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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 236

ANTHONY ODDONE,

Appellant.

20 Eagle Street
Albany, New York 12207
November 14, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

MARC WOLINSKY, ESQ.
BERNARD W. NUSSBAUM, ESQ.
SCOTT M. DANNER, ESQ.
WACHTELL LIPTON ROSEN & KATZ
Attorneys for Appellant
51 West 52nd Street
New York, NY 10019

ANNE E. OH, ADA
SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorneys for Respondent
200 Center Drive
Riverhead, NY 11901

Karen Schiffmiller
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number - - - People
2 v. Oddone, number 236.

3 Counsel, would you like any rebuttal time?

4 MR. WOLINSKY: Yes, Your Honor, I'd like
5 four minutes of rebuttal time.

6 CHIEF JUDGE LIPPMAN: Sure, go ahead.

7 MR. WOLINSKY: Your Honor, the court, I'm
8 Marc Wolinsky from Wachtell Lipton. I'm here with
9 two of my colleagues, Bernard Nussbaum and Scott
10 Danner. And we're here because Tony Oddone, our
11 client, did not get a fair trial. And I say that for
12 four reasons.

13 CHIEF JUDGE LIPPMAN: Counsel, what was
14 wrong with the medical examiner's testimony?

15 MR. WOLINSKY: The medical examiner's
16 testimony was - - -

17 CHIEF JUDGE LIPPMAN: I mean, there was a
18 difference between the experts and the medical
19 examiner - - -

20 MR. WOLINSKY: Doctor - - -

21 CHIEF JUDGE LIPPMAN: - - - but what - - -
22 what was wrong?

23 MR. WOLINSKY: Dr. Wilson's testimony was
24 classic junk science. He did not have a single
25 articulated basis in - - -

1 CHIEF JUDGE LIPPMAN: Doesn't that just go
2 to the weight though?

3 MR. WOLINSKY: No, it does not go to
4 weight.

5 CHIEF JUDGE LIPPMAN: Go ahead, why not?

6 MR. WOLINSKY: Your Honor, it is absolutely
7 clear under this court's precedent and federal law as
8 well, the - - - the admissibility of scientific
9 testimony must be based on - - - in - - - under Frye,
10 generally accepted medical principles. And - - -

11 CHIEF JUDGE LIPPMAN: Or was this just his
12 own personal experience?

13 MR. WOLINSKY: It was, Judge.

14 CHIEF JUDGE LIPPMAN: Or was he - - -

15 MR. WOLINSKY: It was worse.

16 CHIEF JUDGE LIPPMAN: Was he articulating a
17 scientific basis for his testimony?

18 MR. WOLINSKY: Absolutely not.

19 CHIEF JUDGE LIPPMAN: So then - - -

20 MR. WOLINSKY: He said it was based on his
21 experience - - -

22 CHIEF JUDGE LIPPMAN: So why is it a Frye
23 situation?

24 MR. WOLINSKY: Because it - - - it was
25 based solely on his experience. Experience alone is

1 never enough to - - -

2 JUDGE SMITH: You mean, no - - - an
3 experienced doctor can never say, in my experience,
4 these things turn blue?

5 MR. WOLINSKY: An experienced doctor cannot
6 come in and say - - - I'm sorry; I missed the last
7 part of your question.

8 JUDGE SMITH: A doctor comes in and says,
9 I've seen forty-six of this kind of tumor, and I - -
10 - every one I've seen has been blue, so for that
11 reason, I think this blue tumor was diag - - - he
12 can't do that? He has to have a study?

13 MR. WOLINSKY: He doesn't have to have a
14 study, but it has to be generally accepted in his
15 profession.

16 JUDGE SMITH: It has to be - - - so he
17 can't - - - he - - - an experienced doctor cannot
18 rely on his experience alone? He must show - - -

19 MR. WOLINSKY: Correct.

20 JUDGE SMITH: - - - that it's generally
21 accepted in his profession?

22 MR. WOLINSKY: Correct.

23 JUDGE SMITH: Let me say - - -

24 MR. WOLINSKY: That's the essence of Frye.
25 You have to look at experience - - -

1 JUDGE SMITH: Well, well, an experienced
2 nondoctor obviously can rely on his experience,
3 right? You have a golf pro - - -

4 MR. WOLINSKY: Not as an expert.

5 JUDGE SMITH: If you have a golf pro
6 testifying on - - - on - - - as an expert in golf, he
7 doesn't have to show scientific studies.

8 MR. WOLINSKY: If he's coming in, he
9 probably is PGA-admitted pro. But Your Honor, let's
10 - - - let's step back. Dr. Wilson did not come in -
11 - - he came in on three issues. Let's talk about the
12 purple - - -

13 JUDGE SMITH: You're not saying every word
14 he said was junk science, are you?

15 MR. WOLINSKY: No, no, actually we agree on
16 the one thing that he said; he was actual - - -
17 absolutely right. The - - - Mr. - - - Mr. Reister
18 died of carotid sinus compression. It triggered a
19 nerve ending - - - a nerve ending that went to his
20 heart; threw his heart into fatal arrhythmia.

21 What Dr. Wilson went on to say, is that in
22 my experience, because of my experience, something I
23 saw on television, and something I heard from some
24 cops, it can only happen - - - only - - - if the neck
25 is compressed for two to three minutes, and even

1 though I'm not an expert in cardiology, and I
2 disclaim expertise in cardiology, this man's pre-
3 existing conditions were completely irrelevant.

4 JUDGE SMITH: So your - - - so your - - -
5 your theory is that if the expert witness is a
6 scientist, then everything he says has to have - - -
7 has to be accepted in the scientific community. He
8 cannot rely on his personal experience.

9 MR. WOLINSKY: Correct, yes. And - - -

10 JUDGE SMITH: And what do you cite for
11 that?

12 MR. WOLINSKY: Frye. I cite, you know, in
13 preparing for the argument today, I came across an
14 interesting - - -

15 JUDGE GRAFFEO: Does - - - does Frye - - -
16 so you're saying Frye applies to the totality of what
17 a medical or scientific expert testifies to?

