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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 111

THOMAS LEE,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
May 1, 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

Appearances:

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Karen Schiffmiller  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 111, People v.  
2 Lee.

3 Counselor, do you want any rebuttal time?

4 MS. BEPKO: Yes, Your Honor, two minutes,  
5 please.

6 CHIEF JUDGE LIPPMAN: Two minutes, sure, go  
7 ahead.

8 MS. BEPKO: Good afternoon, Your Honors.  
9 My name is Arminda Bepko. I'm with the law firm of  
10 Cleary, Gottlieb, Steen & Hamilton, and in  
11 conjunction with the Office of Appellate Defenders, I  
12 represent the appellant in his appeal.

13 CHIEF JUDGE LIPPMAN: Counsel, what's the  
14 prejudice here of the interpreter issue? What's the  
15 problem?

16 MS. BEPKO: The problem is that the trial  
17 court allowed a biased interpreter to - - -

18 CHIEF JUDGE LIPPMAN: Biased - - - biased  
19 in fact, or biased - - - potential bias, what do you  
20 say?

21 MS. BEPKO: There was every indication that  
22 this interpreter had a prejudice or a bias in favor  
23 of the complaining witness.

24 CHIEF JUDGE LIPPMAN: How so a prejudice?

25 MS. BEPKO: The - - - there was a personal

1 relationship, a professional relationship with the  
2 complaining witness. The interpreter's father got  
3 loans from the complaining witness. And it's  
4 important to understand exactly who the complaining  
5 witness is here. Nicky Louie was an admitted and a  
6 reputed mobster who admitted to kidnapping, multiple  
7 murders, extortion, witness tampering and - - -

8 CHIEF JUDGE LIPPMAN: So are you saying  
9 that - - - that as a result of this relationship that  
10 the interpreter did not provide accurate  
11 interpretation?

12 MS. BEPKO: We - - -

13 CHIEF JUDGE LIPPMAN: Is there any  
14 indication of that whatsoever?

15 MS. BEPKO: We have no way of knowing what  
16 - - -

17 JUDGE READ: Well, how could he have skewed  
18 it? How could he - - -

19 JUDGE SMITH: But weren't there - - -  
20 weren't there - - - weren't there Mandarin or - - -  
21 sorry, Cantonese-speaking people on your side of the  
22 case sitting in the courtroom?

23 MS. BEPKO: There's no indication in the  
24 record that there actually were - - - that there was  
25 anyone in the courtroom apart from the interpreter

1 and the witness who could actually speak Cantonese.

2 JUDGE SMITH: Well, what about the - - -  
3 when the defense lawyer says, can I - - - I guess it  
4 was his client's brother - - - he says, can I go  
5 check with him and see if there's a problem? And the  
6 court says, no, don't check with him. Has he had a  
7 check - - - a chance to check since the trial?

8 MS. BEPKO: The court made it clear at that  
9 point that there was not going to be another  
10 opportunity to revisit.

11 JUDGE SMITH: Well, but, yeah. But if - -  
12 - yeah. But surely, if he said, oh, yeah, there's a  
13 problem when, you know, she said it was somebody  
14 else, and the interpreter said it was that guy over  
15 there at the table. Surely if you had that kind of  
16 thing, the - - - you should at least make a record of  
17 it.

18 MS. BEPKO: And - - - but there's, like I  
19 said, there's nothing in the record that shows that  
20 the brother even spoke Cantonese or English well  
21 enough that he could have. The defense attorney  
22 asked if he could check and was not given that  
23 opportunity.

24 JUDGE GRAFFEO: But this wasn't - - -

25 JUDGE READ: What I don't understand is how

1           could he skew the testimony when he said he didn't  
2           know anything about the case? How did the tran - - -  
3           how is the translator even in a position to skew or,  
4           you know, not translate accurately?

