60 N.Y.2d 474, 458 N.E.2d 801, 470 N.Y.S.2d 342

The People of the State of New York, Respondent,
v.
Charles F., Appellant.

Court of Appeals of New York
Argued October 25, 1983;
decided December 20, 1983

CITE TITLE AS: People v Charles F.

SUMMARY

Appeal, by permission of an Associate Judge of the Court of Appeals, from an order of the Livingston County Court (J. Robert Houston, J.), dated February 24, 1983, which affirmed a judgment of the Town Court of the Town of Conesus, adjudicating defendant a youthful offender upon a determination, after a jury trial, that he was guilty of conduct which if done by an adult would constitute the crimes of menacing and trespassing.

Informations were filed in the Conesus Town Court charging defendant with, *inter alia,* menacing and trespass. Prior to trial, defendant moved in the Livingston County Court pursuant to CPL 170.25 to remove the prosecution from the Town Court on the ground that he had an "absolute right to be tried before a lawyer judge." No other reason for removal nor any claim of possible prejudice was stated. The County Court denied the motion. After a jury trial before a lay Justice of the Conesus Town Court, defendant was found guilty of conduct which if done by an adult would constitute the crimes of menacing and trespassing, offenses punishable by imprisonment, and he was adjudicated a youthful offender. His adjudication was affirmed by the Livingston County Court.

The Court of Appeals affirmed, holding, in a *Per Curiam* opinion, that a defendant has no absolute due process right under New York or Federal law to trial before a law-trained Judge, and that the mere allegation that a Judge lacks legal training does not warrant removal pursuant to CPL 170.25.

HEADNOTES

Judges
Criminal Trial before Lay Justice

(1) A defendant has no absolute due process right under New York or Federal law to trial before a law-trained Judge. Although a defendant is constitutionally entitled to receive a fundamentally fair trial, the mere allegation that a Judge lacks legal training does not mandate removal under the discretionary procedure of CPL 170.25. Accordingly, the judgment adjudicating defendant a youthful offender after a trial before a nonlawyer Town Justice, following denial of defendant's motion to remove the prosecution to the County Court pursuant to CPL 170.25, was properly affirmed where defendant alleged ***475** no reason for removal other than an absolute right to be tried before a lawyer Judge and assigned no trial errors requiring reversal nor any specific prejudice resulting from the conduct of the trial by a lay Judge.

POINTS OF COUNSEL

J. Michael Jones and *Dennis R. Dawson* for appellant.
I. The State's conduct of criminal trials, where defendant is subject to imprisonment upon conviction, violates the due process clause of the Fourteenth Amendment when such trials are presided over by Village and Town Justices who are not attorneys. (Matter of Legal Aid Soc. v Scheinman, 53 NY2d 12; Matter of Murchison, 349 US 133; Argersinger v Hamlin, 407 US 25; North v Russell, 427 US 328; Estes v Texas, 381 US 532; Rideau v Louisiana, 373 US 723; People v De Lucia, 20 NY2d 275; People v McIntyre, 31 AD2d 964; Oregon v Hass, 420 US 714.) II. The constitutionality of the New York criminal court system which grants authority to nonlawyer Judges to preside over misdemeanor cases, with the possible resulting criminal record and/or incarceration, can only be preserved by construing CPL 170.25 (subd 1) as providing divestiture on defendant's motion as a matter of right. (Matter of Legal Aid Soc. v Sheinman, 53 NY2d 12; People v Skrynski, 42 NY2d 218; Matter of Simpson v Swartwood, 69 AD2d 954; People v Dean, 96 Misc 2d 781; North v Russell, 427 US 328; People v Nieves, 36 NY2d 396; People v Epton, 19 NY2d 496, cert den *sub nom.* Epton v New York, 390 US 29; People v Finkelstein, 9 NY2d 342; Matter of Bell v Waterfront Comm., 20 NY2d 54.) III. CPL 170.15 does not provide an adequate alternative to CPL 170.25. (Matter of Legal Aid Soc. v Scheinman, 73 AD2d 411.)
Theodore E. Wiggins, Jr., District Attorney, for respondent.

