

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS

STATE OF NEW YORK

-----

PEOPLE,

Respondent,

-against-

No. 62

TYRONE D. MANOR,

Appellant.

-----

20 Eagle Street  
Albany, New York 12207  
March 31, 2016

Before:

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

Appearances:

KIMBERLY F. DUGUAY, ESQ.  
MONROE COUNTY PUBLIC DEFENDER'S OFFICE  
Attorneys for Appellant  
10 N. Fitzhugh Street N  
Rochester, NY 14614

ROBERT J. SHOEMAKER, ADA  
MONROE COUNTY DISTRICT ATTORNEY'S OFFICE  
Attorneys for Respondent  
47 S. Fitzhugh  
Suite #4  
Rochester, NY 14614

Meir Sabbah  
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Next on the calendar is  
2 number 62, People against Tyrone Manor.

3 MS. DUGUAY: Good afternoon. May it please  
4 the court, my name is Kim Duguay, I'm with the Monroe  
5 County Public Defender's Office and I represent Mr.  
6 Manor. I'd like to reserve two minutes for rebuttal  
7 if I may, please.

8 CHIEF JUDGE DIFIORE: Of course.

9 MS. DUGUAY: It's our contention that it  
10 was an abuse of the lower court's discretion in this  
11 case to deny Mr. Manor's motion to withdraw his  
12 guilty plea, or at a minimum, at least conduct an  
13 inquiry given the unusual circumstances of this case.

14 JUDGE GARCIA: But what inquiry would the  
15 court have held?

16 MS. DUGUAY: Well, at a minimum, I think  
17 that the court could have asked him, you know, what  
18 indeed was going on with him when - - -

19 JUDGE GARCIA: Wasn't there an affirmation  
20 from the defendant?

21 MS. DUGUAY: There was not an affirmation  
22 from him, but there was an affirmation from both of  
23 his attorneys describing what they saw, what they  
24 heard, what their impressions of his behavior were,  
25 and also that of a licensed psychiatrist who evaluate

1 him afterwards. So - - -

2 JUDGE GARCIA: But is there an indication  
3 the court didn't consider those materials in  
4 rendering a decision?

5 MS. DUGUAY: Well, I think that the court,  
6 is considering those, had to either find as a matter  
7 of law that there was not a sufficient, you know,  
8 issue of - - - raised. And I think that would have  
9 been a credibility determination that would have been  
10 improper for court to make based on the papers alone,  
11 without committing - - - or conducting any inquiry.

12 I think that this court has said, where  
13 there is a legitimate issue raised, where somebody's  
14 - - - the voluntariness or the knowingness of a plea  
15 is called into question, that it triggers a duty of  
16 the trial court to conduct an inquiry.

17 JUDGE STEIN: But what if - - - what if - -  
18 - what if he only submitted conclusory, you know,  
19 allegations. And, you know, here, to me it seems - -  
20 - it seems pretty significant that the defendant did  
21 not submit an affidavit as to any of these issues.  
22 And it was just conclusory.

23 Does the court then have to, essentially,  
24 you know, initiate the inquiry so as to make  
25 defendant's case or does defendant have to make the

1 case in the first place?

2 MS. DUGUAY: Well, I think - - - I think  
3 two things. Number one is, I don't think just  
4 conclusory allegations are enough. I think that  
5 there does need to be specific allegations and I  
6 think there were here. I think there was very  
7 significant and detailed allegations about what was  
8 going on, not just immediately before he - - - the  
9 only opportunity, by the way, that Mr. Manor had to  
10 talk about the offer of man 1 versus intentional  
11 murder. So I don't - - - I don't think that's - - -

12 JUDGE STEIN: What about the opportunity to  
13 speak to this - - - this motion to withdraw the plea?

14 MS. DUGUAY: Well, I think he would - - -

15 JUDGE STEIN: He had that opportunity,  
16 didn't he?

17 MS. DUGUAY: Well, I think that - - - I  
18 think there's two things. I think that number one,  
19 it's - - - the onus is on the trial court when a  
20 certain threshold is met that's triggered to then ask  
21 him, do you in fact want to withdraw your guilty  
22 plea, and if so, why. If - - -

23 JUDGE ABDUS-SALAAM: Well, counsel, was Mr.  
24 Manor in the courtroom when the judge rendered a  
25 decision on the motion?

1 MS. DUGUAY: He was. But I think - - -

2 JUDGE ABDUS-SALAAM: And so when the judge  
3 asked, does anybody have anything to say, Mr. Manor  
4 could have said, yes, Judge, I'd like to tell you my  
5 side of this - - -

6 MS. DUGUAY: Uh-huh.

7 JUDGE ABDUS-SALAAM: - - - and he didn't,  
8 right?

9 MS. DUGUAY: I think he was relying on his  
10 attorneys. I mean, he was represented by two  
11 attorneys. He clearly is not - - -

12 JUDGE ABDUS-SALAAM: The same attorneys who  
13 represented him at the plea proceeding, correct?

14 MS. DUGUAY: Correct.

15 JUDGE ABDUS-SALAAM: And they saw - - - or  
16 according to their affirmations, they believed that  
17 there was something untoward about their client's  
18 demeanor or behavior, and they said nothing at that  
19 time, correct?

