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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

NO. 99

WIGGINS (JAYLIN),

Appellant.

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20 Eagle Street  
Albany, New York  
October 16, 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

Appearances:

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Brandon Deshawn  
Official Court Transcriber

1 CHIEF JUDGE WILSON: Last case on the calendar is  
2 People v. Wiggins.

3 MR. METCALF: Good afternoon, and may it please  
4 the court. My name is Steven Metcalf, on behalf of  
5 defendant-appellant, Jaylin Wiggins. I respectfully  
6 request two minutes for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MR. METCALF: If I may, I'd like to jump right  
9 to, ultimately, what was at the heart of the Fourth  
10 Department's decision having to do with jury instructions  
11 and ultimately go to the core of what I think is before  
12 this court today. And that's the fundamental underpinnings  
13 at any trial in ensuring fairness is that jury  
14 deliberations are free of bias, which I think should be a  
15 little bit broader to now include implicit bias and a  
16 knowledge of bias, as I'll get into what this case has  
17 demonstrated, and prejudice.

18 JUDGE CANNATARO: Counsel, did you say something  
19 about instructions when you started your presentation just  
20 now?

21 MR. METCALF: Instructions?

22 JUDGE CANNATARO: Instructions to the jury? I  
23 thought I heard you say that.

24 MR. METCALF: Sure. I'm sorry; if I did say  
25 instructions, I meant jury deliberations.

1 JUDGE CANNATARO: Oh, okay.

2 MR. METCALF: So I - - - I guess - - -

3 JUDGE CANNATARO: I was just - - - I was just - -  
4 -

5 MR. METCALF: - - - the - - - there has - - -  
6 yes.

7 JUDGE CANNATARO: I thought maybe there was some  
8 instruction given that I should be aware of that I wasn't.

9 MR. METCALF: No.

10 JUDGE CANNATARO: That's fine.

11 MR. METCALF: I think that my mind actually has  
12 been focused on - - - my last couple of trials, I've been  
13 focused on a jury instruction that - - - having to do with  
14 implicit bias. So I think that that's where I - - - I may  
15 have confused my own words. It's really, the jury - - -  
16 the jury - - - when the jury received this case during jury  
17 deliberations, is really where you see something unique  
18 here. And that's Juror No. 5, actually, taking a stance  
19 and coming out, writing a note to the court signed by  
20 herself saying - - - and this is what I could gather the  
21 makeup of this jury was - - -

22 JUDGE TROUTMAN: So Juror No. 5 had a concern  
23 regarding the other members of the jury during  
24 deliberation, correct?

25 MR. METCALF: Absolutely.



1 JUDGE TROUTMAN: And that was brought to the  
2 attention of the court?

3 MR. METCALF: By her.

4 JUDGE TROUTMAN: And then the court apprized all  
5 parties, including defense counsel, correct?

6 MR. METCALF: That's correct.

7 JUDGE TROUTMAN: And what was the specific  
8 request of the defense in order to address the issue  
9 besides a mistrial, if anything?

10 MR. METCALF: That's where - - - and that's  
11 where, I think, the confusion really comes into play. So  
12 Juror 5 comes out at this time. This is also, I believe,  
13 note number 5. And she starts to explain that there are  
14 some racial issues that are going on in the jury room, and  
15 - - -

16 JUDGE TROUTMAN: So the court inquired of her - -  
17 -

18 MR. METCALF: - - - of - - -

19 JUDGE TROUTMAN: - - - and of Juror No. 10, was  
20 it?

21 MR. METCALF: 10, which I believe, under these  
22 facts, is wholly insufficient.

23 JUDGE TROUTMAN: Okay. With respect to the  
24 remaining panel, what did defense counsel say to the court  
25 as to an inquiry of the remaining jurors?

1 MR. METCALF: I don't recall exactly what the  
2 defense attorney said, if anything.

3 JUDGE TROUTMAN: Did he ask the court to - - - to  
4 inquire of them to assure that they remain unbiased?

5 MR. METCALF: No. But this is what the court  
6 should have done on its own.

7 JUDGE GARCIA: But I think, actually, Counsel,  
8 the defense counsel at that time said it would be improper  
9 to ask them. They specifically said they didn't want the  
10 other jurors questioned.

11 MR. METCALF: After Juror - - - yeah, but after  
12 Juror 10 came on. So this is - - - this is where the - - -  
13 the dichotomy comes into, is there a less or more - - - is  
14 - - - is less more approach to this situation?

