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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. 14

JIN CHENG LIN,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
January 12, 2016

Before:

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

Appearances:

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1 JUDGE PIGOTT: Case number 14, People v.  
2 Jin Cheng Lin?

3 Ms. Powell, good afternoon.

4 MS. POWELL: Good afternoon Your Honors.  
5 My name is De Nice Powell, and I'm here appearing for  
6 Jin Cheng Lin.

7 Detention and interrogation - - -

8 JUDGE PIGOTT: Would you - - - would you  
9 like rebuttal time, before - - -

10 MS. POWELL: I'll reserve one minute,  
11 please, Your Honor.

12 JUDGE PIGOTT: One?

13 MS. POWELL: Yes, please. Detention and  
14 interrogation are tools, useful tools, in law  
15 enforcement. But there is a line dividing  
16 permissible police conduct and that which offends due  
17 process.

18 The line is drawn where conduct undermines  
19 a defendant's ability to make a reasoned and free  
20 choice as to whether or not to speak or not to speak.  
21 When the conduct creates a situation where the  
22 defendant becomes an unwilling collaborator in his  
23 own demise in establishing his own guilt, then that  
24 conduct violates due process.

25 The facts in this case show quite clearly

1           that the police crossed that line. In this case,  
2           it's undisputed that Jin Cheng Lin's confession to  
3           first degree murder was obtained only after he was  
4           subject to repeated rounds of interrogation by teams  
5           of - - -

6                         JUDGE STEIN: Well, this is different from  
7           - - - from some cases where the interrogation went on  
8           for many hours with - - - with investigators coming  
9           in repeatedly, keeping the defendant awake. It seems  
10          to be a little bit different here, where the - - -  
11          the first day he was there voluntarily, he went home,  
12          he had an opportunity to have a good night's sleep.  
13          And then when he came back, the - - - the record  
14          seems to indicate that he was interrogated on and  
15          off. He was given breaks. He was given food. He  
16          was given cigarettes. You know? It - - - it's not  
17          the typical - - - other than the length of time here,  
18          it's not the typical coercive, you know, keep - - -  
19          keep at him kind of facts that we - - - that we  
20          sometimes see.

21                         So you know, what is it exactly here that  
22          you claim proves so definitively that - - - that this  
23          was involuntary?

24                         MS. POWELL: It's true. This case is not a  
25          case where the - - - the questioning was continuous.

1           Con - - - whether or not the questioning was  
2           continuous bears on whether or not it deprived the  
3           defendant of sleep. In this case, we have four days  
4           of interrogation. He's put in - - - in a twelve-by-  
5           twelve room, without a cot, without a - - - a bed to  
6           - - - to take advantage of the breaks between the  
7           interrogation. And it in - - - given that lack of  
8           the means to take advantage of the opportunity to  
9           sleep, he was deprived of sleep.

10                   JUDGE PIGOTT: We don't - - - we don't have  
11           any fact-finding authority here, of course, and so  
12           the - - - the Appellate Division made a decision.  
13           Did they violate a standard of law, in your view,  
14           that - - - that makes this reversible on that ground?

15                   MS. POWELL: What the - - - what the lower  
16           courts found - - - interesting enough - - - is that  
17           not that Mr. Jin Cheng Lin, in fact, slept, but that  
18           he was simply given the opportunity to sleep. And my  
19           argument here is that just giving the defendant an  
20           opportunity to sleep, in the circumstances in which  
21           he found himself, in a twelve-by-twelve windowless  
22           room without a cot, without at least a bench to sleep  
23           on, he was deprived of his right - - - of his ability  
24           to take advantage of - - - of that - - - of the  
25           breaks and to, in fact, sleep.

1                   But what's here, I think, what makes this  
2 case truly remarkable, is the fact that yes, he was  
3 interrogated over a span of four days. The first day  
4 he was allowed to go home, true. But only after he -  
5 - - they extracted from him an ag - - - an agreement  
6 that he is to return. He - - - and he did. The very  
7 next day he was returned to the precinct, he was put  
8 back into the same exact room, the twelve-by-twelve  
9 windowless room - - -

10                   JUDGE RIVERA: Nothing prevented him or  
11 anyone in his family from calling a lawyer, correct?

12                   MS. POWELL: I'm sorry, Your Honor?

13                   JUDGE RIVERA: Nothing prevented him or  
14 anyone in his family, during that period of time, in  
15 contacting a lawyer, correct?

16                   MS. POWELL: There's nothing in the record  
17 that shows that he had access to - - -

18                   JUDGE RIVERA: And he said yes, as long as  
19 you pick me up, didn't he?

20                   MS. POWELL: He - - -

21                   JUDGE RIVERA: Right? So he had - - -

22                   MS. POWELL: - - - he said - - - he - - -

23                   JUDGE RIVERA: - - - some - - -

24                   MS. POWELL: - - - he agreed to come back.

25                   JUDGE RIVERA: - - - some almost like

1 bargaining arrangement going with these police, did  
2 he not?

3 MS. POWELL: That's correct. And - - - but  
4 that's the first day. He then comes back - - -

5 JUDGE RIVERA: It's really not four days.  
6 You started out with four days, but really - - -  
7 you're really talking about three days, no, because  
8 he went home that first day?

9 MS. POWELL: Yeah, yeah. I'm not saying  
10 that he was in custody for four days. And I want to  
11 make that perfectly clear. He was interrogated over  
12 the span of four days, and intermittently, agreed. I  
13 have no qualm or no question about that. But - - -

14 JUDGE ABDUS-SALAAM: Counsel was there  
15 anything - - - since the police allowed him to go  
16 home the first day, was there anything preventing Mr.  
17 Ling from - - - Mr. Lin from saying he'd like to go  
18 home and get some sleep and come back again tomorrow?  
19 Did anything prevent him from asking them that, since  
20 they'd already shown that they were willing to let  
21 him go home and come back?

