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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

No. 20

DAVID RIVERA,

Respondent.

20 Eagle Street
Albany, New York 12207
March 24, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Let's go to number
2 20, People v. Rivera.

3 Counsel, would you like any rebuttal time?

4 MR. STROMES: Two minutes, Your Honor,
5 please.

6 CHIEF JUDGE LIPPMAN: Two minutes. Go
7 ahead. You're on.

8 MR. STROMES: Good afternoon, may it please
9 the court. David Stromes for the People. A
10 statement by a patient to a doctor indicating an
11 ongoing harm to a third person cannot be privileged,
12 because the patient has no reasonable expectation
13 that the doctor will keep the statement secret, given
14 that the doctor has a legal obligation to report it.

15 JUDGE STEIN: Where does that legal
16 obligation come from? Have we ever said that there's
17 a legal obligation to do that?

18 MR. STROMES: That comes from the Tarasoff
19 Rule. To be sure this court has not had the
20 opportunity to pass on Tarasoff.

21 CHIEF JUDGE LIPPMAN: Yeah, but in this
22 case, how does that apply anyway? What was it - - -
23 there - - - this was not something that the doctor
24 learned that no one else knew about. He came to the
25 hospital because other people now knew that this was

1 what was going on, right?

2 MR. STROMES: I - - - certainly in this
3 case there was a factual finding by the trial court,
4 affirmed by the Appellate Division, that this
5 defendant posed an ongoing and future harm - - -

6 CHIEF JUDGE LIPPMAN: Yeah, yeah. But I'm
7 asking in this case, really was that the case that
8 there was a reason that the doctor had to act, when
9 we know why he came to the hospital in the first
10 place?

11 MR. STROMES: Really, it was. The trial
12 court said why. The trial court cited the statements
13 the defendant made that he was chronically and
14 through the present abusing this girl, had tried
15 unsuccessfully to stop molesting her. And that
16 factual question is not reviewable by this court.
17 That is a classic mixed question. It is an affirmed
18 finding of fact, and - - -

19 CHIEF JUDGE LIPPMAN: Tarasoff - - -

20 MR. STROMES: - - - the court - - -

21 CHIEF JUDGE LIPPMAN: - - - is reviewable
22 by this court, right?

23 MR. STROMES: Tarasoff is - - - Tarasoff is
24 certainly reviewable. As Judge Stein pointed out,
25 this court does not have the opportunity - - -

1 CHIEF JUDGE LIPPMAN: So - - - so?

2 MR. STROMES: - - - to speak on Tarasoff.

3 CHIEF JUDGE LIPPMAN: Yes.

4 MR. STROMES: But it - - -

5 CHIEF JUDGE LIPPMAN: So why does it bind
6 us if we haven't even examined it?

7 MR. STROMES: Certainly this court, were it
8 so inclined, could decide that Tarasoff doesn't apply
9 in New York State. That would overrule decisions of
10 all four Departments. The Ninth Circuit recognized
11 that Tarasoff is the law of virtually every
12 jurisdiction in America.

13 JUDGE READ: Is that even involved here?

14 MR. STROMES: I'm sorry?

15 JUDGE READ: Is - - - I mean, do we have to
16 decide that one way or another? Isn't that even - -
17 - is that even involved here, that issue as to
18 whether or not the - - - the psychiatrist could
19 reveal the information in order to protect the
20 safety? I mean, is that really what we're being
21 asked to decide? I thought we were being asked to
22 decide whether - - - let's assume that - - - let's
23 assume that that can happen. But do we have to
24 decide that in order to decide the question about
25 whether it's admissible in the trial?

1 MR. STROMES: I - - - no. The - - - there
2 are ways you could reach the admissibility issue
3 without reaching the duty to disclose issue.