18 MR. WOLINSKY: Yes, yes, sure. That's - - -
19 - that's absolutely true.

20 JUDGE GRAFFEO: Every single aspect?

21 MR. WOLINSKY: Yes, sure. Well, not every
22 single aspect - - -

23 JUDGE GRAFFEO: Why - - - why can't - - -
24 why can't you - - -

25 MR. WOLINSKY: - - - because I want to be

1 clear - - - I want to be clear - - -

2 JUDGE GRAFFEO: Why can't you present
3 experts that - - -

4 MR. WOLINSKY: No - - -

5 JUDGE GRAFFEO: - - - contest some of those
6 - - -

7 MR. WOLINSKY: He can - - - he can testify
8 about what he saw in the autopsy room. He can
9 testify about generally accepted principles. But the
10 do - - - the doctor here did not just go on and
11 testify about the cause of death. He went on and ar
12 - - - and articulated a scientific basis to support
13 the lynchpin of the prosecution.

14 CHIEF JUDGE LIPPMAN: But they asked him -
15 - - but didn't they ask him what it was based on and
16 wasn't his answer, on my personal experience?

17 MR. WOLINSKY: Yes, which is never enough.
18 On Frye, it's just never enough. It just isn't.
19 That's what Frye is. That's the essence of Frye.

20 JUDGE ABDUS-SALAAM: But was it - - - is
21 this a novel theory? Is - - - is - - - does what he
22 said, two to three minutes, is it novel, is that what
23 you're saying? Because I'm not sure what you're - -
24 -

25 MR. WOLINSKY: It's - - - yes, I'm saying

1 it's novel, because Frye only applies to novel
2 principles - - - novel - - - novel opinions.

3 JUDGE RIVERA: So I assume you're not
4 saying that if he said it's based on my experience,
5 which in this field is aligned with the experience -
6 - -

7 MR. WOLINSKY: Cor - - - yes.

8 JUDGE RIVERA: - - - of the scientists - -
9 -

10 MR. WOLINSKY: Yes.

11 JUDGE RIVERA: - - - in this or the - - -

12 MR. WOLINSKY: Sure.

13 JUDGE RIVERA: - - - professionals with my
14 experiences.

15 MR. WOLINSKY: Well, look - - - look at the
16 record that we made here. We had five or six medical
17 examiners from all around the country, and two
18 cardiologists, who all came in and said, everybody in
19 our profession understands that death from carotid
20 sinus compression can take place and can be - - -

21 CHIEF JUDGE LIPPMAN: Why wasn't the jury
22 able to sort that out?

23 MR. WOLINSKY: This is one of the things
24 that we don't let juries sort out, and this case
25 explains exactly why. The cross-examination of Dr.

1 Spitz and Dr. Kassotis, read it. The cross-
2 examination of Dr. Spitz, you're from Mich - - -
3 you're the coauthor of the - - - you're the coeditor
4 of the leading treatise in the United States on
5 medical - - - on - - - in the medical examiner field.
6 Yes, I am. Your father was the principal editor;
7 you're riding on your father's coattails, aren't you?
8 You're here because - - - you're here from Michigan;
9 aren't you having financial troubles in Michigan?
10 Yeah, I am. Yeah, they are. You're here just to
11 make money. We don't - - - these are not credibility
12 issues, when you look at the science - - -

13 JUDGE SMITH: Are you - - - but you - - -
14 you're not saying any - - - are you saying any of
15 those was an improper question?

16 MR. WOLINSKY: What I'm saying is that's
17 why we don't let juries make those decisions.

18 JUDGE SMITH: Well, well, try - - - try my
19 - - - try my question first.

20 MR. WOLINSKY: Oh, I think it was - - - I
21 think it was unfair cross-examination, and some of it
22 - - - and some of the objections were sustained.

23 JUDGE SMITH: Well, you're - - - you're
24 allowed to ask an expert how much money he's making
25 and suggest that that might bias his testimony.

1 MR. WOLINSKY: Yes, but we're going to the
2 question as to why the court, by precedent, uniformly
3 by this court and courts around the country have
4 said, we don't let scientific evidence go to the
5 jury, unless it's based on generally accepted
6 principles.

7 JUDGE SMITH: I mean, I - - - I can
8 certainly see that if - - - if - - - if Wilson had
9 said, it is generally accepted in the scientific
10 community that you need one minute of neck
11 compression to get these kind of petechiae, then you
12 - - - yeah, then you've got to have a Frye hearing,
13 to see whether it is generally accepted.

14 But if he says, my experience as a few
15 decades as a pathologist tells me that this rarely
16 happens without yea much neck compression, I'm not -
17 - - it's not clear to me that that's Frye.

18 MR. WOLINSKY: Your Honor, I believe that
19 it is Frye. He has to - - - he has to convince - - -
20 you can't come in based only on your - - - your
21 opinions and testify as to things that you've seen,
22 because one doctor has not seen - - -

23 JUDGE SMITH: I mean, I - - - I would - - -
24 I would - - - there would be a stronger point if you
25 - - - if he was - - - if he was testifying to an

1 experience which you had literature and doctors that
2 say is impossible; that it's nonsense, that it's
3 contrary to scientific evidence, but I - - - I don't
4 see that.

5 MR. WOLINSKY: We do have - - - on
6 petechiae - - - petechiae, we do have literature.
7 Look at - - -

8 JUDGE SMITH: What do you have?

9 MR. WOLINSKY: - - - Dr. Andrew's
10 testimony, Dr. Andrew's affidavit. Dr. Andrew said -
11 - - cites a textbook that says you cannot tell how
12 long someone has - - - someone has been subjected to
13 neck pressure or any kind of pressure by the presence
14 or absence of petechiae, or the type of petechiae.

15 JUDGE PIGOTT: Where does that take you,
16 though? I - - - Ms. Oh, in her brief, was saying,
17 this is a pretty simple case. Suppose they - - -
18 they just put in a death certificate saying he died,
19 and you've got this person who choked him. I know
20 you take issue with the word "choke". But here's
21 what happened. They're in a bar; he falls - - - you
22 know, this happens. He gets choked; he's dead. We
23 rest our case, Your Honor.

24 MR. WOLINSKY: Right, okay. So they have
25 to prove that the - - - it was excessive force that

1 caused the death.

