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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,
Respondent,

-against-

CODIE HAYWARD, NO. 83
Appellant.

20 Eagle Street
Albany, New York
September 12, 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: Next matter on the calendar
2 is People v. Codie Hayward.

3 MS. BLUVAS: I'd like to reserve three minutes
4 for rebuttal, please?

5 CHIEF JUDGE WILSON: Yes.

6 MS. BLUVAS: Good afternoon, Your Honors. May it
7 please the court. Kristin Bluvass from the Rural Law
8 Center, on behalf of the defendant, Codie Hayward.

9 I'd like to first start by talking about the
10 history of no-knock warrants and what they authorize the
11 government to do.

12 JUDGE RIVERA: Before you get to that on - - - on
13 that issue. Can you address whether the - - - that issue
14 that divided the - - - the majority and the dissent in the
15 Appellate Division below, is that a mixed question of law
16 and fact? Is that a - - - a different factual
17 interpretation of the record that we're not going to be
18 able to address?

19 MS. BLUVAS: I - - - I would argue that this
20 court can find ineffective assistance as a matter of law,
21 and they can decide this issue as it has been presented to
22 them.

23 CHIEF JUDGE WILSON: But to do that - - -

24 JUDGE HALLIGAN: And what's - - -

25 CHIEF JUDGE WILSON: - - - would we have to

1 determine that there was no support for the majority's view
2 that this was not a no-knock warrant? Not - - - not a - -
3 - that they didn't break the door down.

4 MS. BLUVAS: You asked what was their - - -

5 CHIEF JUDGE WILSON: Let - - - let me reask. I
6 had too many negatives in that question.

7 MS. BLUVAS: Yes. Sorry.

8 CHIEF JUDGE WILSON: To be able to disagree with
9 the Appellate Division majority, which said essentially,
10 they didn't break the door down, would we have to conclude
11 that there is no evidence of that nature in the record?

12 MS. BLUVAS: I think that to be able to disagree
13 with them, you would have to conclude that that was
14 incredible as a matter of law. That - - - that, given this
15 record, you know that the - - - there was enough given the
16 - - - the police report, given the police testimony, that
17 it was incredible, as a matter of law, to conclude that a
18 no-knock warrant did not occur.

19 JUDGE GARCIA: Is that particularly difficult for
20 us to do here because it's unrepresented, so the People
21 didn't litigate it? So if you had raised this issue in the
22 suppression court, we'd have a much better record.

23 MS. BLUVAS: It is difficult, I do agree with
24 you. However, and - - - and then, if we step back at the
25 context that's raised in - - - in the context of

1 ineffective assistance of counsel, the reason that we don't
2 have a sufficient record, I argue, is because counsel did
3 not - - - you know, see this very clear issue that the
4 warrant was exceeded in the scope.

5 JUDGE TROUTMAN: Is this a single-issue error
6 with respect to counsel?

7 MS. BLUVAS: I would argue that it is because it
8 is - - - it would be dispositive, the - - - the - - -

9 JUDGE TROUTMAN: And was the law clear with
10 respect to the issue itself and - - - and what - - - was
11 the law clear that if it was violated, what the
12 consequences were?

13 MS. BLUVAS: So this court has not considered
14 that issue. But I think - - - you know, even though the
15 Supreme Court in Hudson has said that it's not - - - you
16 know, suppression isn't always required. It has also said
17 the opposite, that, you know, in federal drug raids it's -
18 - -

19 JUDGE TROUTMAN: It's so they said it's - - -
20 it's not always required. So that's the floor, and we
21 haven't decided that it does require suppression. So how
22 can that be enough here to get the relief you're seeking?

23 MS. BLUVAS: Well, I - - - I would argue that the
24 - - - the - - - that counsel's failure to raise that is
25 what - - - is what was the issue. Like, this was not - - -

1 you know, challenging the scope of a warrant is very
2 routine defense practice. There was no reason for them not
3 to - - -

4 JUDGE SINGAS: But maybe he read Hudson and
5 decided, he or she, that it wasn't worth raising. And are
6 we to find that based on Supreme Court precedent, a
7 decision like that is ineffective?

8 MS. BLUVAS: I think, you - - - you have Hudson,
9 but you also have - - - you know, Richards v. Wisconsin,
10 that - - - that makes the opposite point, that - - - that
11 there is no per se rule on - - -

12 JUDGE CANNATARO: But doesn't the issue have to
13 be clear cut and dispositive? Wouldn't the success of that
14 motion have to be basically a foregone conclusion?

