Appeal number 28, the
2 People of the State of New York v. Kieth Brooks.

3 Counsel?

4 MR. ANDERSEN: Thank you. Paul Andersen for the
5 People. May I reserve two minutes for rebuttal?

6 CHIEF JUDGE DIFIORE: Yes. Two minutes, you
7 said?

8 MR. ANDERSEN: Yes, please.

9 CHIEF JUDGE DIFIORE: Yes.

10 MR. ANDERSEN: Thank you.

11 CHIEF JUDGE DIFIORE: Um-hum.

12 MR. ANDERSEN: So I guess this case - - - well,
13 the first case is more about the hearsay requirement. This
14 case, I think, speaks more to the verification requirement,
15 and I think Your Honor's just touched upon that issue here
16 of how do we - - - or how are courts to treat people that
17 we're not too sure can swear out a complaint because they
18 didn't read it.

19 It's not just English speakers. A blind
20 complaining witness, an illiterate complaining witness,
21 we've had these same issues. And these, presumably, were
22 issues that were contemplated by the legislature when they
23 came up with this scheme. And that's why I think, in that
24 100.30(2), if a court has any doubt as to the verification,
25 the court can, in its discretion, say you know what, I want



1 a different method of verification.

2 And - - - but the statute says it has to be one
3 of the five under 100.30(1). So there really isn't a
4 provision for file this novel document. So this isn't - -
5 - this is distinguishable from cases with witnesses under
6 eight years old who - - -

7 JUDGE RIVERA: So just clarify for me; I may have
8 misunderstood here. So I'm looking at the record, the
9 supporting deposition of Carlos Ayala. Right? Mr. Ayala,
10 what he signed says - - - says that - - - say that I have
11 read the complaint. But that's not possible at all. That
12 is obviously incorrect, on its face, if you have another
13 document that says, I, Violetta Sambula, translated the
14 contents of the executory - - - excuse me - - - accusatory
15 instrument for Mr. Ayala. I mean, on its face it's - - -
16 it's incorrect, right?

17 MR. ANDERSEN: Well, you could - - - you could
18 read and not understand. I could read a document in
19 Spanish, and I don't speak Spanish, but I could read that.
20 But what - - -

21 JUDGE RIVERA: But then it says: "And that the
22 facts stated in that complaint are true, upon my personal
23 knowledge". So it's just not possible, right?

24 MR. ANDERSEN: Well, it would be possible if
25 someone explained to him what was in that complainant's



1 report.

2 JUDGE RIVERA: But that's not what it says.

3 MR. ANDERSEN: Yes - - -

4 JUDGE RIVERA: I'm talking about what it says. I
5 - - - if it had said, I, Carlos Ayala, have been informed
6 by Violetta Sambula as to the contents of - - - that would
7 be a different statement, but that's not what it says,
8 right?

9 MR. ANDERSEN: And that could be a question used
10 in cross-examination at trial for credibility: you said
11 you read this or you - - - or maybe a defense to perjury,
12 if we - - - someone somehow charged him with perjury for
13 claiming he read something he didn't, well, actually it was
14 read to me. But the fact that there's an outside - - -

15 JUDGE RIVERA: But isn't this on it's face?
16 Isn't this - - - can't I just look at this?

17 MR. ANDERSEN: Excuse - - - but the outside - - -

18 JUDGE RIVERA: Isn't it on its face that I know?
19 Isn't this - - -

20 MR. ANDERSEN: No, Your Honor.

21 JUDGE RIVERA: - - - within the four corners?

22 MR. ANDERSEN: No, Your Honor, because the
23 certificate of translation isn't part of the accusatory
24 instrument. It's an unsworn document, that's just
25 buttressing, that lets defense counsel know and the court



