



The Court of Appeals explained when propensity evidence may be introduced in a criminal trial under *People v Molineux* if the defendant seeks to raise reasonable doubt only to his intent in committing the crime. Let's take a look at that opinion and what else has been happening in New York's highest court recently.

## COURT OF APPEALS

### CRIMINAL LAW, PROPENSITY EVIDENCE

*People v Hu Sin*, 2025 NY Slip Op 03100 (Ct App May 22, 2025)

**Issue:** Did the trial court, at defendant's trial for raping his sister-in-law, properly permit the prosecution to introduce evidence that defendant had previously sexually assaulted two of his other sisters-in-law?

**Facts:** After defendant forcibly raped his sister-in-law, the People sought to introduce evidence at trial "that defendant attempted to forcibly rape B.B., the victim's sister, between 2011 and 2012, and attempted to forcibly rape A.A. [the victim's other sister] in March 2017. The People asserted that, among other things, the evidence was admissible to demonstrate that defendant's 'conscious objective was to rape' the victim. The trial court granted the People's *Molineux* application over defendant's objection, later instructing the jury that it could consider the evidence with respect to defendant's 'guilty knowledge,' that his actions 'were not the product of accident or mistake,' and 'that his actions were part of a common scheme or plan.' The court told the jurors that they could not consider the evidence 'for the purpose of proving that the defendant had a propensity or predisposition to commit the crimes charged.'"

Following the sisters-in-law testimony at trial, the "defendant offered a defense of consent. Defense counsel suggested to the jury that defendant and the victim were having an affair, that the victim was using defendant to conceive a child, and that on the day in question, the victim and defendant had rough, consensual sex." The jury convicted defendant on all counts, and the Appellate Division, Fourth Department affirmed, with one Justice dissenting, holding that the *Molineux* evidence was admissible "to establish defendant's use of force because it was defendant's theory at trial to suggest that defendant and the victim were engaged in rough but consensual sexual acts."

**Holding:** The Court of Appeals affirmed defendant's convictions. The Court explained, "[t]he enduring *Molineux* rule states that evidence of a defendant's uncharged crimes or prior misconduct is not admissible if it cannot logically be connected to some specific material issue in the case, and tends only to demonstrate the defendant's propensity to commit the crime charged . . . The *Molineux* Court provided specific examples of non-propensity purposes for which evidence of a defendant's prior bad acts may be admitted: when the evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; and (5) the identity of the person charged with the commission of the crime on trial." This requires a two-step analysis: "[f]irst, the trial court must determine whether the People have identified some material issue, other than the defendant's criminal propensity, to which the evidence is directly relevant . . . If the People meet this burden, the court must move to step two which requires it to make a discretionary determination as to whether the probative value of the evidence outweighs the potential for prejudice to the defendant. If the answer is yes, the court may admit the evidence and if the answer is no, the court may not."

Here, the Court reasoned, "*Molineux* evidence [is] admissible where a defendant offers a theory of defense that assumes the underlying conduct but disputes that the defendant possessed the requisite guilty intent or state of mind in the commission of said conduct. This rule makes sense because the focus in that situation is not on the actual doing of the act, for the act is either conceded or established by other evidence. Rather, the element in issue is the actor's state of mind, and evidence of other similar acts is admitted under this exception because no particular intent can be inferred from the nature of the act committed." Because defendant's theory at trial assumed the conduct but disputed only his intent—consensual sex compared to rape—"the primary question for the jury was not whether sexual intercourse occurred but whether defendant possessed the requisite intent: did he intend to have sexual intercourse with the victim without her consent and did he intend to use forcible compulsion to do so. That defendant had previously sexually assaulted the victim's sisters—defendant's other sisters-in-law—under hauntingly similar circumstances has obvious relevance as tending to refute defendant's claim of an innocent state of mind. It tends to make the innocent explanation improbable." The Court thus held that the trial court properly admitted the *Molineux* evidence for a non-propensity purpose.

# COURT OF CLAIMS, UNJUST CONVICTION AND IMPRISONMENT

*Tuckett v State of New York, 2025 NY Slip Op 03099 (Ct App May 22, 2025)*

**Issue:** Did the Court of Claims properly conclude that claimant did not prove his actual innocence by clear and convincing evidence to establish an unjust conviction and imprisonment claim under Court of Claims Act § 8-b?