I. Where no specific or substantial error exists, defendant lacks standing to complain of a denial of due process. (North v Russell, 427 US 328; People v Rivera, 39 NY2d 519; People v Satloff, 56 NY2d 745; People v Jones, 55 NY2d 771; People v Egan, 72 AD2d 239; People v Jones, 81 AD2d 22.) II. A defendant subject to imprisonment is not denied due process of law when his trial is conducted by a Justice who is not an attorney. (Kinsella v Singleton, 361 US 234; Matter of Murchison, 349 US 133; North v Russell, 427 US 328; Colten v Kentucky, 407 US 104; ***476** Coolidge v New Hampshire, 403 US 443; Missouri v Lewis, 101 US 22; Francis v State of Maryland, 459 F Supp 163; McGowan v Maryland, 366 US 420; People v Skrynski, 42 NY2d 218.) III. CPL 170.25 provides for discretionary divestiture of jurisdiction by indictment where defendant is charged with a crime, and thereby provides an adequate assurance of due process of the law. (People v Rosenberg, 59 Misc 342; North v Russell, 427 US 328; Goltra v Weeks, 271 US 536; People v Mandrachio, 79 AD2d 278; Stein v New York, 346 US 156.)
Rene H. Reixach for Genesee Valley Chapter, New York Civil Liberties Union and another, *amici curiae.*
An absolute right to choose trial before a lawyer Judge is required by due process where a defendant is subject to incarceration upon conviction. (People v Skrynski, 42 NY2d 218; Armstrong v Manzo, 380 US 545; Matter of Murchison, 349 US 133; Powell v Alabama, 287 US 45; Bruton v United States, 391 US 123; Jackson v Denno, 378 US 368; Johnson v Zerbst, 304 US 458; Gideon v Wainwright, 372 US 335; Argersinger v Hamlin, 407 US 25; People v Witenski, 15 NY2d 392.)

OPINION OF THE COURT

Per Curiam.

Defendant has been found guilty of conduct which if done by an adult would constitute the crimes of menacing (Penal Law, § 120.15) and trespassing (Penal Law, § 140.05), offenses punishable by imprisonment. After a jury trial before the Conesus Town Court he was adjudicated a youthful offender and sentenced to a term of probation. His adjudication was affirmed subsequently

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by Livingston County Court. On this appeal he contends that his constitutional due process right to a fair trial has been violated because the charges were prosecuted before a lay Justice.

In People v Skrynski (42 NY2d 218) we held that the practice of employing laymen as Town and Village Justices was authorized by the State Constitution and that it did not violate the requirements of the Federal Constitution, citing North v Russell (427 US 328). In *North,* the appellant contended that an accused misdemeanant, facing possible incarceration, is entitled in all cases to trial before a ***477** law-trained Judge. Without passing on appellant's claim, the Supreme Court determined that as long as an accused who is initially tried before a nonlawyer Judge has an effective alternative of a criminal trial before a court with a traditionally law-trained Judge or Judges, there is no violation of the due process clause of the Federal Constitution. We noted in *Skrynski* that CPL 170.25 provides such an effective alternative by establishing a discretionary procedure to divest town and village courts, of, and remove to a superior court, the power to try and determine a criminal case.

In *Skrynski* defendant had not moved for removal pursuant to CPL 170.25. In the present case defendant did, alleging in his motion papers that he had an "absolute right to be tried before a lawyer judge." No other reason for removal nor any claim of possible prejudice was stated. County Court denied defendant's applications. In this post-trial appeal, defendant assigns no trial errors requiring reversal nor any specific prejudice resulting from the conduct of the trial by a lay Judge. Indeed, the District Attorney claims that defendant did not register a single objection or protest during the trial. Thus, defendant neither anticipated any errors by reason of his trial before a lay Judge nor suffered any. His claim is the same as that advanced in *Skrynski* that he is entitled to a law-trained Judge, in any event, if the possibility of incarceration exists upon conviction of the charges and that the motion to remove necessarily had to be granted.

A defendant is constitutionally entitled to receive a fundamentally fair trial (see North v Russell, supra, at p 337) but the mere allegation that a Judge lacks legal training does not mandate removal. A defendant has no absolute due process right under New York or Federal law to trial before a law-trained Judge and defendant having asserted no other cause for removal here, County Court properly denied his pretrial motion and affirmed the judgment entered after trial.

Accordingly, the order of County Court should be affirmed.

Kaye, J.

(Dissenting).

While lay Judges unquestionably make a significant, valued contribution to the functioning ***478** of our judicial system, defendants facing imprisonment, with a complex array of constitutional and statutory rights, must have the option to be tried before law-trained Judges. This position is compelled by the holding of the United States Supreme Court in North v Russell (427 US 328), and consistent with the decision of this court in People v Skrynski (42 NY2d 218, 221).

In May, 1981 three informations were issued by the Conesus Town Court, charging appellant with criminal mischief in the fourth degree (a class A misdemeanor), menacing (a class B misdemeanor), and trespass (a violation). If convicted, he faced incarceration for up to one year. Given the charges, appellant had the constitutional right to representation by counsel, and to have such counsel assigned at public expense if necessary (CPL 170.10, subd 3, par [c]), and he was by law entitled to a trial by jury (Baldwin v New York, 399 US 66, 73-74; People v Dargan, 27 NY2d 100, 102, cert den 400 US 920). Appellant pleaded not guilty and demanded a jury trial. Through counsel, he filed a demand to produce together with motions for *Brady* materials, a bill of particulars, and a *Sandoval* hearing. These were all returnable in the Conesus Town Court, where neither Judge was law trained.