20 MS. DUGUAY: Right. Which goes to point  
21 two, which is the ineffective assistance, yes.

22 JUDGE ABDUS-SALAAM: No, I understand that  
23 it goes to point two, but - - -

24 MS. DUGUAY: Yes. I mean, I think that to  
25 put the onus on somebody who does not have - - - this

1 is not somebody who has an extensive criminal record,  
2 who has extensive experience, who has, you know, the,  
3 you know, the kind of education that, you know, this  
4 court has referred to, or there's been extensive plea  
5 negotiations, all of the factors enumerated in Nixon  
6 that could kind of cure some of the things that were  
7 raised in the substantive - - - calling it a question  
8 of his mental capacity. I mean, those - - -

9 JUDGE RIVERA: Well, he raises two grounds,  
10 right? He raises the ground of the family coerced  
11 him.

12 MS. DUGUAY: Uh-huh.

13 JUDGE RIVERA: And the second ground is the  
14 alcohol/marijuana use immediately beforehand. Right?

15 MS. DUGUAY: Right. Well, the diminished  
16 mental capacity - - -

17 JUDGE RIVERA: Okay. So under People v.  
18 Lewis, how do you get past the first ground? How is  
19 the first ground enough for any more inquiry, under  
20 People v. Lewis?

21 MS. DUGUAY: The first one being - - -

22 JUDGE RIVERA: Being the family coercion.

23 MS. DUGUAY: Okay. Well, I think the  
24 family coercion is sort of two-fold here. One is  
25 sort of the internalized pressure in conjunction with

1 a diminished - - -

2 JUDGE RIVERA: No, no, I understand what  
3 the argument is.

4 MS. DUGUAY: Uh-huh.

5 JUDGE RIVERA: My point is, isn't that - -  
6 - didn't that decision - - - didn't we decide in  
7 People v. Lewis that that cannot be the grounds for  
8 this motion?

9 MS. DUGUAY: I don't know that that's what  
10 People v. Lewis said. I think People v. Lewis, the  
11 defendant in that case was visited in prison by two  
12 family members, and they said that that - - - and he  
13 said that, you know, he was convinced into pleading  
14 guilty, and that that, along with conclusory  
15 statements of innocence, wasn't enough. I don't know  
16 that I - - - and that was in 1979, that that was - -  
17 -

18 JUDGE RIVERA: So you're claiming that this  
19 is a different type - - - this is such severe  
20 pressure that somehow it falls outside the ambit of  
21 People v. Lewis?

22 MS. DUGUAY: Well, I think that - - - I  
23 think that there's - - - family pressure comes in  
24 different ways, right. I don't think that it can be  
25 categorized as - - - in just the circumstance in

1 People v. Lewis, where they went to visit him and he  
2 felt pressured. I think that - - -

3 JUDGE RIVERA: Well, let me - - - let me  
4 try this with you. The last paragraph, "We have  
5 never recognized coercion by family members as a  
6 reason for withdrawing a guilty plea."

7 MS. DUGUAY: Correct.

8 JUDGE RIVERA: Why doesn't that then make  
9 it unnecessary for the judge to con - - - to do an  
10 inquiry, at least on this ground?

11 MS. DUGUAY: Okay. I - - -

12 JUDGE RIVERA: Precedent from this court  
13 that says, family coer - - - coercion by family  
14 members is not going to be enough.

15 MS. DUGUAY: Uh-huh.

16 JUDGE RIVERA: We now get to your second  
17 point about the marijuana/liquor - - -

18 MS. DUGUAY: Right.

19 JUDGE RIVERA: - - - immediately - - - the  
20 use of that beforehand. But I think then - - -

21 MS. DUGUAY: Well - - -

22 JUDGE RIVERA: - - - you're stuck with the  
23 problem my colleagues have already mentioned, which  
24 is he himself doesn't put anything before the court  
25 from him describing the impact, since at the actual



1 plea, when he is asked about these things, he says,  
2 no.

3 MS. DUGUAY: What - - -

4 JUDGE RIVERA: Right?

5 MS. DUGUAY: Right.

6 JUDGE RIVERA: I haven't used alcohol, I'm  
7 not under any substance abuse right now. He himself  
8 says, no. So it's contradictory.

9 MS. DUGUAY: Well, there are several issues  
10 in that question. Number one is, I don't think that  
11 plea colloquy itself is determinative. Okay. I  
12 think at any case where there is a motion to withdraw  
13 the plea that there is going to be something  
14 incongruous or information that comes to the court  
15 later that sheds light on the plea colloquy, and that  
16 there has to be determination about whether it rises  
17 to the level that calls into question the  
18 voluntariness of the plea.

19 As far as family pressure goes, I mean,  
20 this court has looked at People v. Fiumefreddo, where  
21 the defendant felt pressure to get a favorable deal  
22 for her father, and then that was a basis of her  
23 motion. But this court said, because of the  
24 extensive plea negotiations and the extensive plea  
25 colloquy, that - - - you know, that showed that it

1 was in fact a voluntary plea.

2 In People v. Homer Brown, this court  
3 recognized that, you know, the incentive for the  
4 defendant to visit his sick son was something that  
5 needed to be explored.

6 So I think that family pressure is  
7 something that has to have been looked at in the  
8 context of each case. It's not something that I  
9 think automatically triggers a finding of  
10 involuntariness, but I also think it's not something  
11 that should be completely disregarded either. It has  
12 to be looked at in the totality of the circumstances.

13 JUDGE STEIN: And in the other cases, did  
14 the defendant - - - him or herself come forward with  
15 something on the application to indicate that indeed,  
16 they were feeling this pressure, and how that  
17 affected them?

