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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE

Respondent,

-against-

NO. 94

WILLIAMS (LOCKSLEY)

Appellant.

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20 Eagle Street  
Albany, New York  
October 15, 2025

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

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1 CHIEF JUDGE WILSON: Next case on the calendar is  
2 People v. Williams.

3 MS. JOURAVLEVA: Good afternoon. Anna Jouravleva  
4 for appellant. I'd like to reserve four minutes for  
5 rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MS. JOURAVLEVA: If this court were to hold that  
8 the glaring inaccuracy in the People's 5-a certification  
9 here had no bearing on their ability to validly declare  
10 ready, then a very important new prerequisite for trial  
11 readiness enacted by the legislature would be nothing more  
12 than an empty paperwork requirement.

13 The facially insufficient count here would have  
14 been noticed upon a one-minute reading of both the  
15 complaint, the superseding information, which was not the  
16 same thing as the complaint with the supporting deposition  
17 attached. It was an entirely new document with new factual  
18 allegations. And most importantly, by the prosecutor who  
19 was getting ready to certify that all counts were facially  
20 sufficient under 5-a. If that prosecutor had taken a  
21 minute to read the complaint, she would have immediately  
22 realized that she was not able to make that certification  
23 and - - -

24 JUDGE CANNATARO: Counsel, assuming you're  
25 correct that there's some culpable failure to review that

1 particular provision, which I think you called it glaring,  
2 and I'll give you that. It's glaring. But it's also part  
3 of a much larger document, so there's a proportionality  
4 question there that we can explore later.

5 But why is it that the appropriate remedy for  
6 that single glaring omission is the dismissal of the entire  
7 information?

8 MS. JOURAVLEVA: Because that's what the  
9 legislature intended by passing 5-a. It's a very - - -

10 JUDGE SINGAS: And where - - - where can you  
11 point to that in the statute? Where does it say that the  
12 information should be dismissed?

13 MS. JOURAVLEVA: 5-a says that a statement of  
14 readiness cannot be valid without the certification. If  
15 the statement of readiness is invalid - - -

16 JUDGE CANNATARO: You do have the certification.  
17 What you have, I believe you just argued, is an inaccurate  
18 certification. But where does the statute address how to  
19 deal with omissions, inaccuracies, intentional falsehoods,  
20 whatever? You know, whatever could cause that kind of  
21 omission to occur. How does the statute address that?  
22 Because I don't see it.

23 MS. JOURAVLEVA: There's two places. The first  
24 is the plain text of 5-a. The ordinary meaning of the word  
25 "certify" necessarily implies that the prosecutor making

1 the certification took some steps to make sure that what  
2 they were certifying to was accurate. There was no need to  
3 insert the word "correct" or "accurate" in front of  
4 certify. It's already - - -

5 JUDGE HALLIGAN: What happens if there's, you  
6 know, a reasonable good-faith belief that the prosecutor  
7 has - - - maybe that's not this case, but in a different  
8 case, and it turns out down the road that a court  
9 determines that that was not correct?

10 MS. JOURAVLEVA: Our primary contention is that  
11 in a case like that, again, we don't have it here. But if  
12 there's a close legal sufficiency question - - -

13 JUDGE HALLIGAN: Yeah.

14 MS. JOURAVLEVA: - - - it should still result in  
15 the invalidation of the certification and the statement of  
16 readiness. And I think it's really important to keep in  
17 mind - - -

18 JUDGE HALLIGAN: And you would say that requires  
19 dismissal in its entirety as here?

20 MS. JOURAVLEVA: Yes, Your Honor. And I - - -

21 JUDGE HALLIGAN: And why is that - - - you know,  
22 why is that consistent with the purposes of the statute?

23 MS. JOURAVLEVA: Because the People bear a very  
24 serious burden to - - -

25 JUDGE HALLIGAN: Well, that's why I asked you if

1           there's a - - - you know, if there's a good-faith effort to  
2           make the certification. And let's assume that it's a  
3           circumstance where you don't dispute that there's diligence  
4           exercised, et cetera. Why does it further the purposes of  
5           the statute to dismiss it in its entirety?

6                         That's what I'm trying to understand.

7                         MS. JOURAVLEVA: I think the legislature very  
8           deliberately used the word "all counts" in 5-a. Their  
9           intention was to tie the validity of each count to the  
10          threat of the dismissal of the entire instrument. That was  
11          the incentive structure - - -

12                        JUDGE HALLIGAN: So you would treat this, I take  
13          it, as sort of a strict liability requirement as compared  
14          with discovery, where you have to exercise some due  
15          diligence? So even the most good faith, you know,  
16          representation that a court later turns around and says,  
17          no, that's not sufficient?

