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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 199

ROBERT PATTERSON,

Appellant.

20 Eagle Street
Albany, New York
November 15, 2016

Before:

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

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Next matter on this
2 afternoon's calendar is appeal number 199, the People of
3 the State of New York v. Robert Patterson.

4 MS. DILLE: Good afternoon; my name is Ellen
5 Dille. I represent defendant-appellant Robert Patterson.
6 And with the court's permission, I'd like to reserve three
7 minutes for rebuttal.

8 CHIEF JUDGE DIFIORE: You may.

9 MS. DILLE: Thank you. The issue in this case is
10 whether the trial court erred by admitting into evidence
11 the subscriber information that was contained in two sets
12 of prepaid cell phone records under the business rule
13 exception.

14 JUDGE STEIN: Can I start, before we get into the
15 business rule exception, just putting a little context on
16 this.

17 MS. DILLE: Um-hum.

18 JUDGE STEIN: This - - - these charges were
19 brought, as were a number of other charges involving other
20 robbery cases, right?

21 MS. DILLE: Correct.

22 JUDGE STEIN: And - - - and you moved for - - -
23 or the defendant moved for severance and that was granted,
24 right. And that was granted because, in the other cases,
25 there was no corroborating evidence of the eyewitness

1 identification; am I right so far?

2 MS. DILLE: Because in the case that went to
3 trial, the Johnson case, there was corroborating evidence
4 in the form - - -

5 JUDGE STEIN: The corroborating evidence were
6 these phone records.

7 MS. DILLE: Correct.

8 JUDGE STEIN: Okay. So if we - - - and those - -
9 - those matters have been resolved?

10 MS. DILLE: They were - - - the other cases were
11 resolved after this trial. That's right.

12 JUDGE STEIN: If we were to reverse, the People
13 would have lost the opportunity to try them all together as
14 a pattern crime, correct?

15 MS. DILLE: If you - - - if you reverse - - -

16 JUDGE STEIN: And it goes - - - or I'm sorry. If
17 - - - yeah, if it - - - if it goes back for a new trial.

18 MS. DILLE: Well, the way the - - - the pleas
19 were structured, one of the three other cases carries a
20 consecutive sentence of ten years. The other sentences, if
21 my recollection serves, are - - -

22 JUDGE STEIN: But what - - - what I'm - - -

23 MS. DILLE: - - - lesser concurring sentences.

24 JUDGE STEIN: - - - suggesting is is that the
25 People's proof would have been different, would they not

1 have?

2 MS. DILLE: It would have been a completely
3 different trial. I mean in - - - in addition - - -

4 JUDGE STEIN: And - - - and so what you did was
5 you argued for severance, you got severance on the basis of
6 these records, and then you - - - and now - - - and then
7 the defendant moved to - - - to - - -

8 MS. DILLE: That's - - - that is not - - -

9 JUDGE STEIN: - - - preclude this evidence,
10 right?

11 MS. DILLE: We - - - we addressed this in the
12 reply brief. There's a very long footnote that goes
13 through exactly the sequence of events. The court did say
14 on the record it was going to grant the - - - the defense
15 attorney's application for severance, but then he brought
16 in the issue of the admissibility, under the business
17 records exception, of the subscriber information. The
18 court held its decision to sever in abeyance. Until after
19 lengthy, lengthy conversation about the admissibility
20 issue, it decided that because it was letting this - - -
21 this evidence in under the business records exception, it
22 was going to adhere to its decision to sever.

23 In addition, the - - - it said - - - I believe it
24 said it would have granted severance in any event because
25 of the possibility that there - - - there might be other

1 evidence in the Johnson case, namely, testimony by one of
2 the codefendants. So there - - - there was no gamesmanship
3 here. The trial attorney kept them separate, the judge
4 kept them separate, and I hope - - - does that answer your
5 question?

6 JUDGE GARCIA: Going to the hearsay problem, and
7 this case is somewhat baffling to me because intuitively, I
8 would think, this would go to weight. But - - - and I know
9 the cases. But the records come in. As I understand it,
10 this is not your client's name.