2 JUDGE PIGOTT: No, they just have to prove
3 he's dead. I mean - - -

4 MR. WOLINSKY: They have to prove it was -
5 - - no, because well, this was a self-defense case.

6 JUDGE PIGOTT: That's your burden.

7 MR. WOLINSKY: Yes. No, no.

8 JUDGE PIGOTT: So they don't have to.

9 MR. WOLINSKY: There's no - - - no, no.
10 Defense has no burden in self-defense.

11 JUDGE PIGOTT: That's true.

12 MR. WOLINSKY: They have the burden in
13 self-defense.

14 JUDGE PIGOTT: Your burden going forward.

15 JUDGE SMITH: Okay, but - - - but choking -
16 - - yeah, choking someone who seems to have already
17 passed out is usually - - - is a funny form of self-
18 defense. And there were plenty of witnesses who
19 testified that he choked him, he collapsed, they kept
20 choking - - -

21 MR. WOLINSKY: Yes.

22 JUDGE SMITH: They were screaming at him -
23 - -

24 MR. WOLINSKY: Yes.

25 JUDGE SMITH: People trying to pull him

1 off. It was self-defense?

2 MR. WOLINSKY: It was self-defense - - -
3 well, first of all, put - - - put yourself, Your
4 Honor, in this circumstance. This did not happen in
5 a laboratory. This - - - my client is - - - is st -
6 - - dancing on a table, 1 o'clock in the morning,
7 attacked without provocation by a six-foot-four, 250-
8 pound man, wrestling in the middle of the floor.

9 JUDGE SMITH: Okay, okay, okay.

10 MR. WOLINSKY: Okay. So - - - so, then - -
11 -

12 JUDGE SMITH: So you can get self - - - you
13 can get you - - - I understand - - -

14 MR. WOLINSKY: So, look, Your Honor - - -

15 JUDGE SMITH: You have a self-defense
16 argument.

17 MR. WOLINSKY: It ultimately then comes
18 down to - - - I don't mean - - -

19 JUDGE SMITH: It's a jury question as to
20 whether it was self-defense.

21 MR. WOLINSKY: Right.

22 JUDGE SMITH: The evidence, it seems to me,
23 would be abundantly sufficient for a jury to reject
24 self-defense if there were no scientific testimony,
25 other than the fact the guy's dead.

1 MR. WOLINSKY: No. It would - - - self-
2 defense - - - it st - - - you just - - - you're use -
3 - - entitled to use justified force to the extent - -
4 -

5 JUDGE SMITH: My question - - -

6 MR. WOLINSKY: Yes.

7 JUDGE SMITH: - - - goes to the necessity
8 of the scientific testimony. Doesn't the eyewitness
9 testimony make a pretty good prima facie case of
10 manslaughter, if not murder?

11 MR. WOLINSKY: The eyewitness testimony has
12 two defects. Two defects - - - let me - - - first
13 let me address the Wilson point and then come back to
14 the defect in the eyewitness testimony. Wil - - -
15 there is conflicting eyewitness testimony on the
16 duration, and that, as Your Honor pointed out, is the
17 critical issue.

18 JUDGE SMITH: I don't - - - I don't think I
19 pointed it out. I - - - I - - - the - - - the - - -

20 MR. WOLINSKY: No, no, your point is that
21 there was too - - - there was evidence that he held
22 on too long, and therefore, it wasn't self-defense.

23 JUDGE SMITH: Okay, but you don't need - -
24 - you don't need a stopwatch to know that he's held
25 on too long, when there's an unconscious man, and

1 he's pressing his neck and people are screaming,
2 trying to pull him away.

3 MR. WOLINSKY: Yes, and he lets go.

4 CHIEF JUDGE LIPPMAN: Why - - -

5 JUDGE SMITH: But twenty seconds is a
6 pretty long time.

7 MR. WOLINSKY: And he lets go. And did he
8 hold on too long? But Your Honor, if I can come back
9 - - -

10 CHIEF JUDGE LIPPMAN: Why do you think the
11 duration though is something within the ken of the
12 juror?

13 MR. WOLINSKY: Duration is within the ken
14 of the juror, based on a fair presentation of the
15 evidence. And what happened here is two-fold.

16 JUDGE GRAFFEO: But different eyewitnesses
17 testified at different time periods.

18 MR. WOLINSKY: Yes, yes.

19 JUDGE GRAFFEO: So isn't that a factual
20 determination for the jury?

21 MR. WOLINSKY: Yes, it is a factual issue,
22 but the evidence on that point was tilted against the
23 defense, for three reasons.

24 CHIEF JUDGE LIPPMAN: Go ahead.

25 MR. WOLINSKY: One is the Frye that we've

1 talked about. Dr. Wilson's testimony put the
2 imprimatur of medical science on the prosecution side

3 - - -

4 CHIEF JUDGE LIPPMAN: Okay, what are the
5 other two points?

6 MR. WOLINSKY: The second, Dr. Penrod. The
7 exclusion of Dr. Penrod's testimony. Dr. Penrod
8 would have testified if permitted that eyewitnesses
9 routinely overestimate the duration of relatively
10 short traumatic events. This has been established
11 since 1895. This is beyond the ken of the ordinary
12 juror.

13 JUDGE SMITH: Isn't - - - but isn't there a
14 corollary to that law? Yes, you've seen something
15 that took thirty seconds and you're going to say it
16 took three minutes. Isn't the corollary to that - -
17 - thirty seconds is a long time to choke someone?

18 MR. WOLINSKY: Yes, thirty seconds is a
19 long time. But still that's the issue - - -

20 JUDGE SMITH: And isn't the evidence
21 overwhelming that your guy choked him - - -

22 MR. WOLINSKY: But - - -

23 JUDGE SMITH: - - - for a long time,
24 whether - - -

25 MR. WOLINSKY: But - - - but it's still put

1 - - -

2 JUDGE SMITH: - - - whether it was overest

3 - - -

4 MR. WOLINSKY: - - - it's still put - - -

5 JUDGE SMITH: Excuse me. Isn't the
6 evidence overwhelming that your guy choked him for
7 what - - - for quite an exceptionally long time even
8 if the witnesses overestimated the number of seconds?

9 MR. WOLINSKY: No. No. You have Cohen.
10 You have Leader. You have Reiner, who's standing
11 twenty feet away, who doesn't even know the whole
12 thing is going on until it's over. So, no.

13 The final point that I didn't get to - - -
14 that I do want to touch on - - -

15 CHIEF JUDGE LIPPMAN: Yeah, give your last
16 point. Go ahead counsel.

17 MR. WOLINSKY: On duration - - -

18 CHIEF JUDGE LIPPMAN: Yes.

19 MR. WOLINSKY: - - - is Flynn - - - Megan
20 Flynn, an eyewitness that the prosecution was going
21 to call. She - - - they drop her at the last minute.
22 We call her. She gets up on the stand. We ask her
23 how long did you see Mr. Oddone hold Mr. Reister?
24 She says, I don't know; I didn't have a watch. A
25 minute or so; I don't know. We have an insurance

1 statement - - -

2 JUDGE PIGOTT: Did you say - - - I know
3 you've got - - - only got three minutes on rebuttal,
4 but could you address the jury issue, when you come
5 back.