4 CHIEF JUDGE LIPPMAN: Well, this is a very
5 different - - -

6 JUDGE RIVERA: But I thought the argument
7 was that's the reasonable expectation?

8 MR. STROMES: I'm sorry, I'm having trouble
9 - - -

10 CHIEF JUDGE LIPPMAN: Judge Rivera then
11 Judge Fahey. Go ahead.

12 JUDGE RIVERA: Sorry. Sorry, my apologies.

13 MR. STROMES: If I could hear the question
14 again?

15 JUDGE RIVERA: I - - - I'm sorry. I
16 thought I heard when you first got up that your point
17 was that he has no reasonable expectation in this
18 statement being maintained as confidential - - -

19 MR. STROMES: That is - - -

20 JUDGE RIVERA: - - - because of the duty to
21 disclose.

22 MR. STROMES: That is correct. That is the
23 - - -

24 JUDGE RIVERA: So why are we able to escape
25 this question of the duty to disclose?

1 MR. STROMES: This court could find that if
2 there was a privilege, that the privilege doesn't
3 apply in this case for one of several reasons, either
4 because the lawful disclosure - - - if it was a
5 lawful disclosure - - - abrogated the privilege.
6 Essentially once this is no longer secret, there's no
7 reason to make it secret again. Or this court can
8 find that enforcing the privilege in this case
9 doesn't further its policy objectives, and all it
10 does is obstruct justice.

11 JUDGE STEIN: Well, I mean, isn't there,
12 though a different - - - I'm sorry. Judge Fahey.

13 CHIEF JUDGE LIPPMAN: That's okay. Go
14 ahead, then Judge Fahey.

15 JUDGE FAHEY: No, it's all right.

16 CHIEF JUDGE LIPPMAN: Go ahead, Judge
17 Stein.

18 JUDGE STEIN: Can't - - - can't we
19 distinguish between - - - even if we say there's
20 either the right to disclose to the authorities or
21 third persons to protect people or a duty, either one
22 - - - even if we say that, can't - - - can't we still
23 say that that's different from allowing the - - - the
24 physician to testify in court against a person in a
25 criminal action? Aren't those two different things?

1 MR. STROMES: I don't think so, Your Honor.
2 I think - - - I - - - I really think they are
3 related. Because once there is be it a right or a
4 duty on the doctor's part to disclose this to the
5 government, the patient doesn't have a reasonable
6 expectation that it's going to be kept secret. And
7 that's one of the - - -

8 JUDGE PIGOTT: Do you think that's what the
9 legislature meant when they passed that statute?

10 MR. STROMES: I'm sorry, Your Honor?

11 JUDGE PIGOTT: Do you think that's what the
12 legislature meant when they passed that statute?

13 MR. STROMES: The privilege statute?

14 JUDGE PIGOTT: Yeah - - - no - - -

15 MR. STROMES: Ye - - -

16 JUDGE PIGOTT: - - - well, the statute
17 saying that they're mandated reporters?

18 MR. STROMES: That's a different statute.
19 I - - -

20 JUDGE PIGOTT: But when they passed that,
21 is your - - - is it your view that by - - - by making
22 him a mandatory reporter, all patients are waiving
23 their physician-patient privilege?

24 MR. STROMES: It's currently not about
25 waiver. The Social Services Law was a policy

1 judgment on the part of the legislature - - -

2 JUDGE PIGOTT: So you're answer's yes, it
3 did mean that - - - that the physician-patient
4 privilege is gone?

5 MR. STROMES: The physician-patient
6 privilege does not apply, correct.

7 CHIEF JUDGE LIPPMAN: Okay, let - - - can
8 Judge Fahey get in a question?

9 JUDGE FAHEY: Well - - -

10 CHIEF JUDGE LIPPMAN: Go ahead, Judge
11 Fahey.

12 JUDGE FAHEY: - - - the other judges have
13 pretty much mopped up on this, so it's really not
14 much left - - -

15 CHIEF JUDGE LIPPMAN: His question is gone.

16 JUDGE FAHEY: - - - to pursue it. But - -
17 - but listen, the distinction that's drawn in
18 Tarasoff is in a civil case where the disclosure
19 takes place under - - - under different circumstances
20 than what we have here.

21 I don't think that - - - I thought a lot
22 about the mandatory disclosure question, and I don't
23 think it really enters in to it. But the distinction
24 that seems to - - - it seems that we have to draw
25 here is between disclosure on one hand, from the

1 perpetrator to - - - to the doctor, and then the
2 doctor reports it to an appropriate agency. That's
3 an entirely different question than admissibility of
4 evidence at trial. And I'm having a hard time
5 getting my mind around Judge Read's point that
6 really, we can just address the question of the
7 admissibility at trial and we don't really get to the
8 Tarasoff question.