1 know a translator was used here and - - -

2 JUDGE RIVERA: So even though he makes a
3 statement - - -

4 MR. ANDERSEN: He - - -

5 JUDGE RIVERA: - - - that obviously is incorrect
6 - - -

7 MR. ANDERSEN: Well, he - - - yes, he'd have to -
8 - -

9 JUDGE RIVERA: - - - that he's signing something
10 that - - - it's text. It's obviously incorrect.

11 MR. ANDERSEN: Well - - -

12 JUDGE RIVERA: Doesn't that incentivize
13 withholding certificates or not creating them at all?

14 MR. ANDERSEN: Well, no, Your Honor. I would say
15 - - -

16 JUDGE RIVERA: Why not?

17 MR. ANDERSEN: - - - first of all, it wouldn't
18 be, on its face, that it couldn't have happened, because we
19 can - - - someone can use a translator who actually reads
20 English but just is more comfortable to have a translator
21 there and have it buttressed by another translation. So
22 theoretically, there could be a defendant that has both,
23 reads it in English and has it explained to them in the
24 language - - -

25 JUDGE RIVERA: But if I can interrupt you there.



1 The whole - - - your point was that they don't feel
2 comfortable, they want something else. So again, they're
3 not able to do it. But let's talk about the policy of the
4 incentivizing.

5 MR. ANDERSEN: The incentive - - -

6 JUDGE RIVERA: I think there's incentive for you
7 all to do it right, but I'm asking you about the problem
8 that I'm seeing on this record.

9 MR. ANDERSEN: So you're saying it's
10 incentivizing us not to turn over or generate certificates
11 at all. But - - -

12 JUDGE RIVERA: I'm ask - - - it would - - - on
13 its face, when we look at this and say, well, if you permit
14 this, it might - - - it disincentivizes having the
15 certificate or submitting them along with the document.
16 But I'm asking you what - - - what is the incentive the
17 other way, or why isn't it a disincentive?

18 MR. ANDERSEN: It's not a disin - - - well,
19 there's - - - first of all, it seems like more of a
20 discovery dispute down the line of what was happ - - - what
21 happened during the drafting of this complaint, what - - -
22 was anyone there? Was anybody saying - - -

23 JUDGE RIVERA: But my point is why isn't it an
24 incentive to make it a discovery issue rather than an issue
25 about a - - - the - - - the facial sufficiency of the



1 instrument and its supporting documentation. So I'm just
2 asking where does the incentive work so that, again, we
3 have everything that shows that Mr. Ayala understands what
4 he's reading and that the defendant can appreciate if
5 indeed there's someone making a statement about them who
6 doesn't speak English and/or read English. It's possible
7 it's both.

8 MR. ANDERSEN: Well, I think then that goes to
9 the two purposes of discovery versus filing a criminal
10 complaint - - -

11 JUDGE RIVERA: Okay.

12 MR. ANDERSEN: - - - or filing an information.

13 JUDGE RIVERA: Okay.

14 MR. ANDERSEN: This is - - - this is a sworn
15 statement saying this is the charges against you, here is
16 how you can prepare a defense, and then discovery is
17 everything that goes along with it. And now with the new
18 240 - - - CPL 245, which the broad discovery rules, I think
19 in nearly this - - - everything would be turned over if
20 yes, a complaining - - - a translator was there, with the
21 complaining witness, translating into Spanish, here you go.
22 Then if we generate it and then turn it over, or down the
23 line forgot, I think the court could then decide either a
24 certificate of compliance was wrong or figure out a
25 prejudice analysis.



1 But in terms of conversion, which is really what
2 the issue is here, and I guess it would be, in the new
3 scheme, 3035-a (ph.), in terms of we have to certify that
4 we're converted, this isn't a conversion issue. We have
5 the - - - we have the statement of the actual complaining
6 witness here, which matches to the complaint, reading the
7 four corners of that, that yes, there was a sworn document.

8 JUDGE RIVERA: And it is fully in the control of
9 the prosecut - - - under your - - - your reading of the
10 statute, fully in control of the prosecutor to inform the
11 defendant, up front, that this individual doesn't speak
12 English and needed a translator?

13 MR. ANDERSEN: Or that one was provided, yes.

14 JUDGE RIVERA: Right, but it's fully in the
15 control of the prosecutor to hold that, give it to them
16 later in discovery.

17 MR. ANDERSEN: Yes, Your Honor. It wouldn't
18 affect conversion at all, I mean, and especially nowadays
19 with - - - we have the fifteen days to comply with our
20 discovery requirements, it would be turned over there. Or
21 if we have it, and we can just give it to him right then in
22 arraignment, what - - - why not just give it right there?