22 MS. POWELL: I'm sorry, it - - - was there  
23 anything preventing him from asking to go home the -  
24 - -

25 JUDGE ABDUS-SALAAM: Yeah, or - - -

1 MS. POWELL: - - - following - - -

2 JUDGE ABDUS-SALAAM: - - - say, I'd like to  
3 go home and come back?

4 MS. POWELL: Well, he was put in a room.

5 JUDGE ABDUS-SALAAM: Well, he's put in a  
6 room the first day, too.

7 JUDGE RIVERA: And it was the same room.

8 MS. POWELL: In his - - - and in his mind,  
9 as we know from the doodles or his notes, he felt as  
10 if he could not - - -

11 JUDGE STEIN: Well, that was on the first  
12 day.

13 JUDGE RIVERA: That was on the first day.

14 JUDGE STEIN: I mean, you can't - - - yeah.  
15 That's not offered for - - - well, and if that's  
16 true, he went home, so it - - - it was disproved.

17 JUDGE FAHEY: You know, the - - - the thing  
18 that struck me the most is not - - - not the period  
19 that he was in interrogation. As you can tell from  
20 our questions, this is - - - doesn't compare to many  
21 of the more onerous interrogations that we've seen  
22 before.

23 What struck me, though, was the lengthy  
24 post-arrest arraignment delay, which is - - - which  
25 is the twenty-eight hours from when he was charged

1 with robbery to when he confessed and then he was - -  
2 - was arraigned.

3 That seemed to me to be the - - - to really  
4 - - - in focusing in, that seemed to be the core of  
5 your argument. I'd like you to address that.

6 MS. POWELL: Correct, Your Honor. But - -  
7 - but I don't want - - - I didn't want the court to  
8 lose sight - - -

9 JUDGE FAHEY: No, I understand - - -

10 MS. POWELL: - - - of all the other - - -

11 JUDGE FAHEY: - - - and you're trying to go  
12 in the order of your brief - - -

13 MS. POWELL: - - - things that occurred.

14 JUDGE FAHEY: - - - and everything else. I  
15 understand all his problems. But the heart of it  
16 here is that, because coercive interrogation, I don't  
17 see that here. But - - - but the question that's  
18 much more difficult for me is the post-arrest  
19 arraignment delay.

20 MS. POWELL: Well, I think that the post-  
21 arrest delay - - - delay in arraignment feeds into  
22 and supports the coerciveness of his statements. And  
23 that is what makes - - -

24 JUDGE FAHEY: Well, what I see it feeding  
25 into is that the police say, and the longer we can

1 keep him from doing that - - - once he gets a lawyer,  
2 we won't be able to get confession out of him. So  
3 that's - - - that's - - -

4 MS. POWELL: Right.

5 JUDGE FAHEY: - - - what's the point of a  
6 post-arrest arraignment delay argument is.

7 MS. POWELL: That's correct.

8 JUDGE FAHEY: So - - - the Federal Rule is  
9 six hours. In New York usually it's about twenty-  
10 four. Here it's at twenty-eight. So why isn't this  
11 just one factor rather than an overriding factor?

12 MS. POWELL: It's an overriding factor  
13 because of the particular facts in this case. So  
14 prior to - - - let me just go through it. The first  
15 day he goes home. Second day he's interrogated  
16 again. They start at 11:40 in the morning. They go  
17 at him, not continuously, intermittently, and by 9  
18 o'clock he throws in the towel and then makes his - -  
19 - makes a statement, not confessing to first-degree  
20 murder but confessing some level of culpability in  
21 connection with the - - -

22 JUDGE PIGOTT: Some knowledge of what went  
23 on.

24 MS. POWELL: Not just knowledge, Your  
25 Honor. It's - - -

1                   JUDGE PIGOTT: Well, I'm trying to help you  
2 out. I - - - I - - - what - - - what I'm trying to  
3 get to is I think what Judge Fahey is raising. I'm  
4 not persuaded by the four days lo - - - you know, the  
5 - - - we're familiar with these rooms. We've - - -  
6 you know, we've threw out thirty-six hours in certain  
7 circumstances, with no food, no - - - you know, et  
8 cetera.

9                   But it strikes me that there's supposed be  
10 - - - you're supposed to get some - - - arraigned  
11 speedily.

12                  MS. POWELL: Right.

13                  JUDGE PIGOTT: And court congestion can  
14 delay that, understand. But if the police are - - -  
15 are getting into a situation where they say, you know  
16 what we got to do here is we've got to hold up the  
17 arraignment, or as Judge Fahey was suggesting, maybe  
18 we don't want him to get a lawyer right now; we can -  
19 - - if - - - if we - - - we've got him halfway to a  
20 confession, let's keep him here, even though we can  
21 get him arraigned this afternoon, so that we can get  
22 a confession, that seems to be a - - - a very strong  
23 point.

24                  So I - - - I don't want you to waste too  
25 much time on - - - on those - - - those other days.

1 I - - - we - - - I think we understand what you're  
2 trying to get to.

3 MS. POWELL: Right. And so - - - I just  
4 wanted to make sure that it's - - -

5 JUDGE PIGOTT: Believe me, we do.

6 MS. POWELL: No. Okay.

7 JUDGE PIGOTT: Yeah.

8 MS. POWELL: All right. So yes, he makes  
9 an inculpatory statement at the end of the first day.  
10 Not only does he make the inculpatory statement, but  
11 they arrest him. And they inform him of the arrest,  
12 and then they keep him there for two more days.  
13 That, I think, is what makes this case truly - - -

14 JUDGE RIVERA: How many hours - - - or how  
15 longer after they know about the blog do they keep  
16 him?

17 MS. POWELL: How many hours - - -

18 JUDGE RIVERA: Once they know about Simon's  
19 blog - - -

20 MS. POWELL: They - - -

21 JUDGE RIVERA: - - - which seems to be the  
22 point in time when - - - when - - - I don't see how  
23 the People can argue that this person is a suspect -  
24 - - isn't a suspect in this murder. At that point,  
25 yes, they're thinking this is the guy who killed him.