11 MS. DILLE: The name on the Sprint records is
12 Darnell (ph.) Patterson.

13 JUDGE GARCIA: Right.

14 MS. DILLE: My client's name is Robert Patterson.
15 The - - -

16 JUDGE GARCIA: So what's the truth of that
17 statement?

18 MS. DILLE: The truth of the - - - of the
19 subscriber information, it's admitted as direct evidence -
20 - -

21 JUDGE GARCIA: So - - - but it's - - -

22 MS. DILLE: - - - for the contents and - - -

23 JUDGE GARCIA: We're in a really technical area
24 of hearsay here which, again, to me, is somewhat
25 counterintuitive. But you're saying it's hearsay. It's

1 being admitted for the truth. That's hearsay, right?

2 MS. DILLE: Right.

3 JUDGE GARCIA: But the truth would be this ten-
4 year-old or whoever old that Darnell Patterson is, got this
5 phone. That's what that statement says. That's the truth
6 of that statement.

7 MS. DILLE: The truth of the statement is - - -
8 and the reason it's hearsay is it's admitted to show that
9 Darnell Patterson is connected to the Sprint phone. That
10 was taken and used as circumstantial evidence - - -

11 JUDGE GARCIA: Right.

12 MS. DILLE: - - - that Robert Patterson was
13 Darnell. But on the prosecutor's application the court had
14 - - -

15 JUDGE GARCIA: But it wasn't used to - - - to - -
16 -

17 MS. DILLE: - - - Mr. Patterson show the tattoo
18 of Darnell on his hand.

19 JUDGE GARCIA: It wasn't used for the truth of
20 the fact that the son got the cell phone, which is what the
21 subscriber record shows.

22 MS. DILLE: It - - - the truth is for the - - -
23 the entry, the information that's in the records. It
24 showed under the name Darnell Patterson - - -

25 JUDGE GARCIA: But they didn't admit it for that.

1 MS. DILLE: - - - my client's date of birth, and
2 an address.

3 JUDGE GARCIA: They didn't admit it to show that
4 - - - I'm sorry if I'm confusing names, but Darnell
5 Patterson got the phone. They didn't admit it for that.
6 They weren't arguing Darnell Patterson got the phone. So
7 how is it coming in for the truth?

8 MS. DILLE: They absolutely used it since Darnell
9 - - - Robert Patterson is my client.

10 JUDGE GARCIA: Right.

11 MS. DILLE: They - - - the direct evidence is - -
12 - is Darnell Patterson. Circumstantial evidence is Robert
13 Patterson.

14 JUDGE GARCIA: Right.

15 MS. DILLE: And because the two - - - the two
16 phones, it's not just the Sprint records, it's also the T-
17 Mobile records that are tied to the female accomplice - - -

18 JUDGE STEIN: But they weren't trying - - - you
19 say direct evidence is that it was Darnell Patterson. That
20 is not what they were trying to prove. They're - - -
21 nobody's - - - they're not trying to prove that - - -

22 MS. DILLE: It's used - - -

23 JUDGE STEIN: - - - the Darnell Patter - - - that
24 actually the subscriber was Darnell Patterson. It's - - -
25 what they're trying to prove is that there is a connection

1 here.

2 JUDGE GARCIA: And they're trying to prove,
3 ultimately, that the call went to this phone and he had the
4 phone. That's what they're trying to prove.

5 MS. DILLE: Right.

6 JUDGE GARCIA: And they're doing that by a number
7 of different circumstantial factors such as this phone
8 calls five numbers that your client called from Rikers.
9 That's all going towards the circumstantial proof that he
10 has this phone at the relevant time. One of those things
11 is that the name on this is the son's name. But it's not -
12 - - that record doesn't come in for the - - - they're not
13 arguing Darnell Patterson went and got this phone and gave
14 it to his father. They're arguing a connection between
15 that phone and the defendant to argue, circumstantially,
16 that he has the phone at the time the crime is committed
17 and he's called.

18 MS. DILLE: I'm not sure, Your Honor - - -

19 JUDGE RIVERA: Well, assert it's not that truth,
20 what's the connection and what's the relevance of a phone?

21 MS. DILLE: I'm sorry Your Honor?

22 JUDGE RIVERA: If the truth is not the son and
23 the father's connection, what's the point of the phone?

24 MS. DILLE: I'm - - - I'm confused about the son.

25 JUDGE RIVERA: And what - - - the record - - -

1 MS. DILLE: I don't - - - I don't - - - is that -
2 - -

3 JUDGE GARCIA: Well, the - - - the phone
4 relevance, to me, seems in this case that at - - - at this
5 point in the robbery it's called, right. The phone call -
6 - - the phone is called and somebody comes and there's a
7 robbery, right, generally?