15 MS. BLUVAS: I don't think we have to prove that
16 - - - that it would have - - - that he would have won that.
17 But I think we have to show you that there was no
18 objectively reasonable strategy to not challenge the
19 warrant. There was no negatives to the defendant for him
20 challenging the warrant.

21 JUDGE HALLIGAN: In addition to Hudson, don't you
22 have to deal with Rodriguez, which suggests that for
23 technical violations - - - I know that was a nighttime
24 issue - - - but that suppression is inappropriate. So I -
25 - - I think we would have to conclude that even though we

1 might view a nighttime constraint as technical, that we
2 wouldn't view knock versus no-knock, and - - - and maybe in
3 a context where a no-knock warrant would have been
4 available given the circumstances. So what do you do about
5 Rodriguez?

6 MS. BLUVAS: You know what? I think they are
7 distinguishable. This is not a technical violation, and
8 it's something you can look at in Hudson.

9 JUDGE HALLIGAN: But - - - but is it clear cut?
10 To go back to Judge Cannataro's question about - - - about
11 the - - - the standard here for ineffective assistance, how
12 would we find it's - - - it's clear cut in light of
13 Rodriguez? That's what I'm grappling with.

14 MS. BLUVAS: I think you could find that it - - -
15 that it was - - - it was a clear-cut issue to challenge the
16 scope of the warrant at a minimum. That would be - - -
17 that it was defective performance as a matter of law.

18 JUDGE TROUTMAN: So - - - so are you suggesting
19 that regardless of the state of the law, it was a claim
20 that any competent lawyer would simply raise? Is - - - is
21 that what you're arguing?

22 MS. BLUVAS: I'm arguing - - - I'm arguing that -
23 - - you know, defense counsel should have raised this
24 issue; it is routine practice. If you - - - looking at the
25 omnibus motion, it was clearly done from a template. You

1 know, it references other defendants' crimes.

2 JUDGE TROUTMAN: So again, regardless of the
3 state of the law, it's something that routinely a competent
4 lawyer would have simply raised?

5 MS. BLUVAS: Correct. Yes.

6 JUDGE RIVERA: Well, but even when you're raising
7 sort of routinely, this is something that - - - that you
8 would file a motion on. It can't be frivolous. You have
9 to have legal basis for even a routine application. You
10 agree with me there?

11 MS. BLUVAS: Correct.

12 JUDGE RIVERA: Okay.

13 MS. BLUVAS: But there was - - -

14 JUDGE RIVERA: So why is it not frivolous? Is it
15 because it's novel under the State Constitution? We
16 haven't resolved that question. The questions you're being
17 asked make it clear we haven't resolved it.

18 MS. BLUVAS: Correct. It is novel, but it is
19 also - - - you know, not decided at the federal level.
20 It's - - - there's no per se rule either way. It - - - you
21 know, it would get the defendant to - - - to evaluating the
22 reasonableness - - -

23 JUDGE RIVERA: Let's say we disagree with your
24 argument here and we disagree with the dissenters. And
25 this is really about the State Constitution?

1 MS. BLUVAS: Then - - - then what is your
2 question? I'm sorry.

3 JUDGE RIVERA: Well, I - - - in a more, I guess,
4 direct way, is a counsel ineffective if they fail to raise
5 what is obviously a novel claim? One, novel in that sense.
6 It has not been resolved by the Court of Appeals that would
7 be dispositive in the case, or at least, would severely
8 weaken the prosecution?

9 MS. BLUVAS: I don't - - - I do think that
10 counsel is defective in this case, it wouldn't always be
11 defective for raising a novel issue. While the - - - the -
12 - - the search discussion is something that may be up for
13 dispute. The - - - you know, challenging the scope of a
14 warrant is not something that's up for dispute.

