
Volume 19

Number 2 *New York State Constitutional Decisions:*
2002 Compilation

Article 7

April 2015

Appellate Division, Fourth Department, People v. Allen

Joaquin Orellana

Follow this and additional works at: <http://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), and the [Fourteenth Amendment Commons](#)

Recommended Citation

Orellana, Joaquin (2015) "Appellate Division, Fourth Department, People v. Allen," *Touro Law Review*: Vol. 19: No. 2, Article 7.
Available at: <http://digitalcommons.tourolaw.edu/lawreview/vol19/iss2/7>

This Due Process is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact ASchwartz@tourolaw.edu.

Appellate Division, Fourth Department, People v. Allen

Cover Page Footnote
19-2

DUE PROCESS

United States Constitution Amendment XIV:

[N]or shall any state deprive any person of life, liberty or property, without due process of law

New York Constitution Article I, Section 6:

No person shall be deprived of life, liberty, or property without due process of law.

SUPREME COURT, APPELLATE DIVISION FOURTH DEPARTMENT

People v. Allen¹
(decided November 15, 2002)

William Allen was convicted by a jury of two counts of murder in the second degree, criminal use of a firearm in the first degree, robbery in the first degree, and criminal possession of a weapon in the second degree.² In its jury instruction, the court advised the jurors that the prosecution had the burden of proving each element of the crime charged beyond a “reasonable doubt” and proceeded to distinguish “reasonable doubt” from doubt “affected by sympathy, bias, prejudice, fear, the effects or rewards or the hope thereof. . . .”³ The defendant’s initial appeal was denied.⁴ However, while acting *pro se*, he again appealed his conviction on the ground that he was denied assistance of counsel because his attorney did not challenge the court’s “reasonable doubt” instruction, which defendant claimed was improper.⁵ The appellate division granted the defendant’s appeal on the issue of

¹ 301 A.D.2d 57, 50 N.Y.S.2d 700 (4th Dep’t 2002).

² *Id.*

³ *Id.* at 58, 50 N.Y.S.2d at 701.

⁴ People v. Allen, 178 A.D.2d 994, 995, 579 N.Y.S.2d 262, 263 (4th Dep’t 1991).

⁵ People v. Allen, 273 A.D.2d 945, 945, 711 N.Y.S.2d 805, 805 (4th Dep’t 2000).

whether the United States⁶ or New York State Constitution⁷ “requires a jury instruction that specifically defines the ‘reasonable doubt’ standard.”⁸ Accordingly, the appellate division granted defendant’s motion *de novo* and vacated its previous decision.⁹

The court in *Allen* looked to the United States Supreme Court decision of *Victor v. Nebraska*¹⁰ for guidance, noting that due process afforded by the Federal Constitution did not require or prohibit the trial court “from defining reasonable doubt.”¹¹ Furthermore, the court noted that New York courts have not decided “whether a trial court must define ‘reasonable doubt,’ in its jury charge.”¹² After analyzing this issue, the appellate court

⁶ U.S. CONST. amend. XIV provides in pertinent part: “[N]or shall any state deprive any person of life, liberty or property, without due process of law”

⁷ N.Y. CONST. art. I § 6, states in pertinent part: “No person shall be deprived of life, liberty or property, without due process of law.”

⁸ *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 701. The defendant had previously and unsuccessfully appealed, and now moved on a writ of error *coram nobis*, advising the court he was denied effective appellate counsel. *Id.*

⁹ *Id.* at 58, 750 N.Y.S.2d at 700.

¹⁰ 511 U.S. 1 (1994) (“The beyond a reasonable doubt standard is a requirement of due process, but the [U.S.] Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course.”).

¹¹ *Allen*, 301 A.D.2d at 59, 750 N.Y.S.2d at 701.

¹² *Id.* Although there are no New York cases that address the specific issue, there are cases that deal with adequate reasonable doubt definitions. *See* *People v. Cubino*, 88 N.Y.2d 998, 1000, 671 N.E.2d 1265, 1266, 648 N.Y.S.2d 868, 869, (1996) (“The preferred phrasing to convey the concept and degree of reasonable doubt is illustrated in the Pattern Criminal Jury Instructions: ‘The doubt, to be a reasonable doubt, should be one which a reasonable person acting in a matter of this importance would be likely to entertain because of the evidence or because of the lack or insufficiency of the evidence in the case’ (citing Criminal Jury Instructions 6:20, at 249).”); *People v. Mosley*, 67 N.Y.2d 985, 987, 494 N.E.2d 98, 99, 502 N.Y.S.2d 993, 994 (1986) (finding jury instructions sufficient); *People v. Berger*, 234 A.D.2d 980, 980, 653 N.Y.S.2d 461, 463 (4th Dep’t 1996) (finding charge to the jury did not violate defendant’s rights); *People v. Towndrow*, 187 A.D.2d 194, 197, 594 N.Y.S.2d 469, 471 (4th Dep’t 1993) (reversing defendant’s convictions because of improper jury instructions); *People v. Garcia*, 179 A.D.2d 1047, 1048, 579 N.Y.S.2d 518, 519 (4th Dep’t 1992) (“[T]he additional gratuitous comments by the trial court in its charge were patently improper and were properly objected to by defense counsel. In our view, those improper comments, when coupled with the trial court’s earlier improper use of the phrase ‘good, sound substantial reasons’, failed to convey the proper standard to the jury and require us to reverse defendant’s conviction”).