8 MS. DILLE: The - - - the People introduced it to
9 show that Robert Patterson, my client, was Darnell
10 Patterson, who was in communication with a female
11 accomplice who supposedly set - - -

12 JUDGE GARCIA: Right. So - - -

13 MS. DILLE: - - - up the crime.

14 JUDGE GARCIA: What I'm getting at is it's the
15 communication, right, that's important to this crime.

16 MS. DILLE: It's the link. It's the link between
17 the woman - - -

18 JUDGE GARCIA: Right.

19 MS. DILLE: - - - and the complainant's
20 apartment.

21 JUDGE GARCIA: Right.

22 MS. DILLE: And the person who has the phone.

23 JUDGE GARCIA: So they're trying to put the phone
24 in - - - in your client's hand when that call is made from
25 the woman who's in the apartment.

1 MS. DILLE: Yes.

2 JUDGE GARCIA: And they do it in various ways. I
3 mean they could have just put these subscriber records in
4 with no subscriber and argued, for example, not this case,
5 but hey, your client's mother is called on this phone, you
6 know, five minutes after this call, and it's also called
7 from Rikers Island. They could have done that, and that's
8 all circumstantial evidence that he has the phone. What
9 they did in addition to that was they put in a statement
10 that Darnell Patterson is the subscriber of this phone,
11 which no one believes. No one accepts that as true. So
12 since we're in a - - - again, a very technical area of
13 hearsay because, obviously, this is probative proof, what
14 is the truth of that statement that's coming in for?

15 MS. DILLE: The truth of the statement is the
16 contents of the records themselves, that the subscribers,
17 the people who have the phones are Darnell Patterson and
18 Daichele Marrero, the female accomplice.

19 JUDGE ABDUS-SALAAM: Counsel, is there any
20 scenario that these - - - this information would come in as
21 non-hearsay information?

22 MS. DILLE: Well, that's the prosecution's entire
23 argument.

24 JUDGE ABDUS-SALAAM: Or do you agree with that
25 that it could have come in as non-hearsay?

1 MS. DILLE: No. I don't because, first of all,
2 the prosecution has never identified a relevant non-hearsay
3 purpose for this evidence. The evidence of the identity of
4 the subscribers of the two phones is only relevant for its
5 truth. Somebody else activates the phone it has no
6 relevance. It does - - - does not implicate Mr. Patterson
7 in any of the crimes.

8 JUDGE RIVERA: Why doesn't it complete the
9 narrative? Why doesn't it get you to why the investigation
10 leads to the door of your client?

11 MS. DILLE: Well, for one thing, the trial judge
12 rejected that claim. And if it had, there would have been
13 a limiting instruction in this case. No limiting
14 instruction was ever given after - - -

15 JUDGE RIVERA: But if the judge had made - - -

16 MS. DILLE: - - - after it came into evidence.

17 JUDGE RIVERA: - - - an error about whether or
18 not this could have been used to complete the narrative, is
19 your fallback that but you don't have the - - - obviously,
20 then, you don't have the limiting instruction and you've
21 got to have the limiting instruction if you're bringing in
22 this kind of evidence for completion of the narrative?

23 MS. DILLE: Completing the narrative might have
24 been an acceptable use, but that's not what happened here.
25 The judge - - - the judge - - -

1 JUDGE ABDUS-SALAAM: What about the - - -

2 MS. DILLE: - - - explicitly rejected that.

3 JUDGE ABDUS-SALAAM: What about the reason that
4 the Appellate Division gave that it's like - - - pedigree
5 information?

6 MS. DILLE: Well, the gist of the Appellate
7 Division's decision was that because the subscriber
8 information was used as circumstantial evidence, that is
9 somehow nonfactual and therefore it's not hearsay. And we
10 disagree with that because all evidence is factual, right.
11 Circumstantial evidence is direct evidence of a fact from
12 which you may infer the existence or nonexistence of
13 another fact. It's still factual. And because it's
14 factual and it's considered for its truth, in this case
15 without any limitation from the court, it's hearsay. And -
16 - -

17 JUDGE PIGOTT: Well, they - - - they analogize it
18 to a fingerprint.

19 MS. DILLE: Yes, they do, Your Honor. But I am
20 hard pressed to see how a fingerprint is a statement. So I
21 don't think that has any - - - any hearsay implications
22 whatsoever. I - - - I just - - - I'm at a loss on that
23 one.