23 JUDGE RIVERA: Why is that a good system, one in
24 which someone can make, on its face, a statement that is
25 incorrect? I'm not saying it's intentional.



1 MR. ANDERSEN: Yep.

2 JUDGE RIVERA: Is incorrect, and we allow the
3 prosecution to proceed to some later stage; why - - - why
4 would we want that kind of system?

5 MR. ANDERSEN: Once again, whether it's a good
6 system or not, it's the system the legislature has decided
7 for us. So whether we're deciding to add it to the - - -

8 JUDGE RIVERA: Yeah, but you agree with me that
9 it's in the power of the prosecutor to avoid the problem.
10 But you're saying we don't have to seek to avoid it because
11 the law doesn't require it.

12 MR. ANDERSEN: Well, we try to avoid the problem,
13 and we do our best to turn over things as - - -

14 JUDGE RIVERA: Okay.

15 MR. ANDERSEN: - - - like, as we get and as we
16 do. But to then say that we're required, in order for
17 conversion purposes, rather than discovery, to do this
18 extra step that's outside the legislature is just beyond
19 what anyone can foresee or contemplate especially when we
20 don't have any idea of what we - - -

21 JUDGE RIVERA: So if the legislature mandated it,
22 which is what you see as the difference - - - it's not
23 mandated by the CPL, so we don't have to do it that way,
24 under the case law this is sufficient, it's a latent defect
25 at best, deal with it later. But if the legislature



1 mandated something different, you're not saying that you
2 wouldn't - - - that the DA's office wouldn't be able to
3 comply?

4 MR. ANDERSEN: Well, I probably - - - my office
5 would probably be able to, but I can't imagine St. Lawrence
6 County or Wyoming County or how - - - if that would be an
7 issue for them.

8 JUDGE RIVERA: Why not?

9 MR. ANDERSEN: I don't - - -

10 JUDGE RIVERA: Why not?

11 MR. ANDERSEN: I just don't know their resources
12 in terms of, like, being able to turn - - - like, how busy
13 their complaint room is, how much they can turn over a
14 complaint and get a note - - - get it notarized, if we go
15 down the 20 - - - if the legislature decides to follow the
16 2101(b) down the line. I'm not saying they would. I don't
17 know how that would affect the other office - - - officers
18 - - - offices. I'm not a legislator; I don't know how they
19 - - -

20 JUDGE RIVERA: It seems to work in the civil
21 system. Why - - - why wouldn't it be appropriate for the
22 criminal justice system where people's liberty is at issue
23 and - - -

24 MR. ANDERSEN: Well, the civil - - -

25 JUDGE RIVERA: - - - in danger?



1 MR. ANDERSEN: The civil system you have
2 accelerated judgment, and so there are different - - -
3 there has to be evidence that's admissible. Here the only
4 rule of admissibility is facial hearsay, not anything else,
5 not best evidence rule, none of those. So the legislature
6 has made - - - the legislature has made the sound decision
7 or their decision that I can't argue or I can't fight that,
8 that they made the decision of here's how you go forward
9 with a - - -

10 JUDGE WILSON: Chief Judge, just one thing I'd
11 like to explore, if I could.

12 CHIEF JUDGE DIFIORE: Yes, Judge Wilson.

13 JUDGE WILSON: So I want to ask about incentives
14 a little bit differently. Your answer to my earlier
15 question, basically, that you could put off a cross-
16 examination of a complainant until trial, and if it turned
17 out there was a mistranslation, or it had never been shown
18 to the witness, or so on, that would - - - could come out
19 at trial, could go to credibility.

20 That made me think that perhaps your office would
21 have a pretty strong incentive to do the translations
22 correctly and to prepare a certificate of translation of
23 some sort at the time the instrument was - - - not the
24 instrument but the declaration was sworn to, to avoid that
25 kind of - - - or at least mitigate that kind of cross-



1 examination. Is that right? That is - - - let me ask it
2 differently. If we adopt the position that you're
3 advocating, which is that it's just the facial sufficiency
4 that matters, my assumption is you would go on trying to do
5 the translations as best as you could and documenting that.
6 Is that wrong or right?

