

★ Court overturns 2015 conviction

Appellate ruling cites misconduct by prosecutor

BY ANDREW SMITH
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A state appellate court has thrown out a Bay Shore man's manslaughter conviction, ruling that a Suffolk prosecutor's misconduct during his closing argument deprived the man of a fair trial.

The Brooklyn-based Appellate Division Second Department also ruled that Suffolk County Court Judge John Toomey Jr. should have allowed the jury to consider a lesser charge of criminally negligent homicide in the case of Wilfredo Flores, 32. He was convicted in 2015 of second-degree manslaughter in the stabbing death of Carlos Velasquez, 40, of Central Islip.

Flores stabbed Velasquez in the abdomen during a party on March 9, 2014, slicing his liver and piercing his heart. During the trial, defense attorney Bryan Browns of the Legal Aid Society argued that Flores was defending himself against the

much larger Velasquez.

"I'm absolutely ecstatic" about the decision, Browns said. "I'm glad they [the appellate judges] recognized the closing argument was full of improper statements."

The court ruled Assistant District Attorney Raphael Pearl's closing argument went well beyond what was permitted.

"The prosecutor engaged in misconduct throughout his summation by continuously referring to the defendant as a liar, misstating evidence, denigrating the defense, shifting the burden of proof, attempting to arouse the sympathies of the jurors, and vouching for his witnesses' credibility," the court's decision said. "The cumulative effect of the prosecutor's improper comments deprived the defendant of a fair trial."

The Suffolk district attorney's office did not immediately respond to a request for comment.

The appellate court dismissed the indictment against Flores. He will be brought back to Suffolk for a bail application hearing. Prosecutors can decide whether to seek a new indictment against him.

The court also criticized Toomey for permitting Pearl to

question Flores about why he exercised his right to remain silent after his arrest. The right to remain silent is absolute and "absent unusual circumstances," the court wrote that prosecutors may not challenge a defendant for using that right.

Flores was acquitted of first-degree manslaughter, which carries a maximum penalty of 25 years in prison, but was convicted of second-degree manslaughter. Toomey sentenced him to the maximum of 5 to 15 years in prison. The appellate court said the jury should have been allowed to consider criminally negligent homicide, which has a maximum of 2 1/3 to 7 years in prison.

"Had the jury credited the defendant's account of the incident, it reasonably could have concluded that the defendant did not intend to cause serious physical injury and that he failed to perceive that his conduct created a substantial and unjustifiable risk that death would occur," the court's decision said.

Browns agreed. "Mr. Flores was being viciously attacked, and he defended himself," he said. "When you're defending yourself, you can't foresee that someone is going to die."



Wilfredo Flores appears in court in Riverhead on March 23, 2015.

JOSEPH D. SULLIVAN

Suffolk offers precautionary tests of some private wells

BY JOAN GRALLA
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Suffolk County health officials are urging dozens of East Patchogue and Medford residents who use private wells to get their water tested for contaminants from firefighting foam and other products.

Health officials are willing to conduct the precautionary tests at about 58 properties free of charge and are offering free bottled water while results are pending, the county health department said Thursday in a news release.

Suffolk, which detected perfluorooctane sulfonic acid (PFOS) in a nearby public well, is offering these tests after this or other similar potential car-

cinogens were found in communities from the Town of Islip to the Gabreski Airport area in Westhampton Beach.

Unlike other sites being tested, however, "At this time, there is no known source of PFAS contamination in this area," the health department said.

PFAS stands for perfluoroalkyl and polyfluoroalkyl substances, a grouping of industrial chemicals that includes PFOS and a related chemical perfluorooctanoic acid called PFOA.

The water quality advisory covers those with private wells in the area "bounded on the north by Jamaica Avenue, on the south by Montauk Highway, on the west by Buffalo Avenue,

Pennsylvania Avenue, and the Swan River, and on the east by Sipp Avenue and Gazzola Drive," according to the Suffolk County Health Department. Those well owners should contact the health department for the tests, officials said.

The public water supply is regularly tested, the health department said, adding any wells that test positive are taken out of service.

"Monitoring by the Suffolk County Water Authority has shown that the concentration of PFOS and PFOA in the public water supply in this area has not exceeded the health advisory level," it said.

The federal Environmental Protection Agency set its health advisory level for PFOS

and PFOA in drinking water at a concentration of 70 parts per trillion, the county health department said. These advisories aim to shield the most vulnerable, including fetuses and infants who are breast-fed.

People can be exposed to PFAS through the air, water or soil from industrial sources and consumer products. The chemicals also were mixed into coatings that repel water, oil, stains and grease, such as food packaging, water-resistant clothing and stain-resistant carpets, health officials said.

Drinking or cooking is the "primary" way people are exposed to PFAS if they are present in the drinking water, the county said, citing the state health department. "Bathing

and showering are not expected to be a concern," Suffolk health officials said.

Suffolk announced the new tests two days after a state panel missed a deadline in state law to recommend safe drinking level standards for the contaminants. Federal health officials have not yet set legally enforceable standards, known as maximum contaminant levels, for the "emerging" contaminants PFOS, PFOA and 1,4-dioxane.

To get their wells tested, residents should call the Health Department Service's Office of Water Resources at 631-852-5810, the health department said.

The analysis for PFAS will be conducted by the state Department of Health Wadsworth Laboratory.