**Facts:** Claimant Ali Tuckett sued the State pursuant to Court of Claims Act § 8-b, alleging that he was unjustly convicted and imprisoned based on his vacated 2011 conviction for sexual abuse of his minor cousin. Approximately two years after his conviction, Tuckett's cousin recanted his accusation. Tuckett used the recantation to support his CPL 440.10 motion to vacate the conviction, and following a hearing, County Court vacated the conviction, albeit with some hesitation. "In its brief order, County Court noted that it 'previously found [N.M.] credible in his accusation against [Tuckett],' and that it was 'troubled' by N.M.'s recantation and had 'concerns about what is actually behind [his] about-face.' But it 'carefully observed [N.M.'s] demeanor' and concluded that his 'insistence on [Tuckett's] innocence . . . cannot be said to be incredible on its face.' Because Tuckett was convicted 'primarily on the strength of [N.M.'s] testimony' and there was no 'real proof establishing an improper motive for [N.M.'s] recantation,' the court concluded that it was required to vacate the judgment of conviction against Tuckett and order a new trial. The People did not pursue the charges further, and the court dismissed the indictment."

Immediately thereafter, Tuckett filed this claim against the State. To succeed on this claim for "unjust conviction and imprisonment pursuant to Court of Claims Act § 8-b[,] Tuckett needed to prove by clear and convincing evidence the remaining two elements of his claim: that 'he did not commit any of the acts charged in the accusatory instrument' and that 'he did not by his own conduct cause or bring about his conviction.'" Following a three-day virtual trial, the "Court of Claims concluded that Tuckett failed to establish his innocence by clear and convincing evidence. Relying on the testimony of an investigating officer and the prosecutor, along with an inference based on the fact of Tuckett's conviction that the grand jury and criminal trial judge had found N.M. to be credible, the court determined that N.M.'s original accusations were 'truth[ful]'. It also determined, based primarily upon its assessment of the testimony from N.M. and Tuckett before the Court of Claims, that N.M.'s recantation was 'not credible.' Concluding that the evidence of Tuckett's innocence was 'equivocal,' the court dismissed the claim." The Appellate Division, Fourth Department affirmed, in a split 3-2 opinion.

**Holding:** The Court of Appeals affirmed, holding that Tuckett's three challenges – that the Court of Claims rested its determination that N.M.'s accusations were credible on inadmissible hearsay, that the court must have improperly relied on evidence outside the record, and that the court erroneously presumed that N.M.'s recantation evidence was unreliable – were insufficient to set aside the Court of Claims' order dismissing the claim. First, the Court held, even if the Court of Claims had relied on inadmissible hearsay – "statements N.M. made to the investigating officer and the prosecutor" – doing so was harmless error because additional support existed in the trial record to support the court's conclusion that N.M.'s accusations were credible. In particular, the Court of Claims "identified substantial additional evidence supporting its conclusion that Tuckett's proof was not clear and convincing. The court emphasized 'the context of Tuckett's behavior' during the time in question and aspects of the recantation it found 'unconvincing.' It placed significant weight on N.M.'s 'unusual demeanor,' noting that in testifying about his recantation he had a 'shockingly flat affect' and that he testified 'as an adult to undo the wrong he presumably inflicted on Tuckett . . . without emotion or apparent remorse.'" The Court of Claims also "noted that N.M. 'offered little explanation about what prompted' his recantation. It also inferred from N.M.'s mother's decision to wait 'months' to inform the prosecutor of the recantation that she was 'apparently unconvinced that N.M. was going to stick with this new story.'"

Second, the Court held, the Court of Claims did not improperly rely on evidence outside the trial record, as there was testimony from the trial that discussed the issues raised in the alleged out of court statements, and the Court of Claims was entitled, under judicial notice principles, to rely on its prior order on Tuckett's CPL 440.10 motion, "even sua sponte after trial." Finally, the Court explained, the Court of Claims correctly applied prior Court of Appeals precedent and did not presume that N.M.'s recantation testimony was inherently incredible. Rather, the "court set forth specific reasons, based on its factual findings and 'careful attention to the demeanor of the witnesses,' to support its conclusion that N.M.'s recantation was not credible." Accordingly, the Court held that the Court of Claims properly concluded that Tuckett has not satisfied his burden to demonstrate his actual innocence by clear and convincing evidence.

CasePrepPlus | June 13, 2025

© 2025 by the New York State Bar Association

To view archived issues of CasePrepPlus,  
visit [NYSBA.ORG/caseprepplus/](https://NYSBA.ORG/caseprepplus/).