18                        MS. JOURAVLEVA: To the extent the court is  
19          concerned about those very close legal sufficiency  
20          questions, we do propose in the alternative that the court  
21          adopt a diligent standard for 5-a, similar to what the  
22          standard is for discovery in Bay. That would give some  
23          wiggle room, but still further the purpose of the statute.

24                        JUDGE CANNATARO: How would you articulate that  
25          diligence standard? What is it that the - - - the

1 submitting party would need to do in order to be - - - show  
2 diligence?

3 MS. JOURAVLEVA: Actually, a good example is in a  
4 trial court decision that was cited by the appellate term  
5 in its decision below. That was People v. Carter. So  
6 there there was a very close legal sufficiency question  
7 about whether the forcible element of forcible touching was  
8 made out by the conduct alleged in the accusatory  
9 instrument. The court decided that the forcible touching  
10 count was facially insufficient, but it held that the 5-a  
11 certification was still valid because the People exercised  
12 good faith and due diligence. And what the court said is  
13 the People researched and cited numerous cases in support  
14 of the sufficiency of the charge. And went on to explain  
15 that it was a very subtle legal question with which the  
16 court disagreed.

17 JUDGE CANNATARO: You know, it sounds like I - -  
18 - you know, just reading that language here from where  
19 you're standing, it sounds like it's almost the same as a  
20 motion to dismiss a charge for facial insufficiency. So is  
21 - - - are you insinuating that the People's burden when  
22 they file these certifications is to somehow establish that  
23 these charges would survive a motion to dismiss before the  
24 court? Like the one you made in this very case.

25 MS. JOURAVLEVA: Well, again, we don't have,



1 like, the close question here. But if there was a close  
2 legal question they could put in the certification. They  
3 don't have to. Instead, if the defendant moved for  
4 dismissal of the one insufficient count and for 30.30  
5 dismissal in their - - -

6 JUDGE CANNATARO: No. I just want to know - - -  
7 I want to know if your conception of good-faith due  
8 diligence goes so far as to say they're certifying that  
9 this count, or these counts would survive a motion to  
10 dismiss before a court. On pain of, I would assume if  
11 they're wrong, if you successfully moved to dismiss, they  
12 filed a - - - an illusory COC or a statement of readiness.

13 MS. JOURAVLEVA: So the People, in their  
14 opposition to a 30.30 motion where there is the close legal  
15 question, presumably would make diligent legal arguments  
16 about why they think the elements of the count and dispute  
17 were made out. And based on that response to the 30.30  
18 motion, in that close legal question type of case, then the  
19 trial court could take a look at that opposition and make  
20 the diligence analysis there.

21 JUDGE CANNATARO: And they could conceivably say,  
22 well, they weren't - - - it wasn't a - - - it wasn't a  
23 charge that could be maintained. It was a charge that  
24 needed to be dismissed. However, it was nonetheless good-  
25 faith diligent? Is that the mechanism you envision?

1 MS. JOURAVLEVA: Right. That, just like in this  
2 Carter opinion, the People exercise due diligence. They  
3 did legal research. They made reasonable, plausible  
4 arguments about why the charge was sufficient. So in that  
5 case the 30.30 motion could be denied, but one insufficient  
6 count would be dismissed.

7 JUDGE CANNATARO: Just one more question from me.  
8 I want to take you back to your original statement about -  
9 - - you know, this is your alternative argument. But your  
10 original argument is that what should happen here is a  
11 complete dismissal. And I'm wondering how you can  
12 elucidate for us, what was the motivation behind creating  
13 such a severe outcome for an inaccurate, incorrect state  
14 certification?

15 MS. JOURAVLEVA: The legislature's motivation was  
16 precisely to create this threat of potential 30.30  
17 dismissal if the prosecutor does not very carefully go  
18 through their accusatory instrument.

19 JUDGE SINGAS: Wasn't it really about partial  
20 conversions? Wasn't that the impetus for this  
21 certification? So that the People couldn't come in in a  
22 case and say you know what, we're going to make an  
23 information on the first two counts, but on the next two  
24 counts, we're not ready to do that. So we'd like to  
25 proceed on the first two counts. And this idea of half the

1 counts on a complaint being able to move forward, and the  
2 other ones not? I think the legislature said look, People,  
3 you have to make a decision, either you're going to make a  
4 certification and say that everything's ready and you can  
5 proceed and then motions can continue, or you're not going  
6 to be able to say that you're ready because you haven't  
7 certified all the counts.