15 JUDGE SINGAS: Can you just clarify what you mean
16 by that, the scope of the warrant?

17 MS. BLUVAS: Well, their authority was - - - was
18 granted by the warrant and the - - - the - - - the - - -
19 their authority was not given to the extent to conduct a
20 no-knock raid on this - - - this defendant's apartments.
21 And we don't know what the - - - the magistrate would have
22 done if this was requested. It was - - - you know, a - - -
23 a multilevel apartment building. While there were drugs
24 that - - - you know, could readily be destroyed, there
25 could have been many other considerations. And by not

1 putting that before the magistrate, I would argue that we
2 have to look at the - - - the - - - the search at the point
3 of when it was conducted. And in this case, it's
4 unreasonable - - -

5 JUDGE SINGAS: And - - - and do you think this
6 record is clear about what happened upon entry or right
7 before entry, for us to come to a determination?

8 MS. BLUVAS: I do think there is enough on this
9 record. While there could be more, I think you have the
10 officer testimony. I think the after-action report - - -
11 you know - - - from the emergency response team is very
12 detailed. It's very clear as to what the officers did
13 prior to the entry, how they moved themselves into place
14 secretly, how they - - - you know, the different equipment
15 that they brought with them. You know, twenty-three
16 officers, seventeen handguns - - -

17 JUDGE RIVERA: But all - - - they could have done
18 all of that and still, before they touch the door, have
19 said police, right? Or whatever they're going to say.
20 Warn that law enforcement is - - - is going to come in if
21 you don't open this door.

22 MS. BLUVAS: I - - - I think it would be
23 illogical to conclude that they - - -

24 JUDGE RIVERA: It would be what? I'm sorry.

25 MS. BLUVAS: Illogical - - -

1 JUDGE RIVERA: Illogical?

2 MS. BLUVAS: - - - to conclude that if they - - -
3 they gave that detailed report of what they did, to - - -
4 to omit that information. You know, there were - - - there
5 was quotes of what they entered - - - what they stated as
6 they entered.

7 JUDGE RIVERA: Whose report was that?

8 MS. BLUVAS: That was - - - it was an after-
9 action report by the police department that's prepared
10 routinely, you know, as - - - as a matter of - - -

11 JUDGE RIVERA: I guess, I'm asking because I know
12 there was an issue raised as to whether or not all the
13 officers would have been in a position to know or to have
14 heard whether an appropriate warning was given?

15 MS. BLUVAS: And that report informs on that
16 issue. It explains which officers entered first, which
17 were in the stack behind the batter - - - which conducted
18 the battering ram, which held the shield - - -

19 JUDGE RIVERA: And how does that address whether
20 or not, indeed, there was a prior warning?

21 MS. BLUVAS: How does - - -

22 JUDGE RIVERA: Knowing the order of those who
23 enter? Knowing who's carrying whatever they're carrying?

24 MS. BLUVAS: Right. Those officers - - - the
25 officers that we primarily rely on, Pendrick and Blowers,

1 were the first officers to enter. You know, they are going
2 to have the first impressions. They were - - - you know,
3 the ones that were yelling. And Ofc. Pendrick, as he
4 entered, yelled, police, search warrant. You know, if he
5 had said that before, he was the one designated to do that,
6 that - - - that would be in the report, I would argue.

7 I'd like to just touch briefly on what the remedy
8 in this case is. And that I think that the remedy is
9 suppression. You know, if this court can find, as a matter
10 of law, that counsel's performance was defective, that
11 suppression can be ordered. You know, if - - - while I
12 think there still is enough, we also would request that
13 this could be sent back to county court for a hearing
14 because of the colorable claim of a violation by the
15 defendant or on behalf of the defendant.

16 JUDGE RIVERA: Let's say we agreed with you.
17 Would - - - would - - - would the prosecution have the
18 opportunity to now establish that, indeed, there was a
19 warning in advance? That this was not a no-knock search
20 and seizure?

21 MS. BLUVAS: Well, the - - -

22 JUDGE RIVERA: A warrant?

23 MS. BLUVAS: - - - the officers could be called
24 back and - - - and - - - and asked that directly. You
25 know, I don't know what they would say. You know, that

1 wasn't actually asked of them directly. It could be
2 contradicted by the report that that they issued, and there
3 would be credibility issues as to why that wasn't included
4 in that report. But we don't know. Thank you.

5 CHIEF JUDGE WILSON: Thank you.

6 MS. RAHILLY STELLER: May it please the court.
7 My name is Bridget Rahilly Steller. I'm an attorney with
8 the New York Prosecutor's Training Institute, here as of
9 counsel to Fulton County District Attorney Michael Poland.

10 JUDGE SINGAS: Can you address that issue about
11 the state of the record and if we have enough information
12 in front of us about the nature of the no-knock or the
13 announcement, and particularly that report; does that shed
14 any light?