18 MS. DUGUAY: Well, I think that - - -  
19 again, I think that once a sufficient basis is raised  
20 in the motion papers, that the onus is on - - - that  
21 a trigger - - - there is something triggered in the  
22 trial court to then ask the question, to put him in  
23 the position where he has to speak up; when his  
24 attorney says, no, I don't have anything to add, and  
25 he relies on trusting his attorney, I think that's an

1 unfair burden to put on Mr. Manor.

2 JUDGE STEIN: Maybe the attorney had  
3 strategic reasons for not wanting his client to say  
4 anything, and then - - - then what you would be doing  
5 is putting the judge in the position of supplanting  
6 the counsel's - - -

7 MS. DUGUAY: Although - - -

8 JUDGE STEIN: - - - you know, strategy or  
9 tactic or - - -

10 MS. DUGUAY: I think he spoke to the  
11 psychiatrist for well over an hour, and that his - -  
12 - what he was feeling, what he was experiencing came  
13 through during the psychiatrist's report, and that -  
14 - - so I don't think we can look at this record and  
15 assume that he was experiencing something different  
16 and - - -

17 JUDGE RIVERA: But all the more to wonder  
18 why then you don't have anything from him, whether  
19 it's in writing in advance, or at - - - before the  
20 judge, in person.

21 MS. DUGUAY: Well, I would think that that  
22 would be - - - I'm sorry, Your Honor, I noticed my  
23 red - - - okay.

24 I would think that that would be the attorney's  
25 responsibility, since the attorney is the one who prepared

1 the motion. The attorneys are the ones that met after  
2 they already met with him and said, wow, there is  
3 something really wrong with his plea. And all of the  
4 details in their affidavits that they put forth - - - that  
5 the onus is on them, and not Mr. Manor.

6 JUDGE ABDUS-SALAAM: Counsel, that - - -

7 CHIEF JUDGE DIFIORE: Thank you, counsel.

8 JUDGE ABDUS-SALAAM: I'm sorry.

9 CHIEF JUDGE DIFIORE: Continue, Judge.

10 JUDGE ABDUS-SALAAM: Yeah, you started to  
11 say earlier that some of what I was asking goes to  
12 the second point which is the ineffective assistance  
13 of counsel, and you did just address that in some - -  
14 - to some extent. Did you have anything else you  
15 wanted to say about the ineffective assistance of  
16 counsel before you sat down, so that counsel could  
17 respond to it and not have to deal with it in your  
18 rebuttal?

19 MS. DUGUAY: Yes. I think that within - -  
20 - as far as ineffective assistance of counsel goes, I  
21 mean, these attorneys both had serious concerns about  
22 their client's wellbeing. So much so, that the one  
23 attorney went to his house the night before at 10  
24 o'clock, they're saying that they're witnessing - - -

25 CHIEF JUDGE DIFIORE: But did they raise

1 that to the trial judge?

2 MS. DUGUAY: Did they raise what,  
3 ineffective assistance?

4 CHIEF JUDGE DIFIORE: This concern.

5 MS. DUGUAY: I'm sorry.

6 CHIEF JUDGE DIFIORE: Their concern. You  
7 said they had so much concern.

8 MS. DUGUAY: They put that in their  
9 affidavits. But they - - -

10 CHIEF JUDGE DIFIORE: No, at the time of  
11 the plea.

12 MS. DUGUAY: They did not, which would go  
13 directly to the ineffective assistance at counsel.  
14 Because I think - - -

15 CHIEF JUDGE DIFIORE: Right.

16 MS. DUGUAY: - - - two things could have  
17 happened if they said, you know, Judge, this meeting  
18 was not productive, there is misinformation going on  
19 there, our client - - - there is something wrong with  
20 him mentally, we're not be able to communicate with  
21 him, he's in the bathroom, another attorney is in the  
22 courtroom, it's chaos.

23 If they had told the court that, a couple  
24 of things could have happened. Number one is the  
25 court could have addressed some of these things in

1 his colloquy with Mr. Manor, or they - - - but the  
2 better course of action would have been to just  
3 request even a brief adjournment to meet with Mr.  
4 Manor alone, to say, look, are you okay, do you  
5 understand the sentencing consequences, is this  
6 something you want to do; you've always told us you  
7 were innocent of intentional murder, now you're - - -  
8 you know, you're going to admit to something you've  
9 consistently denied. I think that is something that  
10 should have been - - -

11 JUDGE ABDUS-SALAAM: When did - - - that's  
12 the thing that troubled me, counsel. When did - - -

13 MS. DUGUAY: Uh-huh.

14 JUDGE ABDUS-SALAAM: When did counsel  
15 realize that Mr. Manor was willing to take a plea?  
16 Because my understanding from their affidavits or  
17 affirmations was that they came there to go to trial.

18 MS. DUGUAY: Yes.

19 JUDGE ABDUS-SALAAM: So what ha - - - could  
20 you just tell us how it came that they came into the  
21 courtroom to take a plea and not discuss this with  
22 him?

23 MS. DUGUAY: Well, apparently he was  
24 supposed to meet with them the day before at some  
25 point, and he uncharacteristically didn't show up.

1 And so they didn't have any opportunity to talk to  
2 him about the plea until immediately before. And  
3 they went into the jury room, and that's when this  
4 sort of - - -

5 JUDGE ABDUS-SALAAM: But they walked into  
6 the courtroom knowing he was going to take a plea - -  
7 -

8 MS. DUGUAY: Yes.

9 JUDGE ABDUS-SALAAM: - - - but they said  
10 they were shocked at that.

11 MS. DUGUAY: Yes.

12 JUDGE ABDUS-SALAAM: So how is that  
13 possible?

14 MS. DUGUAY: Well, apparently, he went in -  
15 - - ran into the bathroom, locked himself into the  
16 bathroom, came out, and when he was yelled at again,  
17 you have to do this, he said, okay, fine. And the  
18 attorney said he was surprised, and the plea ensued.  
19 So there really was - - - I think it - - - he  
20 literally said, fine, and was walked into the  
21 courtroom, which is on the third page of Mr. LePore's  
22 affirmation.