9 MR. STROMES: You could. And - - - and my
10 suggestion is that the Tarasoff question makes it
11 easy. Tarasoff - - - Tarasoff, it's an easy rule to
12 follow. It's a commonsensical rule that has been the
13 law of all four Departments - - -

14 CHIEF JUDGE LIPPMAN: But it doesn't - - -

15 MR. STROMES: - - - that this type of - - -

16 CHIEF JUDGE LIPPMAN: - - - determine the
17 other question.

18 MR. STROMES: It - - - well, it does
19 determine the other question.

20 CHIEF JUDGE LIPPMAN: You're - - - you're
21 arguing that it does, but I don't think it
22 necessarily does.

23 MR. STROMES: Well, certainly - - -

24 CHIEF JUDGE LIPPMAN: It's a privilege.
25 How is the privilege abrogated?

1 MR. STROMES: Well, because the - - - so -
2 - - what - - - what 45.04 of the C.P.L.R. says is
3 that not all statements to doctors are privileged.
4 It has - - - they have to - - - the statement has to
5 meet several criteria. Not only does it have to be a
6 doctor, but it has to be made to the doctor in his
7 professional capacity; it has to be necessary for
8 treatment; and it has to be intended to be kept
9 confidential.

10 And this court has crafted a reasonableness
11 test upon that last classification, that intended to
12 be kept confidential means that the patient has a
13 reasonable expectation of confidentiality.

14 CHIEF JUDGE LIPPMAN: Boy, I would have a
15 reasonable expectation of confidentiality in that
16 kind of situation.

17 MR. STROMES: I - - -

18 CHIEF JUDGE LIPPMAN: I don't know why he
19 wouldn't.

20 MR. STROMES: If I can draw an ana - - -

21 CHIEF JUDGE LIPPMAN: What is the - - -
22 what is the reasonable explanation as to why he
23 wouldn't have an expectation of privacy?

24 MR. STROMES: Because it makes common sense
25 that if you are going to tell someone that a third

1 person - - - that you were placing a third person in
2 imminent danger, that person can't keep it to
3 themselves.

4 CHIEF JUDGE LIPPMAN: What was the danger
5 at that - - - at that point when you - - - when
6 you're testifying at trial?

7 MR. STROMES: Certainly, by the time you're
8 testifying at trial, the danger has passed. But I'm
9 talking about at the time the statement is made. But
10 there is - - - but because there was a danger at the
11 time - - -

12 CHIEF JUDGE LIPPMAN: Why does it come in
13 at trial? What's the - - - what's the rationale?

14 MR. STROMES: It comes in at trial, because
15 it was never privileged in the first place. Because
16 there was a danger at the moment he said it, the
17 doctor could report it. And if I tell - - - if I
18 tell - - -

19 CHIEF JUDGE LIPPMAN: Where does it say
20 that?

21 MR. STROMES: That's the Tarasoff Rule.
22 That's been the rule of all four Departments - - -

23 JUDGE RIVERA: That's my point.

24 MR. STROMES: - - - that's been the rule of
25 the country.

1 JUDGE RIVERA: You - - - the end - - -
2 although there may be arguments for how to avoid
3 Tarasoff, that's not the argument I hear you making
4 today. I hear you saying it's about the patient's
5 reasonable expectation. And because if I tell the
6 doctor something like this, they would have to report
7 because it's potentially my statement that
8 potentially a third party is in danger - - -

9 MR. STROMES: Correct.

10 JUDGE RIVERA: - - - that I cannot possibly
11 have, as the patient, reasonable expectation that the
12 doctor will not tell someone else, given the nature -
13 - -

14 MR. STROMES: Yes.

15 JUDGE RIVERA: - - - of the disclosure.

16 MR. STROMES: Correct.

17 JUDGE RIVERA: So I think you're still
18 getting back to Tarasoff.

19 MR. STROMES: Ye - - - because - - -
20 because Tarasoff - - - as I was trying to answer
21 Judge Fahey's question, makes for an easy rule.