6 MR. WOLINSKY: Yes, I'll address now if
7 you'd like.

8 CHIEF JUDGE LIPPMAN: No, address it when
9 you come back. You'll have your rebuttal.

10 MR. WOLINSKY: Okay. So, can I finish the
11 - - -

12 CHIEF JUDGE LIPPMAN: Finish the thought;
13 go ahead.

14 MR. WOLINSKY: Okay, the thought here - - -
15 so what - - - so Flynn says a minute or so; I don't
16 know. We have an insurance statement - - -

17 JUDGE SMITH: We heard her on tape saying -
18 - -

19 MR. WOLINSKY: - - - where she said - - -
20 an insurance interview where she said - - - six to
21 ten seconds. It goes - - - Your Honor, it goes
22 exactly to your point. Exactly to your point.

23 JUDGE SMITH: And your point is the jury
24 never heard that.

25 MR. WOLINSKY: Well, we didn't even get the

1 - - - the opportunity to refresh her recollection;
2 let alone, impeach her.

3 CHIEF JUDGE LIPPMAN: Well, did it - - -
4 did - - - there's an indication that she needed her
5 recollection refreshed?

6 MR. WOLINSKY: Her prior statement is an
7 indication she needs her recollection refreshed.

8 CHIEF JUDGE LIPPMAN: Okay.

9 MR. WOLINSKY: You don't have to look past
10 that.

11 JUDGE SMITH: But aren't - - - aren't you
12 also arguing, apart from the technicalities, the jury
13 should know that she said that - - - that she said
14 six seconds, when she's standing up there saying a
15 minute?

16 MR. WOLINSKY: Of course, especially when
17 the prosecution then comes back and says, I didn't
18 put on witnesses who don't have a good memory of what
19 happened.

20 JUDGE ABDUS-SALAAM: You're raising that
21 point because you want Dr. Penrod to - - - to be able
22 to talk to the jury or speak to the jury about how
23 the perceptions of people about time is different,
24 because she said six seconds when the insurance
25 investigator spoke with her, and then she takes the

1 stand and says, oh, it could have been a minute.
2 That's a long way from six seconds.

3 MR. WOLINSKY: Very long. Very long.

4 CHIEF JUDGE LIPPMAN: Okay, counsel, you'll
5 have your rebuttal.

6 MR. WOLINSKY: Fine.

7 CHIEF JUDGE LIPPMAN: Counsel?

8 MS. OH: Good afternoon, Your Honors. I'd
9 like to address the Wilson point first.

10 CHIEF JUDGE LIPPMAN: Go ahead.

11 MS. OH: This wasn't based on television
12 articles or some police officer. Dr. Wilson
13 testified on the stand that the only times that he
14 has seen instances of petechiae at this level is
15 either in post-mortem lividity, which obviously this
16 was not that case, or in situations where there is
17 such impact on the human body, like a car rolling
18 over the body, would cause petechiae.

19 CHIEF JUDGE LIPPMAN: But there is a
20 science to this area, isn't there?

21 MS. OH: Yes, Your Honor, and the science
22 is forensic pathology, which Dr. Wilson - - - they
23 concede - - - was qualified to testified to.

24 JUDGE ABDUS-SALAAM: But wasn't there - - -
25 counsel, wasn't there also an attempt to revive this

1 man? Wasn't there some chest compression as well as
2 the choke - - - the alleged choking?

3 MS. OH: Yes, Your Honor. And the cause of
4 death here, was actually brain death, ultimately
5 caused by the neck compression. And I think what's
6 important to note is in the end, Andrew Reister's
7 heart was still working. It was in fact his brain
8 that wasn't working, so it wasn't the fatal
9 arrhythmia, because if it was, he wouldn't have been
10 able to be resuscitated at the scene, again at the
11 hospital, and then to survive two days past the
12 incident. So this isn't a case of fatal arrhythmia,
13 because the heart did, in fact, come back.

14 And with respect to the question of - - -
15 just because there are eight post-verdict affidavits,
16 stating that Dr. Wilson was wrong, that doesn't make
17 the trial court's conclu - - - conclusion that this
18 was admissible, a abuse of discretion. This is no
19 different than a battle of the expert witnesses,
20 where one - - -

21 CHIEF JUDGE LIPPMAN: But there studies in
22 this area, and your witness says that I don't - - - I
23 don't know anything about those studies.

24 MS. OH: And the jury got to hear the
25 witness be cross-examined extensively for almost a

1 week regarding these differing scientific articles.

2 JUDGE SMITH: Do - - - do the studies
3 really say that what he said was nonsense?

4 MS. OH: No, it does not say that. It
5 merely states that he could not qualify the time
6 period. And it was up for the jury, after having
7 seen the impeachment of Dr. Wilson by the defense for
8 several days, to determine the credibility of Dr.
9 Wilson's testimony. That has always been - - -

10 JUDGE SMITH: Suppose - - - suppose
11 hypothetically, a witness testifies, well, in my - -
12 - in my experience, fluoridation - - - I've seen many
13 cases of fluoridation teeth - - - fluoride on your
14 teeth causing lung cancer. And you've got a ton of
15 studies this high saying that's absolute nonsense.
16 Can he - - - is he allowed to say that to the jury?

17 MS. OH: If he is, in fact, qualified to
18 talk about the fluoridation of the teeth.

19 JUDGE SMITH: So you say if he's a
20 qualified - - - if he's a qualified expert, yes, he
21 can do that.

22 MS. OH: It goes to the reliability of the
23 conclusion. It doesn't - - -

24 JUDGE SMITH: So that's a yes?

25 MS. OH: Yes. It goes to the reliability

1 of the conclu - - -

2 JUDGE SMITH: Isn't - - - isn't there a
3 danger, I mean, that - - - that jury - - - that
4 charlatans are going to be selling bills of goods to
5 juries on your - - - on your view?