1 So how many more hours did they keep him after that?

2 MS. POWELL: Well, the answer to your  
3 question is, they - - - they learn about the blog at  
4 7 o'clock in the evening - - -

5 JUDGE RIVERA: Um-hum.

6 MS. POWELL: - - - on the third day that  
7 he's in - - - in - - -

8 JUDGE RIVERA: Um-hum. After he's been  
9 arrested.

10 MS. POWELL: After he's been arrested. And  
11 he's been - - - he's not - - - I just want to make  
12 sure. He is a suspect at that point in the murders,  
13 because he's already inculp - - - he already said I  
14 assisted Gong and the Fukianese man.

15 JUDGE RIVERA: I - - - okay.

16 MS. POWELL: But so he - - -

17 JUDGE RIVERA: How many hours after the  
18 blog?

19 MS. POWELL: So after the - - - the blog is  
20 learned at 7.

21 JUDGE RIVERA: Um-hum.

22 MS. POWELL: They then go in at 9. They  
23 then confront him at that point about the truth of  
24 his earlier statements. So and then he starts  
25 sobbing for fifteen to twenty minutes. And instead

1 of giving what his - - - what is Constitutionally his  
2 due at that point, they continue - - -

3 JUDGE PIGOTT: Well, the question was, how  
4 many hours. I think Judge Rivera - - - we're trying  
5 to get to - - - we can't make - - - we can't say  
6 well, he started crying here and therefore we're  
7 going to reverse this case. What we can look at are,  
8 you know, our standards and rules. And one of them  
9 is that you've got to take someone to - - - to be  
10 arraigned speedily.

11 And I - - - so I don't mean to put words in  
12 Judge Rivera's mouth, but she's saying how long after  
13 the blog when - - - when they had relatively  
14 conclusive evidence that he - - - that he committed  
15 the murder, did it take them to get him front of a  
16 judge?

17 MS. POWELL: He's - - - okay, so the blog  
18 is discovered at 7. He's not arraigned, I believe,  
19 until sometime - - - til - - - it can be - - - since  
20 I have - - - I only have the online booking sheet - -  
21 - he's taken down to central booking the following  
22 day at eighteen minus twelve - - - I think 6:37. So  
23 the earliest he could have been arraigned is the  
24 following day at - - - some time thereafter.

25 But the point is that the - - - but the pre

1           - - - the ind - - - the arraignment delay time runs  
2           from the date - - - from the date and the time of the  
3           arrest, which occurred the day before. So we're  
4           talking about not just, you know - - - we're talking  
5           about a - - - a full two days - - -

6                         JUDGE RIVERA: Well - - -

7                         MS. POWELL: - - - thirty-seven hours.

8                         JUDGE RIVERA: - - - the - - - the People  
9           say he's the one who's got the information and - - -  
10          and the delay is really due to the fact that he keeps  
11          giving these different versions of the story. And  
12          this last story when they're arresting him is that  
13          there's Gong and then this Fukianese man and they're  
14          trying to get information out of him, so that they  
15          can track down those people.

16                        And they say that's what's delaying this,  
17          trying to do our investigation with a suspect who  
18          continues to change the story and uproot - - - and  
19          upend the process that we have in place to really  
20          surface these facts.

21                        At what - - - let me ask you this. That's  
22          not necessarily without some - - - some compelling  
23          aspect to it. At what point can the People, can  
24          police do what they were trying to do here, is they -  
25          - - they have information, they're going to arrest,

1 but they know that this is the person who has  
2 information to get them to these other suspects? Can  
3 they ever hold someone like that? Can they ever  
4 delay the arraignment at all? If so, for how long?

5 MS. POWELL: Once - - - the statute is  
6 clear. You make an arrest, you got to take the  
7 necessary steps to move him from the precinct for  
8 arraignment. That's - - - that's the statute. So at  
9 that point, when they arrested him at 9 o'clock on  
10 the second day that he was in custody or in the  
11 precinct, that's when the time runs. Not when the -  
12 - - not when the blog was discovered. It was - - -  
13 it - - -

14 JUDGE RIVERA: It's regardless of what  
15 other information he may have of any other potential  
16 suspects?

17 MS. POWELL: If they want his help I have -  
18 - - I have - - - I have no problem with the police  
19 obtaining his help. But they've got to do it within  
20 the Constitution.

21 JUDGE FAHEY: Well, you know what they'd  
22 say, though? They'd say - - - the stat - - - it  
23 isn't - - - there isn't a bright-line rule in New  
24 York. So what - - - from the other side, what they  
25 would say is that the defendant created the situation

1 because he attempted to mislead the police and he  
2 caused a delay. So the - - -

3 MS. POWELL: He doesn't lose his - - -

4 JUDGE FAHEY: - - - delay is on the  
5 defendant.

6 MS. POWELL: - - - he doesn't lose his  
7 Constitutional rights. He has every right, and he  
8 has a right under the statute - - -

9 JUDGE FAHEY: Except he doesn't - - - we  
10 all accept that. But - - - but the question is  
11 whether twenty-four hours, we wouldn't be having this  
12 discussion. Twenty-eight hours we've having this  
13 discussion, because then it's moving beyond what this  
14 court has held to be reasonable before. So why? Why  
15 - - - why shouldn't we accept that argument?

