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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 10

DARRYL WATTS,

Appellant.

20 Eagle Street
Albany, New York
January 10, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE WILSON: First case on the calendar
2 is number 10, People v. Darryl Watts.

3 MS. PECKER: Good afternoon, Your Honors, and may
4 it please the court. Rachel Pecker of the Legal Aid
5 Society on behalf of Darryl Watts. I'd like to reserve
6 three minutes for rebuttal, please.

7 CHIEF JUDGE WILSON: Yes.

8 MS. PECKER: Holding Mr. Watts' SORA hearing when
9 he was incompetent violated his due process right to be
10 present and to participate at his hearing.

11 An incompetent Mr. Watts could not effectuate any
12 of the due process rights to which he was entitled,
13 rendering them meaningless. Doe v. Pataki and Correction
14 Law 168-o, lay out the constitutional and statutory due
15 process rights to which Mr. Watts was entitled.

16 JUDGE SINGAS: There's a modification pursuant to
17 Parris; does that take care of a procedural issue here, do
18 you think?

19 MS. PECKER: It does not, Your Honor, and I'd be
20 happy to tell you why. So that was one of the solutions
21 that the Parris court provided for this due - - - due
22 process problem here. And a - - - a 168-o de novo hearing
23 was essentially legislating from the bench. There they
24 wrote in a hearing that does not exist in the statute and
25 wrote it into the statute. And although, they didn't admit

1 that there was a due process violation taking place, it
2 inherently recognizes that there was a due process
3 violation there. And this court has recognized that a 168-
4 o hearing is not a replacement for a fair and accurate
5 hearing in the first place and an accurate initial
6 classification in the first place.

7 A 168-o de novo hearing also presumes that the
8 initial level up front was correct. And here we know that
9 it was not. The Parris and the Watts courts never
10 suggested that Mr. Watts' participation didn't have an
11 impact on his classification level.

12 JUDGE GARCIA: So what - - - what do you think -
13 - - I'm sorry.

14 MS. PECKER: Yes.

15 JUDGE GARCIA: What do you think should happen
16 here?

17 MS. PECKER: Great, Your Honor. So the rule that
18 we're asking for today is if the court - - - SORA court
19 thinks that there is indicia of incompetency, then they
20 have a duty to inquire. And if it reasonably appears that
21 Mr. Watts was incompetent, then they have a duty to order
22 an - - - a competency evaluation. And that balance makes
23 sense - - -

24 JUDGE GARCIA: Okay. And let's play that out,
25 though.

1 MS. PECKER: Sure.

2 JUDGE GARCIA: Let's assume he's - - - in the
3 meantime, what happens? This may take a long time to have
4 a - - - not a long time, but some time to take a competent
5 - - - get a competency.

6 MS. PECKER: Sure. Absolutely, Your Honor. Do
7 you want me to start with what - - -

8 JUDGE GARCIA: So what happens in the interim,
9 first thing?

10 MS. PECKER: After he's been found - - - let's
11 say he was found incompetent?

12 JUDGE GARCIA: No. no. He hasn't been yet, but
13 there's a hearing order - - -

14 MS. PECKER: Okay.

15 JUDGE GARCIA: - - - or an - - -

16 MS. PECKER: All right.

17 JUDGE GARCIA: - - - exam order?

18 MS. PECKER: Sure. So the court orders an exam.
19 If the findings come back that he is competent, the court
20 will - - -

21 JUDGE GARCIA: In the meantime - - -

22 JUDGE CANNATARO: If there's - - - if you're - -
23 -

24 JUDGE GARCIA: - - - what happens?

25 MS. PECKER: Sure. Yes.



1 JUDGE CANNATARO: - - - waiting for a finding,
2 does - - - does he get released while you're waiting for a
3 finding?

4 MS. PECKER: Okay. So if - - - in the meantime,
5 you're - - - what happens? So here Mr. Watts was in
6 confinement. He was civilly confined at the time as a - -
7 -

8 JUDGE GARCIA: But what if the person is not?

9 MS. PECKER: Okay. So why don't I go through all
10 the situations? So if he was civilly confined, we would
11 know where he was and Mr. Watts was on PRS, so there's not
12 that concern. I understand, if he was not confined then
13 what happens when he's in the community? The court would
14 handle this just like it handles 730.20 misdemeanor out,
15 730 cases as this court considered in Molinaro v. Rikers.
16 In those cases, the - - - when the court has a - - - a
17 client that is entitled to be in the community, they order
18 - - - order a competency evaluation and the client is
19 released and has to get to that competency evaluation.

20 JUDGE GARCIA: So this person, who could be,
21 again, not - - - in the hypothetical, a level 3 override
22 sexually violent offender, is released into the community
23 while this is happening?

24 MS. PECKER: Correct, Your Honor. And that makes
25 sense because the legislature in the Correction Law has

1 already contemplated for three situations like this where
2 registration - - -

3 JUDGE GARCIA: Wait. Let's get to that - - -

4 MS. PECKER: - - - is required before - - -

5 JUDGE GARCIA: - - - "makes sense". But before
6 we get - - - let's - - -

7 MS. PECKER: Sure.

8 JUDGE GARCIA: - - - start - - - stop with "that
9 - - - that makes sense". So part of SORA is protection of
10 the community, right?

11 MS. PECKER: Yes.

12 JUDGE GARCIA: You have somebody who is subject
13 to a mandatory override, let's say level 3, sexually
14 violent offender, but pending the competency hearing,
15 they're being released into the community?

16 MS. PECKER: Correct. And - - - and - - - and
17 there's - - -

18 JUDGE GARCIA: Because of a case that involves a
19 misdemeanor and a competency hearing?

20 MS. PECKER: No. So the - - - the three ways,
21 though, a legislature - - - legislature contemplated that
22 someone who, perhaps the board is recommending a level 3,
23 might be in the community and be registered, but not yet
24 have a level. That happens in three situations.

25 So that happens under 168-1 subsection 8, when a

1 hearing cannot be held before the client has been released,
2 and then the client has to register and they're released to
3 the community, but they have not yet had their level. It
4 happens in two other situations that the legislature
5 already contemplated. It happens when an individual has a
6 federal sex offense conviction and when an out-of-state sex
7 offense - - - offender moves into the state. They have to
8 register within ten days of moving into the state, but they
9 don't yet have a level.