15 MS. RAHILLY STELLER: Your Honor, I don't think
16 the record is sufficient for anything. And I have a couple
17 of issues here. First of all, if you look at CPL 710.60,
18 you're supposed to make a suppression motion prior to
19 trial, or you're supposed to put all your grounds in your
20 suppression motion, and that's the exclusive means of
21 deciding that motion under - - - it's one of the - - - it's
22 the first CPL 710.60 refers to CPL 710.20. And the first
23 thing in 710.20 is a personal property - - - a suppression
24 of personal property.

25 So this issue should have been raised - - - if it

1 was going to be raised, should have been raised in the
2 omnibus motion or the motion to suppress. That's where you
3 would have had a hearing on was there - - -

4 JUDGE RIVERA: That - - - that - - - but that's
5 counsel's point. That counsel - - - that the trial counsel
6 - - - excuse me - - - was ineffective. So what happens
7 when you have that scenario?

8 MS. RAHILLY STELLER: I don't think you can say
9 this attorney is ineffective based on this record because
10 you don't know what he knew at the time he made the motion.
11 And if the only time he hears about this delayed or maybe
12 simultaneous announcement is during trial, the issues
13 you're deciding at trial are, is there sufficient evidence
14 that this defendant - - -

15 JUDGE TROUTMAN: Was the law clear?

16 MS. RAHILLY STELLER: Excuse me?

17 JUDGE HALLIGAN: Wouldn't you expect - - - when
18 you look at both the testimony and the after-action report,
19 that if in fact, one of the officers had knocked and
20 announced, that they would have indicated that in the
21 course of their testimony? It's pretty - - -

22 MS. RAHILLY STELLER: I think that - - -

23 JUDGE HALLIGAN: It's pretty thorough and
24 detailed. Why wouldn't that - - - not be in there?

25 MS. RAHILLY STELLER: Well, number one, I don't

1 know how you get an after-action report in there without
2 going through who wrote it and what their basis of
3 knowledge is.

4 JUDGE HALLIGAN: Okay. But - - - but in terms of
5 the recounting of what happened.

6 MS. RAHILLY STELLER: Go to the two officers who
7 did testify. Sgt. Pendrick says he was supposed to be the
8 first person on the battering ram. And he says that as
9 they went through, they announced police. But then he also
10 says - - -

11 JUDGE HALLIGAN: So - - - right. And so just to
12 stay on that for a minute, he does say that. And so it
13 seems to me that if he had also announced that he was there
14 before he went in with the ram, that he would have said
15 that in the course of his testimony.

16 MS. RAHILLY STELLER: But he was never asked that
17 question. And what becomes even more important is, I think
18 if you look at -- I think it's A110 in the record, he
19 testified, "As we approached the rear apartment door of 3W,
20 another officer had breached the door. And the door popped
21 open." So he wasn't the guy who was going in first.
22 Somebody else was ahead of him. So this was never
23 completely vetted on this record.

24 JUDGE RIVERA: So - - - so are you suggesting
25 that even - - - assuming for one moment that because he

1 didn't put it in the report and doesn't testify to it, that
2 that he didn't say it? That because from another door
3 someone else is in front of him, that that person may have
4 issued the warning? Is that - - - or am I
5 misunderstanding?

6 MS. RAHILLY STELLER: Anybody could have - - -

7 JUDGE RIVERA: And - - - and - - -

8 MS. RAHILLY STELLER: - - - issued the warning.

9 JUDGE RIVERA: Okay.

10 MS. RAHILLY STELLER: And also you're talking
11 about - - - even if you listen - - - even if you look at
12 Sgt. Pendrick's testimony, it's - - - it's almost
13 simultaneous. And if you look at - - - even with a - - -
14 even if you don't have the no-knock authorization, you have
15 to knock before you enter and announce. But there's no
16 specification about how long you have to wait before you
17 break the door down. It could be ten seconds. It could be
18 five seconds. It could be thirty seconds. It could be
19 twenty minutes.

20 So there's no specific requirement as to how long
21 you have to wait. So you can't really tell from this
22 record because they're talking about it happening at once.

23 JUDGE TROUTMAN: With respect to the claim,
24 assume for the sake of argument - - -

25 MS. RAHILLY STELLER: Yes, Judge.

1 JUDGE TROUTMAN: - - - that there is a record to
2 say that the no-knock was violated, was the law clear that
3 suppression would be granted?