7 MR. ANDERSEN: I - - - I believe yeah, that we'd
8 - - - we'd make sure to do that. We're still not sure
9 whether - - - how 245 would treat these certificates. I
10 don't think any court has addressed that yet. But yeah, I
11 think we would still try to memorialize these translations.
12 But then trying to figure out what form or what - - - that
13 is just up in the air, and we wouldn't be able to look at
14 the statute to kind of figure it out, unless we go the
15 route of the court in this case, which looked at an
16 administrative court rule and kind of back doored in select
17 provisions of 2101 without reading it all together.

18 I mean, I think that was, like, really the issue
19 here. And yes, our office makes these and files these, and
20 I think many offices do because of all of the extant case
21 law in criminal - - - in the lower courts, in criminal
22 courts. I think only very recently - - - I think Hernandez
23 might have been the first case in the Second - - -
24 Appellate Term Second Department which really brought these
25 up to the intermediate appellate level of, like, oh, these



1 are - - - these certificates of translation, what are their
2 - - - what's their role in all of this, you know?

3 JUDGE WILSON: I guess I'm asking even if you had
4 no obligation to ever file these or even produce them,
5 perhaps, you might still do them to protect your witnesses
6 at trial.

7 MR. ANDERSEN: I mean, it would be - - - yes,
8 Your Honor, it would be good practice to at least have it
9 in our file that a translator was used and - - - and turn
10 that over because why not.

11 JUDGE WILSON: And who the translator was and - -
12 - yeah.

13 MR. ANDERSEN: But then we go into what's the
14 minimum floor for the qualifications of the translator.
15 This officer who took this statement down, he spoke it from
16 when he was ten and on - - - I don't - - - like, I don't
17 know - - -

18 JUDGE WILSON: Right.

19 MR. ANDERSEN: - - - we could get lost in all of
20 that litigation which I think it's important that the
21 legislature tried to avoid in making it - - - making these
22 pre-trial requirements that we just look at the face of the
23 instrument, you have the person who's the source of the
24 information signing it right there, facially under - - -
25 facially verified under 100.30, under penalty of perjury or



1 any of the other methods. And if the court has an issue
2 with it, the court can, under sub (2), ask the prosecutor
3 to go any of the different ways or - - - and - - - that are
4 - - - but once again, any of those ways that are outlined
5 in the statute or specifically delineated.

6 And so that's what we have to look at, and this
7 court, in Hardy and in People v. Anonymous, we don't really
8 look - - - when the statute - - - when the legislature is
9 quiet, they are quiet for a reason. They didn't
10 contemplate a separate situation, or it's really not us to,
11 I guess, legislate under the guise of interpretation, as
12 this court said in Finnegan.

13 CHIEF JUDGE DIFIORE: Thank you, counsel.

14 MR. ANDERSEN: So for these reasons, I ask that
15 you - - -

16 CHIEF JUDGE DIFIORE: Thank you.

17 Counsel?

18 Ms. Isaacs?

19 MS. ISAACS: Good afternoon, Your Honors.

20 Elizabeth Isaacs for respondent, Kieth Brooks.

21 This case is fundamentally about verification or
22 swearing a testimonial oath. And where a court cannot be
23 assured that the person who took that oath understood it,
24 it causes apparent problems in the process, and the
25 verification requirement really isn't met.



1 I think it's helpful to look at the scenario
2 where a complainant comes into court to verify a complaint,
3 which is of course one of the options under 100.30. And I
4 don't think there's any question that a court can and
5 should employ the services of an interpreter if the
6 complainant verifying in person is unable to do so in
7 English because their native language is a different
8 language.

9 So if Mr. Ayala had come in to - - - to verify
10 the complaint in - - - in person, there would be no doubt
11 that an interpreter would be used, it would be someone
12 whose qualifications are known to the court and someone who
13 does so under oath that the - - - of the accuracy of the
14 translation.

15 What happened here is really no different. The
16 requirement imposed is simply that the same verification
17 standard be met for - - - for one that happens outside of
18 court. We don't need to have the CPL dictate to the trial
19 court exactly how to use an interpreter for an in-court
20 verification. That is well within the province of the
21 court to - - - to shape.

