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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

No. 144

LOUIS SPEAKS,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
September 08, 2016

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

NAO TERAII, ESQ.  
APPELLATE ADVOCATES  
Attorneys for Appellant  
111 John Street  
9th Floor  
New York, NY 10038

LORI GLACHMAN, ESQ.  
KINGS COUNTY DISTRICT ATTORNEY'S OFFICE  
Attorneys for Respondent  
Renaissance Plaza  
350 Jay Street  
Brooklyn, NY 11201

Penina Wolicki  
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: This afternoon, the  
2 first matter on our calendar is number 144, People v.  
3 Louis Speaks. Counsel?

4 MS. TERAJ: Good afternoon, Your Honors.  
5 May I reserve one minute for rebuttal, please?

6 CHIEF JUDGE DIFIORE: You may.

7 MS. TERAJ: May it please the court, Nao  
8 Terai from Appellate Advocates, here on behalf of  
9 appellant, Louis Speaks.

10 I'd like to address the issues in reverse  
11 order - - - order, starting with the ineffective  
12 assistance of counsel point. This case ultimately  
13 came down to the identification testimony of three  
14 eyewitnesses, where one of the identify - - - one of  
15 the witnesses identified appellant as a shorter  
16 robber, which appellant clearly was not, since  
17 Octavious Williams came to trial and admitted that he  
18 was the shorter robber. And two other witnesses made  
19 identifications under questionable circumstances.

20 And the defense's mistaken identification,  
21 and defense counsel's clear strategy throughout trial  
22 was to challenge the reliability of identi - - - of  
23 the People's identification evidence.

24 Nevertheless, during summation, pro - - -  
25 during - - - during the prosecutor's summation,

1 defense counsel repeatedly failed to object when the  
2 prosecutor made arguments which had no record support  
3 and distorted the evidence that related to the key  
4 identification issues. And this misconduct here,  
5 just as in Reid and in Fisher, went - - - in Fisher,  
6 went directly to the central issue at trial, and  
7 unfairly bolstered the People's case.

8 Focusing on two of the more egregious  
9 comments, first, although Major testified about  
10 seeing the ro - - - the taller robber's face only  
11 through - - - for three brief periods of time - - -

12 JUDGE ABDUS-SALAAM: I'm sorry, counsel.  
13 Are you suggesting that it's the prosecutor's  
14 summation comments that deprived the defendant of a  
15 fair trial, or the defense counsel's failure to  
16 object to them?

17 MS. TERAJ: It's defense counsel's repeated  
18 failure to object to the prosecutor's summation  
19 misconduct. And the misconduct here went directly to  
20 the central issue at trial, which was identification.  
21 And so there was no strategic reason - - - there was  
22 - - - there was abs - - - and that's exact - - - the  
23 identification was what defense counsel challenged  
24 throughout trial, and there was just absolutely no  
25 reason - - -

1 JUDGE ABDUS-SALAAM: I'm not saying that we  
2 will, but if we disagreed that the comments by the  
3 prosecutor were not improper, then that would be - -  
4 - not be ineffective assistance of counsel to not  
5 have objected to it?

6 MS. TERAJ: If the - - -

7 THE COURT: Do you - - - do you agree?

8 MS. TERAJ: If the comments were not - - -  
9 if she made - - - if the prosecutor made - - -

10 JUDGE ABDUS-SALAAM: If the comments were  
11 proper comments?

12 MS. TERAJ: If the com - - - yeah, if the  
13 prosecutor made proper comments, then there was no  
14 reason for defense counsel to object. But here, the  
15 prosecutor's comment went above - - - went beyond  
16 what's fair comment from the evidence. She clearly  
17 distorted - - - grossly distorted the evidence when  
18 she started com - - - when she played - - - when  
19 Major testified, she - - - that he saw the taller  
20 robber for three brief periods of time, rather than -  
21 - - the prosecutor here distorted that evidence, and  
22 during summation, played this video for ten minutes  
23 and said - - - and repeatedly said, you know, Major  
24 was seeing this robber's face the entire time, and  
25 during this whole ten minutes, he was like looking at

1 this robber's face - - - the taller robber's face.  
2 And that's not what the evidence showed.

3 And this - - - but however, this - - - the  
4 way the prosecutor distorted the evidence really  
5 grossly bolstered the reliability of the eyewitness  
6 identifi - - - this eyewitness' identification, yet  
7 defense counsel did not object at all.