10 And the legislature didn't say you can't live in
11 the community without a level. So they under - - -

12 JUDGE TROUTMAN: So would your client be
13 registered?

14 MS. PECKER: Yes, Your Honor. Here, Mr. Watts,
15 by the time of his SORA hearing was registered. And
16 registration sufficiently on its own, protects and furthers
17 SORA purpose because - - -

18 JUDGE GARCIA: But level - - - registration, as I
19 understand it, is kind of a level 1 light, right?

20 MS. PECKER: It is - - - has many of the same
21 obligations as a level 1.

22 JUDGE GARCIA: But not all?

23 MS. PECKER: But not all, correct. So
24 registration - - - so SORA's purpose is twofold. It is to
25 protect the public. And it does that by allowing law

1 enforcement to monitor, identify, and apprehend
2 individuals, providing a disincentive for them to recommit
3 crimes, and also, by providing community notification.
4 Registration in of itself satisfies both those - - -

5 JUDGE TROUTMAN: Is registration impacted by the
6 level that you're designated?

7 MS. PECKER: Registration is based on your crime
8 of conviction, and you have a list of things that you have
9 to do.

10 JUDGE TROUTMAN: But when you're designated a
11 certain level - - -

12 MS. PECKER: A level - - - you get additional
13 obligations and notifications.

14 JUDGE TROUTMAN: And so if you're out and you - -
15 - after a hearing would be a level 3 and you're only a
16 level 1, is the community being protected?

17 MS. PECKER: In this unavoidably imperfect
18 situation, Your Honor? Yes, you are. Because registration
19 in of itself requires that the - - - the registrant has to
20 give his name, his picture, his identifiers, crime of - - -

21 JUDGE SINGAS: If - - - if we followed your logic
22 - - -

23 MS. PECKER: Sure.

24 JUDGE SINGAS: - - - then you would just say all
25 you need is registration. You wouldn't have the different

1 levels. If registration took care of the concerns as you
2 said, then we wouldn't need to have level 1, 2, or 3,
3 because registration would suffice if we - - -

4 MS. PECKER: So the question - - -

5 JUDGE SINGAS: - - - followed your argument to
6 its natural conclusion.

7 MS. PECKER: No, Your Hon - - - respectively.
8 No, Your Honor. Because we're not asking for him never to
9 have a SORA hearing. We're just saying that the SORA
10 hearing can't take place when he's incompetent because it's
11 as if he wasn't there.

12 CHIEF JUDGE WILSON: So registering him - - -

13 JUDGE HALLIGAN: I assume there's - - -

14 CHIEF JUDGE WILSON: Oh, sorry, Judge Halligan.
15 Go ahead.

16 JUDGE HALLIGAN: No, I was just going to ask. I
17 assume there's no limit on how long he might be in the
18 community and incompetent. It could conceivably be years,
19 yes?

20 MS. PECKER: Correct, Your Honor. Here, just to
21 reiterate, he was actually civilly confined.

22 JUDGE HALLIGAN: I under - - - yes.

23 MS. PECKER: He wasn't in the community. It
24 could be years. But I think another one of the cases right
25 now that my - - - my - - - our appellate providers in the

1 New York City have - - - addresses that issue which is,
2 recently competency was an issue at a SORA hearing and the
3 defense counsel raised it. But then before the next
4 adjourn date, the com - - - the client was returned to
5 competency and so it became moot. And the - - -

6 JUDGE CANNATARO: But what happens if the client
7 is not returned to competency? Is there a situation, a - -
8 - a plausible situation where someone remains out,
9 released, registered a level 1, or a level 1 light, as it
10 were, for years, even though upon adjudication they might
11 be a level 3?

12 MS. PECKER: Yes, Your Honor. I just - - - I
13 don't think that worst case scenario - - - first of all, I
14 don't think that worst case scenario happens all that
15 often. Following Lopez v. Evans, we know that in New York
16 City, parole revocation and competency has only come up
17 between ten and twenty-five times - - -

18 JUDGE CANNATARO: So - - -

19 MS. PECKER: - - - per year.

20 JUDGE CANNATARO: What is the - - - what is the
21 good that is served by your proposal of just having them
22 register and wait for a competency hearing?

23 MS. PECKER: The good is that there's a due
24 process violation that has occurred because a hearing was
25 held when my client was present in body only. And when

1 this - - -

2 JUDGE CANNATARO: And all the due process
3 protections from Doe v. Pataki and the other cases, they
4 simply don't adequately protect whatever the concerns are
5 that you perceive flowing from this particular deprivation?

6 MS. PECKER: That's correct, Your Honor.
7 Exactly.

8 JUDGE CANNATARO: And how is that precisely?

9 MS. PECKER: Okay. Of course. So my client lost
10 every one of the due process rights that he was entitled to
11 at his hearing. He lost the right to presence because he
12 was present in body only and could not waive intelligently,
13 voluntarily, and intelligently his right to presence.

14 JUDGE CANNATARO: Did he get notice?

15 MS. PECKER: He got physical notice. Whether he
16 was aware of what that notice meant is another question - -
17 -

18 JUDGE CANNATARO: Did he get an attorney?

19 MS. PECKER: He did get a coun - - - a attorney,
20 Your Honor, but he lost - - - the attorney - - - the right
21 to an attorney is only meaningful if the attorney can
22 collaborate with her client. And her attorney - - - his
23 attorney could not provide effective assistance of counsel
24 at the hearing here if she could not talk to her client
25 about the facts of the case, his mental state at the time,

1 his history and background, his family and friends, his
2 subjective response to treatment and incarceration, his
3 present thinking on the victim and his offense, any
4 remorse, plans for the future, any number of things that a
5 client could offer and provide to counsel that only he
6 knows.

7 And this court held in Rivera v. Superintendent
8 of Woodbourne that, ultimately, at a SORA hearing the
9 court's determination depends on the unique circumstances
10 and individual lived experiences of a registrant. And here
11 - - -

12 JUDGE RIVERA: But could - - - could the court -
13 - - I'm over here. Could the court - - - let's just go
14 with your, what you say happens in the interim if they're
15 out. Right? And they're out in the community, they've had
16 to register. I do want to hear, actually, what you say
17 this registry component is. But in any event, could the
18 court impose conditions while - - - while waiting for the
19 results of a competency exam?