6 MS. OH: Maybe in a different case, but in
7 this case - - -

8 CHIEF JUDGE LIPPMAN: In the guise of
9 science, really.

10 MS. OH: But this was not a case of
11 charlatan, guise of science, junk science, as Judge
12 Abdus-Salaam did notice, this was not a thing where
13 you - - - where they were positing that Dr. Wilson's
14 testimony was based on any novel scientific
15 procedure. Their claim, basically, is that Dr.
16 Wilson got it wrong, based upon his knowledge and
17 experience. That is not a Frye issue.

18 JUDGE RIVERA: But - - - but aren't - - -
19 I'm sorry. But aren't you arguing that when he says
20 it's based on my experience, that even if in the
21 field that cannot be the experience, he still gets to
22 say it and all they get to do is try and cross-
23 examine him on it?

24 MS. OH: I think that that claim is
25 actually illusory, though. What happened is that

1 there were two articles that the pros - - - that the
2 defense were able to find to impeach the doctor about
3 it. Then they were able to find eight post-verdict
4 affidavits. But whether or not that is, in fact, the
5 situation in prevailing medical science is a
6 speculation brought by the defense post-verdict. And
7 the question is - - -

8 CHIEF JUDGE LIPPMAN: Yeah, but can't you
9 say something so off that it's really a novel
10 principle of science? That it could be viewed that
11 that's what he's doing? Putting some really just,
12 you know, bizarre, novel scientific theory? Couldn't
13 - - - couldn't someone - - - putting aside your - - -
14 your case; I know how you feel about Wilson - - -
15 couldn't someone do that and couldn't you say that,
16 gee, you need a Frye hearing, because this is just
17 totally something that we've got to see if it's
18 accepted by modern science?

19 MS. OH: In a completely different case,
20 absolutely, Your Honor, but not in this case, because
21 in this case, Dr. Wilson was able to qualify his
22 conclusion based upon his forensic background and
23 experience regarding when he's seen this petechiae
24 occur.

25 JUDGE PIGOTT: Did you need him?

1 MS. OH: No, not with respect to the
2 duration.

3 JUDGE PIGOTT: Then why - - - why - - - one
4 of the things that was in the back of my mind when we
5 were discussing this case a long time ago, is that
6 the courtroom was full of correction officers, you
7 know, of - - - of, you know, uniforms - - - and it
8 seemed like every ruling was going against the
9 defense.

10 And it seemed to me that if you were going
11 to bring this person in that - - - that whatever the
12 defense wanted to do on the other side would make
13 sense. And the same thing with time - - - with time;
14 bring in Penrod. You can chew him up, and then - - -
15 I mean, if you can - - - and - - - and the same thing
16 with that Florida thing. I mean, why - - - why not?

17 MS. OH: Why not permit Dr. Penrod's
18 testimony or why not - - -

19 JUDGE PIGOTT: Both, yeah.

20 MS. OH: With respect to why not permit Dr.
21 Penrod's testimony, the trial court did not abuse its
22 discretion when it decided based on this court's
23 ruling in LeGrand. And - - -

24 JUDGE PIGOTT: What did he do - - - this is
25 an unfair question; you can tell me whether you agree

1 with me. What did they - - - what did the - - - what
2 did the judge do that - - - that showed that he was
3 not favoring the People on every single issue and was
4 giving an equal amount of time and opportunity to the
5 defense?

6 MS. OH: I think that here, for instance,
7 the fact that Dr. Wilson was cross-examined for seven
8 days. When Megan Flynn was taken out of turn during
9 the prosecution's direct to accommodate the defense,
10 so that they could place her on the stand, I think
11 that it may appear that the defense was not getting
12 its - - - the - - -

13 JUDGE PIGOTT: Yeah.

14 MS. OH: - - - its fair amount of - - - but
15 I think it's because of - - -

16 JUDGE PIGOTT: Well, didn't it seem odd - -
17 - I mean, that document evidence that your opponent
18 argues. I mean, that seemed to be routine.

19 MS. OH: But - - -

20 JUDGE PIGOTT: Didn't you give a statement
21 earlier that you said the light was red?

22 MS. OH: I - - -

23 JUDGE PIGOTT: I'm going to object to that,
24 judge, and I'm going to sustain the objection. You
25 can't - - - you can't give - - - bring in a prior

1 inconsistent statement.

2 MS. OH: This was hearsay, the definition
3 of hearsay. What they were trying to do - - -

4 JUDGE PIGOTT: Oh, it's her.

5 MS. OH: - - - was get an out of court
6 statement that was unsworn or unsigned - - -

7 JUDGE PIGOTT: It's her. Somebody said she
8 said this.

9 JUDGE SMITH: Well, wait.

10 JUDGE PIGOTT: It's a prior inconsistent
11 statement - - - I'm sorry - - - it's a prior
12 inconsistent statement. And she can say, that's not
13 me; I never said it.

14 MS. OH: But she didn't say that.

15 JUDGE PIGOTT: By whom?

16 MS. OH: And this - - - here - - - here - -
17 -

18 JUDGE SMITH: Well, you're saying I can go
19 into court and say - - - and say, she - - - she
20 killed him. And if I said yesterday he killed him,
21 you can't bring that in; that's hearsay?

22 MS. OH: Not - - - absolutely not, Your
23 Honor, but at - - - but unfortunately every attorney
24 who practices in New York State is constrained by the
25 Rules of Evidence. And - - -

1 JUDGE SMITH: Well, how - - - how is my
2 hypothetical I just gave you dif - - - this woman
3 came in and swore it was a minute; that she's on tape
4 saying six seconds. How can the jury not hear that?

5 MS. OH: How can the jury not hear that?
6 Because, A, there was no - - -

7 JUDGE SMITH: You say it's hearsay?

8 MS. OH: It was hearsay. It was an out - -
9 -

10 JUDGE SMITH: She's sitting there being
11 examined.

12 JUDGE PIGOTT: She can say - - -

13 JUDGE SMITH: You can examine her you want.

14 MS. OH: She - - - and the problem with
15 that is I know that there was a - - - there was a
16 conversation regarding gamesmanship. And this was
17 not a situation of gamesmanship. The six to ten
18 second recording, that was in the possession of the
19 defense long before it was in the possession of the
20 prosecution.

21 JUDGE PIGOTT: They're not complaining they
22 didn't get it.

23 JUDGE SMITH: How does that make it
24 hearsay?

25 JUDGE PIGOTT: They're just - - - they're

1 complaining they couldn't use it.