unanimously upheld Allen's conviction, holding that "the trial court was only required to advise the jury of the prosecution's burden of proof beyond a 'reasonable doubt' but was not required to give a specific definition."¹³ Furthermore, the appellate court concluded the defendant's due process rights were not violated when the trial court distinguished beyond a "reasonable doubt" from doubt "affected by sympathy, bias, prejudice, fear, the effects or rewards or the hope thereof"¹⁴

The *Allen* Court noted that the First, Second, Fourth, Ninth, Tenth, and D.C. Circuit Courts hold that there is no requirement that a "reasonable doubt" definition must be given.¹⁵ The Second Circuit held, in *Gaines v. Kelly*,¹⁶ that a trial court is not required to define reasonable doubt.¹⁷ During its charge to the jury, the *Gaines* trial court provided seven different definitions of reasonable doubt.¹⁸ The appellate court in *Gaines* reasoned that the cumulative effect of the "definitions, caused the jury to apply the 'reasonable doubt' standard in an unconstitutional manner" and, thereby, "impaired the fundamental fairness of the criminal proceeding that led to Gaines' conviction."¹⁹ The court further reasoned that the seven "reasonable doubt" definitions may have confused the jurors which would "undermine the strictness of the standard."²⁰ The

¹³ *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 700.

¹⁴ *Id.* at 59, 750 N.Y.S.2d at 701.

¹⁵ *Id.* (citing *Gaines v. Kelly*, 202 F.3d 598, 605 (2d Cir. 2000) (["A] trial court may choose freely either to define reasonable doubt or to refrain from defining it [,] but if the trial court chooses to define it, then the instructions, 'taken as a whole . . . [must] correctly convey the concept of reasonable doubt to the jury'"); *LaFevers v. Gibson*, 182 F.3d 705, 716 (10th Cir. 1999) (finding that defendant's rights were not violated when the trial court did not provide the jury with an instruction defining reasonable doubt); *United States v. Taylor*, 997 F.2d 1551, 1557-58, (D.C. Cir. 1993) (holding a trial court is not required to give specific jury instructions defining reasonable doubt); *United States v. Adkins*, 937 F.2d 947, 950 (4th Cir. 1991) (holding a definition of reasonable doubt not required in jury instructions); *United States v. Nolasco*, 926 F.2d 869, 872 (9th Cir. 1991) (holding a trial court may refuse to define reasonable doubt); *United States v. Littlefield*, 840 F.2d 143, 146-47 (1st Cir. 1988) (holding a trial court's refusal not to define reasonable doubt is not a constitutional violation)).

¹⁶ 202 F.3d at 598.

¹⁷ *Id.* at 605.

¹⁸ *Id.* at 600.

¹⁹ *Id.*

²⁰ *Id.* at 609.

court concluded that a trial court needs only to instruct the jury of proof beyond a “reasonable doubt” and “must correctly convey the concept of ‘reasonable doubt’” if the court chooses to define reasonable doubt.²¹ The court reversed the judgment of the district court and ordered either a new trial or defendant’s release.²²

The *Allen* Court also relied on *LaFevers v. Gibson*,²³ where the Tenth Circuit found no constitutional violations with the jury instructions, which did not define reasonable doubt.²⁴ The defendant, Loyd LaFevers, appealed his convictions and death sentence on various grounds.²⁵ LaFevers argued the trial court violated his constitutional rights when it failed to provide the jury with an instruction defining the term reasonable doubt.²⁶ The Tenth Circuit rejected this argument and held that the trial court is not required to define reasonable doubt, rather, it is only required to instruct the jury “that the defendant’s guilt be proved beyond a reasonable doubt.”²⁷ The court reasoned that the constitution does not require a trial court to define reasonable doubt.²⁸

Furthermore, the *Allen* Court looked to *United States v. Taylor*,²⁹ which also found no violation of defendants’ constitutional due process rights when the judge charged the jury.³⁰ The defendants in *Taylor* requested that the trial court use the “Redbook” definition of “reasonable doubt,” however, the court denied this request.³¹ The trial court’s charge to the jury was “drawn from the Federal Judicial Center’s *Pattern Criminal Jury Instructions*.”³² The Court of Appeals for the District of Columbia held the trial court was not required, pursuant to the United States

²¹ *Gaines*, 202 F.3d at 605.