20 MS. PECKER: Yes, Your Honor. There's numerous -
21 - - and I'll also then address your second question about
22 registration. There are numerous options in our existing
23 infrastructure to reasonably accommodate the registrant and
24 for the court to decide what should happen and to give it
25 assurance. And I'll step back and give you examples of

1 what courts are already doing in these unavoidably
2 imperfect situations to accommodate.

3 So for instance, Your Honor, where there's no
4 evidence that a client has gotten notice, the court says,
5 okay, we can't go forward today. I'm going to ask the
6 prosecutor to give me an update in, let's say ninety days,
7 whether there's proof that the client has gotten notice,
8 and it's put over.

9 A second case recently is that a - - - a client's
10 SORA hearing was scheduled. He lost his good time. And so
11 now we thought he was being released, but he's not going to
12 be released for six more months. The SORA court says,
13 okay, even though we don't expect him to be released for
14 six months, I'm putting this on the calendar for ninety
15 days. At that point, I want an update from both the
16 prosecution and defense counsel.

17 JUDGE RIVERA: Okay. I'm sorry. But - - - but
18 my - - - my question was what - - - what other, if any,
19 conditions could be imposed to address the concerns about
20 the purpose of SORA and public security?

21 MS. PECKER: Got it. Yes, Your Honor. So the
22 court could say, I would like - - - in the interim, I'd
23 like to follow this sex - - - this registrant, and I'd like
24 the court and defense counsel and the prosecutor to check
25 in in ninety days. And the fiscal - - - I guess, I was

1 giving the other examples to Your Honor. Because the
2 fiscal and administrative burdens of requiring competency
3 are not so prohibited - - - prohibitive or different or
4 significant than what courts are already doing. And so
5 Your Honor, going back, why it - - - why it mirrors the
6 730.20 context is if the court were to say, I'd like to see
7 the client back in ninety days, at which point he may or
8 may not be competent. We both know the client may not be
9 competent, but able to get himself to court. The Legal Aid
10 - - - the defense lawyer might be able to help him to get
11 to court. Or if he has OMH wraparound services, as Mr.
12 Watts did for the brief period of time that he was in the
13 community, a caseworker, an independent living specialist,
14 could facilitate him getting back to court. For someone on
15 PRS, parole release supervision, the - - - parole could
16 also make a condition to abide by the court's rules. So if
17 you don't show up to court, it would be a violation of his
18 parole.

19 Your Honor asked about registration. So
20 registration in of itself requires that the person register
21 with their information, their crime, their identifiers, and
22 their account - - - internet account within ten days of
23 setting up residency in the state.

24 JUDGE RIVERA: With whom?

25 MS. PECKER: Sorry?



1 JUDGE RIVERA: With whom? The local precinct,
2 with the - - -

3 MS. PECKER: With DCJ - - -

4 JUDGE RIVERA: Okay.

5 MS. PECKER: - - - DCJS.

6 JUDGE RIVERA: On the registry? Okay.

7 MS. PECKER: Yes, on the registry.

8 JUDGE RIVERA: Got it.

9 MS. PECKER: They have to annually verify their
10 address. If they move, they have to verify their change of
11 address within ten days. They have to register for twenty
12 years. And as it goes to the notification concern, they
13 also are included in the 1-800 notification - - -

14 JUDGE RIVERA: I see.

15 MS. PECKER: - - - analysis.

16 JUDGE RIVERA: They're not on the website?

17 MS. PECKER: They're not on the website. But as
18 a level 1, the best that an individual could do at a
19 hearing, they also wouldn't be - - -

20 JUDGE RIVERA: Yes.

21 MS. PECKER: - - - on the website.

22 JUDGE RIVERA: Yes.

23 MS. PECKER: So here, whatever half measures Mr.
24 Watts' counsel could cobble together, there was no serious
25 dispute that an attorney who cannot collaborate with her

1 client was hamstrung.

2 And here there was ample evidence before the
3 court that Mr. Watts was not competent. No one, not the
4 court, not the prosecutor, argued that he was competent.
5 The court had both record evidence before it, as well as
6 its own observations and counsel's representations. He had
7 been 730'ed for five and a half years. He was then found
8 fit for a quick moment in time.

9 JUDGE CANNATARO: Counsel, can I ask you a very
10 hypothetical sort of question? In - - - in the civil
11 context, when some litigants are facing negative
12 consequences as a result of litigation, an eviction or
13 something where they might lose property or liberty, the
14 court can appoint a guardian for them who stands in their
15 shoes during and - - - and they're - - - they're deemed to
16 be - - - you know, not able to contribute to their own
17 defense. The court can appoint a guardian to - - - to make
18 those sorts of decisions. Do you think a solution like
19 that might be viable in this context so that you don't have
20 to have this sort of indefinite waiting period?

21 MS. PECKER: I don't think so, Your Honor. And
22 that's because a guardian or counsel can step in and
23 suffice when the question before the court is one that is a
24 matter of law. What can the client contribute at a certain
25 kind of determination? If the answer is nothing, then



1 counsel or a guardian might suffice. And I think looking
2 to the civil procedure administrative proceedings that my
3 adversary pointed to - - -

4 JUDGE TROUTMAN: How do you determine when you
5 say, "contribute nothing", then it's okay? Like with an
6 Article 81 proceeding, there are times when they can't
7 provide information. So some - - - so the guardian is put
8 in their stead to be able to communicate with the lawyer.
9 They get two different people performing different
10 functions.

11 MS. PECKER: Right. So I'll answer both of yours
12 and for - - - let's take Article 9 and 10, as what I - - -
13 proceedings. So those proceedings, unlike our proceedings,
14 are not merely sanctions to prevent future recidivism.
15 There the court invokes its *parens patriae* power and the -
16 - - the legislature created those hearings out of their
17 care for individuals who cannot care for themselves.

18 And this court recognized in *State v. Floyd* that
19 those litigants, while they may be able to contribute
20 information, that is the beginning of an inquiry in Article
21 9 or 10 proceedings. In the end, the legal determination
22 being made in Article 9 and 10 is going to be a battle of
23 legal ex - - - excuse me, a battle of psychiatric experts.
24 The decision will come down to whether he has a mental
25 illness and whether he meets the criteria for 9 and 10.