5                       MS. BEPKO: You don't have to know the  
6           facts of the case to help a witness with a question,  
7           or to interpret or paraphrase - - -

8                       JUDGE READ: Really?

9                       MS. BEPKO: - - - a response.

10                      JUDGE READ: Really? Explain to me how  
11           that would work?

12                      MS. BEPKO: The - - - even the chance of  
13           that happening is something that the court should  
14           avoid if at all possible, and in - - -

15                      CHIEF JUDGE LIPPMAN: Counsel, but - - -  
16           but isn't it - - - I understand what you're saying  
17           that it might have been better practice to look for  
18           someone who had no relationship or no connection  
19           whatsoever. But does that - - - that make it enough  
20           here that this is a prejudice to your client?

21                      MS. BEPKO: The appointment of a biased  
22           interpreter threatens the integrity of the judicial  
23           process. This is some - - -

24                      JUDGE GRAFFEO: Well, this wasn't a case  
25           where the judge wasn't aware of this until after the

1 case. I mean, the judge, pretty much, gave several  
2 reasons why he felt this interpreter was qualified;  
3 he was familiar with the interpreter, had done other  
4 proceedings that the interpreter had been accurate in  
5 the past.

6 MS. BEPKO: Well, he - - -

7 JUDGE GRAFFEO: What - - - what are you  
8 suggesting the judge should have done here?

9 MS. BEPKO: At a minimum - - -

10 JUDGE GRAFFEO: Delay the trial - - -

11 MS. BEPKO: At a - - - well - - -

12 JUDGE GRAFFEO: - - - until they find  
13 another interpreter?

14 MS. BEPKO: It would not have been much of  
15 a burden at all to pick up the phone and at least  
16 inquire as to whether there was another Cantonese  
17 interpreter available.

18 JUDGE READ: What if there wasn't then?

19 MS. BEPKO: Well, there are thirty-eight -  
20 - - currently, there are thirty - - - I'm sorry,  
21 forty-six - - - Cantonese interpreters that are at  
22 the court's disposal, so the chances are they could  
23 have found someone quickly. If - - -

24 JUDGE RIVERA: But then there's the issue  
25 that there were other trans - - - interpreters

1 available, so if this was a case where it's perhaps a  
2 language where you don't have interpreters available,  
3 the outcome would be different? What's your position  
4 on that?

5 MS. BEPKO: My position is that in cases  
6 like those - - - in those circumstances, and the case  
7 law - - - the good case law says that you should only  
8 do that when absolutely necessary. So if a court  
9 finds itself in that position, then the wise thing to  
10 do - - - the most important thing to do is to find  
11 some way to verify the accuracy of the testimony.

12 CHIEF JUDGE LIPPMAN: Why isn't this a  
13 discretionary decision by the judge? Weighing, as  
14 Judge Graffeo said, this wasn't when he discovered  
15 this later. He understood what the alleged  
16 connection was, looked at it, exercised discretion.  
17 Why isn't that the end - - - the end of the story  
18 here?

19 MS. BEPKO: There was no discretion that  
20 was exercised here.

21 CHIEF JUDGE LIPPMAN: There was no  
22 discretion, why not?

23 MS. BEPKO: Well, it was an abuse of  
24 discretion. When faced with the - - - an interpreter  
25 that has the type of relationship that this

1 interpreter had with the complaining witness and  
2 knowing who the complaining witness was - - -

3 CHIEF JUDGE LIPPMAN: Was it - - - does it  
4 matter - - - was the interpreter on staff?

5 MS. BEPKO: The - - - yes, the interpreter  
6 was a staff interpreter.

7 CHIEF JUDGE LIPPMAN: So does it matter  
8 that the judge maybe knew of the clerk's - - - the  
9 clerk had a - - - the interpreter had appeared before  
10 him before, knew the person's reputation. Wouldn't  
11 that have some relevance here? As opposed to if it  
12 was an interpreter with these same - - - very same  
13 connections, it was someone the judge didn't have the  
14 slightest idea of who it was; it was a freelancer.  
15 Do you think that that has any relevance here?