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Appellant also moved in County Court for an order removing the action to a court where the Judges must be law trained. [1] The basis for appellant's motion was that, as he had been charged with offenses carrying potential penalties of up to one year's imprisonment, he had an absolute right to be tried before a lawyer Judge.

In January, 1982, the County Court denied appellant's motion. In its memorandum decision, the court stated that, unlike the defendant's rights to trial *de novo* in North v Russell (427 US 328, supra), which was "absolute, unconditional and available in all instances," the New York removal procedure under CPL 170.25 does not entitle a ***479** defendant to removal as of right but rather requires a showing of good cause and rests with the discretion of the County Court. The fact that appellant was charged with offenses that could result in incarceration did not, in the court's view, constitute the "good cause" required for removal under CPL 170.25, since this court in People v Skrynski (42 NY2d 218, supra) and Matter of Legal Aid Soc. v Scheinman (53 NY2d 12) declined to rule that a lawyer Judge is required in such circumstances.

Appellant proceeded to trial in Town Court before a jury and lay Judge. No record was made. In March, 1982, he was convicted of menacing and, having been adjudicated a youthful offender, was placed on one year's probation, a violation of which would in itself have been punishable by incarceration. The County Court affirmed the conviction "in accordance with" its earlier decision denying appellant's removal motion, and we granted leave to appeal.

The conclusion reached by the County Court is not dictated by our prior decision in People v Skrynski (42 NY2d 218, supra) or Matter of Legal Aid Soc. v Scheinman (53 NY2d 12, supra). In *Skrynski,* on appeal from a conviction and sentence of incarceration by a lay Judge, we concluded that "there is no evident Federal infirmity in the New York State system of town and village courts with lay Justices" because the procedure to remove a case under CPL 170.25 provided the "effective alternative of a criminal trial before a court with a traditionally law-trained Judge" required by North v Russell (supra.; People v Skrynski, 42 NY2d 218, 221, supra). But the defendant in *Skrynski* had not requested removal, so there was no basis for our holding that removal to a court with a law-trained Judge would not have been available to him. In *Scheinman,* because of the procedural posture of the case, we did not reach the issue of the constitutionality of trial before a lay Judge when a defendant facing incarceration requests, and is denied, removal under CPL 170.25. (Matter of Legal Aid Soc. v Scheinman, 53 NY2d 12, 16, supra.) The issue clearly is presented here.

As this case demonstrates, the removal procedure provided by CPL 170.25 is not an "effective alternative of a criminal trial before a court with a traditionally law-trained ***480** Judge," unless that statute is read to require removal upon request of a defendant where incarceration is an available penalty. The statute should be so read: the threat of imprisonment should itself constitute "good cause" for removal, and denial of a request for removal in these circumstances should be deemed an abuse of discretion under CPL 170.25.

Appellant, facing the possible deprivation of his liberty, had the right to trial before a law-trained Judge (see North v Russell, 427 US 328, supra). The right to effective assistance of counsel and the right to trial by jury, both so jealously guarded, lose force without a law-trained Judge to insure that motions are disposed of in accordance with the law, that evidentiary objections are properly ruled on, and that the jury is correctly instructed. Lay Judges are an important segment of the judicial system of this State. But "a lay person, regardless of his educational qualifications or experience, is not a constitutionally acceptable substitute for a member of the Bar." (People v Felder, 47 NY2d 287, 293 [right to law-trained counsel]). Because of the technical knowledge required to insure that defendants facing imprisonment are afforded a full measure of the rights provided to them, use of non-law-trained Judges is a procedure that "involves such a probability that prejudice will result that it is deemed inherently lacking in due process." (See Estes v Texas, 381 US 532, 542-543.) No particular trial error need be shown. [2]

The considerations favoring law-trained Judges are all the more compelling where, because of the nature of the charges, a jury trial has been provided by law. While lay Judges bring a welcome sense of community values and practical wisdom to the courtroom, when a trial is conducted before a jury, those perspectives are furnished by the jury. The Judge's role in a jury trial is necessarily more technical. The Judge must assure that the rules of evidence are complied with, and that the jury is correctly instructed on the law. Despite the courses prescribed for nonlawyer ***481** Town and Village Justices,[3] their training in the law, and especially their exposure to the complexities of a criminal jury trial, do not approach a law school education and experience at the Bar.