15 JUDGE GARCIA: But at that point, the defense  
16 counsel, I think to Judge Troutman's point, was only asking  
17 for a mistrial. Don't speak to the other jurors. I want a  
18 mistrial.

19 MR. METCALF: And that should have been granted  
20 at that point. And that application should have been - - -

21 JUDGE RIVERA: Okay. Why? Let's get to that.

22 MR. METCALF: Okay. So you have Juror No. 5  
23 saying that there are various different issues going on  
24 regarding race, specifically.

25 JUDGE RIVERA: Yes.

1 MR. METCALF: Specific statement is, all black  
2 people look alike. What I could gather - - - at night - -  
3 - all black people look alike at night. Now, you have a  
4 CCTV video that is grainy. Nobody can actually point  
5 Jaylin's face.

6 JUDGE TROUTMAN: Okay. So who is in the best  
7 position to assess a person when they are inquiring? Is it  
8 at the appellate level, or does the trial court have the  
9 ability at that time to see the demeanor of the juror that  
10 is being inquired of to determine using the normal tests we  
11 do with respect to veracity?

12 MR. METCALF: Your - - - Your Honor, yes.

13 JUDGE TROUTMAN: There - - - there were two  
14 competing interpretations of what did or did not happen in  
15 the jury room, correct?

16 MR. METCALF: Yes. And the court took it upon  
17 itself to make a determination basically in regards to  
18 credibility. So while the - - - while I respect - - -

19 JUDGE TROUTMAN: So what was the court supposed  
20 to do if not assess the credibility when an inquiry is made  
21 as to what did or did not happen?

22 MR. METCALF: More than what it did here.

23 JUDGE GARCIA: What more? What else?

24 MR. METCALF: The court has to have discretion -  
25 - - okay. So the court has discretion, but there has to be

1 a careful balance.

2 JUDGE HALLIGAN: But I thought - - -

3 MR. METCALF: What are we balancing?

4 JUDGE HALLIGAN: I thought you said that the only  
5 appropriate response would have been a mistrial and not  
6 inquiry of any additional jurors.

7 MR. METCALF: Based on what the court just  
8 addressed that counsel did - - -

9 JUDGE HALLIGAN: So - - -

10 MR. METCALF: - - - I believe that there should  
11 have been a much more deeper inquiry.

12 JUDGE SINGAS: Yeah, but you're - - -

13 MR. METCALF: I believe that - - -

14 JUDGE GARCIA: So isn't it an ineffective  
15 assistance claim - - - isn't that an ineffective assistance  
16 claim? Because counsel said I don't want that.

17 MR. METCALF: It - - - I think that, with this  
18 discretion and in knowing that there is a racial bias here,  
19 it is implicit upon the court to actually do an inquiry - -  
20 -

21 JUDGE GARCIA: There's an - - - Counsel, there's  
22 an allegation of racial bias.

23 MR. METCALF: Yes.

24 JUDGE GARCIA: There isn't a finding - - - in  
25 some of our other cases, we have a finding of racial bias.

1 MR. METCALF: That's correct.

2 JUDGE GARCIA: There's an allegation. So what  
3 should the court do in response?

4 MR. METCALF: The court - - - the court should  
5 have done a meaningful investigation - - - investigate  
6 meaningfully. That's People v. Buford, investigate  
7 meaningfully.

8 CHIEF JUDGE WILSON: So wait. So let's - - - so  
9 - - - so let's - - - let's slow down - - -

10 MR. METCALF: So that's where the less is more -  
11 - -

12 CHIEF JUDGE WILSON: Let's slow down a little  
13 bit, so - - -

14 MR. METCALF: Okay. So - - -

15 CHIEF JUDGE WILSON: The court did, after  
16 interviewing Juror 5, went and got Juror 10, who was the  
17 one that Juror 5 fingered as having made some inappropriate  
18 remarks, right?

19 MR. METCALF: Yes.

20 CHIEF JUDGE WILSON: And - - -

21 MR. METCALF: But let's add a fact here.

22 CHIEF JUDGE WILSON: And - - - and inquired about  
23 Juror 10, right? And had counsel ask questions of Juror 10  
24 as well?