22 JUDGE RIVERA: Yeah, but - - -

23 MR. STROMES: I - - -

24 JUDGE RIVERA: - - - what's the ea - - -
25 harder rule?

1 MR. STROMES: I - - - this court - - - this
2 court could find that even if - - - even if there was
3 a privilege that attached - - -

4 JUDGE RIVERA: Yes.

5 MR. STROMES: - - - that enforcing - - -

6 JUDGE RIVERA: Well, there is a privilege
7 that attaches. It's a patient-doctor.

8 MR. STROMES: Only if the patient has a
9 reasonable expectation - - -

10 JUDGE RIVERA: You may argue it's abrogated
11 but - - -

12 MR. STROMES: - - - of confidentiality - -
13 -

14 JUDGE RIVERA: - - - it is a privilege.

15 MR. STROMES: Only if he has a reasonable
16 expectation of confidentiality when he makes the
17 statement. Otherwise, under C.P.L.R. 45.04, there is
18 no privilege.

19 CHIEF JUDGE LIPPMAN: Once it - - - once,
20 once the doctor - - - even assuming the doctor has
21 the obligation to report it to the authorities, then
22 that carries all the way through - - - you're saying
23 that - - - that then at trial or anywhere else, the
24 privilege is totally abrogated forever?

25 MR. STROMES: That - - - I - - - that the

1 privilege - - - that the privilege did not attach in
2 the first place.

3 CHIEF JUDGE LIPPMAN: Right.

4 MR. STROMES: Yes.

5 CHIEF JUDGE LIPPMAN: That - - - that once
6 he - - - even assuming that the doctor had an
7 obligation to report it, that automatically means the
8 doctor can tell about it at trial?

9 MR. STROMES: That's correct. That the
10 statement is not privileged.

11 CHIEF JUDGE LIPPMAN: Okay. Hold that
12 thought. You'll have rebuttal. Let's hear from your
13 adversary.

14 Counsel, what about that point? Assuming
15 we believe that there is an obligation - - - the - -
16 - the doctor had an obligation, for safety reasons,
17 put aside whether you have an argument the other way,
18 does it automatically hold that then it's admissible
19 at trial? And if not, why?

20 MR. EPSTEIN: Absolutely not. This is not
21 the first time that this court has confronted the
22 question about whether a lawful disclosure by a
23 physician, allows the physician to testify at trial.
24 The first time - - -

25 JUDGE FAHEY: Otherwise there would be no

1 privilege for every mandatory reporter, then?

2 MR. EPSTEIN: One hundred percent.

3 JUDGE FAHEY: Yeah.

4 MR. EPSTEIN: The first time, at least as
5 far as I know, the court confronted this, was in a
6 case called Prink back in 1979. It's a case which I
7 cite in my brief, in which the court found that the
8 doctor, pursuant to, you know, the rules of
9 professional responsibility applied to doctors, had
10 to disclose something. The court then ruled that the
11 - - - the doctor was not allowed to testify at trial.

12 Similarly, in the Sinski case that this
13 court ruled on many years ago, the doctors were also
14 required to report, you know, that the patient had
15 taken certain amounts of drugs that may have made him
16 an addict. The court ruled in that case, as well,
17 that it did not abrogate the privilege.

18 CHIEF JUDGE LIPPMAN: So then, I take it,
19 that your view is, in answer to Judge Read's earlier
20 question, we don't have to get to Tarasoff at all,
21 that we could assume that it was okay at the
22 reporting, but that it shouldn't have come in at
23 trial, and we don't really have to deal with whether
24 New York adopts Tarasoff or doesn't?

25 MR. EPSTEIN: That's correct, Your Honor.

1 In fact, that position that, frankly, the First
2 Department took, is the position that the First
3 Department took many years ago in the Bierenbaum
4 case, you know, where the court allowed the warning,
5 you know, but did not allow any testimony at trial.
6 It's the position of the Sixth Circuit, you know,
7 that the warning doesn't abrogate the - - - the
8 privilege.

9 JUDGE READ: Are there public policy
10 reasons that support that position?

11 MR. EPSTEIN: Well, the first public policy
12 reason, Your Honor, really goes to the nature of
13 privilege itself. That it's long been the policy of
14 this court, you know, that privileges are - - -
15 especially this privilege is to be construed in a
16 broad way, and that exceptions to the privilege are
17 not for the courts to invent but for the legislature.

18 And the legislature has shown an ability,
19 you know, to abrogate the privilege in given
20 instances, but none of them would allow this. You
21 know, for instance, you know, the legislature allows
22 for an abrogation of the privilege where somebody is
23 facing a civil commitment. A psychiatrist can
24 testify there.