In view of the requirements and discretionary nature of a motion under CPL 170.25,[4] that procedure, as it stands, "requires too much and protects too little." (Ward v Village of Monroeville, 409 US 57, 61.) In keeping with our policy of construing statutes, if possible, so as to uphold their constitutionality (People v Nieves, 36 NY2d 396, 400; Matter of Bell v Waterfront Comm., 20 NY2d 54, 62; McKinney's Cons Laws of NY, Book 1, Statutes, § 150, subd c), we should construe CPL 170.25 to provide for mandatory removal of cases to County Courts when requested by defendants who are scheduled to proceed to trial before lay Judges in Town or Village Courts on charges which could lead to imprisonment.[5] (See Silberman, Non-Attorney Justice: A Survey and Proposed Model, 17 Harv J Legis 505, 543.) As such, the order of the County Court herein was an abuse of discretion under CPL 170.25.

The argument that it would be difficult throughout the State to find law-trained persons to serve as Judges cannot preclude what is constitutionally required. Indeed, this court rejected a similar argument regarding the assignment of counsel in People v Witenski (15 NY2d 392, 397-398): ***482** "The dissenting opinion in this court suggests that a requirement for assignment of counsel in Special Sessions Courts is impracticable because the Judges would have difficulty in finding lawyers to assign. We do not think this fear well grounded. There are about 54,000 registered lawyers in this State, or one lawyer to every 300 inhabitants. Each county of the State, including Rockland County where these defendants were sentenced, has a substantial number of resident attorneys and the New York State Bar Association has 96 members living in that county. In the Village of Spring Valley, where this Justice of the Peace has his office, there are 40 resident lawyers". The dissenters there also argued unsuccessfully that the requirement of assigned counsel in outlying lower courts would be a change in the criminal process "unworkable without extensive implementation" and "accompanied by an appropriation of public money" and ought therefore to be in the form of a legislative enactment. (15 NY2d, at p 398.) Any similar argument here that a requirement of law-trained Judges must come from the Legislature should likewise be rejected.

Accordingly, the order of the County Court should be reversed, appellant's adjudication should be vacated, and the case should be remitted to County Court with instructions to grant appellant's motion to remove pursuant to CPL 170.25.

Judges Jasen, Jones, Meyer and Simons concur in *Per Curiam* opinion; Judge Kaye dissents and votes to reverse in a separate opinion in which Chief Judge Cooke and Judge Wachtler concur.
Order affirmed. ***483**

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Footnotes

1 CPL 170.25 (subd 1) provides: "At any time before the entry of a plea of guilty to or commencement of a trial of a local criminal court accusatory instrument containing a charge of misdemeanor, a superior court having jurisdiction to prosecute such misdemeanor charge by indictment may, upon motion of the defendant made upon notice to the district attorney, showing good cause to believe that the interests of justice so require, order that such charge be prosecuted by indictment and that the district attorney present it to the grand jury for such purpose."

2 While the majority rests its holding on the fact that no specific trial errors were identified, this court has not in the past hesitated to recognize important individual rights irrespective of a showing of particular prejudice by defendant. (See, e.g., People v Jones, 47 NY2d 409, 417, cert den 444 US 946; People v Felder, 47 NY2d 287, 295-296; People v Crimmins, 36 NY2d 230, 238; People v De Lucia, 20 NY2d 275, 280.)

3 Nonlawyer Town and Village Justices are required to attend training courses prescribed by the chief administrator of the courts (UJCA 105, subd [a]; Judiciary Law, § 212, subd 1, par [r]). The basic training consists of six days of classes, only three of which are spent on courses relating to criminal cases. Successful completion of the training requires attendance at only 80% of such classes. (22 NYCRR 17.2.) This is hardly a substitute for the education and experience of a lawyer. In the proposed revision of 22 NYCRR 17.2 of the Rules of the Chief Judge relating to the education and training of Town and Village Justices, even lawyer-Justices will be required to supplement their skills by attending training courses.

4 On a motion pursuant to CPL 170.25, defendant has the burden to show good grounds for removal. (People v Cannizzario, 17 Misc 2d 839, 841.) A defendant must show that his case presents particularly intricate questions of law or fact, that property rights are involved, that the decision will have far-reaching precedential value, or that there are particular facts that show defendant could not get a fair trial in the lower court. (People v Rosenberg, 59 Misc 342, 343-344; Matter of Hewitt, 81 Misc 2d 202, 204.) The court's decision on a CPL 170.25 motion is seen as an exercise of discretion normally not subject to appellate review. (Matter of Cross [Kiliani], 275 App Div 719, app dsmd 299 NY 680, cert den 338 US 859.)

5 We do not now pass on whether other legislative schemes to provide for the mandatory right to a trial by a law-trained Judge at some point in the judicial process would also be constitutional. Under the present statutory scheme, CPL 170.25 must be interpreted according to this opinion in order to meet Federal constitutional standards.

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