16 MS. BEPKO: Well, the judge knows who he  
17 sees in the courtroom, and he had a relationship - -  
18 - a professional relationship - - - with this  
19 interpreter, but when the interpreter said that - - -

20 CHIEF JUDGE LIPPMAN: Yeah, but isn't that  
21 important?

22 MS. BEPKO: In a circumstance - - -

23 CHIEF JUDGE LIPPMAN: Judge's exercise of  
24 discretion perspective?

25 MS. BEPKO: Not when you've got an

1           interpreter who tells you that his father goes to  
2           Nicky Louie to get loans. And I would be willing to  
3           bet - - -

4                         CHIEF JUDGE LIPPMAN: Where - - -

5                         MS. BEPKO: - - - that if you've got to go  
6           to Nicky Louie to get a loan, you're not getting it  
7           from the bank.

8                         CHIEF JUDGE LIPPMAN: Where do you draw the  
9           line, though? How do we know when it's enough of a  
10          connection to - - - any appearance? Any perception  
11          of - - -

12                        MS. BEPKO: In a situation like this, where  
13          you have the personal and the professional  
14          relationship, plus the added experience of who this  
15          witness was, that's an instance where the judge had  
16          an obligation to pick up the phone and see if another  
17          interpreter was available.

18                        JUDGE SMITH: How - - - wouldn't - - -  
19          wouldn't it solve problems like this just to record  
20          the testimony, make a tape recording?

21                        MS. BEPKO: Indeed, it would be a perfect  
22          sol - - -

23                        JUDGE SMITH: Did - - - did you ask - - -  
24          did your - - - did you ask for that at trial?

25                        MS. BEPKO: There was no request at trial.

1 But Your Honor is absolutely right. It would also  
2 have the effect of making sure that if a translator  
3 knew that they were on - - - being recorded, they'd  
4 be less likely to - - -

5 CHIEF JUDGE LIPPMAN: Yeah, but that's best  
6 practice. That's best practice. That would be a  
7 good thing to do. You agree; everybody agrees. But  
8 is there a distinction between a judge who exercises  
9 discretion, maybe doesn't do the absolute state-of-  
10 the-art in terms of what they should be doing, but is  
11 that different then when there's any indication that  
12 there's prejudice? You know, do you understand what  
13 I'm saying?

14 MS. BEPKO: I do, Your Honor, and there is  
15 - - -

16 CHIEF JUDGE LIPPMAN: Where do we draw the  
17 line?

18 MS. BEPKO: Well, there's a difference  
19 between, for example, competence-type cases with  
20 interpreters and instances of bias, where there's  
21 even the potential, like there was here, for an  
22 interpreter to add his own spin or help a witness  
23 with his testimony, then that's - - -

24 CHIEF JUDGE LIPPMAN: Where do you draw the  
25 line? Anything; that remote connection to - - -

1 MS. BEPKO: Well, certainly when the  
2 connection is with a complaining witness, and that  
3 complaining witness is going to establishing the  
4 elements of the crime as we have here.

5 JUDGE READ: That's a per se rule you're  
6 asking for?

7 MS. BEPKO: Yes, Your Honor.

8 JUDGE PIGOTT: How many days did the  
9 interpreter interpret?

10 MS. BEPKO: One day.

11 JUDGE PIGOTT: One, okay.

12 MS. BEPKO: And as I said, I mean, the - -  
13 -

14 JUDGE GRAFFEO: Is there any question or  
15 answer in the record that you find doesn't make  
16 sense, is incoherent that you're claiming is  
17 inaccurate?

18 MS. BEPKO: We have no way to test it. The  
19 defense attorney even stood up and said, I have no  
20 way to make a record of this, Your Honor, I don't  
21 speak the language.

22 JUDGE PIGOTT: Well, in James L., you know,  
23 it became obvious, because the interpreter was  
24 saying, you know, speaking in third person. You know  
25 what I'm saying? This is - - - she's saying, I mean,

1 he clearly was not doing the job. There was no  
2 evidence of that in this case either, was there?