8 That was my understanding of what was behind the  
9 certification requirement in 5-a.

10 MS. JOURAVLEVA: That was one of the purposes,  
11 Your Honor. And our rule is completely consistent with  
12 ending the practice of partial conversion. If there was no  
13 penalty to the People from leaving unconverted counts in  
14 the complaint, then partial conversion could continue,  
15 because there - - -

16 JUDGE TROUTMAN: So why isn't it a sufficient  
17 penalty to require dismissal of the insufficient count  
18 only?

19 MS. JOURAVLEVA: Because the legislature has  
20 decided to tether a certification about the sufficiency of  
21 all counts to 30.30 dismissal.

22 JUDGE SINGAS: No they haven't. And there was a  
23 bill that was pending where they did do that expressly.  
24 There was a bill that was pending that said upon a local  
25 criminal court accusatory instrument, "A statement of

1           readiness shall not be valid unless all counts charged meet  
2           the requirements of subdivision 1, 2, 3", et cetera. That  
3           bill was not enacted.

4                     The legislature made a specific call not to enact  
5           this bill and then instead enacted this certification.

6                     MS. JOURAVLEVA: I think there is two reasons  
7           that it was switched to a certification requirement that  
8           aren't - - - we don't care if the counts are sufficient or  
9           not. The first reason is that it then mirrors the  
10          mechanism for discovery certifications, the People are  
11          required to certify sufficiency. And the second reason is  
12          under the first version, the People would not be able to  
13          make a separate certification declaration of sufficiency of  
14          the entire instrument. So now - - -

15                    JUDGE SINGAS: But under discovery, the  
16          certification first had to be proper. Then they changed it  
17          to valid. There's none of that language here. So why  
18          isn't the purpose exactly what happened here? That once  
19          the People couldn't meet the certification, that count gets  
20          dismissed. Because before, and correct me if I'm wrong,  
21          that motion couldn't have been made by the defense until  
22          the 30.30 time had elapsed on that count because there was  
23          this partial conversion. So there would never be an  
24          opportunity for the defense to challenge those counts until  
25          30.30 expired on those counts.

1           And what the legislature said is, look, we need  
2           to move these along. When you're making a certification,  
3           there's no partial conversion. Once you make that  
4           conversion, then all motions practice will continue. The  
5           defense can make their motion, which happened here, and the  
6           count gets dismissed if it's not certified correctly.

7           Why isn't that exactly what happened here? What  
8           was supposed to happen?

9           MS. JOURAVLEVA: What was supposed to happen here  
10          was dismissal of the entire instrument under 30.30.

11          JUDGE SINGAS: Again, where - - - what is your  
12          authority for saying that?

13          MS. JOURAVLEVA: I think it flows directly from  
14          the text of 5-a. To certify something has to have some  
15          meaning if there is no inquiry into the accuracy of the  
16          certification.

17          JUDGE SINGAS: I mean, they could have said an  
18          accurate certification. They didn't say that. There's  
19          other - - - there's other instances in the CPL. I found  
20          10.40 where the attorney certifies in good faith, that's  
21          subsection 1. Subsection 2 where the attorney certifies in  
22          good faith. There wasn't that requirement here. They just  
23          said a certification.

24          MS. JOURAVLEVA: I see my red light is on. I'll  
25          just answer Your Honor's question. Again, I think if we

1 were to read into this provision that what the legislature  
2 intended is for a certification to be okay with no inquiry  
3 into its accuracy, there would have been no purpose to  
4 passing this provision. Because then the People could  
5 simply copy and paste certification language in each case  
6 with no penalty.

7 JUDGE SINGAS: But the penalty is a dismissal of  
8 the count. Exactly what happened here. That's a - - - is  
9 that not a penalty?

10 MS. JOURAVLEVA: That would be the available  
11 penalty before the passage of 5-a. I think 5-a was  
12 specifically designed to create - - -

13 JUDGE SINGAS: That would not have been the  
14 appropriate penalty before 5-a under a partial conversion  
15 system. Do you disagree with that?

16 MS. JOURAVLEVA: I'm not sure I'm understanding  
17 the question.

18 JUDGE SINGAS: Before, if you had converted two  
19 counts - - -

20 MS. JOURAVLEVA: Right.

21 JUDGE SINGAS: - - - and had not converted two  
22 counts, you could not - - - the defense could not have made  
23 motions on the two unconverted counts until 30.30 time had  
24 expired on those counts. But now they can, which is  
25 exactly what happened here. The defense was able to make

1 their motions and say this count is insufficient. Count  
2 got dismissed.

3 MS. JOURAVLEVA: I think the purpose of 5-a was  
4 to end the previous practice of piecemeal dismissal of  
5 counts, which if - - -

6 JUDGE CANNATARO: And isn't that exactly what  
7 happened here? They had to certify that each and every  
8 count was ready, and it opened a window for the defendant  
9 to start making motions sooner than the 30.30 time. And  
10 indeed, with respect to the count that was improperly  
11 certified, a dismissal was obtained.