22 And that's exactly what happened here where the
23 trial court looked for guidance to a provision of the CPLR
24 that deals with an analogous scenario and drew guidance
25 from it. So this - - - this should be a sworn document.



1 This should be something where the person attests to the
2 accuracy and really knows something about their ability to
3 translate.

4 Those are - - - we submit that those are three
5 reasonable, very - - - they're the three requirements that
6 are - - - that are very simple - - -

7 JUDGE RIVERA: Counsel? Counsel?

8 MS. ISAACS: - - - they're easy to follow - - -

9 JUDGE RIVERA: Counsel, this is Judge Rivera.
10 But if the CPL sets out the requirements, why - - - why is
11 a judge able to go look beyond that statute and decide for
12 him or herself what might be the better way to get this
13 done? Why isn't counsel right, that's for the legislature?
14 If there's a problem, the legislature - - - if the prob - -
15 - if the legislature determines, you know, this really is a
16 problem, we should address it, let's find a way to address
17 it, isn't that the proper forum and the proper way to do
18 that?

19 MS. ISAACS: I would say that the - - - the court
20 looks outside the CPL for the particulars of what could be
21 required for the - - - for the affidavit of translation.
22 The court did not look outside the CPL for the verification
23 requirements which we - - - it needs to ensure that the
24 complainant, here, Mr. Ayala, would - - - could understand
25 the allegations and the statement about verifying them



1 under penalty of perjury. Without that, the court was put
2 on notice that - - - you know, at the stage of conversion
3 that there was a defect here, and if the court was supposed
4 to simply overlook that, you know, that - - - that's
5 certainly not what the CPL contemplates.

6 JUDGE STEIN: Counsel, this is Judge Stein.
7 Aren't you presuming a defect? Aren't there any number of
8 circumstances in which someone may have provided a
9 translation for - - - for a better comfort or whatever, but
10 where the - - - the person did in fact understand. Maybe
11 it's not a non-English speaking person; maybe it's an
12 illiterate person. Maybe, you know, it's - - - it could be
13 a lot of different things.

14 So why would we presume that it was not a proper
15 verification, rather than looking at the document and
16 saying it was signed, it said, you know, I swore I
17 understand that those - - - the facts are accurate and
18 true, and all that stuff. And - - - and then if there's a
19 question about it, that goes to, as - - - as your adversary
20 has said, you know, discovery or trial cross-examination.
21 What's the problem with that?

22 MS. ISAACS: I think the problem is that here the
23 court was - - - the - - - the certificate that was filed
24 was inextricably linked with the supporting deposition that
25 was submitted. It was submitted at the time that the



1 prosecution was converted. And so the court was put on - -
2 - was - - - was basically informed that a translator was
3 needed for this complainant to verify the document. At
4 that point, you know, there - - - there is a question about
5 whether the verification was legitimate. It was entirely
6 reasonable for the court to, you know, require, you know,
7 the qualifications of the person for it to be sworn,
8 because of course most misdemeanors, you know, the vast
9 majority are not going to a fact-finding stage. And so
10 they're - - -

11 JUDGE STEIN: Counsel?

12 MS. ISAACS: - - - they're ending in - - -

13 JUDGE STEIN: Counsel?

14 MS. ISAACS: - - - this is an incredibly crucial
15 safeguard. The verification requirement is an - - - is
16 vital to making sure that people are not being prosecuted
17 on unsupported instruments.

18 And to speak to something that was raised earlier
19 about the - - - the kind of equity concerns here, I think
20 that complainants, informants that do not speak English,
21 you know, as a first language, or well enough to verify the
22 document in English, it's very important that the system
23 supports processes that allow their stories to be heard,
24 their voices to be heard as they - - - as they report
25 crimes.



1 I think that the principals of equity here
2 actually are very much in the favor of requiring an
3 affidavit of translation in these circumstances. And it's
4 not a heavy lift. As we know, this is already being done
5 in the majority of cases. If the question is precisely the
6 - - - the best way to do it, again, I think the parallel is
7 to the trial court who received the verification in person.

8 The court is not required to, you know, follow
9 the letter of the statute to decide to employ a court
10 interpreter who is qualified. You leave that to the - - -
11 to the - - - to the judiciary to decide, you know, the best
12 way to afford an interpreter. This is exactly like what
13 happened here. It was simply done for purposes of an out-
14 of-court verification to ensure that the same accuracy of
15 translation is present.