24 CHIEF JUDGE DIFIORE: Thank you, Ms. Dille.

25 MS. DILLE: Thank you.

1 CHIEF JUDGE DIFIORE: Counsel.

2 MR. MANSELL: May it please the court, Ryan
3 Mansell for the Bronx County District Attorney's office.
4 Going right to Justice Garcia's question points exactly to
5 what we are asking this court to do in this case which is
6 to apply the hearsay rule in the same way that the lower
7 departments apply it, that it was applied in this case, and
8 that other jurisdictions with the same hearsay rule choose
9 to apply that rule. And that is for the truth of the facts
10 asserted in the statement. And I think the key distinction
11 in this case is that we didn't bring it in for its truth,
12 and there's a distinction between accuracy and veracity.

13 JUDGE RIVERA: Well, what - - - what did you
14 bring it in for?

15 MR. MANSELL: We brought it in simply to show the
16 fact of the occurrence, the fact that someone called up
17 Sprint and left a specific set of information with the
18 Sprint representative.

19 JUDGE ABDUS-SALAAM: That's a non-hearsay
20 purpose.

21 MR. MANSELL: Correct. That's a non-hearsay
22 purpose because we don't care what the date of birth is of
23 the defendant. We don't care where he actually lives. We
24 don't actually care what his real name may or may not be.
25 We're simply trying to show that the information that was

1 left with the Sprint representative matches the information
2 that defendant provided at various times. He provided the
3 same date of birth when he was arrested. He had the - - -
4 the address had come up during an NYPD database search by
5 the detective. The name was tattooed on his hand. We
6 didn't actually care that the birth date was June 4th,
7 1986. We only cared that the information that was provided
8 to Sprint matched the information that was provided by the
9 defendant. Whether it was his real birthday or not didn't
10 matter for the reason we were introducing it into evidence.
11 And that's the distinction between accuracy and veracity.
12 It mattered that the last name was Patterson and that the
13 first name was Darnell, just as it would have mattered or
14 made a difference - - -

15 JUDGE RIVERA: So then - - - so then you're
16 looking for a hearsay exception? You're looking for it to
17 fit under some other category? What's that other category
18 that you presented to the trial court?

19 MS. DILLE: Well, the other category that we
20 presented to the trial court, we very clearly said this
21 when we were making our argument, was that we were bringing
22 it in for the non-hearsay purpose simply to show that the
23 information had been provided. And the court agreed. They
24 said in their oral ruling specifically that they were
25 letting it only for the purpose of showing that somebody

1 had left that information. They said the same thing in the
2 written ruling, that it was coming in only for the
3 occurrence of the fact that the information was left.
4 That's what the Appellate Division affirmed.

5 JUDGE STEIN: Didn't care whether that person was
6 Darnell Patterson or Robert Patterson or Jane Smith or - -
7 - it didn't matter who that person was that provided the
8 information?

9 MR. MANSELL: Exactly, Judge Rivera. It didn't
10 matter who actually provided - - -

11 JUDGE STEIN: Judge Stein.

12 MR. MANSELL: Oh, I'm sorry. Judge Stein.

13 JUDGE RIVERA: Although, I'm pleased that you
14 might think I'm Judge Stein.

15 MR. MANSELL: My apologies.

16 JUDGE RIVERA: Thank you.

17 MR. MANSELL: It didn't matter who actually
18 provided the information. We simply wanted to show, the
19 same way you would show with a prior and consistent
20 statement. For instance, if a defendant had previously
21 lied about their alibi saying they were at the mall and
22 then they later said that they were at a neighbor's house,
23 the accuracy of the statements matter. The fact that he
24 said mall before and that he said neighbor's house this
25 time, the accuracy matters, we don't actually care where he

1 was. The same way in this case, we don't actually care
2 what the truth of the statement is. We just care that the
3 sets of information provided match. And that's the same
4 situation that happened in the Lieberman case, the same
5 situation in the Siny Van Tran case. It's - - -

6 JUDGE RIVERA: So why isn't that the truth that
7 he's the one who provided it? Why isn't that the truth
8 you're trying to match up to?