12 I feel like - - - not to repeat what you've  
13 already heard. What they were trying to fix got fixed here  
14 because the - - - the improperly certified charge was  
15 dismissed, and there was no opportunity for the People to  
16 engage in partial readiness statements.

17 MS. JOURAVLEVA: Again, I think under a reading  
18 where we're not looking into the accuracy of the  
19 certification, the People aren't going to be incentivized  
20 to make sure they're ready, i.e., that each count is  
21 sufficient.

22 JUDGE CANNATARO: Then you can have all the  
23 charges just dismissed. If they just cut and paste a bunch  
24 of affirmative statements with respect to charges that are  
25 not compliant, you can have each and every one of those

1 charges dismissed. Couldn't you?

2 MS. JOURAVLEVA: Only if each - - - if each  
3 charge is facially insufficient - - -

4 JUDGE CANNATARO: Yeah.

5 MS. JOURAVLEVA: - - - then correct.

6 JUDGE CANNATARO: Yeah.

7 MS. JOURAVLEVA: Right.

8 CHIEF JUDGE WILSON: Thank you.

9 MS. JOURAVLEVA: Thank you.

10 MS. OWEN: May it please the court. Melissa Owen  
11 for the respondent.

12 The legislature could have written 5-a to say  
13 that all counts in the accusatory instrument have to be  
14 facially sufficient, be converted, or otherwise dismissed.

15 JUDGE TROUTMAN: So what's your reading of what  
16 the certification means? Or what its requirement is with  
17 5-a?

18 MS. OWEN: The requirement is that the  
19 prosecutor, acting in good faith, has to - - -

20 CHIEF JUDGE WILSON: They didn't say good faith.  
21 And as Judge Singas pointed out, there are other places in  
22 the code where they specifically say good faith.

23 MS. OWEN: That's true. They don't write in good  
24 faith.

25 CHIEF JUDGE WILSON: So why do we read good

1 faith, then?

2 MS. OWEN: Because the option is for an officer  
3 of the court to act in bad faith, and that would be a  
4 nullity. We have to assume that an officer in court acts  
5 with a minimum of good faith. And here, they need to say  
6 that to the best of their ability all counts are facially  
7 sufficient or converted.

8 What they cannot do is say, ready, stop the 30.30  
9 clock, have an unconverted count on the accusatory  
10 instrument, and hope that they can get that supporting dep  
11 in before the case is sent out to trial.

12 That's how partial conversion is remedied by the  
13 enactment of 5-a.

14 JUDGE GARCIA: Counsel, but - - - assume that's  
15 true. And let's assume, just for purposes of this  
16 question, that you're right. This is not the remedy. This  
17 is not a practice we would want to encourage. Right?  
18 Sending a count on. Not really reading what the supporting  
19 deposition says. And then it gets knocked out later, and  
20 they have to make a motion.

21 So my question is, is there outside of this  
22 statute - - - and I don't know the answer to this. Is  
23 there any authority by the judge to take other actions in  
24 response to this type of thing, outside of using this  
25 statute? So could the judge dismiss the rest of the

1 indictment under - - - information under some other power?

2 MS. OWEN: I don't believe so. But in your  
3 scenario, the prosecutor just sending it on willy-nilly  
4 would be in bad faith. And that would make the 5-a  
5 illusory - - -

6 JUDGE GARCIA: So does - - -

7 MS. OWEN: - - - and that would invalidate.

8 JUDGE GARCIA: So what's bad faith in your view?

9 MS. OWEN: We have to look at what happened and  
10 what didn't happen here. Both the trial court and the  
11 appellate term found there was no bad faith because there  
12 was no possible strategic benefit to having a - - - the  
13 lowest possible count of violation be added.

14 JUDGE HALLIGAN: So it - - - and it sounds like  
15 then there is a significant distinction between no bad  
16 faith and good faith.

17 JUDGE CANNATARO: Yeah. I was going to say that.

18 JUDGE HALLIGAN: It sounds to me like you're  
19 saying that if this was not nefarious, then even if it was,  
20 I think we would agree, not acceptable practice to send it  
21 along, then - - - then there is no harm that - - - no  
22 consequence that flows from that.

23 MS. OWEN: No. And - - -

24 JUDGE HALLIGAN: Why shouldn't the standard be  
25 good faith, not an absence of bad faith?

1 MS. OWEN: Yes, Your Honor. I'm saying a way to  
2 determine whether the prosecutor was acting in good faith  
3 is to look to see whether or not indicia of bad faith is  
4 present. And here it was not.