3 MS. BEPKO: There's no evidence, but when  
4 you're dealing with the specter of bias in this  
5 circumstance, do you really want to take that - - -  
6 that chance that just because an interpreter doesn't  
7 exhibit any nervousness - - - outward nervousness,  
8 because he's testifying on behalf of the wife a  
9 reputed mobster.

10 JUDGE RIVERA: At what point was the  
11 interpreter in the courtroom? Did the interpreter  
12 hear other witnesses?

13 MS. BEPKO: It's not clear that he heard  
14 other witnesses, but he was there and - - - when the  
15 complaining witness was brought in. She did see him  
16 and she knew that there was an issue.

17 JUDGE RIVERA: Is there anything to suggest  
18 he understood anything about the case before he  
19 started interpreting?

20 MS. BEPKO: He indicated that he knew a  
21 little about the case, but he certainly understood  
22 that it was a criminal proceeding and he knew that  
23 the wife of the gangster was a complaining witness.

24 CHIEF JUDGE LIPPMAN: Okay, counsel.

25 MS. BEPKO: Thank you.

1 CHIEF JUDGE LIPPMAN: Thanks, counsel.

2 MR. MARTIN: May it please the court, my  
3 name is John Martin and I represent the People of the  
4 State of New York. I first want to start by  
5 correcting the record on a number of points.

6 There is nothing - - -

7 CHIEF JUDGE LIPPMAN: Counsel, let me stop  
8 you for a second. Why - - - why wouldn't the judge  
9 in this case try and get another interpreter from the  
10 pool?

11 MR. MARTIN: I'm glad you asked. I think  
12 if you - - -

13 CHIEF JUDGE LIPPMAN: I'm glad I did too.  
14 What's the answer?

15 MR. MARTIN: Two points. First, there's  
16 nothing wrong with this interpreter. Second, when  
17 you look - - -

18 CHIEF JUDGE LIPPMAN: There's nothing - - -  
19 but - - - but - - - they're saying clearly, at the  
20 very least, there's some connection to, you know, the  
21 witness. Why wouldn't the first thing that the judge  
22 did - - - does, would be to say, gee, hold on a  
23 second, and - - - and go and see if there's another  
24 interpreter who doesn't these people from - - - you  
25 know, from anything else? Why isn't that just good -

1           - - good practice? Is it good practice? Should the  
2 judge have done that?

3           MR. MARTIN: In a hypothetical case, it  
4 would be good practice, but I want us to talk about  
5 this record which shows why the judge knew this would  
6 be fruitless.

7           CHIEF JUDGE LIPPMAN: Yeah, but the judge  
8 didn't do anything that was good practice here,  
9 though, right? He didn't - - -

10          MR. MARTIN: Actually?

11          CHIEF JUDGE LIPPMAN: - - - ask for another  
12 interpreter. He didn't record it. You know, he  
13 really didn't take any steps recognizing there was a  
14 connection.

15          MR. MARTIN: The judge actually providently  
16 exercised his discretion by holding an inquiry as  
17 soon as the interpreter himself first raised this  
18 issue with the participation of counsel. That  
19 inquiry showed that the interpreter had never done  
20 business with or through Louie. There's actually no  
21 evidence that the father had gotten loans from Louie.  
22 He just said Louie knew banks.

23          JUDGE RIVERA: But - - - but - - -

24          MR. MARTIN: And there was actually no  
25 evidence of interest in the outcome of the case.

1                   JUDGE RIVERA: But defense counsel  
2 obviously objected; said there's a problem, says I  
3 think there's bias, says this is not an appropriate  
4 interpreter. So now you've got someone who is  
5 objecting and saying I think there's going to be a  
6 problem with the interpretation. How - - - what I  
7 want to know is, how is this judge ever going to  
8 check on the accuracy?

9                   MR. MARTIN: A couple of things. That  
10 issue is not before us, because the defendant did not  
11 preserve any objection to the judge's procedures in  
12 this case with respect to the translation, and it is  
13 the burden of the defendant to show error.