9 MR. MANSELL: Because the for - - -

10 JUDGE RIVERA: As opposed to the content? I get
11 your point there.

12 MR. MANSELL: Because the formulation of the
13 hearsay rule that this court articulated in Huertas is the
14 truth of the facts asserted in it, in the statement. We're
15 confined to looking at the four corners of the statement.
16 The way I would say to look at this is as collateral facts.
17 There are things even when - - -

18 JUDGE RIVERA: So it's too bad for the defendant
19 that he lied, right?

20 MR. MANSELL: Well, even if the statements were
21 true, we would still say that they come in because again,
22 we're just looking for the fact that they match. So for
23 instance - - -

24 JUDGE ABDUS-SALAAM: But is that - - - is that
25 how the trial court said they were coming in? I didn't - -

1 - it wasn't clear to me from the colloquy in the court's
2 ruling in the transcript that the court was saying it's
3 coming on a non-hearsay basis.

4 MR. MANSELL: I would say two things, Justice
5 Abdus-Salaam, to that. Which is first I would say that the
6 court was very clear that it recognized defendant's exact
7 argument, that there was a business duty on the supplier.
8 And it would be tough to argue that somehow the court
9 recognized that very requirement but yet still let it in
10 while disregarding that requirement. And in fact, if you
11 read defendant's briefs in this case, nowhere do they point
12 to anywhere where the court said that it was coming in for
13 its truth - - -

14 JUDGE FAHEY: Yeah. But just - - - just to
15 follow up, it seems like there's a distinction between what
16 was said orally by the court and in the written decision
17 that was awhile later. I'm not sure. There was - - -
18 there was a big time gap. The written decision seems
19 clear. I give you that. But the - - - the oral decision
20 of the court, it doesn't really give us the same kind of
21 clarity.

22 MR. MANSELL: Well, I don't agree, Judge Fahey,
23 for the reason that the court said in the oral ruling that
24 it was coming in for the purpose of showing that this is
25 the information that was given, for which somebody gave the

1 information Darnell Patterson. That's the same language
2 it's saying in the written ruling, it's coming in for the
3 fact of the occurrence itself.

4 JUDGE ABDUS-SALAAM: The court also said,
5 counsel, in that same colloquy that it would be permissible
6 through the C.P.L.R. but she wasn't going to let it in
7 through the C.P.L.R. You had to bring in a witness to
8 testify to it. So I'm - - - I still think it's a little
9 unclear what the court was saying about how the - - - the
10 information was coming in, whether it was a hearsay or a
11 non-hearsay purpose.

12 MR. MANSELL: Well, Your Honor, I'll say two
13 things to that. The first thing I would say is that
14 conversation dealt more as to whether it would qualify as a
15 certified record, and the issue there was because there was
16 a disclaimer about veracity in the document. So that
17 wasn't actually about the business record exception itself.
18 It was about a collateral matter as to what foundation
19 would have to be laid for it to come in. But the second
20 thing is that there was no dispute in this case that the
21 Sprint records were going to come in. And the way that
22 defense counsel at trial - - - or before trial
23 characterized it was hearsay within hearsay. And when
24 asked, he specifically said that he wasn't objecting to the
25 call log. So of course, in the oral ruling there's still

1 going to be some discussion about the fact that this is
2 hearsay contained with a business record and whether or not
3 that hearsay is actually going to be considered hearsay or
4 it's going to come in for a nonhearsay purpose.

5 And to go directly to that point, as the Third
6 Department's decision in State v. Hayes, which this court
7 affirmed. And in that case, the Third Department was
8 trying to reconcile this court's decision in Johnson v.
9 Lutz with this court's decision in Kelly v. Wasserman. And
10 the way the court did that was to say that it was very
11 clear that the record itself and everything contained
12 within the record, except for the hearsay within hearsay,
13 could come in as a business record. But that without
14 another justification or another exception, the hearsay
15 within the record couldn't come in unless it was being used
16 for a non-hearsay purpose. So that's what the trial court
17 was articulating, that there's shell of a business record
18 that comes in and then there's this hearsay within hearsay
19 issue. And as for that issue, it's non-hearsay. And this
20 court affirmed that decision by the Third Department, and
21 that's the decision that should control in this case
22 because the exact same thing was articulated by the trial
23 court here.