5 JUDGE HALLIGAN: Why shouldn't an examination of  
6 good faith also require a consideration of whether some  
7 bare bones diligence was exercised, as opposed to doing  
8 nothing?

9 MS. OWEN: There should be, and I believe the  
10 trial court did that here. When we look at the evolution  
11 between the complaint and the superseding information, you  
12 could see what happened here. The complaining witness was  
13 no longer - - -

14 JUDGE CANNATARO: Can you see - - -

15 MS. OWEN: - - - available.

16 JUDGE CANNATARO: Oh.

17 JUDGE GARCIA: Go ahead.

18 JUDGE CANNATARO: Because I - - - I'm - - - I've  
19 still been struggling to understand how such a glaring  
20 omission could get through under a good faith, or an  
21 absence of bad-faith standard. So how did this happen?

22 MS. OWEN: The witness was no longer available.  
23 The prosecutor who was assigned the case, who did not write  
24 the complaint - - - if you look at the narrative section,  
25 it's very clear she's trying to excise all the hearsay.

1 She's reworking the complaint into an information that is  
2 sustainable. I believe she did not notice that there was a  
3 count in there that should not have been. It's the kind of  
4 error that is glaring in retrospect, that makes your face  
5 turn red in the privacy of your office. But it is not the  
6 practice to just copy and paste a certification. To copy  
7 and paste - - -

8 JUDGE HALLIGAN: But why does it reflect some  
9 exercise of diligence? I think you just called it an  
10 omission. You might have even said glaring, but I won't  
11 hold you to it because I don't recall. But why isn't a  
12 glaring omission an absence of some diligence? I'm not  
13 suggesting it's bad faith. But why isn't it the absence of  
14 some requisite diligence that we would expect?

15 MS. OWEN: I think there was sufficient diligence  
16 in the recrafting in the narrative to show that the  
17 prosecutor was looking at this document and was attempting  
18 to make it into an acceptable information - - -

19 JUDGE HALLIGAN: But - - - but - - -

20 MS. OWEN: - - - but she failed.

21 JUDGE HALLIGAN: - - - but the Prosecutor, I  
22 think, has to look at each and every count, not just to  
23 look at - - - not just to look at the document, generally,  
24 correct?

25 MS. OWEN: That's correct. But if we look at



1 what would happen if there is a glaring mistake. Under my  
2 opposing counsel's view of the rules, any possible mistake  
3 would result in dismissal of the entire accusatory  
4 instrument. And that sort of disproportionate result  
5 cannot be what the legislature intended here. We know that  
6 there are close questions of law. It is not this case, but  
7 there are close cases where it is close. Where this court  
8 disagrees with the term, which disagreed with the trial  
9 court, where panels of judges disagree amongst themselves.

10 JUDGE HALLIGAN: But why wouldn't a due diligence  
11 or good faith, whatever the articulation is that would make  
12 sense. Why wouldn't a standard along those lines address  
13 that consideration where there are some close questions of  
14 legal sufficiency, and there is a good-faith effort that is  
15 made, but a judge down the road decides that, in fact, you  
16 know, you didn't clear the bar?

17 MS. OWEN: Well, there should be due diligence,  
18 and there should be good faith, but there needs to be one  
19 rule for all cases. And the result of that - - -

20 JUDGE HALLIGAN: Why couldn't one rule be if  
21 there is no diligence exercised that then the entire - - -  
22 you know, then the consequence that she's suggesting, which  
23 is it's set aside in its entirety, that that's when that  
24 attaches, but not if there's some showing of diligence or  
25 good faith?

1 I take that to be the alternative that she is  
2 proposing?

3 MS. OWEN: Yes. And that could be the case. But  
4 this court does not need to reach the alternative because  
5 her initial precept is incorrect. When we look at what the  
6 draft legislation of this bill was and what the legislature  
7 intended 5-a to do. They did not say - - -

8 JUDGE CANNATARO: What's that precept? What's  
9 the precept that's incorrect?

10 MS. OWEN: That it has to be facially sufficient,  
11 converted, or the entire case gets dismissed.

12 JUDGE CANNATARO: And that's uncorrect - - -  
13 incorrect. Wow, I've lost the ability to speak. That's  
14 incorrect because? You were going to explain. Go ahead.