²² *Id.* at 610.

²³ 182 F.3d at 705.

²⁴ *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 700.

²⁵ *LaFevers*, 182 F.3d at 709. Defendant was convicted of kidnapping and murder. *Id.*

²⁶ *Id.* at 716.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 997 F.2d at 1551.

³⁰ *Id.* at 1560; *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 700.

³¹ *Taylor*, 997 F.2d at 1555. The “Redbook” is a book containing jury instructions published by the Young Lawyers Section of the Bar Association of the District of Columbia. *Id.*

³² *Id.* at 1555.

Constitution, to give specific jury instructions on the burden of proof or define reasonable doubt.³³ Therefore, the court affirmed the defendants' convictions.³⁴

Similarly, in *United States v. Adkins*,³⁵ the Fourth Circuit held the trial court was not required to define the term reasonable doubt.³⁶ The defendant appealed his conviction on several grounds, including an incomplete jury instruction.³⁷ However, the Fourth Circuit rejected defendant's argument and found there was no attempt to define reasonable doubt.³⁸ The court further stated that the Fourth Circuit has "warned against giving the jury definitions of reasonable doubt," except where a jury requests a definition.³⁹ Accordingly, Adkins' conviction was affirmed.⁴⁰

Likewise, in *United States v. Nolasco*,⁴¹ the court held a trial court's refusal to define reasonable doubt was constitutional.⁴² In *Nolasco*, the defendant appealed his conviction arguing that the trial court violated his constitutional rights because his request to define reasonable doubt was denied.⁴³ The Ninth Circuit found no constitutional violations and held that it is within the trial court's discretion whether to define reasonable doubt.⁴⁴ In holding that an "appropriate instruction defining 'reasonable doubt' is permissible but not necessarily required," the Ninth Circuit affirmed the defendant's conviction.⁴⁵

The *Allen* Court also noted that *United States v. Littlefield*⁴⁶ held the trial court's refusal to explain "reasonable doubt" to the jurors was not a violation of defendant's due process rights.⁴⁷ During the jury instruction, the *Littlefield* court refused to explain

³³ *Id.* at 1557.

³⁴ *Id.* at 1560.

³⁵ 937 F.2d at 947.

³⁶ *Id.* at 950.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Adkins*, 937 F.2d at 953.

⁴¹ 926 F.2d at 869.

⁴² *Id.* at 870.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 872-73.

⁴⁶ 840 F.2d at 143.

⁴⁷ *Id.* at 146; *Allen*, 301 A.D.2d at 60, 750 N.Y.S.2d at 702.

the concept of “reasonable doubt” to the jurors.⁴⁸ The First Circuit reasoned that the trial court’s emphasis on the government’s burden of proof for all crimes charged was enough to satisfy procedural due process requirements, and no explanation of “reasonable doubt” was required.⁴⁹ Therefore, the First Circuit found no violation of defendant’s constitutional due process rights.⁵⁰

Because there is no New York precedent that deals with this specific issue, the *Allen* court also looked to other state court decisions, such as *Chase v. State*,⁵¹ for guidance. In *Chase*, the Mississippi court refused the defendant’s request to read to the jury “D-2” instructions, which is a circumstantial evidence instruction that explains reasonable doubt.⁵² Instead, the court charged the jury with a “D-7” instruction, which states that in order for the jury to find the defendant guilty, the state must meet its burden of “proving the defendant guilty beyond any reasonable doubt, the State must prove each and every essential element of the offense charged; and that before the Jury may convict, they must be convinced of each and every essential element beyond a reasonable doubt.”⁵³ The court reasoned that a circumstantial evidence instruction was unnecessary, because Chase and his accomplice both testified at trial, and their testimony was direct evidence.⁵⁴ Furthermore, the court added that reasonable doubt is self-explanatory and needs no definition.⁵⁵ The Court found that the “D-7” instruction adequately satisfied the trial court’s procedural due process requirements and held there was no violation of defendant’s due process rights.⁵⁶

Similarly, in *State v. Johnson*,⁵⁷ the Supreme Court of South Carolina held that the trial court’s refusal to explain

⁴⁸ *Littlefield*, 840 F.2d at 146.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 645 So. 2d 829 (Miss. 1994).