25 MR. METCALF: That's correct.

1 CHIEF JUDGE WILSON: Okay.

2 MR. METCALF: But Juror 5 said, and this is where  
3 I went to the makeup of the jury - - -

4 CHIEF JUDGE WILSON: Right. So I know what - - -  
5 I'm - - - I'm - - - I'm not done.

6 MR. METCALF: Okay.

7 CHIEF JUDGE WILSON: I - - - I know what they  
8 said. I read the transcript. So the next question is,  
9 what is the - - - is there any next thing that the court  
10 should have done short of declaring a mistrial?

11 MR. METCALF: Hundred percent. So - - -

12 CHIEF JUDGE WILSON: Okay. What is that?

13 MR. METCALF: Okay.

14 CHIEF JUDGE WILSON: Tell me - - - tell me one  
15 thing.

16 MR. METCALF: Six people also addressed this,  
17 poll every single member of the jury.

18 CHIEF JUDGE WILSON: Okay. So that's then the  
19 question is, when both the prosecutor and defense attorney  
20 say, don't do that, should the court - - - is your  
21 position, the court still should do that?

22 MR. METCALF: I think the court - - - it's - - -  
23 it's - - - as this has been - - -

24 CHIEF JUDGE WILSON: And so - - -

25 MR. METCALF: - - - explained, it's delicate.



1 CHIEF JUDGE WILSON: And let me give you one more  
2 thing.

3 MR. METCALF: It's a complex inquiry.

4 CHIEF JUDGE WILSON: So yes or no?

5 MR. METCALF: I think that more - - -

6 CHIEF JUDGE WILSON: Over the objection of both  
7 counsel.

8 MR. METCALF: Over the objection of more, I think  
9 that a more meaningful investigation should be done.

10 CHIEF JUDGE WILSON: Which would be what?

11 MR. METCALF: It's more than - - -

12 CHIEF JUDGE WILSON: I'm just trying - - - I know  
13 - - - I'm - - - I'm trying to - - -

14 MR. METCALF: - - - inquiring of Juror 10.

15 CHIEF JUDGE WILSON: I'm trying to get very  
16 specific. Take - - - you said, I think, if I heard you  
17 right, take the six jurors out and ask them - - - by six,  
18 is that what you said?

19 MR. METCALF: There were six others that were  
20 mentioned to have had similar sentiments - - -

21 CHIEF JUDGE WILSON: Okay.

22 MR. METCALF: - - - that Juror 5 could recount.

23 CHIEF JUDGE WILSON: Okay. So the transcript  
24 actually says approximately six.

25 MR. METCALF: Yes.

1 CHIEF JUDGE WILSON: And - - - and those are  
2 Juror 5 who's saying that, right?

3 MR. METCALF: That's correct.

4 CHIEF JUDGE WILSON: And Juror 5 says, and I  
5 don't want to tell you who they are, right?

6 MR. METCALF: Yes, she does.

7 CHIEF JUDGE WILSON: Okay. So now what should  
8 the court do?

9 MR. METCALF: I think that the court should take  
10 a recess, go through a - - - a more detailed inquiry.

11 CHIEF JUDGE WILSON: Of whom?

12 MR. METCALF: First Department - - -

13 CHIEF JUDGE WILSON: Of how many people? Of  
14 whom? Where? How? What?

15 MR. METCALF: Call one more juror.

16 CHIEF JUDGE WILSON: Which one?

17 MR. METCALF: Well, we have a makeup here of - -  
18 - on this case so fact-specific. She's a black juror. All  
19 I know about the other jurors is that they're all white  
20 from the suburbs. Call one of them - - - call one juror  
21 and say, have you heard about any - - -

22 JUDGE TROUTMAN: Randomly - - - are you saying  
23 randomly just pick another juror without any indication as  
24 to whether that person participated or not?

25 MR. METCALF: I don't have a perfect answer for

1 this situation. I have more - - -

2 JUDGE TROUTMAN: And trial court judges don't - -  
3 -

4 MR. METCALF: Yes.

5 JUDGE TROUTMAN: Trial court judges have broad  
6 discretion. Do we agree with that?

7 MR. METCALF: I agree to that a hundred percent.

8 JUDGE TROUTMAN: And do you agree that they do,  
9 in fact, have a difficult job?

10 MR. METCALF: Yes. Oh, absolutely.

11 JUDGE TROUTMAN: So the judge is dealing with the  
12 hand the court has dealt. And as the Chief Judge noted,  
13 there were some constraints that were placed by the  
14 defendant's attorney. Do you disagree with that?