1 And so that is a matter of law, just like this court
2 considered in People v. Roman, if it's a matter of law that
3 the registrant - - - the litigant has nothing to contribute
4 to, his presence isn't necessary.

5 And the termination of parental rights is another
6 example, Your Honor. There again, the state is invoking
7 its *parens patriae* power because it's specifically
8 concerned with the best interest of the child. There too,
9 the legislature, which it has yet to do here, specifically
10 contemplated what should happen in this imperfect
11 situation, what process is due when someone is incompetent?
12 And there it simply just cannot be that a parent could say
13 I'm too incompetent to have a hearing, but not so
14 incompetent that I can't be a good parent.

15 JUDGE CANNATARO: But the - - - the benefit of
16 that sort of arrangement - - - and I would - - - you know,
17 I hear what you say about how it isn't going to work; is
18 that you always have competing interests. You have the
19 interests of the person who's being negatively affected,
20 and then you have the interests of the child or you have
21 the interests of whoever's on the other side of the
22 litigation. And here we're talking about the interests of
23 the community at large, which by your solution, sort of
24 have to wait indefinitely to get vindicated pending a
25 return to competence. And that seems to, among other

1 things, it seems to - - - to really be very inefficient.

2 MS. PECKER: I think - - - I understand the
3 concern that Your Honor has. But I think that loses the -
4 - - the understanding that some states have a SORA
5 statutory scheme that is just registration based on past
6 crime, and we don't have that. So our - - - our state has
7 a two level. And it un - - - our legislature understood
8 that registration in itself provided law enforcement with
9 information, and provided basic notification for these
10 imperfect situations, before a level can be held.

11 And I - - - I don't - - - I think it's just not
12 that common that it will be indefinite. Again, it's not
13 that he doesn't have to register; it's just the SORA
14 hearing can't happen yet.

15 JUDGE GARCIA: But he's not registered as a
16 level. So level 3 has very strict requirements, and - - -
17 and level 2 as well, in terms of public notice, right? You
18 can go on the website. And it seems we're very much
19 downplaying the public safety when you say, kind of, no
20 harm, no foul. He has to register. And some states do
21 that. Well, New York's decided not to do that.

22 And let's say - - - this is a level 3, would be a
23 sexually violent predator, child sex predator, convicted.
24 Looking at a violent - - - a sexual - - - a level 3, under
25 your regime, they go out indefinitely. They don't - - -

1 they have to just show up and register. But they don't - -
2 - they're not on the public website. And here's a family
3 who has a child that is going to go door-to-door to sell
4 things. And they're responsible, they go on the website,
5 and they want to make sure this child goes out, they're not
6 knocking on the wrong door or at risk. They go on, they
7 don't see this person because they don't have to be
8 publicly registered. Isn't that a public safety impact?

9 MS. PECKER: Your Honor, it's only a windfall to
10 the registrant in the way that I think you're suggesting.

11 JUDGE GARCIA: I won't say it's a windfall to the
12 registrant or not. I think it's a problem for the
13 community.

14 MS. PECKER: I - - - I think when we - - -

15 JUDGE GARCIA: But I'm putting aside the interest
16 of the registrant right now because this is not only about
17 the registrant.

18 MS. PECKER: Right. But I think that hyp - - -
19 hypothetical presumes that a level 3 is correct. And if
20 our client wasn't at the SORA hearing, we just don't know
21 if a level 3 would have been correct. And this court - - -

22 JUDGE GARCIA: But let's even say he was a
23 presumptive 3. You don't - - - you don't think that in a
24 SORA hearing it would at least be a 2? So they would have
25 to publicly register? That it's - - - it could be a 1, is

1 what you're saying?

2 MS. PECKER: I think that when you take into
3 account the Matthews v. Eldridge factors, the - - - the due
4 process violation here, this court hasn't imputed a
5 prejudice analysis. And so I understand that it's - - -
6 that there are - - - that the court has concerns. What if
7 this person had been a level 3?

8 JUDGE GARCIA: But there are different interests
9 here. We're not only looking - - -

10 MS. PECKER: Correct.

11 JUDGE GARCIA: - - - at the registrant here.
12 It's a civil proceeding. It's not a criminal proceeding.
13 They're not going into incarceration. We've said it's a
14 civil proceeding and there's a public safety component to
15 that proceeding. Just as an interest-of-the-child
16 component in other - - -

17 MS. PECKER: Correct.

18 JUDGE GARCIA: - - - proceedings. So we have to
19 weigh that. And I don't see how your solution factors in
20 public safety.

21 MS. PECKER: So Your Honor, one, I understand
22 that we disagree. I think registration does factor in
23 public safety. But two, Your Honor, this court has also
24 recognized the state has an interest in a classification -
25 - - classification system that is fair and accurate. And

1 in comparing this - - - you know, you - - - you said that
2 it's a civil proceeding, which it is. But in Lopez v.
3 Evans, this court considered only secondarily that the
4 possible re-incarceration of a parole violator was a reason
5 for the due process rights and for competency to be read
6 into that proceeding. What the court said in Lopez v.
7 Evans that - - - was that its primary concern, its quote,
8 "paramount concern" was the fairness and the accuracy of
9 the proceedings. And this court in People v. Mingo - - -

10 JUDGE GARCIA: That parole violator is facing
11 prison time, right?

12 MS. PECKER: Correct.

13 JUDGE GARCIA: Me - - - to me, the analogy is
14 imposition of parole conditions. What if a person shows up
15 at a parole - - - you know, they're eligible for a parole
16 and they show up and you say, I can't understand the nature
17 of this proceeding, so you can't put any additional parole
18 conditions on me. That's what this is more analogous to
19 me. This isn't a SORA violation proceeding.

20 MS. PECKER: Respectfully, I disagree, Your
21 Honor. Our - - - our clients don't have a right to counsel
22 or these other due process rights with their parole
23 officer. I'm not - - - as his counsel, I'm not present in
24 those situations. At his hearing he has a right to counsel
25 and all of these due process rights that only he had

1 information in his head that could have persuaded the court
2 of what the right level was in this proceeding.