15 MS. OWEN: Yes, Your Honor. The proposed  
16 language of the bill was that the prosecutor had to submit  
17 an accusatory instrument that was facially sufficient or  
18 converted. They changed that. They took a step back,  
19 saying the prosecutor has to certify it. And not only that  
20 - - -

21 JUDGE HALLIGAN: But then what - - - what meaning  
22 does that requirement have? I mean, I think there's a  
23 point with some force that the word certify means  
24 something. And you also say, and I think you're correct,  
25 that we would expect that lawyers are acting as officers of

1 the court, being responsible. But if there is no  
2 consequence beyond - - - is your point that dismissal of  
3 the count alone is sufficient? What teeth does the  
4 requirement have, if that's all that - - - that is  
5 required?

6 MS. OWEN: If the prosecutor is acting in bad  
7 faith?

8 JUDGE HALLIGAN: No. I'm saying if the - - -

9 MS. OWEN: Then - - - oh.

10 JUDGE HALLIGAN: Yeah. Yeah, you're right.  
11 Pardon me. Yes, please go ahead.

12 MS. OWEN: If the prosecutor is acting in bad  
13 faith, then your 5-a is not valid, and your statement of  
14 readiness is illusory. And depending on when this was  
15 brought to the court's attention by defense, inside or  
16 outside the 30.30 clock, it may result in dismissal if you  
17 can't remedy it. If the prosecutor - - -

18 JUDGE HALLIGAN: So you might have the same  
19 result?

20 JUDGE SINGAS: Dismissal of the count or  
21 dismissal of the entire information?

22 MS. OWEN: Of the entire information. If the - -  
23 - if defense counsel, as here, waited until the 30.30 clock  
24 had run and then brought this to the court's attention. If  
25 the prosecutor was found to be acting in bad faith.

1                   JUDGE SINGAS: I - - - you know, I don't  
2 understand where you're getting that. And I don't  
3 understand practically how that works. Like, let's take  
4 this case, which is a - - - a pedestrian is hit when - - -  
5 with - - - by an unlicensed driver. And the violation that  
6 we're talking about here is a failure to say that the light  
7 was red.

8                   Explain to me how we would demonstrate that that  
9 prosecutor was acting in bad faith by saying that - - - by  
10 not noticing, or making the mistake and not converting that  
11 the light was red? Like, I don't understand what kind of  
12 hearing or what kind of evidence or what kind of arguments  
13 would be made in front of a judge to say that that  
14 prosecutor was acting in bad faith.

15                   How would that go?

16                   MS. OWEN: Well, we would be arguing that the  
17 prosecutor was acting in good faith here. And - - -

18                   JUDGE SINGAS: But how would you even say that,  
19 though? What evidence do you have that they were acting in  
20 good faith?

21                   MS. OWEN: Because what benefit was there for the  
22 prosecutor to have an errant count on there? It's not a  
23 count that makes the case.

24                   JUDGE SINGAS: Exactly. But that's true  
25 regardless of good or bad faith.

1 MS. OWEN: I think there are errors that could  
2 tend to demonstrate bad faith. Such as having a count that  
3 is not sustainable; that happens to be bail eligible; that  
4 it's the only count that is an a, when everything else is a  
5 violation. Those things are not present here.

6 And if we look at when this case was filed, it  
7 was December 21st - - - or pardon me. When the 5-a and the  
8 superseding information were filed, it was December 1st,  
9 2021. So this was a relatively junior ADA who was working  
10 fully remotely during a COVID surge. Then seven months  
11 later, the defense counsel said, I think there's a facially  
12 insufficient count here.

13 And when we're talking about a glaring error,  
14 when you wait seven months, that does suggest that this  
15 statute can be weaponized. And it is not going towards the  
16 aim of the legislature, which is to have prompt resolution  
17 of cases, to have a defendant know earlier on what exactly  
18 are the charges that he is facing, what he is going to be  
19 going to trial on. It lends a certainty - - -

20 JUDGE SINGAS: So the People's position is that  
21 5-a is a certification that the prosecutor acted in good  
22 faith when they - - - when she certified counts. And if  
23 she did not act in good faith, that the entire information  
24 should be dismissed. That's what you're engrafting onto 5-  
25 a?

1 MS. OWEN: It would depend when that happened.  
2 If it was inside or outside the 30.30.

3 JUDGE SINGAS: So now there's a temporal element  
4 that you're ingrafting onto this?

5 MS. OWEN: I don't think we need to get there.  
6 Because when we look at what the draft legislation was, and  
7 what the draconian result of that would be, it's clear that  
8 the legislation did not ask for perfection. We also know  
9 that because they didn't modify the word "certification".

10 JUDGE TROUTMAN: I know. But the problem I'm  
11 having now is, at first, it seemed the argument was it was  
12 harsh to dismiss all of the counts, even though the others  
13 might be perfectly sound. And now you say, if there's bad  
14 faith, then it's okay. I'm - - - if there's bad faith,  
15 it's okay that everything be dismissed. And the question  
16 is how do you establish the measurement of when it's - - -  
17 when it should all be dismissed? Or when it's not, there's  
18 good faith or bad faith. How is that to practically work?