23 And I would mention that both of these  
24 attorneys' affirmations are sworn statements under the  
25 penalty of perjury. So they're - - - they're definitely

1 saying what - - - giving their impression of what  
2 happened.

3 So I think that under the circumstances, that  
4 any reasonable attorney - - - and also, I think it's very,  
5 very significant that his attorney said that she didn't  
6 think that either one of these pleas should have been  
7 considered. And both of them felt that this was a really,  
8 you know, triable case, that there were real issues of  
9 justification and intent, and he should not take the plea.  
10 There is no indication that that was ever really, in a  
11 meaningful way, communicated to him.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 MS. DUGUAY: Thank you.

14 CHIEF JUDGE DIFIORE: Counsel.

15 MR. SHOEMAKER: Good afternoon, may it  
16 please the court. Robert Shoemaker for the People.

17 There was no abuse of a discretion here in not  
18 allowing the defendant to withdraw his plea, there is also  
19 - - -

20 JUDGE PIGOTT: Why don't we start at the  
21 beginning. I'm trying to figure out - - - the  
22 indictment was straight ahead. You know, it's an  
23 intentional murder. The judge makes an odd offer, it  
24 seems to me. I don't - - - he is saying, you're  
25 going to get, I guess, a more serious sentence if you



1           plead to manslaughter than if you plead to murder 1;  
2           is that right?

3                         MR. SHOEMAKER:   So I think the judge  
4           offered the fifteen to twenty to life on the  
5           indictment, and the prosecutor is the one who offered  
6           the man 1 with twenty-five.

7                         JUDGE PIGOTT:   Well, the judge said, you  
8           can - - - you know, if you plead to murder, I'll give  
9           you no more than twenty to life.  If you plead to  
10          manslaughter, you're getting twenty-five - - - a hard  
11          twenty-five, I assume.

12                        MR. SHOEMAKER:   Yeah.  And the second - - -  
13          that second half, I think he was parroting what the  
14          People's offer was.

15                        JUDGE PIGOTT:   But they don't get to decide  
16          that.  I mean, the People don't get to decide the  
17          sentence and it just seemed really odd to me,  
18          particularly in the - - - I mean, garden shears,  
19          where the idea was that she threw them at him first,  
20          and hit him in the leg, and he threw them, and it  
21          happened to hit her in the back and, what, ~~I think it~~  
22          had to punctured her aorta or something.

23                        I mean, I don't see - - - I couldn't figure  
24          out how we got to a murder in that - - - that aside.  
25          But it was Judge Connell who simply gave them these

1 parameters on sentencing that made it more difficult  
2 for him to plead to an unintentional criminal act  
3 than an intentional one.

4 And I would've thought any lawyer would've  
5 said, what, Judge, Judge - - - you know, one is a C  
6 and one is an A or B, I forget, but - - - and - - -  
7 but - - - but the court is saying, you know, plead to  
8 the murder and you get a - - - you get an easier  
9 sentence. And then when he denies it and says, no, I  
10 didn't have any intent, he says, well, now, you see,  
11 you know, we've got to go back.

12 Well, if he denied it and said that's a  
13 manslaughter, you know - - - but nobody was doing  
14 that. And - - - and I'm just trying to figure out in  
15 this very short colloquy, how this guy ends up with  
16 twenty to life on, kind of what I thought, as Ms.  
17 Duguay was saying, you know, it could've been an  
18 accident - - - there's just so many facts that were  
19 missing here; did you get that sense when you were  
20 looking at the record?

21 MR. SHOEMAKER: As far as the colloquy, the  
22 colloquy wasn't - - - didn't go into all the details,  
23 but we get - - - we get the - - - you mentioned the  
24 piercing of the aorta and everything with the garden  
25 shears, we get that at the sentencing. That wouldn't

1 have necessarily come out - - -

2 JUDGE PIGOTT: Right.

3 MR. SHOEMAKER: - - - during the plea  
4 colloquy. But that it was - - - the shears did  
5 pierce through a leather jacket, a layer of clothing,  
6 skin, broke ribs, pierced an aorta; I think the  
7 People's theory based on that was this was an  
8 intentional - - -

9 But that wasn't - - - that wasn't in the record.  
10 I mean, if you read what the judge was saying to them - -  
11 - to him, it was shorter. Anyway, it just seemed to me  
12 that I - - - I can't imagine a lawyer doing that. And I  
13 also - - - did you get the impression during the pre-trial  
14 hearing that the judge was saying, why are we having a  
15 Wade? All three of them - - - your office said, these  
16 three people are going to testify all confirmatory.

17 And we have a Wade, and every time there is a  
18 question, the judge is saying, this is all confirmatory,  
19 what are you doing? And the ju - - - and the lawyer was  
20 contesting what the judge was saying, and I - - - I was  
21 mystified as to why that was all going on.

22 MR. SHOEMAKER: It was a little strange,  
23 the Wade hearing.

24 JUDGE PIGOTT: Uh-huh.

25 MR. SHOEMAKER: But I - - - you know, we

1 consented to the Wade hearing. The Wade hearing that  
2 was conducted, we consented - - - we said the three  
3 identifying witnesses - - - we said they were  
4 confirmatory; nevertheless, we will have - - - let's  
5 have a Wade hearing. And I think the judge did, a  
6 few times during the hearing, say what you're saying,  
7 basically, why are we having this hearing. But they  
8 did complete the hearing.