16 MS. POWELL: Because the rule is - - - is  
17 simple. The statute says you - - - if you're going  
18 to make him a warrantless arrest, the only elements  
19 that make it reasonably necessary to delay an  
20 arraignment are things that relate to processing a  
21 defendant for arraignment. And the People  
22 essentially concede - - -

23 JUDGE RIVERA: Does your approach - - -  
24 does your approach incentivize the People to - - - or  
25 the police to delay the arrest, to keep talking to

1 him, to get more information? They're not sure what  
2 to arrest him on; maybe he knows more because he  
3 keeps changing the story.

4 MS. POWELL: It might be - - - it might  
5 raise that. However, it seems to me that once  
6 there's probable cause, then there's another argument  
7 that could be made.

8 JUDGE PIGOTT: Thank you, Ms. Powell. I  
9 think we have your argument. You have your rebuttal  
10 time.

11 Ms. Spanakos - - - am I pronouncing your  
12 name correctly?

13 MS. SPANAKOS: Yes, you are, Judge.

14 JUDGE PIGOTT: Thank you.

15 MS. SPANAKOS: Good afternoon, may it  
16 please the court. Anastasia Spanakos on behalf of  
17 Richard A Brown, the Queens County District Attorney.

18 JUDGE STEIN: How would a defendant ever  
19 establish that the purpose of delaying the  
20 arraignment was to - - - to try to extract a  
21 confession without - - - without an attorney. How -  
22 - - what would they have to show? How would they do  
23 that?

24 MS. SPANAKOS: Well, they'd have to show  
25 facts that are not present here. They'd have to show

1 facts like you have in some of the other cases that  
2 have been before this court, like the Gilford case or  
3 the Thomas case, when the police are constantly  
4 questioning a suspect in the effort and in the  
5 attempt to get him to inculcate himself more. That's  
6 exactly what we did not have here. Okay?

7 The officers' intention was demonstrated -  
8 - -

9 JUDGE STEIN: What we said there wasn't - -  
10 - it - - - well, we said it wasn't voluntary for - -  
11 - for all of those reasons. But I thought that that  
12 went more to the coerciveness than to the delay. I -  
13 - - I'm - - - I'm sort of asking you more directly  
14 about the delay between arraignment and - - - and - -  
15 - I'm sorry, between arrest and arraignment.

16 MS. SPANAKOS: Correct. That delay would  
17 have to be designed to get a more of an inculpatory  
18 statement.

19 JUDGE PIGOTT: Well, it - - - it - - - I'm  
20 not - - - I'm not sure we said that. I - - - I think  
21 what we said is you've got to move him toward  
22 arraignment. And court congestion, things like that,  
23 things beyond the control of the police are - - - are  
24 excluded.

25 But I guess the question here is, if they

1 were holding him for purposes of further  
2 investigation, attempting to - - - to get other  
3 statements, whatever the - - - whatever it was, can  
4 they do that on their own after an arrest, or do they  
5 have to take him to be arraigned immediately?

6 MS. SPANAKOS: Well, it depends for - - -  
7 in this case, it depends on what arrest you're  
8 talking about. His initial - - -

9 JUDGE PIGOTT: Well, let - - - let me - - -  
10 let me make it clearer for you. Is it the police who  
11 make that determination that we are not going to  
12 arraign this - - - we can take this man across the  
13 street - - - not your case - - - and arraign him, but  
14 we're not going to do that, because we have questions  
15 for him. And so we're going to ask him a lot of  
16 questions between now and 4 o'clock when we'll take  
17 him over, and then he'll get arraigned, and he'll be  
18 told he has an attorney, and - - - and we're going to  
19 be out of luck. So we are making the decision to  
20 hold him for purposes of further questioning even  
21 though we could arraign him now. Can they do that?

22 MS. SPANAKOS: Well, they - - - since  
23 they're the ones in control of the situation, I mean,  
24 obviously they - - - they can do that. Okay? But -  
25 - -

1 JUDGE PIGOTT: Well, I - - - I think you're  
2 - - - wait, wait, wait, wait. Sure they can do it.

3 MS. SPANAKOS: Right.

4 JUDGE PIGOTT: They can hold him - -they  
5 can hold him for three months without telling  
6 anybody. I'm not asking you that.

7 MS. SPANAKOS: Okay.

8 JUDGE PIGOTT: I'm saying, is it - - - is  
9 it proper, is it legal, is it - - - is it what we  
10 ought to be endorsing that the police make the  
11 determination between arrest and arraignment, as to  
12 how long that's going to be, or is it the courts? I  
13 assume it's the courts, since we've already said it.

14 But having said, you know, within twenty-  
15 four hours, generally, can the police say, okay,  
16 we've got twenty-four hours; we can do anything we  
17 want, and if we want to extend it, we can do that  
18 too?

19 MS. SPANAKOS: Well, they'd have to have a  
20 reasonable basis for extending it. They can't just  
21 keep him there indefinitely to run out the - - -

22 JUDGE FAHEY: But here - - -

23 MS. SPANAKOS: - - - clock to get to - - -

24 JUDGE FAHEY: - - - here - - - there the  
25 argument that's being made it's further

1 investigation. I hate to have a hard and fast rule,  
2 and - - - but recently the Massachusetts court has  
3 adopted the federal rule of six - - - six hours.  
4 You've got to be arraigned within six hours. And but  
5 it - - - it's hard for me to envision an arraignment  
6 that couldn't be delayed by a need for further  
7 investigation.

8 It seems that the police could justify any  
9 delay in arraignment by simply citing the need for  
10 further investigation.