2 MS. OH: They could have developed her as a
3 witness, but chose not to.

4 CHIEF JUDGE LIPPMAN: But why shouldn't the
5 jury hear it? Why - - - why would the judge not
6 allow that in?

7 MS. OH: The judge did not allow it in; the
8 defense didn't pursue it once it realized that it
9 couldn't come in as a hearsay exception - - -

10 JUDGE PIGOTT: It's not hearsay.

11 MS. OH: Once it couldn't come in as a
12 refreshing the recollection and come in as direct
13 evidence - - -

14 JUDGE PIGOTT: Why could - - - why isn't it
15 a prior inconsistent statement?

16 MS. OH: Because the value of that
17 statement, had it come in as a prior inconsistent
18 statement to impeach the witness, it would have come
19 in as merely impeachment value.

20 JUDGE PIGOTT: Right.

21 MS. OH: As opposed to direct evidence - -
22 -

23 JUDGE PIGOTT: What's wrong with
24 impeachment? It's kind of a good thing. It happens
25 a - - - it happens a lot.

1 MS. OH: Right, but it would have only gone
2 to the credibility of Megan Flynn's recollection at
3 the time - - -

4 JUDGE PIGOTT: Right.

5 MS. OH: - - - not the evidence of the six
6 to ten seconds. And I - - - and that is our position
7 as to why the defense ended up backing off. When
8 they realized - - - when they couldn't actually get
9 the six to ten seconds - - -

10 JUDGE SMITH: Where - - - where did they
11 back off? I thought every way they could to get it
12 in. The judge wasn't having it.

13 MS. OH: And it was not an abuse of
14 discretion for the trial court not to do it. Megan
15 Flynn stated it was a minute or so.

16 JUDGE ABDUS-SALAAM: But regardless of
17 whether that statement came in, there were a bunch of
18 witnesses saying that this happened over a course of
19 time that ranged in - - - you know, wildly, from, you
20 know, six minutes, to - - - down to six seconds. Why
21 wouldn't you - - - why wouldn't the court allow Dr.
22 Penrod to come in and talk about that issue, about
23 eyewitness testimony regarding time and how off it
24 can be?

25 MS. OH: This court's jurisprudence

1 regarding expert eyewitness testimony regarding
2 identification evidence have been merely limited to
3 cases where you have a problem with maybe mistaken
4 identity, and there is one witness regarding the
5 identification - - -

6 JUDGE ABDUS-SALAAM: But this isn't about -
7 - - we - - - we knew that the def - - - this isn't
8 about identification. This is - - - this is about
9 eyewitnesses, not identifying a person, but something
10 that happened.

11 MS. OH: And had this been a case where one
12 or two witnesses testified regarding the duration,
13 and not fourteen witnesses that testified regarding
14 duration, thereby giving the jury - - -

15 JUDGE PIGOTT: How many - - - how many of
16 those fourteen - - -

17 MS. OH: - - - a factual finding.

18 JUDGE PIGOTT: What was their range?
19 Rather wide.

20 MS. OH: Rather wide? Yes, but - - -

21 JUDGE PIGOTT: Well, that's my point. If -
22 - - if - - - if they all came in and said, he hung
23 onto him for five minutes. I mean, we - - - you
24 know, we had to drag him off. His - - - you know,
25 his fingernails are still in the guy's neck, then I

1 don't know why you'd say, you need an expert to talk
2 about the time.

3 MS. OH: Exactly.

4 JUDGE PIGOTT: But if you got fourteen of
5 them, and every one of them has a different time,
6 you'd say why - - - well, why is it? Who should we
7 believe of the fourteen? And Dr. Penrod could have
8 said, believe - - - I'm not sure which one he wanted
9 to pick, but - - -

10 JUDGE ABDUS-SALAAM: None of them.

11 MS. OH: Because the resolution of - - -

12 JUDGE PIGOTT: Or none of them, right.

13 MS. OH: - - - whatever the time and the
14 duration of that hold was, is a factual finding that
15 was up to the jury.

16 CHIEF JUDGE LIPPMAN: Yeah, but it's so
17 crucial to this case, isn't it?

18 MS. OH: So - - -

19 JUDGE PIGOTT: Which one - - - which one of
20 the fourteen do you believe?

21 MS. OH: I believe that he caused it - - -
22 he intended to cause his death, so - - -

23 JUDGE PIGOTT: Which one do you believe?

24 MS. OH: - - - we would have to come all
25 the way back from that, so.

1 JUDGE RIVERA: You're - - - you're saying
2 that the jury could hear this, could observe them,
3 and they can draw their own conclusion. No one needs
4 anybody to get up and say, when you've got that kind
5 of range, you've got to determine for yourselves
6 whether or not to believe anybody, all of them, or
7 none of them.

8 MS. OH: Exactly, Your Honor.

9 JUDGE ABDUS-SALAAM: But why wouldn't you
10 want - - -

11 JUDGE SMITH: Well, let me ask you
12 something. Suppose - - - suppose - - - assume it was
13 whatever the shortest one was, suppose it was twenty,
14 thirty seconds, which I guess was the shortest
15 anybody testified to, because the six was only a
16 piece of the incident. Could you still get a
17 conviction if it was twenty, thirty seconds here?

18 MS. OH: Absolutely, Your Honor, because
19 what the defense - - -

20 JUDGE SMITH: Is twenty, thirty seconds
21 actually rather a long time to choke someone?

22 MS. OH: I - - - yes, and also the - - - I
23 think the problem is, is that the defense has mis - -
24 - has misrepresented the evidence here regarding
25 defendant's intent to cause serious physical injury.

1 It's not just the duration of the hold; it was the
2 force of the hold.

3 CHIEF JUDGE LIPPMAN: But the duration is
4 vital - - - but the duration is vital, isn't it?

5 MS. OH: Not vital. Given the force of the
6 hold, given the fact that for - - -

7 JUDGE PIGOTT: Well, the funny - - - I
8 apologize; I keep interrupting you - - - but the - -
9 - the funny thing about that is, that - - - that you
10 want to say he hung on to him forever. They've got
11 an expert that's going to say it could have been two
12 or three seconds, and he could have been - - - done
13 this, and if Penrod came in and said, you know,
14 whatever he's going to say, maybe it would have
15 helped you. I don't - - - I just don't know. We
16 don't know.