14                  JUDGE RIVERA: But didn't the judge stop  
15 him from being able to do that?

16                  MR. MARTIN: The judge did not, because, in  
17 fact, at any time from the testimony of the witness  
18 on to the end of trial, the defendant could have  
19 asked anybody in that room, and the judge said,  
20 without contradiction - - -

21                  JUDGE RIVERA: Anybody in that room? How  
22 does the judge know anybody in that room is a  
23 qualified interpreter?

24                  MR. MARTIN: The judge said, without  
25 contradiction, that they spoke the same language, and

1 we know - - -

2 JUDGE RIVERA: Speaking the same language  
3 doesn't make you a qualified interpreter.

4 MR. MARTIN: I would also point out that we  
5 know from this record that Victoria Chen (ph.), the  
6 co-defendant, communicated with this victim in  
7 Cantonese. And remember, the victims and the  
8 defendants know each other in the first place.  
9 They're in the same courtroom. In a way the  
10 defendants are uniquely qualified to know - - -

11 JUDGE RIVERA: You're assuming that they  
12 could be interpreters. That they could be able to  
13 communicate - - - that the English version is  
14 accurate.

15 MR. MARTIN: And I think that that's a fair  
16 thing to infer from this record that - - -

17 JUDGE SMITH: But isn't there a basic  
18 common sense point that given your choice, you'd  
19 rather have an interpreter who never heard of any of  
20 these people before?

21 MR. MARTIN: Given your choice, and  
22 unlimited resources, yes.

23 JUDGE SMITH: Well, but, yeah, yeah, but -  
24 - -

25 JUDGE GRAFFEO: Well, this was New York

1 City, where you know you're going to have a variety  
2 of Chinese interpreters available. We're not talking  
3 one of the small upstate counties that somebody's got  
4 to travel a couple of hours to get to the courthouse.

5 JUDGE RIVERA: I mean, the judge didn't  
6 even try.

7 MR. MARTIN: Two things. First, we don't  
8 know that there are a lot of interpreters available.  
9 In fact, we know to the contrary. As I was saying  
10 earlier, on this record, the judge, on Monday of this  
11 trial, announced to the jury that they were going to  
12 have to take the witnesses out of order because of  
13 the availability of interpreters.

14 He then turned to his court clerk whom he  
15 had evidently contacted previously about getting an  
16 interpreter, and asked where they stood about that.  
17 The court clerk said we can get an interpreter here  
18 for the full day on Wednesday. And in fact, when  
19 Wednesday came around, they brought this witness in,  
20 and the witness - - - and even then they couldn't  
21 hold the testimony in the morning. It turned out the  
22 availability was so limited, they had to do it in the  
23 afternoon.

24 Defense counsel's assertion that there are  
25 forty-six interpreters available is not on this

1 record.

2 JUDGE PIGOTT: But what - - - let me just -  
3 - - let me just - - -

4 MR. MARTIN: And I happen to know it's not  
5 true.

6 JUDGE PIGOTT: That aside. I mean, when  
7 you're talking about the liberty interests of a  
8 defendant, why are we treating so casually, well,  
9 there was, there wasn't, there - - - you know, maybe  
10 we could have, it's no big deal; the person  
11 translated, when it is a big deal. Because you want  
12 to make sure that, you know, that the thing's handled  
13 correctly.

14 MR. MARTIN: This is an official court  
15 interpreter. This court has said - - -

16 JUDGE PIGOTT: No, we know that. I know  
17 that, at least. That's not my question. My question  
18 is, you're simply saying, all we could do is get a  
19 Spanish speaker on Wednesday afternoon. The fact  
20 that he was speaking Chinese, no big deal, he just  
21 said what he said; we're over. Will he tell these  
22 defendants to stop complaining that the interpreter  
23 is not trustworthy?

24 I mean, that's not - - - that's not the  
25 approach I suggest the People ought to be taking,



1 close; this is the reason. Is there any reason why  
2 we wouldn't have done - - - at least made the effort  
3 to see - - - maybe there aren't forty-six, maybe  
4 there's only one, but at least it'd be on the record.