11 MS. SPANAKOS: But they'd have to support  
12 that with record evidence, Your Honor. They have to  
13 support that, that they actually are investigating  
14 the matter further, that there is something else to  
15 investigate. It can't be the defendant confesses, I  
16 - - -

17 JUDGE PIGOTT: Well, wait. There - - -  
18 there could always be further investigation. I - - -  
19 I would think, no matter what the charge is, you can  
20 always say, you know, we had phone calls to make, we  
21 had research to do, we had - - - I - - - I guess I'm  
22 trying to get to the point where the police have got  
23 to say we can't do this. Sure we want to  
24 investigate; sure we want to do this stuff. We  
25 can't. We've got to get him over and get him

1           arraigned, otherwise they're going to dismiss the  
2           case on us.

3                   MS. SPANAKOS:   And - - - and in most of the  
4           - - -

5                   JUDGE PIGOTT:   Cover that point.

6                   MS. SPANAKOS:   - - - in most of the cases  
7           in New York City that's exactly what they do.  
8           They're arrested for a particular charge.  They have  
9           a victim saying, you know, this happened or that  
10          happened, and they have probable cause and they  
11          arrest the individual, and then they process them.  
12          Then they can go about.

13                   Here it was very different, because  
14          defendant was claiming that this brutal homicide - -  
15          - double homicide was committed by two other people.  
16          He was not involved directly in that.

17                   JUDGE PIGOTT:   Then they had no grounds to  
18          arrest him, is what you're saying.

19                   MS. SPANAKOS:   I didn't say they had no  
20          grounds to arrest him.  He inculcated himself in  
21          arranging a robbery that led the death of these two  
22          people.

23                   JUDGE PIGOTT:   Then they had grounds to  
24          arraign him - - - arrest him and have him arraigned.

25                   We want to say - - - I'm - - - I'm making

1 this up. We want to say, look, let's make this clear  
2 for you, People. You know, once you arrest somebody,  
3 you got seven hours to - - - to arraign them. Very  
4 clear. Know what they're doing. In this case, they  
5 probably wouldn't have arraign - - - arrested him  
6 right away. They would have continued their  
7 investigation. But there'd be a clear rule.

8 The trouble - - - the wor - - - the  
9 worrisome thing here is that the - - - that the  
10 allegation is the police are trying to deprive a  
11 defendant of his right to an attorney and - - - and  
12 whatever other rights spawn from that. Now, I know  
13 you know that's not true. But how do - - - how do we  
14 establish that? How do we - - -

15 MS. SPANAKOS: Well, we - - - we know  
16 that's not true in this case based on the facts and  
17 what occurred here. And to establish such a bright-  
18 line rule at seven hours, I - - - I would - - - I  
19 would suggest to all of you that that would really be  
20 quite onerous on - - -

21 JUDGE STEIN: Well, what if - - -

22 MS. SPANAKOS: - - - the downstate  
23 counties.

24 JUDGE STEIN: - - - instead of twenty-eight  
25 hours it was forty-eight hours or it was a week,

1           because he's - - - essentially, if - - - if this  
2           defendant is lying about Gong and the Fukianese man,  
3           there are no such people, so - - - so the police  
4           could be running all over town, you know, asking  
5           people in the community, or - - - I mean, there's all  
6           kinds of investigation they could do, and it might  
7           take them days.

8                         MS. SPANAKOS:   And they - - -

9                         JUDGE STEIN:   Does that make it appropriate  
10           for them to fail to arraign the defendant while  
11           they're doing that legitimate investigation?

12                        MS. SPANAKOS:   You have to keep in mind  
13           that what the officers were aware of - - -

14                        JUDGE PIGOTT:   Is that - - -

15                        MS. SPANAKOS:   - - - at the time - - -

16                        JUDGE PIGOTT:   - - - a yes?

17                        MS. SPANAKOS:   That - - - that's a  
18           qualified yes.

19                        JUDGE PIGOTT:   So they can keep him for a  
20           week?

21                        MS. SPANAKOS:   They could keep him for some  
22           time, okay, and there's no set fast rule how long  
23           they can keep him.  But it all - - -

24                        JUDGE PIGOTT:   We're trying to give you  
25           one.  Do you - - - do you have a - - - do you have a

1 time that you think would make some sense? I mean,  
2 we've - - - we've said in our previous cases twenty-  
3 four hours seems to be about right.

4 MS. SPANAKOS: I think twenty-four hours is  
5 appropriate. And on most cases, okay, at least out  
6 of Queens County, they are arraigned within the  
7 twenty-four hours.

8 JUDGE PIGOTT: This one didn't make it.

9 MS. SPANAKOS: This one did not make it.

10 JUDGE PIGOTT: And Ms. - - - and Ms. Powell  
11 wants us to throw the case out because you didn't  
12 arraign him within twenty-four hours, and you have no  
13 good reason for not doing that.

14 MS. SPANAKOS: I would disagree with that  
15 completely. We had a very good reason. The - - -  
16 the officers were investigating this double homicide.  
17 They were told by the defendant that two other people  
18 actually committed it; it was not him. And these  
19 people were then going to go and use the proceeds  
20 from this and go and commit another, you know,  
21 violent act in another state.

22 The officers were not looking - - - when  
23 they kept going back in to speak to defendant, they  
24 weren't looking to get him to inculcate himself more.  
25 They kept - - -

1                   JUDGE STEIN: Well, but that - - - that's  
2 sort of his word against his word. I guess the  
3 question that I - - - I'm trying to get at is, is  
4 that what the statute intends is to allow someone to  
5 be held while the police do further investigation,  
6 whatever that may be?

7                   It seems to me that that's not what the  
8 statute says. The - - - the statute is a much more  
9 practical statement of, you know, you - - - you need  
10 to get the - - - the wheels in motion to get this  
11 person in court. And - - - and I don't think there's  
12 any evidence in the - - - in this record, that that  
13 was happening, because the police felt that they were  
14 entitled to hold off while they investigate.