3 JUDGE RIVERA: Could - - - could the court - - -
4 since I asked you before about additional conditions.
5 Could the court - - - I'm trying to follow up on Judge
6 Garcia's very valid concern that he's discussing with you.
7 Could the court order that the individual, in - - - in - -
8 - in this interim period, that the individual - - -

9 MS. PECKER: Yes.

10 JUDGE RIVERA: - - - be placed on the website?

11 MS. PECKER: I don't know the answer to that
12 question, but parole can. Parole can set a condition of -
13 - - sets its own conditions of - - - special conditions of
14 parole. And if that's what the court was concerned with,
15 yes, they - - - they could - - - they could do that.

16 But I think a level 3 doesn't give that much more
17 information to law enforcement to be able to identify,
18 apprehend, and - - -

19 JUDGE RIVERA: No. But this was an issue - - -

20 MS. PECKER: Yes.

21 JUDGE RIVERA: - - - about access for the public
22 to information, so that the public can take whatever action
23 the individuals deem necessary to protect themselves and -
24 - - and - - - and usually young people, right?

25 MS. PECKER: Correct, Your Honor. I mean - - -

1 going back, yes. Going back to Judge Garcia's questions
2 about - - - you know, parole being different, I would say
3 that while it's true that parole is the closest analog to a
4 criminal prosecution, I still think the commonalities
5 between a SORA hearing and a parole hearing, and the - - -
6 the parallels and the serious deprivation of liberty at a
7 SORA hearing, make it the closest parallel and - - - and
8 helpful analogy. And that's because even though the
9 possibility of incarceration following a parole violation
10 occurs, there are - - - there are four consequences as
11 great in the SORA hearing, or - - - or analogous.

12 Your Honors, hundreds of registrants remain
13 incarcerated because of their SORA level or SARA being
14 applied, as - - - as habeas petitions through - - - in this
15 court and throughout the state demonstrate. Also the
16 possibility of prosecution for a SORA violation is not
17 speculative, as my adversary suggests. On a yearly basis -
18 - -

19 JUDGE GARCIA: Maybe you couldn't adjudicate the
20 violation if you were incompetent because then you would
21 say, I didn't understand and I didn't understand I was
22 violating. And that would be analogous to your parole
23 revocation.

24 MS. PECKER: That would be a mens rea defense at
25 that time, you're right, of the prosecution, Your Honor.

1 But it's still - - - it's a prosecution that hangs over the
 2 individual's head because they were subject to a level at a
 3 hearing that it was as if they weren't present at the
 4 hearing. And I think in Doe v. Pataki itself, the court
 5 said that the consequences of notification and registration
 6 are significant enough that the closest parallel it drew
 7 was to parole. It relied on Morrissey v. Brewer and said,
 8 let us look at the reasoning that the Supreme Court decided
 9 what due process protections are due in parole, and that
 10 reasoning is the same one we're going to use here to decide
 11 - - -

12 CHIEF JUDGE WILSON: So - - -

13 MS. PECKER: - - - what due process rights are.

14 CHIEF JUDGE WILSON: - - - so Mr. Watts was - - -
 15 was registered while not competent?

16 MS. PECKER: Correct, Your Honor.

17 CHIEF JUDGE WILSON: And I take it you think that
 18 is not a due process violation because the Mathews factors
 19 balance differently?

20 MS. PECKER: That's - - - we're not challenging
 21 his registration here. And that's - - -

22 CHIEF JUDGE WILSON: Well, I understand that.

23 MS. PECKER: Yes.

24 CHIEF JUDGE WILSON: But I asked you something a
 25 little different.



1 MS. PECKER: Yes. And - - - and the answer is, I
2 don't even think - - - I guess, we don't get to the Mathews
3 factors, I think. Because registration happens as an
4 automatic and mechanical result of his criminal conviction
5 and his certification at sentencing, and at the time he
6 registers, he doesn't have a right to counsel.

7 What can he contribute to whether or not, as a
8 matter of law, he has to register? Nothing. What can he
9 contribute at a SORA hearing under the second tier of New
10 York's statute? Potentially, everything. His
11 participation - - -

12 JUDGE SINGAS: Yeah. But some of the SORA - - -
13 would you agree with me that some of the SORA
14 qualifications are static? Or you could figure it out from
15 the nature of the crime or from - - - you know, the - - -
16 the person's background? And what if, based on the static
17 information, you come up with a level 2?

18 MS. PECKER: So - - -

19 JUDGE SINGAS: Why then would - - -

20 MS. PECKER: Sure.

21 JUDGE SINGAS: - - - would it be inappropriate to
22 - - - to render that classification?

23 MS. PECKER: So some are static, Your Honor, but
24 there are fifteen risk assessment instrument factors.
25 Seven of them are not static.

1 JUDGE SINGAS: Okay. But going back to what I'm
2 saying. What if the static ones get you to a level, and
3 then we have the Parris solution which says the burden is
4 still on the People, but you can modify. Why doesn't that
5 take care of your issue?

6 MS. PECKER: Because I believe that that remedy -
7 - - it's as if what you're saying is it - - - the
8 legislature said if there is no disagreement on the
9 person's level, no hearing needs to be held. Or if
10 everyone agrees that they're a level 1, no hearing needs to
11 be held. But there isn't a sliding scale. The legislature
12 said regardless of level and regardless of whether the
13 parties agree, he has a right to a hearing and a right - -
14 -

15 JUDGE SINGAS: He's going to have a hearing.

16 MS. PECKER: A right - - - a right to a hearing
17 at which he was, in all essence, not - - - not competent.

18 JUDGE SINGAS: The legislature put in certain
19 factors that can get you to a - - - a rating without his
20 involvement, if - - - if we looked at it from that
21 perspective. So the legislature has taken care of that
22 issue for us or sometimes, they allow a judge to override.
23 And if an override gets you to a 3, the input of the
24 defendant is insignificant.

25 MS. PECKER: I - - - I disagree, Your Honor.

1 Because even if - - - even if we were saying that his risk
2 assessment - - - assessment instrument included only static
3 factors, which here they didn't - - - risk factor 7. Had
4 he been competent, he could have provided information to
5 his counsel to contest the prosecution's clear and
6 convincing evidence on risk factor 7.

7 But even if we had only static factors and the
8 risk assessment instrument, as the court has recognized,
9 the downward departure is a huge part of this process and
10 his not being present at a downward departure is the
11 difference between a level 1 and a level 2. Even if Mr.
12 Watts' points had been a level 2, if he could have
13 contributed things, if he could have made sincere
14 expressions of remorse and explained what happened, what
15 happened in his illness, what happened at the time, why
16 this was an anomaly in his life, and what he has in the
17 community, that could have been a difference between a
18 level 1 and a level 2.