5 MR. MARTIN: What I would suggest is that  
6 while it may be the better practice, of course, to  
7 inquire, it is still not per se reversible error  
8 here. I think that this is, again - - - there is no  
9 indication on this record, as many of you have  
10 indicated, that anything improper occurred. This  
11 court said in Constantino, we look to the acts of the  
12 interpreter as disclosed by the record.

13 CHIEF JUDGE LIPPMAN: Counsel, when is it a  
14 per se reversible error? If the interpreter says  
15 this is my first cousin who I know for a lifetime, is  
16 that per se reversible error?

17 MR. MARTIN: That would be a very different  
18 situation. Family situations are very different.

19 CHIEF JUDGE LIPPMAN: But I'm saying there  
20 can be a per se reversible error. So here they say,  
21 well, we know the family a long time. My family's  
22 had business relations with them, whatever, a whole  
23 litany of things. It can be per se error, right?

24 MR. MARTIN: Yes, there comes a point when  
25 there is an actual interest in the outcome of the

1 case, and where the circumstances - - -

2 CHIEF JUDGE LIPPMAN: But you can - - - but  
3 if I say, he's my first cousin. I know him my whole  
4 life, but I have no interest in the outcome of the  
5 case, well, so what?

6 MR. MARTIN: I believe that that would  
7 present a unique situation. Typically, family  
8 members will discuss the facts of the case. This is  
9 a traumatic event for them. It's such a close  
10 relationship. I think family members are different,  
11 fundamentally, and therefore, I'm not suggesting - -  
12 -

13 CHIEF JUDGE LIPPMAN: They're different so  
14 fundamentally than I know this person from the  
15 community my whole life, and - - - but don't worry; I  
16 have no interest in the case.

17 JUDGE RIVERA: Or this person made it  
18 possible for my father to have a business.

19 MR. MARTIN: Two responses to that. First,  
20 this person in this case did not make it possible for  
21 the father to have a business. He just said he knew  
22 banks. Second - - -

23 JUDGE SMITH: Well, did - - - couldn't - -  
24 - couldn't you draw the inference that you needed to  
25 know that if you were not a prime credit in

1 Chinatown, you needed this guy to get a loan. This  
2 guy knew the banks, and you didn't get the loan  
3 unless you knew him.

4 MR. MARTIN: Well, the judge in the trial  
5 court was the one who draws the inferences in this  
6 case. It's within his discretion. There was no  
7 evidence of what you're saying now. And - - -

8 JUDGE SMITH: Well, you have a record from  
9 which that's a possible inference. I grant you, you  
10 don't have to draw it.

11 MR. MARTIN: Correct.

12 JUDGE SMITH: But when it's a possible  
13 inference, doesn't there come a point when you're - -  
14 - when a provident exercise of discretion would be to  
15 say, let's just see if there's anybody else who  
16 doesn't have this problem.

17 MR. MARTIN: I think, and this goes back to  
18 the point, the court certainly can exercise his  
19 discretion to remove this person if the court feels  
20 uncomfortable. We're just saying there's no per se  
21 rule that he has to.

22 JUDGE GRAFFEO: And when - - - when would  
23 that point be reached, then? When should a judge be  
24 required to substitute an interpreter?

25 MR. MARTIN: I think given the presumption

1 of regularity that this court has repeatedly  
2 reaffirmed, given that this is an abuse of discretion  
3 standard, to say that it's an abuse of discretion as  
4 a matter of law, you would certainly have to show  
5 knowledge of the facts of the case, and something so  
6 fundamental that the interpreter clearly had some  
7 stake in this case, in the outcome.

8 JUDGE SMITH: There - - - there are two  
9 facts that the interpreter acknowledged knowing. One  
10 was that the - - - that this guy was of assistance in  
11 getting loans. And the other was that he was thought  
12 to be connected with organized crime. Isn't it a  
13 pretty compelling inference from that, that the  
14 interpreter would not want to make this guy mad at  
15 him?