19 MS. OWEN: Because if the prosecutor was acting  
20 in bad faith when they filed the certification, then the  
21 certification is invalid.

22 JUDGE TROUTMAN: When you say, "bad faith", the  
23 question is - - - okay. So give me the tools to consider  
24 when it's bad faith.

25 MS. OWEN: In this case, when defense counsel

1 filed his 30.30 motion and said this count is wrong. It  
2 would have been bad faith for the prosecutor to say, no, it  
3 - - - it was correct, we're going to keep going forward  
4 with this even if the court said, no, this count is not  
5 sustainable, it's not facially sufficient. That would be a  
6 showing of bad faith. If this - - -

7 JUDGE CANNATARO: No. But that sounds like bad  
8 faith in opposing the argument to dismiss. But I would  
9 assume in a situation like this, it would be the  
10 defendant's burden to prove the bad faith. Is - - - would  
11 - - - is that your position?

12 MS. OWEN: Yes, Your Honor.

13 JUDGE CANNATARO: Okay. So what is it that a  
14 defendant is going to come in and say? Just from looking  
15 at the certification and seeing what they saw in this case,  
16 a count that is unsupported in any way by nonhearsay  
17 allegations. What is it that they're supposed to come in  
18 and say relative to bad faith?

19 MS. OWEN: In this case, it would be difficult  
20 because there was no bad faith to show. Because there was  
21 no possible reason for the prosecutor to have this count  
22 on.

23 CHIEF JUDGE WILSON: As the statute imposes the  
24 obligation on the People to certify something, why would it  
25 be the defendant's burden to show bad faith?



1           Why would the burden fall on the defense at all?  
2           The obligation of the statute is on you.

3           MS. OWEN: The People are obligated to certify.

4           CHIEF JUDGE WILSON: Yeah.

5           MS. OWEN: If defendant thinks that the  
6           certification is incorrect for any reason, bad faith or  
7           not, it's incumbent upon them to bring it to the court's  
8           attention - - -

9           CHIEF JUDGE WILSON: Sure.

10          MS. OWEN: - - - so that it could be resolved.

11          CHIEF JUDGE WILSON: Well, that's a burden of  
12          production, surely? Not proof.

13          MS. OWEN: Pardon me? That's a burden to raise  
14          the issue, not a burden to prove the issue.

15          MS. OWEN: Yes, Your Honor. And that is  
16          essentially what happened here.

17          Defendant filed a motion saying this count is - -  
18          -

19          CHIEF JUDGE WILSON: Um-hum.

20          MS. OWEN: - - - doesn't exist in the narrative  
21          section of the complaint, I don't think the prosecutor read  
22          this instrument. And the trial court took into account the  
23          situation, read the complaint, read the superseding  
24          information, and made a determined that there - - -  
25          determination that there was no bad faith. And she arrived



1 at the proper remedy, which is to dismiss the count that  
2 was not sustainable. And - - -

3 CHIEF JUDGE WILSON: So let me ask you. Let me  
4 stop you for a second and ask you about something you said  
5 earlier having to do with the temporal difference.

6 So I assume in that - - - when you were  
7 discussing that, that was in the context of defense counsel  
8 waiting a long time to raise it, which maybe suggested, I  
9 think in your word, "weaponizing".

10 MS. OWEN: It could be.

11 CHIEF JUDGE WILSON: Okay. So what if defense  
12 counsel actually moved and there was still time left on the  
13 30.30 clock? And I'm asking, right, a question I should  
14 know the answer to myself, but don't. Could you then have  
15 filed a new accusatory instrument that corrected the  
16 defect?

17 MS. OWEN: We could have.

18 JUDGE CANNATARO: Could you have filed an amended  
19 certification?

20 MS. OWEN: It's interesting because there's  
21 nothing in the 30.30 legislation that discusses a  
22 supplemental 5-a the way it does a supplemental certificate  
23 of compliance. But we would - - - I would assume that you  
24 should.

25 JUDGE CANNATARO: Is that omission of any legal

1           significance to you? Does it say something to you about  
2           the statutory framework or the legislative intent that it  
3           doesn't make a provision to amend?

4                   MS. OWEN: I think it suggests that accuracy is  
5           not built into the certification, and that the act of  
6           certifying once accomplished by the prosecutor is what is  
7           required from 5-a.