19 JUDGE SINGAS: Yeah. I - - - I - - - I
20 understand your argument.

21 MS. PECKER: Yeah.

22 JUDGE SINGAS: I'm - - - I'm just trying to get
23 at why Parris doesn't balance both your argument and the
24 public safety concerns.

25 MS. PECKER: Going back to the fact that in other

1 violations of due process in the SORA hearing, our courts
2 have reversed. I think the court's decision in David W. is
3 helpful because there the court said, the question before
4 the court is not whether David W. was accurately decided a
5 level 3 or not. The question is whether he had notice and
6 an opportunity to be heard. And the same is true here.

7 The question is not - - - regardless of Mr.
8 Watts' level, it's not whether it was - - - had he been
9 competent, whether he would have been a level 2. It's
10 whether he had a meaningful hearing at a meaningful time
11 and place where he could participate. And I think - - -

12 JUDGE TROUTMAN: So it's not meaningful if he's
13 not competent to participate? That's essentially your
14 argument.

15 MS. PECKER: Absolutely, Your Honor. Correct.

16 CHIEF JUDGE WILSON: Thank you, counsel.

17 MS. PECKER: Thank you, Your Honors.

18 MR. WEISS: Good afternoon, Your - - -

19 JUDGE TROUTMAN: Counsel - - -

20 MR. WEISS: - - - good afternoon, Your Honors.

21 JUDGE TROUTMAN: Counsel, why is it that it's
22 meaningful due process if one is not competent to assist
23 their counsel?

24 MR. WEISS: Well, as a preliminary matter, Your
25 Honor, there was no - - - there was no finding in this case



1 that - - - that - - - that Mr. Watts was incompetent. But
2 beyond that, there would be no basis to conclude on this
3 record that counsel was unable to meaningfully protect his
4 interests. For one thing, the entirety of the risk
5 assessment was derived from static factors in this case.
6 The - - - the nature of the crime, the fact that the
7 defendant caused injury to the victim, the age of the
8 victim - - -

9 JUDGE TROUTMAN: What about the argument
10 regarding the downward departure factors?

11 MR. WEISS: Sure. So wha - - - counsel's main
12 argument in support of a downward departure was the - - -
13 was the defendant's mental state. However, as Judge Kiesel
14 noted, the defendant - - - the defense counsel proffered no
15 evidence with respect to his existing mental condition at
16 the time. The stat - - -

17 CHIEF JUDGE WILSON: Well, what the - - - what
18 the question here, though, really is he made a - - - or his
19 counsel made a request for a competency hearing. So why
20 shouldn't that have been granted? Why wasn't that error?

21 MR. WEISS: Because the existing safeguards
22 contained in the statute are sufficient to protect
23 registrants' rights, Your Honor. Competency has never been
24 a constitutional prerequisite to - - -

25 CHIEF JUDGE WILSON: Right. So then, to where

1 you started was, well, there was no competency
2 determination made here. So really that's irrelevant,
3 right? Because you're saying it doesn't matter whether
4 he's competent or incompetent, the reason to deny his
5 request for a hearing was it makes no difference legally?

6 MR. WEISS: Correct, Your Honor. Correct, Your
7 Honor. I was just pointing out as a practical matter, that
8 there had been - - - there had been no finding.

9 CHIEF JUDGE WILSON: But that's inconsequential,
10 right?

11 MR. WEISS: That - - - that's correct, Your
12 Honor. It - - - it is inconsequential. It's - - - it's
13 not an issue that the - - - that a - - - that the SORA
14 court was required to parse because it's consistent with
15 the civil nature of the proceeding. It was designed to
16 advance the government's - - - the - - - the - - -
17 society's overriding interest in keeping the public safe
18 from - - - from the risks of recidivist conduct presented
19 by - - - by known sex offenders.

20 CHIEF JUDGE WILSON: So why can't we just - - -

21 JUDGE HALLIGAN: Counsel - - -

22 CHIEF JUDGE WILSON: - - - have all - - - all
23 SORA hearings in absentia?

24 MR. WEISS: Because that would be inconsistent
25 with the statutory mandate, Your Honor. It would - - - it

1 would hinder the public's access to information in this
2 case.

3 CHIEF JUDGE WILSON: Oh, I'm sorry. I'm - - -
4 I'm asking about a constitutional question. Suppose the
5 legislature rewrote the statute so defendants didn't have a
6 right to be present? No defendant, competent or otherwise.

7 MR. WEISS: Um-hum.

8 CHIEF JUDGE WILSON: Why isn't - - - is that - -
9 - that's okay? Doesn't violate due process?

10 MR. WEISS: I - - - I - - - if - - - if there
11 were no competency requirement? I'm sorry. I'm not
12 following.

13 CHIEF JUDGE WILSON: No, no. If a competent
14 defendant - - -

15 MR. WEISS: Right.

16 CHIEF JUDGE WILSON: - - - if the statute were
17 written so that a competent defendant had no right to be at
18 the SORA hearing, does that violate due process?

19 MR. WEISS: That - - - no. That - - -

20 CHIEF JUDGE WILSON: Because - - - because when
21 you say that the competency of the defendant doesn't matter
22 at all, then I wonder what's the point in the defendant
23 being there?

24 MR. WEISS: Right.

25 CHIEF JUDGE WILSON: Why is - - - why isn't that

1 perfectly okay and not a violation of due process?

2 MR. WEISS: Well, I believe that - - - the civil
3 - - - the civil - - - that the civil nature of these
4 statutes have to merely afford the defendants a right to be
5 present to - - - to - - - to present evidence, to cross-
6 examine witnesses. These aren't - - - these aren't on a
7 constitutional level with the rights that he would of
8 course - - - that would, of course, apply at a criminal
9 trial. So - - -

10 JUDGE HALLIGAN: Counsel, but this defendant - -
11 - over here, if I can, counsel? Thank you. This defendant
12 was in OMH custody; is that right?