9 JUDGE PIGOTT: Now you move forward, and  
10 there's a few months that go by, and - - - and  
11 they're going to a jury trial. And all of a sudden,  
12 it's a non-jury trial. I mean, there is - - - and  
13 not that there has to be an explanation, but I  
14 thought, well, that's interesting.

15 And then the next day, the very next - - -  
16 one lawyer says, I'm ready to go to trial. The other  
17 one says, well, I'm going to take him into the jury  
18 room and convince him to take a plea. They don't  
19 know what - - - which way is - - - Mr. LePore has  
20 been disbarred since, right?

21 MR. SHOEMAKER: I think that's right.

22 JUDGE PIGOTT: Yeah, he was disbarred for  
23 taking a cell phone into the jail and assisting in a  
24 prisoner escape, but - - - I just thought that added  
25 a little frosting to the cake, because one - - - many

1 of the questions here are the fact that the defendant  
2 didn't have an affidavit attached to all of this.

3 So Judge Connell decided that he had enough  
4 information. People, all they said was, Judge, look  
5 at the record. You know, counsel that was there  
6 said, you know, it's all belied by the record. But  
7 nobody challenged this doctor. I mean, they had a  
8 professional doc - - - you know, who talked to the  
9 mother, had talked to him, spent, as Ms. Duguay said,  
10 about an hour, and said, the guy is nuts, and this  
11 was not a knowing plea.

12 And everybody said, well, it's belied by  
13 the record. There is nothing in the record. You  
14 know, he said - - - he said, I didn't mean to do it.  
15 But he said, well, wait, then you can't take your  
16 plea. Okay, then I did intend to do it, and it's  
17 over. Doesn't that - - - does that raise any  
18 thoughts in your mind as to how this went?

19 MR. SHOEMAKER: Well, I think it is belied  
20 by the record. And I think it's a belied by case law  
21 from this court.

22 JUDGE PIGOTT: Yeah, we don't - - - we  
23 don't do that stuff. Wasn't the record about two  
24 pages? You know, the plea?

25 MR. SHOEMAKER: Of the plea?

1 JUDGE PIGOTT: Yeah.

2 MR. SHOEMAKER: I think it was a little  
3 longer than that, but as far as the intoxication,  
4 defendant denied that. As far as being threatened or  
5 coerced, defendant denied that. And as far as the  
6 family coercion, even assuming that everything in  
7 these affidavits is true with regard to the family  
8 coercion, that is not a recognized legal ground as  
9 this - - -

10 JUDGE STEIN: What would have been  
11 necessary here to get a hearing or further inquiry?  
12 I mean, are you saying that whenever during the plea  
13 the defendant, you know, answers the magic questions,  
14 are you intoxicated, are you - - - have you been  
15 threatened, had you been coerced, are you doing this  
16 freely, and they answer all these questions right,  
17 there can never be a challenge then to the  
18 voluntariness of the plea?

19 MR. SHOEMAKER: Well, first, it's important  
20 that he does answer those questions. In Brown, I  
21 think, the defendant was never actually asked whether  
22 he was pleading voluntarily. So his claims in his  
23 motions to withdraw were not belied by the record.  
24 Second, the - - - it would be nice if the defendant  
25 had made an affidavit, and in that affidavit there

1 would have to be some showing of mistake or fraud, or  
2 a colorable - - - the - - - a colorable claim of  
3 innocence, or a legitimate claim of innocence. Those  
4 would give rise to the court holding a hearing.

5 JUDGE STEIN: So what you say is missing  
6 here is the defendant never came forward and said,  
7 this is - - - this is how I was feeling when my  
8 family was jumping on top of me, I was intoxicated or  
9 whatever, other than what he said to the doctor, and  
10 by the way, I'm innocent. So those are the three  
11 things that you say are missing.

12 MR. SHOEMAKER: Well, the first two, I  
13 don't know if those would change the outcome. Saying  
14 he was intoxicated and the family coercion, I don't  
15 know that they would change the outcome because the  
16 family coercion, as I said before, is not a  
17 recognized legal ground. And as for the  
18 intoxication, the whole reason why we afford trial  
19 courts' broad discretion in this arena is because  
20 they are the ones who are actually observing the  
21 defendant at the time of the plea.

22 The county court judge had the opportunity  
23 to see the defendant, he was there firsthand, he  
24 could assess whether the defendant was alert, awake,  
25 knowledgeable when he was making his plea.

1                   JUDGE RIVERA: Counsel, given that the  
2 defendant makes these statements about the shears - -  
3 - she threw it at me, I threw it back - - - and  
4 initially says, no, I didn't intend to kill her. Did  
5 the judge have to either advise or otherwise inquire  
6 of defendant about a self-defense?

7                   MR. SHOEMAKER: I don't know that he had to  
8 inquire about a self-defense. But as far as whether  
9 or not he actually intended, because the defendant  
10 did have trouble meeting that element in his plea  
11 colloquy, People v. Mox says the judge does have to  
12 do further inquiry, which is what the judge did in  
13 this case and he ended up - - - the defendant  
14 actually - - -

15                  JUDGE RIVERA: So when the judge goes  
16 through, these are the rights you're waiving or these  
17 are the rights you're giving up by not going to  
18 trial, by entering a plea, and this defendant makes a  
19 statement that seems to at least suggest that there  
20 might be a self-defense argument; you're saying the  
21 judge doesn't have to - - - even with - - - without  
22 necessarily advising him, oh, by the way, do you know  
23 that that constitutes potentially a self-defense, he  
24 doesn't have to inquire - - - the judge doesn't have  
25 to inquire to ensure that the defendant understands



1           that he is giving up the opportunity to potentially  
2           present a self-defense?