16 JUDGE FAHEY: Judge, can I - - - Judge, could I
17 ask a - - -

18 CHIEF JUDGE DIFIORE: Judge Fahey.

19 JUDGE FAHEY: Thank you.

20 I just want to turn to a different issue for a
21 second. On this - - - on this decision, the court relied
22 on 2101(b) and - - - of the CPLR. And what I'm wondering
23 is, is if we should agree with your argument and uphold the
24 court's decision, would - - - would we be saying that the
25 whole of the CPLR is now applicable to criminal cases and



1 can be applied at any point? I think you relied on the - -
2 - the rules in 200.3. In other words, can - - - can the
3 CPLR now - - - if we rule the way you've asked, and uphold
4 it, are we saying the CPLR can be applied at any point in
5 the Criminal Procedure Law?

6 MS. ISAACS: No, Your Honor, I don't think - - -

7 JUDGE FAHEY: So let me stop you.

8 MS. ISAACS: - - - that that would be - - - that
9 broad a ruling would be necessary.

10 JUDGE FAHEY: Are -- - well, why not? Why - - -
11 why, if we're allowing it here, why wouldn't we be allowing
12 it anywhere else?

13 MS. ISAACS: I think that the best way to read
14 what the lower court did and - - - and specifically looking
15 at the language of the trial court decision - - - is that,
16 in the absence of a specific CPL provision that addressed
17 what an affidavit of translation contains, the court
18 looked, by analogy, to 2101(b) for guidance which, you
19 know, is - - - is completely permissible.

20 It does not mean that - - - that the court was
21 reading in a new facial sufficiency requirement for - - -
22 under the CPL. It was merely trying to effectuate the
23 purpose of the verification requirement. So - - -

24 JUDGE FAHEY: So you're saying that the court - - -

25 -



1 MS. ISAACS: We - - -

2 JUDGE FAHEY: So you're saying that the court
3 looked at in the way this court would look at a ruling from
4 another state, to draw on their legal reasoning to support
5 something that we want to do here. Are you drawing that
6 kind of analogy?

7 MS. ISAACS: I think that the - - - the court did
8 indicate that the uniform rules of courts require, you
9 know, the application of 2101. But in the language of the
10 - - - the trial court decision, it does say that, based on
11 the foregoing, where it described 2101(b), it stands to
12 reason that if a paper served or filed in the English
13 language was translated into a foreign language, so that
14 the complainant could understand its contents, then it
15 should be accompanied by an affidavit of translation. So I
16 think that same analogy is that the court was not holding
17 that CPL - - - all of CPLR 2101(b) - - -

18 JUDGE FAHEY: See, that's - - - let me stop - - -

19 MS. ISAACS: - - - I'm sorry, CPLR 2101 - - -

20 JUDGE FAHEY: Let me stop you for a second.
21 That's not the way I read it. The way I read it is he
22 relied on the authority to do this based on 2101(b).
23 You're saying that isn't correct, or you're saying that
24 that's what he relied on? That's the way I read his
25 decision, that he relied on the authority to do this on

1 2101(b). And he correctly quoted the rules.

2 My - - - my question is two-fold. If he can do
3 it there, to 2101(b), are we now allowing the entire CPLR
4 to be subsumed in the Criminal Procedure Law whenever the
5 trial court decides it can or needs to? And you're saying
6 - - -

7 MS. ISAACS: No, I - - -

8 JUDGE FAHEY: I understand that. And you gave an
9 intellectually-honest answer, which I appreciate. I point
10 that out to you. But - - - but it - - - the problem is is
11 I don't see what limiting factor there is that would limit
12 it to this circumstance.

13 MS. ISAACS: I think that here it is that the CPL
14 does not directly address the - - - what should be the best
15 kind of proof for accuracy of a translation.

16 JUDGE STEIN: Well - - -

17 MS. ISAACS: And so it was cited by analogy.

18 JUDGE STEIN: Counselor, the CPL does address the
19 methods that the court may take if - - - if it's not
20 satisfied with the verification. So isn't this going
21 beyond that statute?