8 Similar - - -

9 JUDGE FAHEY: Are you talking - - - I'm a  
10 little confused. Are you talking about the Anderson  
11 identification that was brought in in - - - as  
12 hearsay, allegedly, by Detective Henry?

13 MS. TERAI: This one I'm talking about was  
14 Major - - - Wilton Major - - -

15 JUDGE FAHEY: Oh.

16 MS. TERAI: - - - which was the first - - -

17 JUDGE FAHEY: Okay, one of the witnesses.  
18 Yeah.

19 MS. TERAI: One of the witnesses who  
20 testified. And similarly, another witness who  
21 testified, Mateo, said that she - - - he saw the tall  
22 - - - she saw the taller robber's face for two brief  
23 - - - twice for a couple of seconds.

24 JUDGE FAHEY: Well, they said - - - laid  
25 out the deficiencies - - - arguable deficiencies in

1 each one of those.

2 If you could, I'd like you to focus a  
3 little bit on the - - - the issue of the testimony of  
4 the identification - - - or the description that was  
5 given by Anderson that Detective Henry used.

6 MS. TERAJ: Um-hum.

7 JUDGE FAHEY: Do you want to address that?

8 MS. TERAJ: Yeah, of - - - so, regarding  
9 the description, first Anderson didn't testify at  
10 trial. And the problem here was that this  
11 description was ostensibly introduced to explain  
12 police action. But here, police action was, first  
13 off, not at all relevant. How the police ended up  
14 seizing upon my client had no relevance at all at  
15 trial, and the People never actually tried to elicit  
16 - - -

17 JUDGE GARCIA: But isn't it relevant if  
18 it's an identification case, how they came to find  
19 this defendant and charge him with this crime?  
20 Wouldn't that be relevant, if you're saying it's not  
21 the right guy?

22 MS. TERAJ: But the - - - the People didn't  
23 try to introduce how - - - like how this particular  
24 description that Anderson gave did not factor at all  
25 into how the police came upon my client. And in

1 fact, the People never tried to even introduce how  
2 the - - - how the police ended up seizing upon my  
3 client. That was not at all relevant.

4 What was relevant was whether these three  
5 eye - - - whether these three eyewitnesses who  
6 testified at trial were able to make an accurate - -  
7 - the accuracy of the identification.

8 JUDGE STEIN: Isn't your argument, though,  
9 premised on the assumption that the jury would not  
10 follow the court's instruction on this? So in other  
11 words, if - - - if the jury followed the instructions  
12 and said well, I don't see a connection, then - - -  
13 then they're going to disregard the testimony; and if  
14 they do find a connection, then they'll consider it  
15 for that purpose.

16 MS. TERAJ: Well, the jury couldn't have  
17 followed the instruction, because it - - - this  
18 testimo - - - there was no connect - - - there was no  
19 connection between this description and - - -

20 JUDGE GARCIA: And they wouldn't have used  
21 it for anything? I mean, it's a hearsay violation.  
22 There's no confrontation clause issue here. It  
23 wasn't raised. So what - - - it's a hearsay  
24 violation, they get a hearsay instruction; to the  
25 extent it's relevant, they can use it, but to the

1 extent it's improper to consider it for the truth,  
2 you can't.

3 MS. TERAJ: But I think here in this case,  
4 there was no - - - there was no way for the jury to  
5 use it for a proper purpose, because the - - - the -  
6 - - it didn't relate at all to any sort of - - - it  
7 wasn't relevant to how the police seized upon my  
8 client. It wasn't connected - - -

9 JUDGE GARCIA: They should use it for  
10 nothing. I mean, then you're assuming they used it  
11 for something.

12 MS. TERAJ: But - - - but - - -

13 JUDGE GARCIA: But Judge Stein is saying  
14 they were instructed the only way you can use this is  
15 for X - - - police steps subsequent to this  
16 identification. So if the instruction from the judge  
17 is you could only use it for X, and X really doesn't  
18 become an issue, why do we assume they used it for  
19 the improper purpose?

20 MS. TERAJ: I - - - I think here, though,  
21 because this case came down to identification and  
22 this description was somewhat - - - you know, it was  
23 similar to what my client looked like, and my  
24 client's size was fairly unique, I think the  
25 temptation here would have been for the jury to use

1 it for its truth, to hear that, you know - - -

2 JUDGE ABDUS-SALAAM: Counsel, but you  
3 mentioned there were two other eyewitnesses who - - -  
4 who testified, and I think you mentioned Mr. Major.  
5 And I - - - my recollection of the record is that  
6 when he was asked questions about who, you know, the  
7 suspects or the robbers were, he - - - he pointed to  
8 your client immediately, without even being - - -  
9 maybe he wasn't even asked. He just said there he  
10 is, there's the guy sitting at the table, without  
11 even any questions.