3                       MR. SHOEMAKER: Well, I don't know that he  
4           had a potential self-defense claim based on his  
5           colloquy. He might have said he didn't intend, which  
6           may have been a potential rec - - -

7                       JUDGE RIVERA: He said she threw it at him.

8                       MR. SHOEMAKER: And then he had them - - -

9                       JUDGE RIVERA: And then he threw it back.

10                      MR. SHOEMAKER: And that's when he threw  
11           them back. I don't know he's - - -

12                      JUDGE PIGOTT: Or maybe even a crim neg. I  
13           mean, I don't know how far down you can go on the - -  
14           - you know, on the felony scale on this. But, you  
15           know, my notes aren't quite complete, but I got the  
16           impression that the judge gave him the choice. You  
17           know, he said, "I have agreed to cap the sentence at  
18           twenty to life instead of twenty-five to life. The  
19           alternative would be if you were to plead to  
20           manslaughter first, then that would require a  
21           sentence of twenty-five plus five PRS."

22                      And then my note simply says, "The  
23           defendant chooses murder 2nd over manslaughter 1." I  
24           mean, I guess I wrote that because I thought, we're  
25           negotiating with a judge saying, pick - - - you know,

1 pick your crime? I don't - - - I don't know that we  
2 should be doing that either.

3 MR. SHOEMAKER: I really do think that the  
4 manslaughter was offered by the People. The judge  
5 there is kind of summarizing his offer and the  
6 People's offer.

7 JUDGE PIGOTT: Well, the judge - - - I  
8 mean, they can't make an offer. I mean, the judge  
9 says I'm not allowing manslaughter, it's not going to  
10 get allowed. I mean, I know what you're saying.

11 MR. SHOEMAKER: He could block it, sure.

12 JUDGE PIGOTT: Yeah. But I mean, the judge  
13 was saying, okay, you got a choice. You can take - -  
14 -

15 CHIEF JUDGE DIFIORE: Does your office  
16 engage in the practice of negotiating pleas and  
17 setting a condition on the sentences?

18 MR. SHOEMAKER: If it's a reduction off of  
19 the indictment, yes.

20 CHIEF JUDGE DIFIORE: Uh-huh.

21 MR. SHOEMAKER: As far as - - - I'd really  
22 would like to briefly finish up just with the Mox  
23 issue with the defendant first saying he didn't  
24 intend. The judge actually did do the further  
25 inquiry, and the defendant actually said four times

1           that he did intend. He said, "I intended", "I  
2           intended". Did you intend? That's corr - - - is  
3           that correct? Yes. "Is that the truth? Yes."

4                    JUDGE PIGOTT: That's the whole thing,  
5           right?

6                    MR. SHOEMAKER: For that particular  
7           element, yes.

8                    JUDGE PIGOTT: Would a hearing help here?

9                    MR. SHOEMAKER: In this case, I don't know  
10          that a hearing would help. But if - - - maybe if the  
11          defendant had submitted something, it might have - -  
12          -

13                   JUDGE PIGOTT: I mean, should we hear from  
14          the doctor?

15                   MR. SHOEMAKER: I'm sorry.

16                   JUDGE PIGOTT: You got a doctor who said  
17          he's nuts and everybody else just saw what happened  
18          that day, you know, in the courtroom.

19                   MR. SHOEMAKER: Well, like I said, with the  
20          intoxication, the judge witnessed that.

21                   JUDGE PIGOTT: Oh no, I'm talking about the  
22          doctor. There's a doctor that certifies, I'm a  
23          medical doctor, I examined him, the guy is nuts. He  
24          did not know what he was doing when he took this  
25          plea.

1           The People didn't offer any contrary - - -  
2           anything contrary to that other than the fact that Mr.  
3           Waldorf said, well, you were here, Judge, so was I. And  
4           it's belied by the record. But there's no - - - there's  
5           no professional testimony saying that doctor is wrong, he  
6           did indeed know what he was doing.

7           MR. SHOEMAKER: Well, the doctor said that  
8           based on those two factors, based on the family  
9           coercion and based on the intoxication.

10          JUDGE PIGOTT: No, based on the interview.  
11          He interviewed him and he interviewed his mother, I  
12          think, didn't he?

13          MR. SHOEMAKER: I'm not sure about that.  
14          But his conclusion was based on those two factors  
15          being in play.

16          JUDGE PIGOTT: I see.

17          MR. SHOEMAKER: And as I said before, the  
18          family coercion is not a ground, intoxication is  
19          something the court could see for itself.

20          CHIEF JUDGE DIFIORE: Thank you, counsel.

21          MR. SHOEMAKER: Thank you.

22          CHIEF JUDGE DIFIORE: Counsel.

23          MS. DUGUAY: A couple of points. I think  
24          that I - - - I mean, this court historically has  
25          looked at factors in totality. All right. They

1 don't - - - you don't necessarily have to isolate and  
2 say, okay, the family coercion, does that meet the  
3 threshold? No. Move on to plan B. Is it the  
4 diminished capacity? No. Intoxication - - -

5 I mean, you look at the relationship and  
6 the synergistic effect that these factors have on one  
7 another and there are times where these things can  
8 become greater than the sum of the parts.