17 MS. OH: So, then I guess then the court's
18 holding would be the exact opposite of Santiago and
19 LeGrand, would be to, now where there's overwhelming
20 evidence of the defendant's factual findings - - -

21 JUDGE PIGOTT: But see, you can't - - - you
22 can't say that, because you don't know what time it
23 is.

24 MS. OH: No, we can, and that time duration
25 was a factual resolution that was left for the jury,

1 and then - - -

2 JUDGE ABDUS-SALAAM: Well, doesn't Dr.
3 Wilson's testimony that this compression took two to
4 four minutes in order to cause the appearance of the
5 petechiae, doesn't that also play into how long this
6 hold was going on, or how long these two people were
7 grappling?

8 MS. OH: Absolutely, but the evidence
9 regarding the defendant's intent to cause serious
10 physical injury was not limited to duration. Our
11 case didn't hang on duration. Our case hung on the
12 fact that the - - - the force of the defendant's hold
13 on Andrew Reister was so great, that he broke neck
14 bones - - -

15 JUDGE PIGOTT: So you don't - - - so you
16 didn't need Wilson and you put him on. You didn't
17 need any of these time witnesses; you put them on.
18 And when they wanted to bring in evidence to the
19 contrary, the judge said no.

20 MS. OH: I think that misconstrues the
21 evidence. We put Wilson on to testify regarding the
22 cause of death and the injuries that Andrew Reister
23 sustained as a - - - as a cause of defendant's
24 action.

25 JUDGE PIGOTT: Oh, they brought out the

1 time - - - the two or three minutes?

2 JUDGE SMITH: So then - - - does he - - -
3 you're really saying that the - - - that on both, as
4 to the fact witnesses and to the expert witness, the
5 mention of a duration was a rather small part of the
6 testimony?

7 MS. OH: Yes, Your Honor. Has my time run
8 up?

9 JUDGE PIGOTT: No.

10 CHIEF JUDGE LIPPMAN: No, keep going.

11 JUDGE PIGOTT: Did you want to talk about
12 the jury?

13 MS. OH: I did, sure. Regarding the jury
14 misconduct point, the defense argues in its brief,
15 that the fact - - - and I'm going to just rely on - -
16 - unless the court wants to talk about Timmy Buckley
17 (ph.) - - - I'm going to talk about Oka (ph.) - - -
18 FO, sorry - - - that the fact that her son gets
19 arrested during the deliberations was an outside
20 influence under CPL 330.

21 And we believe that that is not the case,
22 because the exception under CPL 330 is rooted in the
23 Sixth Amendment right to confrontation. And here,
24 there is nothing to support any allegation that FO
25 went back into the jury and became an unsworn witness

1 against the defendant. As this court has recognized
2 in DeLucia, hold out juries happen. The o - - - the
3 greater will - - - the weaker will submit to the
4 greater - - - the greater power.

5 This is a classic case of juror's remorse.
6 She is trying to impeach the verdict. And had this
7 been the only reason why she returned her verdict of
8 not guilty was her son's - - - the mental working of
9 her own mind that she was now going to be a victim of
10 the District Attorney's Office, had that been the
11 case, then it is our position, she would never have
12 submitted the affidavit anyway while we were still -
13 - -

14 CHIEF JUDGE LIPPMAN: What about the
15 summation, counsel? What about the summation?

16 MS. OH: Oh, okay. Going to the summation,
17 except for the two preserved statements, which
18 regarding the act of kindness as well as the he was a
19 man of forty and he had two kids, the rest of them
20 were not preserved. However, assuming that they were
21 preserved - - -

22 CHIEF JUDGE LIPPMAN: That would be a
23 pretty - - - do you think it was pretty bad putting
24 aside preservation about not appearing and
25 testifying. That's not - - - isn't that important?

1 MS. OH: No, Your Honor, because I - - -

2 CHIEF JUDGE LIPPMAN: Isn't that highly
3 prejudicial?

4 MS. OH: No, Your Honor. Because if you -
5 - -

6 CHIEF JUDGE LIPPMAN: Why not?

7 MS. OH: - - - review the comments in the
8 context of how they occurred during the summation,
9 the next sentence is always saying - - - defense cou
10 - - - defense counsel Sarita Kedia cannot testify
11 regarding to the defendant's state of mind. No one
12 testified, and this was not a case where the defense
13 did not present any witnesses. This was a case where
14 the defense did present its own defense.

15 So when the defense attorney, strayed out
16 of the four corners of the evidence, it was well
17 within the prosecutor's pow - - - right to rebut
18 those claims. And in this case, the defense attorney
19 got on the stand, and - - - I mean, got on in front
20 of the podium, and stated, he was panicked; he was
21 afraid; he didn't know Andrew Reister was hurt. And
22 there was categorically no evidence in the record to
23 substantiate those inferences.

24 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
25 you.

1 MS. OH: Thank you, Your Honor.

2 CHIEF JUDGE LIPPMAN: Counsel, rebuttal?

3 MR. WOLINSKY: Yes, Your Honor. Judge
4 Pigott, you put your finger on it. The issue here,
5 ultimately, if you look at the entirety of this
6 record, is the overall fairness of the trial. They
7 tried the case on the basis - - - this was the - - -
8 right out of the summation - - - how do you know it's
9 murder? He held his - - - he held him for three
10 minutes. That was the key lynchpin of their whole
11 case. This was not a twenty-second case. If it was
12 a twenty-second case, somebody might have thought,
13 okay, he's dancing; he gets attacked. So - - -

14 CHIEF JUDGE LIPPMAN: They say duration is
15 not - - -

16 MR. WOLINSKY: - - - duration was the key.

17 CHIEF JUDGE LIPPMAN: Your adversary says
18 duration is not what this is all - - - it's the
19 force.

20 MR. WOLINSKY: Duration - - - the force - -
21 -

22 CHIEF JUDGE LIPPMAN: Duration, to you, is
23 linked with the - - - with the force?

24 MR. WOLINSKY: Force is a false issue,
25 because the force that was applied here was the force

1 that you get when you put someone in an LVNR. Look
2 at the literature in the record: lateral - - -
3 lateral vascular neck restraint. Mr. - - - Mr. Reis
4 - - - Mr. Oddone didn't know it, but it's a police
5 maneuver. In the record, you'll see evidence that
6 when the police use this same maneuver, you have the
7 same injuries that you have here.

8 JUDGE SMITH: The - - - the - - - there
9 were a lot of eyewitnesses who said that the choking
10 continued for a perceptible time after the guy seemed
11 - - - forget about duration - - - for some time after
12 the guy seemed to be unconscious.