12 So he was making this in-court  
13 identification, and he had been in the store when it  
14 was robbed. And - - -

15 MS. TERAJ: Major made an in-court  
16 identification, but there were problems with his in-  
17 court - - - there were problems with the a - - - like  
18 the reliability of the identification. First it went  
19 - - - merely after the robbery, he wasn't able to  
20 provide a description to the police. He told the  
21 police he wasn't even sure if he could make an  
22 identification.

23 Further he had - - - he had very little  
24 recollection of whether, you know, the man had facial  
25 hair or if he was wearing a hat, which suggested that

1 he didn't really get an opportunity to see this man's  
2 face, and maybe he was able to glean this man's size.  
3 But he - - - just seeing the size, I mean, Wilson  
4 also gleaned the taller robber's size - - -

5 JUDGE RIVERA: But isn't that all - - -

6 MS. TERAI: - - - and - - -

7 JUDGE RIVERA: - - - isn't that all for the  
8 jury?

9 MS. TERAI: Pardon?

10 JUDGE RIVERA: Isn't that all for the trier  
11 of fact?

12 MS. TERAI: But it all goes to the harmless  
13 error, and it goes to show that, you know, this  
14 evidence the - - - it was not very strong. The  
15 People's case was not particularly strong. So  
16 allowing this like implicit identification testimony,  
17 implicit description that ended up becoming an  
18 implicit identification, was not harmless.

19 JUDGE RIVERA: What - - - what's your  
20 strongest case for weak - - - several eyewitness  
21 identifications that are weak but point to the  
22 defendant are not harmless error? Do you have a case  
23 that's strong enough to support that proposition?

24 MS. TERAI: A particular - - - well, like,  
25 we know the ident - - - there are problems with

1 identification - - - identifications, and that the -  
2 - - you know, the social sciences show that the - - -  
3 there are actual weaknesses with identification in a  
4 case like this - - -

5 JUDGE RIVERA: Was there expert testimony  
6 to that effect in this trial?

7 MS. TERAI: Not in this trial. But you  
8 know, defendant's counsel did do a good job of trying  
9 to elicit all of this. And that also makes the  
10 reason why the - - - during summation, when he failed  
11 to object to a lot of the summation con - - -  
12 misconduct, it was ineffective assistance.

13 JUDGE GARCIA: I'm sorry. One last  
14 question. I'm sorry. Chief, may I - - -

15 CHIEF JUDGE DIFIORE: Yes.

16 JUDGE GARCIA: What are - - - we're  
17 reviewing a hearsay ruling, right?

18 MS. TERAI: Um-hum.

19 JUDGE GARCIA: So what's our standard of  
20 review?

21 MS. TERAI: Whether it was - - - whether it  
22 deprived my client of a fair trial.

23 JUDGE GARCIA: It's an abuse of discretion,  
24 right?

25 MS. TERAI: It's abuse of discretion, yes.

1 JUDGE GARCIA: So we're reviewing whether  
2 this trial judge abused their discretion in admitting  
3 this testimony?

4 MS. TERAI: Yeah.

5 CHIEF JUDGE DIFIORE: Thank you, counsel.  
6 Counsel?

7 MS. GLACHMAN: Good morning. Lori Glachman  
8 for respondent. I want to start off by talking about  
9 preservation. This entire claim is not reviewable by  
10 the court because - - -

11 JUDGE FAHEY: You're talking about  
12 preservation on Anderson?

13 MS. GLACHMAN: On - - - on - - -

14 JUDGE FAHEY: Of the entire claim?

15 MS. GLACHMAN: - - - on the entire claim.

16 JUDGE FAHEY: Go ahead.

17 MS. GLACHMAN: Counsel objected, one-word  
18 hearsay objections. The court sustained - - -  
19 effectively sustained that objection. The court  
20 agreed that it was hearsay and issued a ruling on it  
21 saying it's not to be considered for its truth. And  
22 - - -

23 JUDGE STEIN: But when I - - - and it  
24 talked about the very issue that they're - - - that  
25 they're now discussing. And so doesn't that provide

1 a basis for our - - -

2 MS. GLACHMAN: No, the court did not - - -

3 JUDGE STEIN: - - - so - - -

4 MS. GLACHMAN: - - - expressly decide the  
5 issue, nor could it, because the detective, he hadn't  
6 testified yet about his investigation, so it - - -