24 So when we're discussing whether or not the
25 information came in for its truth or falsity or whether it

1 would have made a difference in this case whether or not
2 the information is true, we say the fact that the
3 information was false is also the reason why the inference
4 regarding the limiting instruction doesn't hold here.
5 Because counsel's best argument at summation would have
6 been to say that you should consider this statement for its
7 truth, that some other person named Darnell Patterson, who
8 actually does live at 1854 Cedar Avenue, because, as we
9 heard during the hearing in this case, this defendant
10 actually lives at 184th Street, that the person who
11 actually lives at that address who actually has that name
12 is the person who subscribed to the phone and who is the
13 person who committed these crimes.

14 So a limiting instruction would have actually
15 precluded defense counsel from making the very best
16 argument that he could have made at closing, which was that
17 somebody else was the owner of the phone. So he wouldn't
18 have wanted a limiting instruction. And when he said in
19 the record that of course he would want one, that was
20 simply a knee jerk reaction to the court asking him, well,
21 if I let it in as non-hearsay, would you want a limiting
22 instruction. There was no actual dialogue or discussion
23 about that. And the fact that counsel didn't later ask for
24 a limiting instruction I don't think should control in this
25 case.

1 And that points to a very important point in this
2 case which is that we don't get to any of these business
3 record exception arguments in this case unless we look
4 specifically to the inferences that defense counsel asks us
5 to draw from the later conduct of the parties. Because
6 counsel cannot point to anything in any ruling by any court
7 which says it was coming in for the truth or that it was
8 specifically the subscriber information that was coming in
9 under the business record exception. So for instance, look
10 to the litigation that took place over the second set of
11 business records here. What we argued was that there was a
12 big difference between the Daichelle Goree records, which
13 came in under the T-Mobile representative, and defendant's
14 record, which came in under the Sprint Nextel
15 representative. If we had won the business record
16 exception litigation in the very beginning pretrial we
17 wouldn't have been arguing about the differences between
18 the records. We would have been trying to point to their
19 similarities to say that the court should rule the same way
20 with the Daichelle records as it had ruled with the Sprint
21 Nextel records.

22 And now I see my time has expired, but just to
23 put a capstone on this, it's simply to say that in a
24 scenario we - - - like that one, we would have been trying
25 to get them in under the business record exception because

1 in that particular situation or in that particular scenario
2 that would have been the best possible income for the
3 strength of the evidence. So we were making that argument
4 because we wanted a different ruling than what we had
5 gotten in the first place. And so for those reasons, this
6 court should affirm the ruling of the Appellate Division
7 and uphold the ruling of the trial court. Thank you.

8 CHIEF JUDGE DIFIORE: Thank you, counsel.

9 Ms. Dille.

10 MS. DILLE: Well, I'm not really sure where to
11 start. The - - - the reference to the Third Department
12 cases in Hayes affirmed by this court, I don't recall that
13 that was included in my briefs, and I don't know the case,
14 and I'd ask the court not to consider it because I - - - I
15 don't think it's properly before you.

16 Getting back to the beginning, the information
17 that the prosecution's theory that - - - that the
18 information was provided as - - - as set forth in the
19 records, it's only relevant if it tends to inculcate Mr.
20 Patterson. And the subscriber information only - - -

21 JUDGE STEIN: Well, all evidence is admitted
22 because it tends to inculcate but that doesn't mean that
23 it's hearsay - - -

24 MS. DILLE: Right.

25 JUDGE STEIN: - - - or that it's offered for its

1 truth.

2 MS. DILLE: Correct. But initially, this theory,
3 the non-hearsay theory, has no relevance unless it's
4 offered for its truth.

5 JUDGE STEIN: But what - - - but the hearsay
6 rules says for the truth of the matter asserted in the
7 statement.

8 MS. DILLE: Um-hum.

9 JUDGE STEIN: And the matter asserted in the
10 statement is that a Darnell Patterson living at a certain
11 address and a certain - - - subscribed for - - - to this
12 phone.