15                   And that's the question. Are they ever  
16 entitled to hold off for the purpose of further  
17 investigating the crime?

18                   MS. SPANAKOS: The - - - the statute is - -  
19 - is written to get most people through the  
20 arraignment process as quickly as possible. But  
21 there are those cases that just don't fit within that  
22 twenty-four hour rule. And there's a case cited by  
23 my adversary in her reply brief, the Brown case,  
24 which talks about that. It was a habeas corpus  
25 where, you know, people were coming in and

1 complaining about how long they were being held.

2 Okay?

3 And in those cases, in the trial court in  
4 those cases, the court said that in normal  
5 circumstances, the twenty-four hours should be  
6 applied. This is not a normal case. And the normal  
7 rules - - -

8 JUDGE PIGOTT: I think we all know that. I  
9 think what we're trying to get at - - - let's assume  
10 it's not normal. How long do you get? Do you say  
11 it's not normal, three months?

12 MS. SPANAKOS: If - - -

13 JUDGE PIGOTT: Do you say it's not normal,  
14 one month? Do you say it's not normal, a week? Or  
15 do you say it's totally within the discretion of law  
16 enforcement; we decide when arraignments get made?

17 MS. SPANAKOS: There's no hard and fast  
18 rule.

19 JUDGE PIGOTT: The answer's that the police  
20 decide?

21 MS. SPANAKOS: No, obviously the courts  
22 make that decision. But when you have unusual  
23 circumstances that don't - - -

24 JUDGE RIVERA: Okay, so what makes it so -  
25 - - let me go back to that. Because you say it's not

1 a normal case; it's unusual. What makes it so  
2 unusual and - - - and not a normal case? You've got  
3 a defendant who's giving you all different kinds of  
4 stories.

5 MS. SPANAKOS: But the sto - - -

6 JUDGE RIVERA: They get - - - they get  
7 enough information that they - - - they are now - - -  
8 and based on his statements, they arrest him for his  
9 involvement in - - - in the robbery, pursuant to - -  
10 -

11 MS. SPANAKOS: Correct.

12 JUDGE RIVERA: - - - you know, that then  
13 results in this murder. Okay. So what makes this so  
14 unusual. The guy lied. He lied several times.

15 MS. SPANAKOS: Right. But what - - - what  
16 - - -

17 JUDGE RIVERA: Is it that there are exigent  
18 circumstances?

19 MS. SPANAKOS: That definitely exists here.

20 JUDGE RIVERA: And - - - and you argued  
21 that below that there were exigent circumstances.  
22 This is not like the Boston bombing, right? This is  
23 not like you have a terrorist and people might die if  
24 I don't get more information out of you right now.

25 MS. SPANAKOS: It is not a terrorist

1 situation. But we did have a situation where he  
2 implicated these other individuals who were going to  
3 use the proceeds from this robbery to do another  
4 massive, I think, home invasion - - -

5 JUDGE RIVERA: You don't have a time - - -  
6 you don't have the time frame for that. It's been  
7 days. How much longer are you hold - - - going to  
8 hold him on that? Again, we're getting back to Judge  
9 Pigott's and several questions around that. But this  
10 sounds to me like it's not that unusual in the sense  
11 of you have a defendant who's giving you all kinds of  
12 stories.

13 And of course, what we have not said and  
14 what you have not said is, you could continue to  
15 investigate while he's being arraigned. You had a  
16 certain amount of information. The police could have  
17 continued.

18 What the police did not want is they just  
19 didn't want him to have his attorney next to him - -  
20 -

21 MS. SPANAKOS: No, Your Honor. That - - -

22 JUDGE RIVERA: - - - while they asked  
23 questions.

24 MS. SPANAKOS: - - - that's not true. They  
25 could not continue this investigation without

1 defendant. Defendant was the only person who could  
2 identify Gong and the Fukianese man. So - - -

3 JUDGE PIGOTT: Okay, before you - - -  
4 before you - - - I apologize. But do you want to be  
5 heard on the other issues, the videotape?

6 MS. SPANAKOS: Just - - - just briefly,  
7 Your Honor.

8 JUDGE PIGOTT: Because what struck me was,  
9 it was your evidence. And for some reason, the  
10 defendant couldn't use it. I didn't - - - I didn't  
11 understand that at all. And I particularly didn't  
12 understand it once the judge said you can use a  
13 picture from it. I mean, if you can use a picture  
14 from it, why can't you use it?

15 MS. SPANAKOS: Because the video itself, as  
16 my adversary points out in her brief, and she uses  
17 it, strikingly, what it is about the video, was that,  
18 you know, it put in front of the jury whether he  
19 wanted to argue it or not, his ability or inability  
20 to speak English.

21 Since he dis - - - was disavowing that  
22 numerous times from the trial court, the trial court  
23 didn't want to put in the six-minute video. The  
24 trial court's ruling in that respect, was proper.

25 Defendant never - - -

1                   JUDGE ABDUS-SALAAM:  Wasn't there enough -  
2                   - - counsel, wasn't there a lot of rebuttal evidence  
3                   - - - even if the video had come in, wasn't there a  
4                   lot of other evidence that this man spoke English,  
5                   that, you know, he understood his rights, he had  
6                   already agreed to some Miranda warnings before?  Why  
7                   keep the video out because it would show that?