13 MR. WEISS: Correct, Your Honor.

14 JUDGE HALLIGAN: So - - - so if we look only at
15 individuals who are in OMH custody, not individuals who are
16 currently in DOCCS custody, what exactly is the - - - the
17 state's interest in having a designation at that juncture?
18 As opposed to at whatever time - - - having a hearing at
19 whatever time they're released from OMH custody? Because
20 they're not out in the community at that point, I take it?

21 MR. WEISS: Absolutely. Absolutely. So in - - -
22 in that instance, it would still hinder the public's acc -
23 - - the public's access to information, specifically those
24 individuals who are likely to come into contact with him.
25 And those - - -

1 JUDGE HALLIGAN: You mean, folks at - - - at the
2 OMH facility? I would think there would be sufficient
3 safeguards in place at a facility like that, that - - -
4 that they would be able to handle that.

5 MR. WEISS: That certainly - - - that certainly
6 could be the case, Your Honor. I would just point out that
7 there were - - - there were no arguments made at the SORA
8 court regarding the conditions of Mr. Watts' commitment.
9 So we don't really know much about his placement. But - -
10 -

11 JUDGE HALLIGAN: But - - - but in terms of the
12 Mathews v. Eldridge calculus, right? Could - - - could
13 that come out differently with regard to defendants who are
14 in OMH custody as opposed to not in OMH custody because the
15 extent of the state's interest would be different?

16 MR. WEISS: I think - - - I think, conceivably,
17 the state's interest might be somewhat - - - somewhat
18 smaller in that circumstance, but it would still require
19 this court to draw an arbitrary distinction and find that
20 people who - - - who the defendant is going - - - is going
21 to encounter, visitors at the facility, other patients,
22 that these people are somehow less deserving of protection
23 than the public at large. And the statute - - -

24 JUDGE HALLIGAN: But - - - but it - - - it would
25 presumably address or significantly mitigate the concern

1 that Judge Garcia was raising about - - - yeah, you know,
2 who - - - for example, the - - - the child out knocking,
3 selling candy door-to-door.

4 MR. WEISS: Right. Right. It would - - - it - -
5 - it would address that aspect of his - - - of - - - of his
6 concern, Your Honor. But - - -

7 JUDGE HALLIGAN: And is there - - - is there a
8 practical reason why you couldn't do that? Why you
9 couldn't hold a hearing before someone is released from OMH
10 custody?

11 MR. WEISS: Well, the statute requires that - - -
12 that - - - that - - - that the process for the SORA
13 adjudication be set into motion within - - - within thirty
14 days of the defendant's release from a - - - from a
15 correctional facility.

16 CHIEF JUDGE WILSON: Well, it doesn't say that,
17 does it? It says correctional facility? Doesn't it have a
18 whole lot - - - list of other things, like hospital?

19 MR. WEISS: It - - - it does say hospital, Your
20 Honor. But - - - and - - - and it's interesting - - - it's
21 interesting you bring that up. Because I'm not - - -
22 because based on my reading of the statute, I'm not - - -
23 I'm not entirely sure that - - - that Mr. Watts' hospital
24 meets the SORA definition of hospital. The - - - the defin
25 - - - the - - - the definition under SORA of hospital

1 contemplates two situations. One, where the inmate is
2 confined pursuant to Article 10 of the - - - the Mental
3 Hygiene Law. And two, when the mentally ill individual is
4 still a prison inmate completing his sentence and he has
5 been transferred to that hospital.

6 Mr. Watts completed his sentence. So I don't
7 even believe there - - - that there is any sort of securing
8 mechanism to even alert the board, the SORA court, the
9 District Attorney's Office, about that - - - that Mr.
10 Watts' release is imminent.

11 JUDGE GARCIA: Counsel, I don't know much about
12 Article 9 and placement, but is it possible that the
13 designated offender level would affect what type of
14 facility a person is placed in in OMH custody? Like, if
15 you're a sexually violent offender, would - - - you might
16 not get placed in a less secure facility? Or get less
17 privileges in terms of being able to go out into the
18 public, than you would if you were not designated a level
19 3? I mean, I don't know the answer to that.

20 MR. WEISS: I - - - yeah. I - - - I don't - - -
21 I don't know the answer with certainty, Your Honor. But I
22 - - - but I think it's fair to - - - to assume that some
23 decisions are - - - are determined based on - - - based on
24 - - - based on facts and evidence that - - - that are - - -
25 that are adduced at the SORA hearing. That - - - that - -



1 - that alert the facility of a - - - of a particular need
2 to - - - to place - - - to place the - - -

3 JUDGE GARCIA: No unsupervised visits into the
4 community?

5 MR. WEISS: Correct. Exactly, Your Honor.

6 And - - - and if I may? I just want to briefly
7 address the argument that - - - not that a - - - that a - -
8 - that registering a - - - an incompetent sex offender
9 elevates the risk of prosecution. I think that's a bit of
10 a canard. A - - - an unclassified offender is still
11 subject to the requirements of a level 1. So forestalling
12 the SORA hearing indefinitely would not immunize Mr. Watts
13 from prosecution if he didn't comply with the foundational
14 registration requirements.

15 And - - - and I would - - - and I would - - - and
16 I would also just add that, of course, it's - - - it's
17 certainly within this court's province to - - - to - - - to
18 disagree with us, to continue with its tradition of
19 providing more protective rights under due process to
20 criminal defendants. But I would just note that the
21 natural corollary of - - - of such a rule would be an
22 extension of this competency - - - of a competency
23 requirement to other civil proceedings that serve a non - -
24 - that serve a non-penological purpose where even greater
25 liberty interests are at stake.

1 So that would be the path that the court would be
2 embarking upon if it were to recognize such a right in this
3 proceeding.

4 Unless the court has any further questions, we
5 would just ask that the order of the SORA court and the
6 Appellate Division be affirmed.

7 CHIEF JUDGE WILSON: Thank you.

8 MR. WEISS: Thank you.

9 MS. PECKER: I'd like to correct some errors I
10 believe my adversary made, and then answer Judge Halligan
11 and a question by Judge Garcia.

12 First of all, Your Honor, there was no dispute
13 below that Mr. Watts was not competent or certainly had all
14 indicia of not being competent. Two, Your Honor, there was
15 a risk factor here, risk factor 7, that we regularly argue
16 against all the time based on our client's input. So it
17 was not all static factors. Three, registration is not the
18 same as a level 1. They are similar, but level 1 imposes
19 additional obligations on top of registration. I'm happy
20 to expound on that if you would like.