13 MR. WOLINSKY: Yes.

14 JUDGE SMITH: And that people were
15 screaming at the - - - at the defendant trying to
16 pull him off.

17 MR. WOLINSKY: And - - -

18 JUDGE SMITH: What is - - - how is this
19 self-defense?

20 MR. WOLINSKY: And Mr. Cato - - - one of
21 the pe - - - the guy who said, hey, dude, you're f-
22 ing killing him, said he punched him in the back of
23 the head because he didn't seem to know what was
24 going on. So the defense ultimately - - - and it
25 goes right to the - - - to the summation - - - the

1 defense - - -

2 JUDGE SMITH: Is that an insanity defense?

3 MR. WOLINSKY: - - - Your Honor, the
4 defense, ultimately, one of the aspects of the
5 defense, was that he did not realize what was
6 happening. He did not form mental intent.

7 JUDGE SMITH: He - - -

8 MR. WOLINSKY: That goes - - -

9 JUDGE SMITH: You - - - you can
10 unintentionally go like that to someone for a long
11 time and kill them?

12 MR. WOLINSKY: You can be frozen in fear,
13 and instinctively hold someone. That was the
14 defense. And their - - - their reputation of the
15 defense was that can't - - - that can't be true
16 because he held him for three minutes. And on that
17 issue - - - that issue - - - the evidence was
18 stacked.

19 Very briefly, Frye. People v. Wesley. The
20 long recognized rule of Frye is that "expert
21 testimony based on scientific principles or
22 procedures is admissible, but only after a principle
23 or procedure has gained general acceptance." That's
24 the essence of the Frye point.

25 The juror. FO. A classic case - - - a

1 classic case of juror remorse? The woman put in a
2 post-trial affidavit that said she was terrified - -
3 - terrified, that was the word she used - - -

4 JUDGE SMITH: Okay, but suppose - - -

5 MR. WOLINSKY: - - - terrified - - -

6 JUDGE SMITH: - - - suppose - - - suppose
7 she put in an affidavit saying she was tired and
8 wanted to go home?

9 MR. WOLINSKY: That's not bias.

10 JUDGE SMITH: So what - - - what - - - but
11 ter - - - if she's terrified, she's terrified, but
12 she just says she's terrified in her mind.

13 MR. WOLINSKY: No. She - - -

14 JUDGE SMITH: She didn't say there was a
15 good reason for being terrified.

16 MR. WOLINSKY: Bias - - - bias is always in
17 your mind.

18 JUDGE SMITH: Okay, so, you're - - -

19 MR. WOLINSKY: But the question you have to
20 look at is whether they're looking at it objectively
21 - - - objectively and subjectively, but objectively -
22 - - if your child - - - your son - - - is arrested
23 over the weekend in a traffic - - -

24 JUDGE SMITH: So you're - - - so a juror's
25 - - - a juror's son - - - a juror's family member has

1 a problem with the law, and the juror decides in her
2 own mind, I'm - - - I'm not going to - - - I - - - I
3 - - - I'm going to give up my views. I won't vote
4 against the People. That's bias?

5 MR. WOLINSKY: Yes. Subjective and
6 objective. Subjectively, she believes it, and
7 objectively, it's reasonable.

8 JUDGE SMITH: What - - - what - - - what if
9 she says I really have a very - - - I - - - I want to
10 be with my children over the weekend; I'm going to
11 give up and vote - - - and vote to convict. Bias?

12 MR. WOLINSKY: Probably not. Probably not.

13 JUDGE PIGOTT: Was there - - -

14 JUDGE SMITH: What's the difference?

15 JUDGE PIGOTT: Was there a hearing on - - -

16 MR. WOLINSKY: The difference is
17 objectively, she's fear - - - she's fearful for
18 retribution against her son - - -

19 JUDGE PIGOTT: Was there a hearing on that
20 iss - - -

21 MR. WOLINSKY: - - - in a case that - - -
22 I'm sorry, Judge.

23 JUDGE PIGOTT: Was there a hearing on that
24 issue, right?

25 MR. WOLINSKY: No hearing.

1 JUDGE PIGOTT: The reason I ask - - -

2 MR. WOLINSKY: No hearing.

3 JUDGE PIGOTT: I mean, again, I think of
4 the courtroom full of deputies, and I'm not sure what
5 I'd be thinking if my son was in trouble.

6 MR. WOLINSKY: No hearing, no hearing.

7 CHIEF JUDGE LIPPMAN: Okay, counsel.

8 MR. WOLINSKY: Your Honor, summation - - -

9 CHIEF JUDGE LIPPMAN: Go ahead, you can
10 give one thought on summation.

11 MR. WOLINSKY: One thought.

12 CHIEF JUDGE LIPPMAN: Go ahead.

13 MR. WOLINSKY: Here's what she said.

14 "Neither I nor defense counsel can tell you what he's
15 thinking. It has to be from the witness stand.
16 There's no evidence that this defendant felt
17 panicked. There's no evidence that this defendant
18 felt fear. Nothing from the witness stand."

19 JUDGE SMITH: A prosecutor is barred from
20 mentioning the absence of evidence on any point?

21 MR. WOLINSKY: Yes, if the evidence is
22 peculiar - - - peculiarly within the knowledge of the
23 defendant.

24 JUDGE SMITH: And why do you - - -

25 MR. WOLINSKY: The state of mind of Mr.

1 Oddone, competent evidence - - - direct evidence of
2 what was on his mind, could only come from him.

3 Indirect evidence - - -

4 JUDGE SMITH: So - - - so you're pleading
5 self-defense. The - - - your - - - the whole basis
6 for your claim is that he had a reasonable belief
7 that he's - - - he was in danger. And the pros - - -
8 the prosecutor's not allowed to say there's no
9 evidence of that?

10 MR. WOLINSKY: The prosecutor's not allowed
11 to say there's no evidence from the witness stand,
12 because that is an indirect reference to the fact
13 that the only the only person who could take the
14 witness stand, and say, I was in fear, I felt danger,
15 is Mr. Oddone.

16 CHIEF JUDGE LIPPMAN: Okay, counsel.

17 MR. WOLINSKY: And Carvalho, Your Honor - -
18 -

19 CHIEF JUDGE LIPPMAN: Counsel, that's it.

20 MR. WOLINSKY: Thank you.

21 CHIEF JUDGE LIPPMAN: Thank you both,
22 appreciate it.

23 MR. WOLINSKY: Thank you.

24 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Anthony Oddone, No. 236 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

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