⁵² *Id.* at 850.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 645 So.2d. at 851.

⁵⁷ 445 S.E.2d 637 (S.C. 1994).

“reasonable doubt” was constitutionally permissible.⁵⁸ Johnson asserted that his due process rights were violated when the judge refused his request to explain the concept of reasonable doubt.⁵⁹ However, the court reasoned that “the phrase ‘beyond a reasonable doubt’ without an explanation of its legal significance is much more favorable to a defendant than when amplified by an explanation.”⁶⁰ Thus, the court found there was no error.⁶¹

Moreover, in *State v. McMahon*,⁶² the Supreme Court of Vermont held a trial court is not required to define “reasonable doubt.”⁶³ In *McMahon*, the trial judge advised the jury numerous times of the “reasonable doubt” standard during jury instruction but never defined the concept, nor did defendant request it.⁶⁴ The appeals court reasoned that any attempt to explain reasonable doubt would only lead to confusion of the jurors.⁶⁵ Thus, the court affirmed defendant’s conviction, concluding that such a concept is better left unexplained.⁶⁶

Furthermore, the *Allen* court relied on *People v. Tokich*,⁶⁷ in concluding its analysis of this issue.⁶⁸ In *Tokich*, the trial court refused the jury’s request to define reasonable doubt.⁶⁹ The court reasoned that because defendant failed to object when the judge denied the jury’s request for a reasonable doubt definition, and did not submit specific instructions on how to explain reasonable doubt to the jury, the defendant waived the issue.⁷⁰ Additionally, the court added that the law in Illinois is clear on this issue:

⁵⁸ *Id.* at 638.

⁵⁹ *Id.* at 637.

⁶⁰ *Id.*

⁶¹ *Id.* at 638.

⁶² 603 A.2d 1128 (Vt. 1992).

⁶³ *Id.* at 1128.

⁶⁴ *Id.*

⁶⁵ *Id.* The court cited to *State v. Blay*, 58 A. 794, 795 (Vt. 1904), which stated “attempts to define the term are futile; ‘that the words are of plain and unmistakable meaning, and that any definition on the part of the court tends only to confuse the jury and to render uncertain an expression which, standing alone, is certain and intelligible.’” *Id.*

⁶⁶ *Id.*

⁶⁷ 734 N.E.2d 117 (Ill. App. 2000).

⁶⁸ *Allen*, 301 A.D.2d at 60, 750 N.Y.S.2d at 702.

⁶⁹ *Tokich*, 734 N.E.2d at 121.

⁷⁰ *Id.*

“Neither the trial court nor counsel should define ‘reasonable doubt’ for the jury.”⁷¹ Thus, the court held that even if a jury requests that reasonable doubt be defined, it is not to be defined.⁷²

In conclusion, federal courts have given trial judges discretion in deciding whether to define, specifically or otherwise, the concept of reasonable doubt.⁷³ Alternatively, state courts have either refused to allow a trial court to explain reasonable doubt or have disfavored any attempt to explain the concept.⁷⁴ Thus, the Appellate Division, Fourth Department held that no specific definition of “reasonable doubt” was required from the trial court in its jury instructions.⁷⁵ Thus, the Fourth Department found that Allen’s constitutional due process rights were not violated and unanimously affirmed his convictions.⁷⁶

Joaquin Orellana

⁷¹ *Id.* (citing *People v. Speight*, 606 N.E.2d 1174, 1177, (Ill. 1992); *People v. Malmenato*, 150 N.E.2d 806, 811 (Ill. 1958)).

⁷² *Id.*

⁷³ *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 700 (citing *Gaines*, 202 F.3d at 605).

⁷⁴ *Id.* (citing *Chase*, 645 So. 2d at 850 (“[R]easonable doubt defines itself and needs no further definition by the court”); *Johnson*, 445 S.E.2d at 637 (“[T]he phrase ‘beyond a reasonable doubt’ without an explanation of its legal significance is much more favorable to a defendant than when amplified by an explanation”); *McMahon*, 603 A.2d at 1128 (“[D]efining ‘reasonable doubt’ is a hazardous undertaking because it seems the more said about it to the jury, the less protection that concept provides the accused”); *Tokich*, 34 N.E.2d at 122, (“[T]he law in Illinois on this subject is clear. Neither the trial court nor counsel should define reasonable doubt for the jury”).

⁷⁵ *Allen*, 301 A.D.2d at 58, 750 N.Y.S.2d at 700.

⁷⁶ *Id.*