25 If the - - -

1 JUDGE STEIN: What about child protective
2 proceedings? I mean this - - - the statute - - -

3 MR. EPSTEIN: Yes.

4 JUDGE STEIN: - - - explicitly says that -
5 - - that it's admissible in those proceedings if
6 somebody was required to report. Can we imply that
7 that's extended to this situation?

8 MR. EPSTEIN: In fact, I think it's the
9 opposite. And here, I will confess, I am very, very
10 weak in Latin, so I'm going to read the words. I
11 think the words are *expressio unius exclusio*
12 *alterius*. Yeah - - -

13 JUDGE RIVERA: Not bad.

14 MR. EPSTEIN: Was it okay? You know, and
15 basically what it means is where, you know, the
16 legislature has enacted certain exceptions, what that
17 means is that there are no other exceptions.

18 So really the first answer to Judge Read's
19 question is that the basic public policy is that this
20 type of rule should not be decided here, but should
21 be decided, you know, in a different building.

22 You know, in addition, Your Honor, there
23 are many public policy reasons, you know, why, you
24 know, this should be - - - really why the First
25 Department opinion should be affirmed. First, look

1 at the factual background here, you know, that Mr.
2 Rivera goes to the hospital and asks for help. You
3 know, he's seeking help. That's something that I
4 think we want to encourage. We want people with
5 psychiatric problems to go to, you know, the
6 hospital.

7 Secondly, it's certainly within his
8 interest that it's reported to the authorities. He
9 says he wants to stop. That's in the patient's
10 interest.

11 Lastly, Your Honor, I think - - - and here
12 I quote in my brief from Professor Appelbaum, who was
13 probably the leading authority, you know, on law and
14 psychiatry. He's a professor at Columbia. The
15 patients know the difference between reports that are
16 designed to prevent harm and the testimony which is
17 designed to facilitate punishment. And if we allow
18 an abrogation - - -

19 JUDGE RIVERA: Do doctors inform their
20 patients?

21 MR. EPSTEIN: Well, I think what's
22 interesting here, Your Honor, and this is very
23 telling - - -

24 JUDGE RIVERA: That they would have to
25 disclose it?

1 MR. EPSTEIN: They would have to disclose,
2 yeah. If you look at all of the federal cases, you
3 know, which allow the warning, the only reason they
4 allow the warning is because the patient himself or
5 herself was warned, you know, that if you persist in
6 saying things like this, I'm going to have to tell
7 the authorities.

8 The basic principle in all of those cases -
9 - - in fact, if we applied here - - - you know, we go
10 to Judge Lippman's original point - - - and I don't
11 think we have to get to it, you know, about whether
12 or not the Tarasoff warning was permissible in the
13 first instance. I don't think we have to get to that
14 over here, because I think the real issue, as I think
15 most of you have noticed is - - - noted, is whether
16 the testimony should come in.

17 What I can say is, what lies behind the
18 People's argument is basically a matter of conceptual
19 confusion. There are two types of issues here, that,
20 you know, a psychiatrist has a duty of
21 confidentiality, you know, which is a product, you
22 know, of their code of professional responsibility.
23 And the court can certainly - - - and this code says
24 they can't disclose the third party's confidences.

25 The court certainly can intervene and say

1 that, you know, if someone is in imminent danger, the
2 doctor can set it aside. You know, the privilege is
3 a rule of evidence. If you look in the C.P.L.R.,
4 it's listed under rules of evidence. And it's
5 designed, you know, so that a psychiatrist or a
6 doctor cannot provide evidence against his client.

7 And the rule in this court has really been
8 from the outset, you know, that the privileges are
9 established by the legislature, and they're the ones
10 who decide any exceptions.

11 JUDGE RIVERA: Let me try the - - - the - -
12 - an attempt at trying to understand the hard case
13 that perhaps he didn't articulate. The reasonable
14 expectation not based necessarily on Tarasoff, but
15 the reasonable expectation that if the patient says
16 not only what you have already articulated but says,
17 and now it's out, it's public, so I know there are
18 legal ramifications.