9 JUDGE STEIN: But you have to - - - you  
10 have to assume that there is some validity to - - -  
11 to the factors themselves.

12 MS. DUGUAY: Oh, absolutely, I think. You  
13 know, but it doesn't necessarily rise and fall on  
14 just one in this case, because they are just so many  
15 factors that came into play here, and it's detailed  
16 in both of the attorneys' affirmations. Which I  
17 think in itself is unusual. Usually, you know, you  
18 have the courts saying, well, you know, just relying  
19 on self-serving comments made by a defendant isn't  
20 enough. So you know - - -

21 CHIEF JUDGE DIFIORE: This isn't made by  
22 the defendant, right? There is no sworn statement by  
23 the defendant, which is my issue.

24 MS. DUGUAY: Right.

25 CHIEF JUDGE DIFIORE: We are going to

1           discredit a sworn admission taken during the  
2           allocution - - -

3                       MS. DUGUAY:   Uh-huh.

4                       CHIEF JUDGE DIFIORE:   - - - conducted by  
5           the trial court, without a sworn statement from the  
6           defendant at a - - - at the later point.

7                       MS. DUGUAY:   Right.

8                       CHIEF JUDGE DIFIORE:   That's problematic  
9           for me.

10                      MS. DUGUAY:   Well, two things.   Number one  
11           is the sworn - - - we're arguing that the sworn  
12           statement - - - well, actually, his plea colloquy was  
13           never sworn, I don't believe, and I looked at the  
14           trial minutes, and we can look at the plea minutes,  
15           but I don't think he was put under oath before taking  
16           the plea in this case.

17                      Second of all, even if they were, the  
18           argument is that he was - - - he was functioning with  
19           a diminished capacity at the time he was making those  
20           statements.   So he - - - you know, if the  
21           voluntariness of those statements is called into  
22           question, then I think it goes to - - - again, this  
23           court has always held that at some point there is - -  
24           - once a threshold is met, there is a - - - the trial  
25           court is - - - got a duty that's triggered.   It's not

1 triggering a duty to him to - - -

2 JUDGE ABDUS-SALAAM: Counsel, the  
3 allegation is that he was proceeding under diminished  
4 capacity, but when he was asked those questions - - -  
5 those very questions about whether he understood what  
6 he was being asked and whether he had imbibed any  
7 alcohol - - -

8 MS. DUGUAY: Uh-huh.

9 JUDGE ABDUS-SALAAM: - - - or was on any  
10 medication, he said, no.

11 MS. DUGUAY: Well - - -

12 JUDGE ABDUS-SALAAM: Whether they were  
13 sworn or not.

14 MS. DUGUAY: Right. Which again, there is  
15 the diminished capacity, number one, and number two,  
16 he denied guilt too. Shortly after that he said, did  
17 you intend to kill her? No. And he went through  
18 exactly the scenario that Judge Pigott was talking  
19 about which was what he said to the police.

20 So - - - and I would just - - - if I could  
21 just end on the idea that, you know, this man relied  
22 on his attorneys. And I think that - - - it's not  
23 necessarily unreasonable, especially for somebody,  
24 again, who is very vulnerable - - -

25 JUDGE GARCIA: When - - - you say that and

1 then assuming they - - - they were ineffective in not  
2 filing this affidavit - - -

3 MS. DUGUAY: Uh-huh.

4 JUDGE GARCIA: - - - but would - - -  
5 couldn't there be strategic reasons not to file an  
6 affidavit from a defendant?

7 MS. DUGUAY: If there were, I don't think  
8 there is any that are on the face of this record,  
9 because they sat with a psych - - -

10 JUDGE GARCIA: They have to be on the face  
11 of the record? I mean, isn't the standard for  
12 ineffective that there is no strategic reason why  
13 they would do that? I could think of a lot of  
14 strategic reasons why a defense lawyer wouldn't file  
15 an affidavit.

16 MS. DUGUAY: Well, I don't think - - - I  
17 think that, again, you know, he met with a  
18 psychologist for - - - I'm sorry, a licensed  
19 psychiatrist - - -

20 JUDGE GARCIA: Right.

21 MS. DUGUAY: - - - for an hour and any  
22 statements that he made to that psychiatrist was out  
23 there.

24 JUDGE GARCIA: Right. And wouldn't it be a  
25 choice to rely on those statements rather than put in



1 an affidavit which might not completely line up with  
2 him?

3 MS. DUGUAY: Well, I think we know what,  
4 you know, he said during that meeting. And again, it  
5 goes to - - - with the psychiatrist, but it also goes  
6 to - - - number one, it goes to the effective  
7 assistance of counsel, and, I mean, arguably, if you  
8 rely on your attorneys once and they mess up, and you  
9 rely on them again and mess up, I mean, isn't that  
10 sort of the definition of an insanity as well, so - -  
11 -

12 JUDGE GARCIA: My problem is more basic  
13 than that. It's assuming they messed up, I mean, I  
14 just think there are reasons why a lawyer would not  
15 file an affirmation from a client. You have the  
16 statements to the doctor - - -

17 MS. DUGUAY: Uh-huh.

18 JUDGE GARCIA: - - - perhaps your  
19 affirmation is not going to be as good as that. So,  
20 you know, maybe he's saying, no, I didn't really say  
21 that to the doctor, or he - - - the doctor  
22 misinterpreted, or I can't go this far. You rely on  
23 the doctor; you have what the doctor is going to say.  
24 Why are we going to second guess the decision not to  
25 file an affirmation when there are legitimate reasons

1 not to?