15 MR. METCALF: No. I don't disagree with that.

16 JUDGE TROUTMAN: And so - - - but are you saying,  
17 despite what the defendant's own attorney insisted upon,  
18 the court on its own was just to disregard that and create  
19 something that - - - stabbing in the dark?

20 MR. METCALF: No.

21 JUDGE TROUTMAN: Because you said, bring out  
22 someone not even knowing if they participated.

23 MR. METCALF: If we're talking about a  
24 hypothetical situation, I think that a mistrial should have  
25 been granted if that was the case. And then there's

1 another inquiry based on another jury note that brings up  
2 another jury issue about them being deadlocked - - -

3 JUDGE CANNATARO: But you - - - you - - -

4 MR. METCALF: - - - another opportunity for  
5 mistrial being granted.

6 JUDGE CANNATARO: We started this portion - - -

7 MR. METCALF: So - - -

8 JUDGE CANNATARO: Counsel, we started this  
9 portion of the oral argument by you acknowledging that we  
10 have Buford. And what was required was a tactful - - - a  
11 probing and tactful inquiry by the court. And you seem to  
12 have pivoted now to, no - - - no inquiry, mistrial.

13 MR. METCALF: Mistrial or alternatively, a  
14 meaningful - - -

15 JUDGE RIVERA: Okay. Let's stay with the  
16 mistrial.

17 MR. METCALF: Okay.

18 JUDGE RIVERA: What would be the basis for  
19 mistrial?

20 MR. METCALF: Exactly what we just went over  
21 right now.

22 JUDGE RIVERA: Run it through again.

23 MR. METCALF: Number one, we - - - say again?

24 JUDGE RIVERA: Say it again, please.

25 MR. METCALF: Okay. So we have one juror making

1           allegations about - - -

2                   JUDGE RIVERA: Yes.

3                   MR. METCALF: - - - racial bias.

4                   JUDGE RIVERA: Did the court - - -

5                   MR. METCALF: That's - - -

6                   JUDGE RIVERA: Did the court ever find that she  
7 was perhaps not accurately - - -

8                   MR. METCALF: Credible.

9                   JUDGE RIVERA: - - - representing what had  
10 happened?

11                   MR. METCALF: No. But there are - - -

12                   JUDGE RIVERA: The - - - so there's no finding  
13 that she's not credible?

14                   MR. METCALF: That's correct.

15                   JUDGE RIVERA: Okay.

16                   MR. METCALF: Okay. So now there are others that  
17 are involved in this. There is her mention that she is  
18 feeling rushed. So take into account what the allegations  
19 are - - -

20                   JUDGE RIVERA: Okay. When - - - when - - -

21                   MR. METCALF: - - - then you have - - -

22                   JUDGE RIVERA: - - - Juror 10 comes out, what did  
23 Juror 10 say?

24                   MR. METCALF: When Juror 10 comes out - - - and  
25 you have a - - - you have a - - - you have a complete

1 opposite polarizing - - - you have - - - you have a  
2 complete opposite effect.

3 JUDGE RIVERA: Does Juror 10 deny that something  
4 was said that offended Juror 5?

5 MR. METCALF: No. Juror 10 basically says it  
6 wasn't said in that context and that there - - - there - -  
7 - it should be interpreted a little bit differently.

8 JUDGE RIVERA: Juror 10 then refers to their own  
9 child - - -

10 MR. METCALF: Their own child being of Asian  
11 descent, yes.

12 JUDGE RIVERA: So that - - -

13 MR. METCALF: So - - -

14 JUDGE RIVERA: - - - that Juror 10 is also  
15 talking about race?

16 MR. METCALF: Yes. That's correct.

17 JUDGE RIVERA: And there would be no reason to do  
18 that if you're not - - - have some kind of racial  
19 implication, right?

20 MR. METCALF: Yes. That's correct. And what I  
21 think - - -

22 JUDGE RIVERA: Is that enough to get to the  
23 mistrial?

24 MR. METCALF: I do - - - I - - - I think that  
25 that's enough. And there are alternatives here. There are

1 issues - - -

2 JUDGE RIVERA: Did Juror 5 say she could be  
3 impartial - - -

4 MR. METCALF: And that's - - -

5 JUDGE RIVERA: - - - despite what had gone on?

6 MR. METCALF: Juror 5, yes. And Juror 5  
7 continued. And then there is - - -

8 JUDGE GARCIA: But you think - - - Counsel, you  
9 think that's error, right? I mean, this isn't the first  
10 encounter the court had with Juror 5 - - -

11 MR. METCALF: That's correct.

12 JUDGE GARCIA: - - - the source of these  
13 allegations. In fact, I think in your papers in this  
14 court, you still claim it was error not to dismiss that  
15 juror before any of this happened.