7 JUDGE STEIN: He said he was going to admit  
8 it for that particular purpose, so it clearly - - -

9 MS. GLACHMAN: It was - - -

10 JUDGE STEIN: - - - made a ruling on it.

11 Now whether, you know, something else may have  
12 happened after his ruling - - -

13 MS. GLACHMAN: Well, the court - - - if I  
14 may for a second - - - said that it's going to - - -  
15 "I'm going to allow it to explain why this witness  
16 did whatever he may have done." Because the  
17 detective hadn't testified to it yet. So in order to  
18 properly des - - - expressly decide this, it would  
19 have had to be brought to the court's attention that,  
20 wait a minute, you made a ruling that you were  
21 allowing it in, effectively subject - - - subject to  
22 connection, but it was never connected.

23 JUDGE ABDUS-SALAAM: Well, assuming it was  
24 preserved, whether we, you know, ultimately think it  
25 is or it isn't - - - assuming it was preserved, do

1           you have some comments you want to make to the state  
2           of your counsel - - -

3                     MS. GLACHMAN:   Oh, yes, absolutely.

4                     JUDGE ABDUS-SALAAM:   Yes?

5                     MS. GLACHMAN:   Thank you.

6                     JUDGE FAHEY:   Can you focus on there's - -  
7           - I'd like you to focus on - - - this is the way I  
8           read the summation of the proof that the dissent laid  
9           out.  First off, Major - - - one of the - - - I'm  
10          talking about the witnesses now.  There's four  
11          witnesses we need to talk about.  Major, after crime  
12          did not give any description.  He gave a description  
13          the first time at, I think, seven months afterwards  
14          at the line-up in the photo array.  There was no  
15          description after the crime, of Major.

16                     Wilson's the second one.  He misidentified  
17          the defendant as the shorter robber, and he didn't  
18          view the line-up.  You can correct me if you think  
19          I'm wrong.

20                     Third one, Mateo ID'ed the defendant for  
21          the first time at the trial, two years afterwards,  
22          and didn't identify him either in the line-up or the  
23          photo array.

24                     And then Anderson, his description was  
25          given, but Anderson, of course, is this - - - that's,

1 that's what we're here for argument, the hearsay  
2 question on that.

3 So those are the four - - - four witnesses  
4 that are primary witnesses used to identify him, plus  
5 the surveillance video.

6 So if we set that aside, set all four of  
7 those aside, we still get to the surveillance video,  
8 which I went and looked at, and I don't know if it's  
9 dispositive one way or the other, to be honest  
10 objectively. I can't say that now.

11 But I think you need to focus there.

12 MS. GLACHMAN: Okay.

13 JUDGE FAHEY: Okay.

14 MS. GLACHMAN: I'll start with Major. He  
15 did tell the police - - - it's partially what he told  
16 the police. I - - - he said I can't identify him;  
17 I'd have to see him. So he just - - - he - - - he  
18 repeatedly testified at trial that he clearly saw the  
19 taller robber's face. He was face-to-face with him.  
20 He came in - - - they had conversations. They had  
21 two conversations. He - - - he was never more than  
22 four feet away from him during the entire incident.

23 And as the prosecutor pointed out, Major  
24 had a stutter, and - - - and as she closedly argued  
25 in summation, it could have been difficult for him at

1           that time to give a description.

2                         He was asked - - - there's no testimony  
3           about whether he was asked for a description and he  
4           couldn't give it. The testimony is was he - - - was  
5           he - - - he was asked whether - - - can you - - - can  
6           you identify this person, and he said "I don't know.  
7           I'd have to see him." And that's exactly what he  
8           did. He saw him three months later in a photo array  
9           and four months after that in a line-up, and then at  
10          trial.

11                        With respect to Major - - - I'm sorry.  
12          With respect to Wilson, he was held at gunpoint and  
13          not with the rest of the eyewitnesses, and he did  
14          focus on the shorter robber. But at trial, he  
15          recognized the defendant, and he testified about the  
16          description. He did have an opportunity to see the  
17          defendant when he was brought out from his office  
18          where the defendant was standing with the others, and  
19          he provided a description that fit defendant.

20                        And - - - and he recognized him at trial.  
21          He said that's the shorter one but with more weight.  
22          Of course, that's incorrect. But the fact is that he  
23          did recognize him. So I don't think you could  
24          absolutely discount that identification.

25                        With respect to Mateo - - - I'm sorry, if

1           you would just repeat what troubled Your Honor on  
2           that?