21 Turning to Judge Halligan's question. No. There
22 is no reason why a hearing could not be held at a time when
23 Mr. Watts was actually released into the community. Here,
24 he was transferred directly from DOCCS custody to OMH
25 custody. And while it is true that there is a question

1 whether South Beach Psychiatric facility, where he was
2 being held, was a hospital under the definition of - - - of
3 the Correction Law, it is not true what my adversary said,
4 that there is no alert mechanism to alert the court.

5 168-m, as Judge Wilson noted, says, "Any
6 correctional facility, hospital, or institution" - - -
7 "shall forward information on the individual to be released
8 within 120 days". And that sets in motion the same thing
9 that happens when an individual is being released from
10 DOCCS. The board - - -

11 JUDGE HALLIGAN: So just - - -

12 MS. PECKER: - - - notifies the court - - -

13 JUDGE HALLIGAN: - - - so just to - - - to make
14 sure I understand that.

15 MS. PECKER: Sure.

16 JUDGE HALLIGAN: It sounds to me like what you're
17 saying - - - but I want to make sure I'm hearing you
18 correctly. Is that there's - - - setting aside the
19 hospital institution category question. There's nothing
20 that you see with respect to the timing requirements for
21 either reevaluation or release from OH - - - OMH custody or
22 the process for getting the SORA hearing in place, that - -
23 - that would preclude scheduling a hearing before someone
24 is discharged from OMH custody? Is - - - is that right?

25 MS. PECKER: That's correct, Your Honor. The



1 same mechanism that we go forth. That the board then has a
2 duty to inform the court, the court informs the sex
3 offender and the DA, the hearing is held, et cetera. It
4 gets put into place if his South Beach Psychiatric hospital
5 is included in institution or hospital.

6 Going back to - - - excuse - - - and - - - and
7 also to address Judge Garcia and Judge Halligan's question.
8 The OMH Facility Manual QA-410 also puts in place that OMH
9 gets a full criminal history, and psychiatric and hospital
10 history on anyone in its midst. And so yes, they
11 regularly, within twenty-four hours of admission to an
12 Article 9 facility, are making an analysis of where that
13 individual should be housed based on his criminal
14 proclivities, which the registry - - - they're not looking
15 to the registry. They're looking to the official documents
16 that they've received. And so they have all of this
17 information - - -

18 JUDGE GARCIA: You don't think that - - -

19 MS. PECKER: - - - at their fingertips.

20 JUDGE GARCIA: - - - the court determination that
21 they were a level 3 sexually violent offender might affect
22 that decision?

23 MS. PECKER: I don't know that it would, but I
24 know that they have more information on Mr. Watts than a
25 SORA hearing - - -

1 CHIEF JUDGE WILSON: There was mention - - -

2 MS. PECKER: - - - court does.

3 CHIEF JUDGE WILSON: - - - there was a mention in
4 your brief I was going to ask about. That - - - that - - -
5 I don't want to mischaracterize it. But I think it says -
6 - - as I remember it, it said that the - - - a level 2
7 designation might interfere with the ability of Mr. Watts
8 to get services from OMH?

9 MS. PECKER: And that's - - - that has happened
10 here, Your Honor.

11 CHIEF JUDGE WILSON: Can you explain that?

12 MS. PECKER: Sure. I don't think I - - - I - - -
13 I hope I didn't say from OMH. But for OM - - - OMH to do
14 its discharge planning and decide what is right, the level
15 2 has hampered him as a fact here. And that's because he
16 has now been in Article 9 for - - - he was in Article 9 for
17 over a year. He was released with full wraparound
18 services, continually hospitalized, and now has been back
19 in Article 9 involuntary civil commitment for over a year
20 and a half. And it is my understanding from his mental
21 hygiene legal services attorney as well as his social
22 worker, OMH social worker, that they have been unable to
23 find him a nursing home, which is what the doctors think is
24 the best place for him now. And a level 2, is their
25 understanding, is part of the thing that is preventing them

1 from implementing the discharge plan they seem - - - deem
2 best.

3 JUDGE GARCIA: Isn't that - - - go to the point
4 of, they factor in the level in certain decisions of who
5 you would have contact with?

6 MS. PECKER: But - - -

7 JUDGE GARCIA: Because otherwise, why would it
8 affect that?

9 MS. PECKER: Because nursing homes and OMH
10 facilities are - - - are contemplating people's criminal
11 proclivities already. And he has not sexually re-offended,
12 Your Honor. He - - -

13 JUDGE GARCIA: No, no, no. But I - - - I thought
14 your point was because he's labeled a level 2, it's
15 affecting where he can be placed?

16 MS. PECKER: I think in part it is, Your Honor.

17 JUDGE GARCIA: Isn't that sort of the point of
18 SORA? That these level designations might restrict that,
19 given the risk?

20 MS. PECKER: That's correct, Your Honor. But it
21 goes back to the fact that in this case, he was designated
22 - - - he was given a level at a hearing that he had a right
23 to participate and a right to be present at, and he simply
24 wasn't present.

25 And just going back to Judge Singas' one

1 question. Although, it's a Second Department case, I think
2 People v. Gutierrez-Lucero is a helpful case for this court
3 to look at. Because there, there was no question that the
4 SORA registrant had not gotten notice. But he'd been
5 deported, and so the question was what to do? And the SORA
6 court said had he done the best he could at a hearing, he
7 would only have gotten a level 1. And so we're going to
8 make him a level 1.

9 The Appellate Division reversed. And the - - -
10 the Appellate Division reversed because they said the
11 legislature did not put a sliding scale in place. It's all
12 or nothing. He had a right to a hearing and to be present
13 at that hearing. And the - - - the due process violation
14 here occurred, whether or not his level was correct.

15 And I think that's the same thing that we're
16 looking at here. He had a right to a hearing. He was not
17 present at that hearing. And because the legislature, and
18 the Constitution, going to your question, afforded him due
19 process rights at a hearing, our courts cannot withhold
20 those rights by allowing SORA hearings to go forward when
21 our clients are incompetent and not present.

22 CHIEF JUDGE WILSON: Thank you.

23 MS. PECKER: Thank you, Your Honors.

24 MR. WEISS: Thank you.

25 (Court is adjourned)

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

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Darryl Watts v. People, No. 10 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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