19 MR. EPSTEIN: Oh, okay. In fact, I think
20 that's exactly what he says.

21 JUDGE RIVERA: Yes. Well - - -

22 MR. EPSTEIN: But - - -

23 JUDGE RIVERA: That's where I got it.

24 MR. EPSTEIN: The fact of the matter is
25 that he's going to the doctor, because he knows that

1 there are familial ramifications and because he knows
2 that there are legal ramifications. The case begins
3 when his mother tells him that his niece has reported
4 him. Family - - - a familial implication - - -
5 reported to ACS and police - - - legal, you know.

6 But it's clear there that he understands
7 that the police know, his family knows. There's
8 nothing there that would indicate that he thinks that
9 his discussion with the psychiatrist is going to
10 become public.

11 JUDGE RIVERA: It falls within this
12 umbrella of the legal ramifications, and it's out in
13 the public and - - -

14 MR. EPSTEIN: Yes. I don't think there's
15 any suggestion that - - - I think that the People are
16 trying to argue that if he believes it's public - - -
17 well, you know, let me go back to what we call common
18 experience. A lot of us have problems that are
19 public which we discuss with our psychiatrists. We
20 would never in a million years think that that
21 allowed the psychiatrist to go and testify about
22 these problems in court.

23 Okay, thank you very much.

24 CHIEF JUDGE LIPPMAN: Okay, thank you
25 counselor.

1 Counsel, rebuttal?

2 MR. STROMES: Thank you, Your Honor. He
3 said a little more than - - - than he knew there were
4 going to be legal ramifications. He actually said
5 that he was - - - I'm quoting now - - - "relieved
6 that it was no longer a secret." That is
7 inconsistent with any notion that he thought that
8 further confidences would be kept.

9 And moving forward to - - - to a point that
10 Judge Read brought up which was the public policy of
11 if this was privileged, keeping it privileged. Many
12 jurisdictions in the United States that have touched
13 on this issue have found that there is, in fact, not
14 a policy reason to continue the privilege.

15 As the Supreme Court of Connecticut said -
16 - - I'm quoting here from State v. Orr - - - "Once a
17 therapist lawfully discloses the patient's
18 communication, the danger to the psychotherapist-
19 patient relationship has been done and in-court
20 testimony by the therapist is likely to cause little,
21 if any, additional harm to the relationship.

22 JUDGE RIVERA: But, but Mr. Epstein - - -
23 Mr. Epstein's point, I think, is that that policy
24 consideration doesn't belong in this courthouse, it
25 belongs to the legislators.

1 MR. STROMES: The legislature - - - and I
2 think that the legislature has made clear through
3 other statutes that it has a special concern in this
4 area. And - - - and this defendant is really going
5 to slip through the cracks.

6 If the defendant had been a parent or
7 guardian - - -

8 CHIEF JUDGE LIPPMAN: It didn't have enough
9 concern to make a statute addressing this situation.

10 MR. STROMES: And - - - and if this court
11 affirms, then I certainly hope they will. But I
12 think this court, based on - - -

13 CHIEF JUDGE LIPPMAN: And that would be up
14 to them, isn't it?

15 MR. STROMES: I - - - but - - - but this
16 court, based on the New York City Health and
17 Hospitals case and a number of others in past years
18 that are a little more distant, have found that where
19 asserting the privilege will not further the policy
20 considerations underlying it, it does not have to be
21 enforced.

22 And finally, I just want to touch briefly
23 on harmless error. Even if this court finds that the
24 doctor should not have testified, there is no reason
25 to reverse the case. We're talking about non-

1 Constitutional evidentiary error, and the standard
2 for whether or not we have to reverse is whether or
3 not there was a significant probability that but for
4 the doctor's testimony - - -

5 CHIEF JUDGE LIPPMAN: Okay, counselor.

6 MR. STROMES: - - - the jury would have
7 acquitted. And I think it's important to point out
8 that the evidence was overwhelming.

9 When you have the prompt outcry evidence
10 from the schoolmate and the circumstances by which
11 this came to the doctor - - -

12 CHIEF JUDGE LIPPMAN: Counselor - - -

13 MR. STROMES: - - - the jury cannot have
14 legal basis - - -

15 CHIEF JUDGE LIPPMAN: - - - your time is
16 up. Thanks so much.

17 MR. STROMES: Thank you very much, Your
18 Honors.

19 CHIEF JUDGE LIPPMAN: Thank you both.
20 Appreciate it.

21 (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 v. David Rivera, No. 20 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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