16 MR. MARTIN: No, because the interpreter  
17 disclosed this in the first instance, so if he was so  
18 afraid of these victims, that he was going to help  
19 them - - -

20 JUDGE SMITH: Well, I'm not saying  
21 terrified, but suppose - - - you know, suppose  
22 something comes up. I mean, doesn't it have to be in  
23 the back of his mind, look, I don't - - - one man I  
24 don't need for an enemy is this witness' husband.

25 MR. MARTIN: That's speculation, of course.

1 And I would say, also - - -

2 JUDGE SMITH: Well, I guess what I'm saying  
3 - - - of course, it's speculation, but what I'm  
4 saying is, is that - - - that sort of inevitable a  
5 fact - - - isn't that a reason where there's - - - to  
6 at least find out whether there's somebody else?

7 MR. MARTIN: No, because this interpreter  
8 didn't know Louie as the monster defendant portrays  
9 him as. He knew Louie as a businessman. He said he  
10 didn't even know him till two or three years ago.

11 JUDGE SMITH: But he did know he'd done  
12 quite a bit of time, I think.

13 MR. MARTIN: He said he knew he did - - -  
14 done federal crime - - - time and was a criminal.  
15 That's all he said he knew, and that he had no  
16 association at that time.

17 JUDGE SMITH: Yeah, I mean - - - yeah,  
18 wait, I mean, look, but what's the - - - your  
19 family's in - - - your father has some business  
20 relationship with a criminal who's done ten years of  
21 federal time. You're going to annoy that man?

22 MR. MARTIN: Well, in this case, if that  
23 had been the concern of the - - - the primary concern  
24 of the interpreter, he would have just clammed up,  
25 because then he would be able to avoid annoying that

1 man altogether. Nobody would have raised this issue  
2 in the first place. He would be free to serve the  
3 interests of these people, which of course, he could  
4 not do in this case, because he did not know the  
5 facts of the case. And therefore, since there is no  
6 record of an error here, the trial court providently  
7 exercised its discretion.

8 CHIEF JUDGE LIPPMAN: Okay, counsel; thank  
9 you, counsel.

10 Counsel, rebuttal?

11 MS. BEPKO: Your Honors, the main point  
12 here is that a proper exercise of discretion would  
13 have been to at least inquire as to another - - - if  
14 another disinterested interpreter was available.  
15 That didn't happen here. There was no exercise of  
16 discretion. And when you're dealing with a situation  
17 where you've got the relationship that's as close as  
18 the complaining witness had to this interpreter, at a  
19 minimum, the trial court should have done that.

20 In analogous situations, courts have  
21 reversed. This is another - - -

22 JUDGE RIVERA: Is the appearance of bias  
23 enough?

24 MS. BEPKO: Yes, Your Honor. The  
25 appearance of bias should be enough.

1                   JUDGE RIVERA: The appearance of bias is  
2 enough to either relieve the interpreter and replace  
3 him, or is it just enough to get you to the inquiry?  
4 To look and see if there's somebody else?

5                   MS. BEPKO: It, at a minimum, should get  
6 you to the inquiry. In this instance, this  
7 interpreter should have been replaced.

8                   JUDGE SMITH: What's the closest case to  
9 this one?

10                  MS. BEPKO: There is - - - Advance Tech.  
11 Incubator is one example. There are a number of  
12 examples. This was a case out of the Eastern  
13 District of Texas from 2010, where the court  
14 sustained an objection to a certified translator on  
15 the basis of bias.

16                  Other cases that are outlined in our  
17 briefs, have said - - - the trial courts have said  
18 that the appearance of bias enough is alone (sic),  
19 and that courts shouldn't even - - - unless it's  
20 absolutely necessary, courts shouldn't even consider  
21 using a biased interpreter, because that mere  
22 appearance of bias should be enough.

23                  CHIEF JUDGE LIPPMAN: Okay, counsel.

24                  MS. BEPKO: Thank you, Your Honors.

25                  CHIEF JUDGE LIPPMAN: Thanks. Thank you

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both, appreciate it.

(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. Thomas Lee, No. 111 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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