

State of New York Court of Appeals

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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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