8                   MS. SPANAKOS:  Because then we're just  
9                   putting this little mini-trial in front of the jury  
10                  regarding his inability or ability to speak English -  
11                  - -

12                 JUDGE PIGOTT:  But you did it.  The - - -  
13                 and it's not his ability.  They wanted to put it in  
14                 to show how haggard he was because of all of this  
15                 questioning.  And - - - and it - - - it was your - -  
16                 - I just don't understand why you thought it was  
17                 smart to videotape this guy.  So you videotaped the  
18                 guy.  He didn't do, apparently, what you thought he  
19                 was going to do - - - not you personally, of course -  
20                 - - and - - - and so now you want to keep it out.  
21                 And I'm - - -

22                 MS. SPANAKOS:  We wanted - - - we asked to  
23                 keep it out because we didn't think it was relevant  
24                 for the purpose that counsel was asking to put it in  
25                 for.  It wasn't relevant to show anything about his

1 demeanor that showed that the earlier statements were  
2 involuntary. There was nothing about the video. And  
3 still on - - - into this court, defendant doesn't  
4 point to anything in the video that demonstrates that  
5 his earlier statements were volun - - -

6 JUDGE PIGOTT: No, he looked haggard. I -  
7 - - and I thought - - - I mean, that's the argument,  
8 that, you know, he - - - that he was haggard. That  
9 he was beleaguered or something.

10 MS. SPANAKOS: But there was - - -

11 JUDGE PIGOTT: But you - - - you can  
12 instruct on that. I mean, you can - - - you can put  
13 - - - you can bring that ADA in, you know, who was  
14 sitting there, and she could say, he was fine. He  
15 was just, you know, acting for the camera, or  
16 whatever.

17 MS. SPANAKOS: Right. We could have done  
18 all that. But that would've brought like this little  
19 mini-trial at the trial, regarding the issue - - -

20 JUDGE PIGOTT: But he's on trial for  
21 murder.

22 MS. SPANAKOS: Yes.

23 JUDGE PIGOTT: I mean, that's kind of  
24 important.

25 JUDGE STEIN: What was the prejudice to you

1 - - - to the People?

2 MS. SPANAKOS: The prejudice to the People?

3 JUDGE STEIN: I - - - yeah. I mean, it - -  
4 - if all it showed was that he was haggard, or even  
5 if he tried to show in the face of all this rebuttal  
6 testimony that he - - - he didn't speak English very  
7 well, what - - - what's the prejudice?

8 MS. SPANAKOS: We didn't want to have to go  
9 through putting all that before the jury. We didn't  
10 want to obscure the real issue. When counsel was  
11 saying I am not going to make that argument, well,  
12 depending on the evidence, I'm not going to make that  
13 argument, and kept waffling on that, we wanted to  
14 make a very clear presentment to the jury of what the  
15 evidence had.

16 JUDGE PIGOTT: Of course you did. But they  
17 want to do the opposite. And you know, I get your  
18 point. I - - - it just seemed to me, at some point  
19 you start thinking, they're not letting this guy  
20 breathe. I mean, the defense counsel's trying to put  
21 in, you know, what's pretty innocuous evidence, and  
22 the DA's pounding it, you know, saying, you know, it  
23 can't come in because it's a mini trial. I - - -

24 MS. SPANAKOS: But it wasn't relevant for  
25 the purpose counsel asked. But even if it should

1 have come in, in this case, there was no reversible  
2 error here, because the evidence of defendant's guilt  
3 was so overwhelming, even - - - all that video was  
4 for was to show that his statements were involuntary.  
5 Even without all the statements in, as the prosecutor  
6 argued on summation, there was more than - - - more  
7 than enough evidence to establish defendant - - -

8 JUDGE RIVERA: The prints on the wall, the  
9 prints on the duct tape adhesive?

10 MS. SPANAKOS: The duct tape ad - - -

11 JUDGE RIVERA: His own admission that he's  
12 there?

13 MS. SPANAKOS: It's - - - in the - - - in  
14 the duct tape, on the duct tape roll, demonstrating  
15 he was holding the duct tape with one hand and  
16 pulling it, okay? On Simon, the brother. His  
17 fingerprint on Simon's wall. And while counsel says  
18 there's no harmless - - - it can't be harmless,  
19 because well, he dated the - - - the sister, and he  
20 could have his prints there.

21 Well, actually, no, because they had moved  
22 into that apartment quite a while after she had  
23 broken up the relationship, and Simon was kind of a  
24 private person. There would be no reason for him to  
25 be in Simon's room.

1                   But on top of that, and the reason why the  
2 People put in the photograph of defendant, was to  
3 show the scratch on his - - - on his forehead. And  
4 his DNA was found under Sharon's fingernail, the  
5 other victim.

6                   JUDGE ABDUS-SALAAM: But - - -

7                   JUDGE STEIN: Well, let me ask this. If  
8 the - - - if the - - -

9                   JUDGE FAHEY: My - - -

10                  JUDGE STEIN: - - -if the confession is  
11 allowed in, that's pretty - - - that's - - - the  
12 evidence may be overwhelming, but it also has to be  
13 no reasonable possibility that - - - that the error  
14 wouldn't have resulted in a different result. Right?  
15 There - - - there're two stages to our analysis here  
16 - - -

17                  MS. SPANAKOS: Correct.

18                  JUDGE STEIN: - - - as to whether it's  
19 harmless. So if - - - if the - - - if the confession  
20 is allowed in, and - - - and he's challenge - - - and  
21 he's attempting to persuade the jury that it wasn't  
22 voluntary, then - - - then doesn't - - - doesn't the  
23 - - - the lack of his ability to use the videotape  
24 and other evidence just hamper his ability to  
25 question that - - - that confession, that admission,

1           which isn't just a minor thing? Could've - - -  
2           could've changed the result, maybe?

3                       MS. SPANAKOS: I - - - absolutely would not  
4           have changed the result. Take - - - take out the - -  
5           - the confession, the statement completely. Had we  
6           not been allowed to use that, there was overwhelming  
7           evidence of his guilt. There was no doubt that he  
8           committed these - - - these heinous crimes on his  
9           own, personally, individually. He was the one. He  
10          was there.