3                       JUDGE FAHEY: Well, my understanding of the  
4           record is he identified him for the first time at  
5           trial, and he'd never viewed the line-up or the photo  
6           array?

7                       MS. GLACHMAN: Right. Mateo did not.

8                       JUDGE FAHEY: Right.

9                       MS. GLACHMAN: Not - - - I point out  
10          something interesting with Mateo and Wilson, and that  
11          is they both did correctly identify the accomplice.  
12          The accomplice himself testified that's---that's me  
13          on the video, and he confirmed - - -

14                      JUDGE FAHEY: You're talking about the  
15          person who pled?

16                      MS. GLACHMAN: I'm sor - - - yes.

17                      JUDGE FAHEY: Yeah.

18                      MS. GLACHMAN: And he confirmed their  
19          identification. And this court's decision in People  
20          v. Thomas, I believe is very relevant, because it - -  
21          - the correct identification of an accomplice - - -

22                      JUDGE FAHEY: Okay. Let me just stop you  
23          one second. So - - - because the other judges have  
24          questions. But there's three witnesses there, and  
25          there are varying degrees of problems with their

1 testimony. And then the last one was Anderson, and  
2 you've got Anderson and - - - we're given a  
3 description of Anderson through Detective Henry. You  
4 see the problem?

5 MS. GLACHMAN: Well, it's not a problem,  
6 because the jury was instructed it's not admitted for  
7 its truth. And it had a very relevant purpose. The  
8 detective testified that once he armed himself with  
9 these descriptions he went out - - - the next step in  
10 his investigation was specifically to look for a  
11 video.

12 JUDGE PIGOTT: So the Anderson description  
13 that was essential for the detective to go out and  
14 look for a surveillance video?

15 MS. GLACHMAN: Yes, because first of all,  
16 this video was not recovered from the crime scene.  
17 It was around the corner in a private house. And  
18 without having descriptions it would - - - it would -  
19 - - a detective would be hard-pressed to - - -

20 JUDGE ABDUS-SALAAM: But - - - but counsel,  
21 did the detective need to give the description - - -  
22 although I - - - I think the description was pretty  
23 minimal; it was just height and weight - - - to  
24 convey to the jury that he had something that he was  
25 - - - that made him focus on these defendants as

1           opposed to just two black men who might have been on  
2           the street?

3                       MS. GLACHMAN: I think, did he have to?  
4           No. But it was proper to do so, and it was more  
5           helpful for the People to elicit that. They're not -  
6           - - they're not constricted by the amount of evidence  
7           they elicit to prove their case. And if it wasn't  
8           connected, which I believe it was, the jury would  
9           just disregard it.

10                      It was a very important piece of evidence.  
11           The video - - - first of all, it was a step to  
12           further the investigation.

13                      JUDGE FAHEY: You're talking about the  
14           video was an important piece of evidence.

15                      MS. GLACHMAN: Right.

16                      JUDGE FAHEY: Go ahead.

17                      MS. GLACHMAN: This detective, Henry, he  
18           didn't arrest the defendant. He - - - he only took  
19           the case to a certain point. And the video was an -  
20           - - a piece - - - and important piece of evidence on  
21           the People's direct case.

22                      JUDGE STEIN: I'm still trying to  
23           understand why it was important for the jury to know  
24           what led him to find the video. Why - - - why would  
25           that - - - without that information, would it have

1 made any difference to the jury at all?

2 MS. GLACHMAN: I think it's more helpful -  
3 - - more helpful to the jury, other than saying - - -

4 JUDGE STEIN: In what way? Helpful to do  
5 what? So - - - so what if he just said as part of my  
6 investigation I went looking to see if there was any  
7 video, to see if, you know, maybe - - -

8 MS. GLACHMAN: But why focus on a video  
9 around the corner from the location at - - - at a  
10 private home that the People are introducing into  
11 evidence? It's more helpful to understand that he  
12 obtained these descriptions - - -

13 JUDGE RIVERA: Is your point that the jury  
14 would be confused trying - - - and then be distracted  
15 or derailed from its focus on the issues that are  
16 pertinent to the case by trying to figure out why are  
17 you going to - - - to look for a video around the  
18 corner?

19 MS. GLACHMAN: No. I think - - -

20 JUDGE RIVERA: No? Okay.

21 MS. GLACHMAN: - - - that's extreme. I  
22 just think it was more helpful and it was proper.  
23 And the People are not constricted by the amount of  
24 evidence.