4 MS. RAHILLY STELLER: No, Your Honor. And that
5 would be my second point. That in order for you to have a
6 valid argument that - - - that the defense attorney was
7 ineffective, it seems to me that there has to be a clear
8 law that any reasonable defense attorney would have raised
9 this issue.

10 And if you look at the state of the law - - -

11 JUDGE RIVERA: So - - - so you're - - - so you're
12 saying if a lawyer is aware of a novel issue not resolved
13 by this court and they choose not to raise it - - -

14 MS. RAHILLY STELLER: Yes.

15 JUDGE RIVERA: - - - that any other defense
16 lawyer would have raised, they're not ineffective because
17 it's novel?

18 MS. RAHILLY STELLER: Well, I think it's - - -
19 it's novel, but I - - - I don't think you can say here that
20 any other defense attorney would have - - - would have
21 raised this issue. But again - - -

22 JUDGE RIVERA: Why not? Why not? Why not?
23 Would have been the - - - if - - - if they would have won
24 on the issue and gotten the remedy, all that evidence is
25 suppressed. Then you left, I - - - I can believe - - - you



1 can correct me - - - you're left with the CI's statement
2 and that's it.

3 MS. RAHILLY STELLER: But if you look at it and
4 you - - - you see - - - number one, I go back to what did
5 the attorney know when he made his suppression motion?
6 Then you make strategic decisions. And if he didn't know
7 or if he knew something else that it had in fact happened,
8 he wouldn't be making this motion.

9 JUDGE RIVERA: No, no. But it was a different
10 hypothetical. It - - - it's - - -

11 MS. RAHILLY STELLER: Okay.

12 JUDGE RIVERA: - - - I - - - I thought Judge
13 Troutman had said, let's assume for one moment that there's
14 no ambiguity in the record, there's no uncertainty, that's
15 not what the dispute is. Everyone agrees, they did not
16 give the warning upfront. Okay?

17 MS. RAHILLY STELLER: Okay.

18 JUDGE RIVERA: All right.

19 MS. RAHILLY STELLER: I - - - I still -

20 JUDGE RIVERA: And - - - and everyone here, of
21 course, agrees that the lawyer never raised such a claim.

22 MS. RAHILLY STELLER: I still think that since
23 the issue had never been decided by this court or by any of
24 the intermediate - - -

25 JUDGE RIVERA: But that's the point.

1 MS. RAHILLY STELLER: - - - appellate courts in
2 the State - - -

3 JUDGE RIVERA: That's the point. It's not
4 foreclosed because it's a novel issue under the State
5 Constitution.

6 MS. RAHILLY STELLER: Under the State
7 Constitution, yes. But since the - - - you have the
8 Supreme Court decision in there and no other courts in this
9 - - - in this state - - - at least when I looked, I
10 couldn't find anything - - - or another court in this state
11 had adopted or rejected that proposal, I think that the
12 attorneys would not be required to raise that.

13 And again, it's a strategic decision on the part
14 of the attorney. And I think if he thought he had a better
15 argument - - - and I think he could have thought he had a
16 better argument here, because he's arguing that the whole
17 thing should have been suppressed. On the other hand - - -

18 JUDGE RIVERA: Are they mutually exclusive?

19 MS. RAHILLY STELLER: Excuse me?

20 JUDGE RIVERA: Are the arguments mutually
21 exclusive?

22 MS. RAHILLY STELLER: He did. But the other side
23 of that - - -

24 JUDGE RIVERA: No, no, no. Are the arguments
25 mutually exclusive? You said he had a better argument.

1 What - - - would it have undermined his argument?

2 MS. RAHILLY STELLER: Well, that may have been
3 the better argument. But the other thing we don't know
4 about is, is he concerned about if he does raise this
5 argument, are we going to have a standing objection and
6 then he's going to have to litigate standing. Because the
7 evidence also tended to indicate that the defendant claimed
8 his apartment was not this one, it was the one across the
9 hall. So you would have had to worry about, are you going
10 to win on the standing point?

11 So I think it's - - - it's legitimate for an
12 attorney to look at what he or she knows at the time
13 they're making their motions, at the time they're
14 litigating something, and you - - - you can't tell from
15 this record what the attorney did or didn't know. But I
16 also believe that no attorney in this state is going to be
17 required, in order to be competent, to raise a novel issue.