8                   If there are no further questions, I'd rely on my  
9           brief.

10                   CHIEF JUDGE WILSON: Thank you.

11                   MS. OWEN: Thank you.

12                   MS. JOURAVLEVA: I'd like to address why it's so  
13           important to hold the People to their burden here of filing  
14           an accurate certification. In People v. Alejandro, this  
15           court addressed the purpose of the facial sufficiency  
16           rules.

17                   In the felony context, we have cases presented to  
18           a grand jury to make sure that there's sufficient evidence  
19           to try a defendant. In the misdemeanor context, the  
20           corollary for that is holding prosecutors to a very strict  
21           set of requirements about putting forth sufficient  
22           information in their pleadings, legally sufficient  
23           information to try the defendant.

24                   I think in light of that, it's very important to  
25           implement a standard for 5-a certifications that

1           incentivizes prosecutors to make sure that all counts of  
2           their instrument are sufficient.

3                   JUDGE SINGAS: Okay. Let me ask you a question.  
4           Suppose that there's a case and it's a domestic violence  
5           case. The top count is an assault and a class A  
6           misdemeanor, and there's also a criminal possession of a  
7           weapon. Let's say he beat her with a bat. Okay?

8                   The complainant doesn't want to cooperate. The  
9           People file an information based on an excited utterance.  
10          And they certify that their counts are converted because of  
11          the nonhearsay allegation pursuant to the excited  
12          utterance.

13                   Fast forward four months, five months. As  
14          they're getting ready for trial, defense makes motions. A  
15          court decides that really wasn't an excited utterance. So  
16          under your theory, that entire information now is  
17          dismissed?

18                   MS. JOURAVLEVA: Well, under our alternative due  
19          diligence standard, in that case, if there was a very close  
20          legal question about did the excited utterance fall under  
21          the hearsay exception or not, if the People were able to  
22          demonstrate the diligent steps they took, put forward some  
23          legal research to show why they did think it fell under the  
24          excited utterance exception. In that case, the  
25          certification, and the statement of readiness - - -

1 JUDGE SINGAS: Well, let's say a judge decides,  
2 you know what, I didn't think it was a close case at all?

3 MS. JOURAVLEVA: Well, if it's not a close case,  
4 Your Honor, then in that case, the hearsay defect could  
5 implicate the validity of the certification.

6 JUDGE SINGAS: Of the possession of the bat? Why  
7 isn't it enough that the top count gets dismissed?

8 MS. JOURAVLEVA: I think that 5-a is precluding  
9 any sort of piecemeal dismissal.

10 JUDGE SINGAS: No.

11 MS. JOURAVLEVA: Again, if a 30.30 motion was  
12 filed before trial in this hypothetical.

13 JUDGE SINGAS: Right. But that's not the  
14 situation. Again, I understand where you're coming from.  
15 I just don't think the language of this statute gets you  
16 there.

17 MS. JOURAVLEVA: I think the language of the  
18 statute is pretty unequivocal. If the legislature did not  
19 mean to apply to all counts, the word "all" wouldn't have  
20 been used in 5-a's language.

21 I'd also like to address something that my  
22 adversary stated about, well, the defendant waited a while  
23 to bring this 30.30 motion. That the purpose of 30.30 is  
24 to promote the prompt resolution of trials.

25 That is not what the purpose of 30.30 is. The

1 purpose of 30.30 is for the People to get the case ready  
2 for trial within the allotted amount of speedy trial time.

3 JUDGE GARCIA: Counsel, just to go back to  
4 something I asked your adversary here. Is there any other  
5 power of the court to impose sanctions or take other action  
6 in response to, let's say, a bad-faith filing, or a lack of  
7 good-faith filing, other than found within this statute?

8 I mean, does the court have discretion to dismiss  
9 the information under any other inherent power?

10 MS. JOURAVLEVA: If the entire information were -  
11 - -

12 JUDGE GARCIA: No. In these circumstances.  
13 Let's say, not these facts but more egregious facts where  
14 there's obviously bad faith. But the rule says you can't  
15 dismiss the whole indictment. Let's say we put, for  
16 hypothetical purposes, that's the rule we say? Like, the  
17 penalty here is an automatic dismissal of the information,  
18 but - - - you know the 30.30 remedy.

19 But does the court have another - - - other  
20 authority to sanction the People in that case?

21 MS. JOURAVLEVA: If it's a case where a prosecu -  
22 - - there's proof a prosecutor's knowingly lying to the  
23 court? Then, to be honest, I'm not really aware of what  
24 the remedies would be.

25 JUDGE GARCIA: Right. Me neither.

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MS. JOURAVLEVA: Okay.

JUDGE GARCIA: Thank you.

MS. JOURAVLEVA: Thank you.

CHIEF JUDGE WILSON: Thank you.

(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. Williams (Locksley), No. 94 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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