2 MS. DUGUAY: Well, I think that this court  
3 has long recognized how grave, grave plea-taking  
4 process is, that people are making real decisions  
5 about the rest of their life, and that there is a  
6 real onus on trial courts to look at all of the  
7 circumstances in these cases.

8 Again, they are enumerated in Nixon, you  
9 know, how long did this person have to talk to his  
10 attorneys, how long and detailed was the colloquy, is  
11 he familiar with the circumstances, how beneficial -  
12 - - like Judge Pigott was saying, how beneficial is  
13 the plea bargain to him.

14 And you know, in looking at all of the  
15 circumstances, again, the - - - the onus is on the  
16 trial court then. It triggers a duty in the trial  
17 court to conduct an inquiry. And the very purpose of  
18 that inquiry is to answer the questions that - - -  
19 that you're asking. If there is anything that he  
20 could have provided that could have supplemented the  
21 information that was already provided to the court,  
22 then I would submit that there was submission - - -  
23 the sufficient information provided to the court to  
24 trigger that affirmative duty to say, you know Mr.  
25 Manor, you know, isn't - - -

1                   JUDGE GARCIA: Why isn't it - - - maybe the  
2 defense lawyers made the determination that there  
3 wasn't anything that he had that could have made that  
4 motion better.

5                   MS. DUGUAY: Well, he was there and  
6 available to answer questions to the court.

7                   JUDGE GARCIA: Right. Or to be offered.

8                   JUDGE PIGOTT: Well, then - - - then they  
9 submitted on the papers. They made no oral argument  
10 and it just - - - and this is one of those rare cases  
11 where you actually have a motion before sentencing,  
12 which is when they're supposed to be brought, rather  
13 than the ones after sentencing, and we end up in a  
14 440 situation.

15                   MS. DUGUAY: Well, I think they're kind of  
16 in a Catch 22 also sometimes, because I think  
17 historically that sort of statements by defendants  
18 are seen self-serving - - - as self-serving - - - as  
19 - - -

20                   JUDGE RIVERA: Well, not putting it in - -  
21 - defendant might say something at the trial also,  
22 right?

23                   MS. DUGUAY: I'm sorry.

24                   JUDGE RIVERA: You have kind of gone  
25 through with the client and prepared the affidavit.

1           When you don't do that, you risk that the defendant  
2           might get up and say something at trial.

3                     MS. DUGUAY:    Sure.

4                     JUDGE PIGOTT:  Well, except he's got  
5           nothing to lose.  At this point, he's - - - you know,  
6           he's already plead to a murder - - -

7                     MS. DUGUAY:  Right.

8                     JUDGE PIGOTT:  - - - and he's already been  
9           told that he is going to be sentenced up to twenty.  
10          I don't know why he wouldn't put in an affidavit.

11                    MS. DUGUAY:  Well, I - - - I don't know; I  
12          obviously, you know, I would have done something  
13          quite different, and you know, I also think that they  
14          should have done something different well before they  
15          ever got to this point - - - the point - - - I think  
16          the bigger question is, why didn't they do something  
17          before the client pled guilty when they were  
18          concerned, than wait until after.

19                    JUDGE RIVERA:  Without the - - - you're not  
20          taking position that with these papers, the judge  
21          couldn't directly turn to the defendant and ask  
22          questions.

23                    MS. DUGUAY:  I'm - - - I'm suggesting the  
24          opposite.

25                    JUDGE RIVERA:  But he had to do that,

1 right?

2 MS. DUGUAY: I'm suggesting that he - - -

3 JUDGE RIVERA: So if you don't do the  
4 affidavit, the judge - - - you're asking the judge to  
5 do exactly what you are now asking. And so why - - -  
6 what would be the strategic purpose not to put in an  
7 affidavit - - -

8 MS. DUGUAY: I - - -

9 JUDGE RIVERA: - - - if you are - - - if  
10 you are hoping that your client will be asked a bunch  
11 of questions?

12 MS. DUGUAY: I don't - - - I don't know of  
13 any strategic purpose.

14 JUDGE RIVERA: Okay.

15 MS. DUGUAY: But I also don't - - - you  
16 know, I think that this representation was deficient  
17 in a lot of levels throughout these proceedings. And  
18 again, once they got to that point, it's too late.  
19 The damage has been done to Mr. Manor. They pled him  
20 to a crime he consistently denied, with a life  
21 sentence, without a meaningful opportunity to talk to  
22 them, when they were concerned about his mental  
23 capacity at the time.

24 JUDGE RIVERA: But at the plea, did the  
25 judge have to ask anything about self-defense?

1 MS. DUGUAY: I think the judge - - - I  
2 certainly think the better course would have been so.  
3 Does it rise to a Lopez issue where, you know - - - I  
4 don't think we need to reach the point because that  
5 more goes to preservation, but yeah, this plea, on  
6 its face, was very troubling because the response  
7 after he said, no, I didn't kill her, was, well, you  
8 have to say you intended to kill her for me to take  
9 your plea.

10 He didn't go through anything else like,  
11 what you just said is not intentional murder. What  
12 intentional - - - you know, if that's your story,  
13 that's not - - - you know, that's - - - you're not  
14 guilty of this crime. And he also didn't say  
15 anything about justification. So I think the plea,  
16 on its face, is very problematic without any of the  
17 extra information.

18 CHIEF JUDGE DIFIORE: Thank you, counsel.

19 MS. DUGUAY: Okay. Thank you.

20 (Court is adjourned)

21

22

23

24

25

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Tyrone D. Manor, No. 62 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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

Agency Name: eScribers

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

Date: April 5, 2016