18 JUDGE RIVERA: Well, it doesn't have to be
19 competent. It's whether or not the defendant is denied
20 meaningful representation given the error if it is an
21 error.

22 MS. RAHILLY STELLER: And I - - - I'm - - - what
23 I'm saying is I don't believe it's an error when it is not
24 any kind of a settled issue. And I also think that if it
25 were a settled issue, we'd be seeing this argued a lot more

1 in this state. Or if it was something that somebody
2 thought they would have a chance of winning on, it would be
3 heavily argued.

4 JUDGE RIVERA: One - - - one would hope law
5 enforcement is not, as a matter of course, violating the
6 statute and engaging in these no-knock warrants. One would
7 hope.

8 MS. RAHILLY STELLER: I mean, I understand that -
9 - - that this is a problem, but on this record, you can't
10 even tell that. And if you look at - - - there's two
11 police officers who testified here. Pendrick, who was the
12 first one. Ofc. Blowers, when he's asked how did you enter
13 apartment 3W, he says I don't know. And then he's - - - he
14 has to be refocused. He's also the one who testifies that
15 after they got in there, there were three people in the
16 apartment when we know there were four because there were
17 four arrests. So this is all credibility issues also
18 involved here.

19 But I would suggest to you that this is not
20 properly before you. It wasn't preserved. And there's no
21 showing that this attorney did not provide meaningful
22 representation.

23 Does the court have any other questions you would
24 like me to address?

25 CHIEF JUDGE WILSON: No, thank you.

1 MS. RAHILLY STELLER: Okay. Thank you very much.
2 We'd ask that the - - - you affirm the Third Department.

3 CHIEF JUDGE WILSON: Thank you.

4 MS. BLUVAS: Just quickly in - - - in rebuttal.
5 We do know when counsel got the report that would have made
6 this clear. It was pre-discovery reform, so it was
7 disclosed as Rosario - - - you know - - - immediately
8 before trial. It was redacted, so counsel didn't get a
9 copy until the day of jury selection. And I submit that it
10 was ineffective for him not to at that time, move to reopen
11 the Mapp hearing when the issue became very apparent on the
12 record.

13 The - - - you know, in response to the officer's
14 testimony, while Ofc. Pendrick was the second one in - - -
15 you know, the person that breached the door is first and
16 popped the door open, but he was the first one in the stack
17 of officers behind the shield. So he was the first to
18 observe the - - -

19 JUDGE RIVERA: Do you want to take a moment to
20 address the Molineux issue?

21 MS. BLUVAS: Yes. And I would like to take a
22 moment to address the Molineux issue because that was a
23 preserved issue, so it's a much - - - it's a cleaner issue
24 for the court to address.

25 This prior sale, I think county court was correct

1 in their original discussion of excluding it. You know,
2 the sale was simultaneous. It could have been indicted at
3 the same time. It could have been before the court. He
4 knew its purpose was to show propensity. And the best
5 evidence of the prejudice to the defendant, is that the
6 jury acquitted him of the charges for the cocaine which was
7 found in the same room as him with the drug paraphernalia,
8 you know, and convicted on the heroin which was in a back
9 bedroom - - - you know, and the possession was the real
10 issue at trial.

11 So this Molineux evidence was not - - - you know,
12 relevant to his possession of that heroin. It was only - -
13 - you know, highly prejudicial, and it was - - - the only
14 purpose it was introduced, I argue, was for propensity that
15 he - - - he sold - - - sold heroin.

16 JUDGE SINGAS: So are you arguing that the trial
17 court abused his or her discretion?

18 MS. BLUVAS: The - - - I think that the - - -
19 that it was an abuse of discretion to reverse their
20 decision. Because originally, they - - - they decided that
21 the - - - that they were precluded from using that and they
22 could only elicit - - - you know, an ongoing drug
23 investigation was occurring at the residence and that's how
24 the search warrant was obtained.

25 JUDGE CANNATARO: You mean the - - - the trial

1 court reversed its own decision?

2 MS. BLUVAS: Reversed its own decision, correct.

3 If there's no other questions on that, I would
4 rest on my briefs and ask the court to reverse.

5 CHIEF JUDGE WILSON: Thank you.

6 (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 People v. Codie Hayward, No. 83 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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