25 JUDGE RIVERA: But the - - - but I think

1           that's where Judge Stein and now I'm trying to  
2           understand, what's - - - what are you helping?  
3           What's the helping part?

4                       MS. GLACHMAN: I think it's more helpful  
5           for the jury to say oh, he - - - he received  
6           descriptions of two black men, one big and large, one  
7           short and skinny, and recovered - - - and went around  
8           the corner, viewed a video inside someone's home, and  
9           determined its value. And that's the video that  
10          we're seeing now.

11                      And if he had not been able to testify  
12          about that, would they have been confused? No. But  
13          it's just more helpful that the police conduct in - -  
14          - and the recovery made - - -

15                      JUDGE RIVERA: That - - - that turns on - -  
16          - I'm just trying to follow this analysis. So that  
17          turns on assuming that what the cop sees on the video  
18          is an accurate - - - accurately reflects what he  
19          claims is the description that has been given to him,  
20          correct? Right?

21                      MS. GLACHMAN: Or comports with it. Yes.

22                      JUDGE RIVERA: Um-hum.

23                      MS. GLACHMAN: Yes, correct. And this - -

24          -

25                      CHIEF JUDGE DIFIORE: Counsel, do you care

1 to take a moment and address your adversary's issues  
2 on the ineffective - - -

3 MS. GLACHMAN: Yes.

4 CHIEF JUDGE DIFIORE: - - - with respect to  
5 summation?

6 MS. GLACHMAN: I just want to end on - - -  
7 on one note that this issue is completely unpreserved  
8 had counsel brought to the - - -

9 CHIEF JUDGE DIFIORE: We understand that.

10 MS. GLACHMAN: - - - this court's  
11 attention.

12 Regarding the summation, I'll just say  
13 counsel is clearly not effective. The prosecutor's  
14 summation was fair comment on the evidence. It was  
15 responsive to the defense summation which attacked  
16 the credibility of the identifications. And it was  
17 permissible rhetorical comment.

18 And also I would note that counsel did  
19 object to - - - he did move for a mistrial on the  
20 issue regarding the medical evidence and received  
21 very favorable instructions. And other than that,  
22 the prosecutor's summation was proper and - - -

23 JUDGE STEIN: Even - - - even the  
24 statements ridiculing Williams? You don't think that  
25 went over the line a little bit?

1 MS. GLACHMAN: No, I don't, Your Honor. I  
2 don't believe they ridiculed him. I think that  
3 Williams' testimony was replete with - - - with  
4 inconsistencies, and the prosecutor was certainly  
5 able to comment on that - - a witness, as she would  
6 any witness.

7 CHIEF JUDGE DIFIORE: Thank you, counsel.

8 MS. GLACHMAN: Thank you.

9 CHIEF JUDGE DIFIORE: Counsel? Counsel,  
10 would you address the argument of the burden-shifting  
11 on the summation that you claim?

12 MS. TERAJ: So defense counsel did object  
13 to when there was the no medical documentation thing,  
14 but he only said the word "objection", and didn't  
15 explain what the basis of objection was, and  
16 therefore it appeared that the court, at least at  
17 that point, didn't really understand what the basis  
18 of the objection was and gave some instructions that  
19 were not - - - not to say that, you know, the People  
20 didn't have a burden - - - the defense didn't have a  
21 burden, but you know, gave instructions saying that  
22 the jury can consider the evidence or the lack of  
23 evidence further suggesting that the People can - - -  
24 that the defense - - - that the jury can consider the  
25 fact that the People - - - the defense didn't

1 introduce medical documentation. And so - - -

2 JUDGE ABDUS-SALAAM: So do you agree,  
3 counsel, that - - - with your adversary that the  
4 hearsay objection didn't preserve the issue of the  
5 identification, at least with respect to the - - -

6 MS. TERAI: No, the hearsay - - - as to  
7 Anderson, it's - - - preserved it. I mean, defense  
8 counsel said the word "hearsay". The court made a  
9 ruling in response - - - the court was made aware of  
10 what the problem was and made an explicit ruling  
11 saying that this was being introduced for a  
12 nonhearsay purpose, and there was nothing more that  
13 defense counsel was required to do, and this issue is  
14 properly preserved for this court's review.

15 CHIEF JUDGE DIFIORE: Thank you.

16 MS. TERAI: Thank you.

17 (Court is adjourned)

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

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of People of the State of New York v. Louis Speaks, No. 144 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Penina Wolicki*

Signature: \_\_\_\_\_

Agency Name: eScribers

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

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