13 MS. DILLE: Correct.

14 JUDGE STEIN: Okay.

15 MS. DILLE: Correct.

16 JUDGE STEIN: So is - - -

17 MS. DILLE: That - - -

18 JUDGE STEIN: If they're trying to prove that,
19 unless they're trying to prove that he's Darnell Patterson,
20 which it doesn't - - -

21 MS. DILLE: That's absolutely what they - - -
22 that was the whole point of the tattoo. That was the whole
23 point of that - - - the tattoo. The court said the tattoo
24 comes in as circumstantial evidence but the only thing that
25 makes that relevant is that the subscriber information

1 comes in, and that's the first link. That's the first - -
2 -

3 JUDGE RIVERA: But your argument - - -

4 MS. DILLE: - - - step in the circumstantial
5 chain.

6 JUDGE RIVERA: - - - is not that they're trying
7 to prove he's Darnell. Your argument is they're - - -
8 they're trying to prove - - -

9 MS. DILLE: They're trying to prove that Darnell
10 is my client.

11 JUDGE RIVERA: - - - he's - - - excuse me. Not
12 that he's Darnell but he's the person who registered this
13 phone.

14 MS. DILLE: Correct.

15 JUDGE RIVERA: Right?

16 MS. DILLE: Correct.

17 JUDGE RIVERA: Which - - - so again - - -

18 MS. DILLE: But that's - - -

19 JUDGE RIVERA: - - - the defendant could have
20 lied and it's not the accurate information and they're just
21 trying to get in the information and then link him to
22 your client.

23 MS. DILLE: Well - - - theoretic - - -

24 JUDGE RIVERA: That's not the same as saying I'm
25 putting this information to show that whoever this Darnell

1 person is, Darnell is the person who registered the phone.

2 MS. DILLE: Theoretically, that would be
3 possible, but that's absolutely not what happened in this
4 case. The prosecutor used this throughout the trial,
5 throughout the pretrial colloquy, as proof that my client
6 was the subscriber and therefore, link him to the crime.
7 It was - - -

8 JUDGE RIVERA: You mean as an alias, that this
9 was his alias?

10 MS. DILLE: Yeah. That was an argument. That
11 was the argument when counsel moved for an expert ID
12 witness on this case. She said, oh, no, we have
13 corroborating evidence. We - - - this is independent
14 corroborator - - - the cell phone records, the subscriber
15 information, is independent corroborating evidence.

16 JUDGE STEIN: But the statement doesn't say that
17 Darnell Patterson, whose real name is Robert Patterson,
18 living at this address subscribed to this phone. That's
19 not what it says. That's not in the statement.

20 MS. DILLE: It says - - - it lists the subscriber
21 as Darnell Patterson at a given address with a given date
22 of birth which then the prosecution, using other evidence,
23 direct circumstantial evidence, direct evidence of a fact.
24 This was introduced as circumstantial evidence for its
25 truth, direct evidence of a fact. It's not non-hearsay.

1 It's admitted for its truth because - - -

2 JUDGE FAHEY: See, I thought the truth they were
3 trying to prove is that he used the phone, not that he - -
4 - that - - - not that he was Darnell Patterson. I didn't
5 think that anybody cared one way or the other. That's the
6 way I understood it.

7 MS. DILLE: It's - - - it's both.

8 JUDGE FAHEY: It's kind of - - - kind of - - -

9 MS. DILLE: They need both.

10 JUDGE FAHEY: I - - - well, I was thinking of the
11 Lieberman case, that kind of analysis. So that's the way I
12 saw it.

13 MS. DILLE: Well, again, they - - - they need
14 both. If the Darnell Patterson in the records is the first
15 step on the circumstantial evidence by which they proved
16 that Darnell Patterson is Robert Patterson. Darnell is a
17 name tattooed on his - - - my client's hand. And that
18 therefore, Robert Patterson is one of the robbers - - -

19 JUDGE FAHEY: I see.

20 MS. DILLE: - - - who's in communication with the
21 female accomplice who's in the - - - in the complainant's
22 apartment.

23 CHIEF JUDGE DIFIORE: Thank you, counsel.

24 MS. DILLE: Thank you.

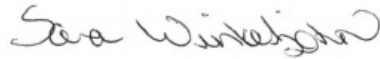
25 (Court is adjourned)

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

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Robert Patterson, No. 199 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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