22 MS. ISAACS: I think - - - I understand your
23 question, and this goes to the - - - one of the key
24 arguments that my adversary makes. I - - - I think that
25 the mistake there is that the court here was simply



1 effectuating the verification - - - an out-of-court
2 verification requirement that is allowed in the statute.
3 So it was - - - this is not creating a new one in the same
4 way that one of the ways a complainant can verify is in
5 person.

6 And again, the statute does not address what
7 happens when that complainant comes into court to verify
8 and the person is a Spanish speaker alone. So in that
9 scenario, a court is surely free to - - - to call in a
10 court interpreter, make sure that person is - - - is
11 qualified. And so, in the same way here, it was completely
12 permissible to - - - to require more assurances of the
13 accuracy of the translation. And - - -

14 JUDGE RIVERA: Counsel?

15 MS. ISAACS: - - - simply, the - - - the court -
16 - -

17 JUDGE RIVERA: If the Chief Judge will permit me,
18 because your light is off, it'll be my last question to
19 you.

20 The difficulty I'm having, beyond some of the
21 difficulty you hear at the bench with this argument, is
22 that 2101(b), what it really is anticipating is the
23 affidavit is in a foreign language and then it is
24 translated. Here you never have the original affidavit in
25 the foreign language. You don't have a complainant or a



1 witness being asked to prepare an affidavit in their
2 language, the language that they speak or they - - - or
3 they write, or they can read, whatever the language is,
4 their primary language. And that - - - that's the problem
5 that 2101(b) in that way is not really applicable to this
6 scenario, which is the question I asked in the prior case
7 about, sort of, that process. So that's, I think, a
8 challenge you have with this. Can you address how this can
9 apply when it's really intended to apply to a different
10 scenario?

11 MS. ISAACS: Absolutely, and I think that it's
12 true that 2101(b), on its face, addresses the - - - you
13 know, what to do if - - - if the document is submitted,
14 filed in court in a foreign language. But as Your Honor,
15 Judge Rivera, you addressed earlier on, the - - - the
16 complainant's report here is being given in another
17 language.

18 So I think the animating purpose, the policy
19 behind 2101(b), which is what the court below, the trial
20 court, was looking at is - - - is exactly the same, to
21 assure the court that where a process as important as
22 verification is, in the misdemeanor context, when we are
23 relying on a verification that has been translated, the
24 court needs an assurance that it has been properly done by
25 a qualified person.



1 It's a very low bar. I mean, I don't think - - -
 2 I think that requiring someone to list their
 3 qualifications, and to state that it's accurate in a sworn
 4 document, is - - - is simply a clarifying rule and one that
 5 would actually assist, I think, all the parties involved.

6 And in terms of - - - I'm sorry, my - - - my
 7 light is off, so I'll ask Your Honors if there's any
 8 further questions.

9 CHIEF JUDGE DIFIORE: No further questions.
 10 Thank you, counsel.

11 Counsel?

12 MR. ANDERSEN: Yes, thank you.

13 MS. ISAACS: Thank you.

14 MR. ANDERSEN: Just to briefly respond to the
 15 lower court's analysis; it's laid it out step by step. We
 16 look at Rule - - - or the court looked at Rule 200.3, and
 17 based on 200.3, which says based on - - - you look at the
 18 applicable provisions of 2101 for documents filed in
 19 criminal court. And then looked at 2101 and said - - - and
 20 found this that said documents filed in a foreign language.
 21 But then that's where the court said stands to reason, if a
 22 paper is served - - - the other way in English, as Judge
 23 Rivera was pointing out, that was the leap in analogy the
 24 court made. And that is a question that I don't know if
 25 this court needs to decide it in a drunk-driving



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prosecution, considering the amount of civil cases this would probably affect, is not really a - - - a question that the CPL or the legislature really wanted to inject in these criminal prosecutions. And once again, Rule - - - this, as I've argued, Rule 200.3 applying this way, an administrative court rule to legislate, essentially, that we look at 2101, is unconstitutional.

And if Your Honors have no questions, I'll ask that you reverse.

CHIEF JUDGE DIFIORE: Thank you, counsel.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of People of the State of New York v. Kieth Brooks a/k/a Keith Brooks, No. 28 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

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