11                      We have the blog. We had the DNA evidence.  
12          We have his - - - his fingerprint evidence - - -

13                      JUDGE RIVERA: I - - - I know you've gone  
14          way over. It's just one question. What is the  
15          process now when you have someone - - - let's assume  
16          that, for the moment, defendant is correct that he  
17          really has a limited understanding - - - it's an  
18          accurate representation of his understanding of the  
19          English language, which he didn't understand what it  
20          meant to say you have a right to an attorney, you  
21          have a right to speak to an attorney before you speak  
22          to us - - - what's the process now?

23                      Because I found this striking that there  
24          were cops who came in and spoke to him in his native  
25          tongue.

1 MS. SPANAKOS: Right.

2 JUDGE RIVERA: But you keep having cops  
3 come in and speak in English. So obviously someone  
4 realized they might - - - it might be more effective  
5 to get to this guy in his own language. So I'm just  
6 curious: what is the protocol today?

7 MS. SPANAKOS: Well, when the officers need  
8 somebody to speak that language, they have more than  
9 enough staff that they'll - - -

10 JUDGE RIVERA: Yes. And how do they know  
11 they have such a need.

12 MS. SPANAKOS: Well, if they can't  
13 communicate with the person, which - - -

14 JUDGE RIVERA: What if someone has a  
15 limited ability to communicate? He gets across  
16 something in English, but is not really fluent. I  
17 mean, certainly this person, at least from what  
18 you've got in the record, it appears on its face he's  
19 got some limitations. He's not fluent in English.

20 MS. SPANAKOS: But he also went to school  
21 here for years. And the officers had - - -

22 JUDGE RIVERA: Yes, there are people who've  
23 been in this country for many years and gone to  
24 school here and don't speak English very fluently.  
25 So but that's not my question. My question is, the -

1           - - how do the police deal with someone who doesn't  
2           have a - - - a good understanding of the language, is  
3           not able to communicate, may have some real  
4           limitations, and there may be doubts as to what they  
5           understand?

6                       MS. SPANAKOS: What the officers generally  
7           do is get a fellow officer who speaks that language  
8           and have that officer assist them.

9                       JUDGE RIVERA: So they have that officer  
10          here. Why didn't they just keep Huey or - - - I  
11          can't remember who was the attorney. I think it was  
12          Huey, who spoke with him, and Wong, perhaps.

13                      MS. SPANAKOS: Yeah.

14                      JUDGE RIVERA: Why didn't they stay on this  
15          case? Why did they have other people - - -

16                      MS. SPANAKOS: Because defendant - - -

17                      JUDGE RIVERA: - - - really talk to him in  
18          English most of the time?

19                      MS. SPANAKOS: - - - because defendant  
20          exhibited an ability to speak and converse with the  
21          officers and nobody had any problems understanding  
22          him, and he didn't indicate any problems  
23          understanding them.

24                      When the other officers went to speak to  
25          him, they had no problem with - - - with him, you

1 know, understanding. He didn't indicate any  
2 inability to understand what was being said.

3 JUDGE RIVERA: Well, now - - - now we're  
4 here, so say you, and he says otherwise. But okay.

5 JUDGE PIGOTT: Thank - - - thank you, Ms.  
6 Spanakos.

7 MS. SPANAKOS: Thank you very much, Your  
8 Honors.

9 JUDGE PIGOTT: Ms. Powell, you have a  
10 minute.

11 MS. POWELL: Just very quickly. I - - -  
12 the - - - the tape amply shows that this man, while  
13 he may very well have been able to communicate some  
14 ideas, some thoughts, between himself and the  
15 officers, what was critical here is did he understand  
16 the word "attorney", and did he understand the words  
17 "right to remain silent". And clear - - -

18 JUDGE ABDUS-SALAAM: But defense counsel  
19 kept saying when he offered - - - wanted to offer the  
20 tape, I'm not offering it to show that he doesn't  
21 speak English, I just want to show how he looked.

22 MS. POWELL: That's true. Actually, Your  
23 Honor, I was referring now to - - - because I didn't  
24 reach the Fifth Amendment claim. There is - - -  
25 there are separate claims here. There's a due

1 process problem, but there's also a Fifth Amendment  
2 problems.

3 He - - - our argument in subpoint (b) of 1,  
4 is that he was never effectively given his Miranda  
5 rights, because he didn't understand them. And this  
6 court has held that when you give Miranda rights to a  
7 person, it at least has to be in a language that the  
8 person understands. And the tape amply shows that  
9 this man did not understand those words.

10 JUDGE ABDUS-SALAAM: He - - - he understood  
11 some things. Because when it came to whether he  
12 wanted to speak to the ADA who was videotaping him,  
13 when he realized that he could have a lawyer, he  
14 said, no I don't want to talk to you, and that was  
15 the end of the interview.

16 MS. POWELL: But Your Honor, that - - -  
17 that was after he - - - when she said you have the  
18 right to an attorney, he basically said I don't know  
19 what that word means.

20 JUDGE ABDUS-SALAAM: Yeah.

21 MS. POWELL: And she said, that means a  
22 lawyer. Then he understood.

23 JUDGE ABDUS-SALAAM: Yeah.

24 MS. POWELL: Right? And also the right to  
25 remain silent. He - - - you have to understand at

1 least those two fund - - - that's just fundamental to  
2 understanding one's Miranda rights. Which - - -

3 JUDGE PIGOTT: Thank you, Ms. Powell. I  
4 think we have your argument.

5 (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. Jin Cheng Lin, No. 14 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Penina Wolicki*

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