16 MR. METCALF: I inherited this case after the  
17 appeal. So I was - - - I was stuck with what I had at that  
18 point in time after the First Department - - -

19 JUDGE GARCIA: But it's your position before this  
20 court that you're - - - in your brief - - -

21 MR. METCALF: Yes.

22 JUDGE GARCIA: - - - that Juror 5 committed  
23 misconduct so egregious that she should have been dismissed  
24 for gross misconduct before she made these allegations?

25 MR. METCALF: That - - - that is the - - - that

1 is the position that was advanced on appeal. I took that  
2 position up to this court, ultimately, Juror 5 and the  
3 definition of gross negligence - - -

4 JUDGE GARCIA: But since - - -

5 MR. METCALF: - - - I do not think is - - - I  
6 think it's - - -

7 JUDGE GARCIA: - - - there's some tension between  
8 that position, and you should accept these allegations - -  
9 -

10 MR. METCALF: Well, then - - -

11 JUDGE GARCIA: - - - by Juror 5 at face value  
12 even though Juror 10, you can read it different ways, but  
13 arguably denied them.

14 MR. METCALF: Well, if I could make this easy, I  
15 would just withdraw my second position or issue two and  
16 focus on issue three. So the gross - - - that - - - that  
17 could be background to show, ultimately, Juror 5 being  
18 brought out and being inquired by herself. And that's why  
19 I said that her making that jump and letting the court know  
20 after the weekend about these - - - about these concerns  
21 that she had and bringing race as a - - - a conversation  
22 was a courageous move of her.

23 JUDGE GARCIA: She also - - - she also made some  
24 other allegations, right?

25 MR. METCALF: She said that it made her feel

1 uncomfortable. She said that - - -

2 JUDGE GARCIA: No. She made some completely  
3 different allegations, right? She said somebody was  
4 staring at her in the courtroom.

5 MR. METCALF: Oh, yes. That's - - - that's true.

6 JUDGE GARCIA: And - - - and a court officer  
7 touched another witness. And then the DA was smiling, and  
8 she had a litany of them in the first note, right?

9 MR. METCALF: That - - - that's correct. I  
10 didn't really understand those as well.

11 JUDGE GARCIA: And then the second note came out,  
12 a proper note, because she sent that directly to the judge  
13 in violation of the instructions. Then a proper note came  
14 out, and she doesn't mention racial bias in that note. She  
15 mentions only the guy staring at her in the courtroom,  
16 right?

17 MR. METCALF: On - - - on?

18 JUDGE GARCIA: On juror note 6 - - - juror note 6  
19 comes out.

20 MR. METCALF: Juror note - - -

21 JUDGE GARCIA: And it's - - -

22 MR. METCALF: - - - 6, but then - - -

23 JUDGE GARCIA: - - - it's signed by the  
24 foreperson.

25 MR. METCALF: Jury note - - - court Exhibit 5 - - -

1 -

2 JUDGE GARCIA: Is - - -

3 MR. METCALF: - - - is where she indicated bi - -  
4 - the bias.

5 JUDGE GARCIA: Right. And then they go.

6 MR. METCALF: And then - - -

7 JUDGE GARCIA: They bring the jury in. They say,  
8 you can't send notes by individual jurors directly to the  
9 judge. You have to send a note signed by the foreperson.  
10 Juror note 6 comes out, which is signed by the foreperson,  
11 and it contains one allegation, apparently, by Juror 5.  
12 And that allegation is not racial bias. That allegation  
13 is, someone is staring at me in the courtroom.

14 MR. METCALF: That's correct.

15 JUDGE GARCIA: And then the defense lawyer raises  
16 racial bias based on the old note.

17 MR. METCALF: That's correct.

18 JUDGE GARCIA: So in that juror note number 6,  
19 the racial bias allegation is not present, right?

20 MR. METCALF: The - - - yes. But it was raised  
21 prior, and she was told - - - and during that inquiry, she  
22 also said that she addressed all the other jurors about  
23 this issue, and it - - - it's not going to be resolved. I  
24 don't think that overnight or one addressing in a group of  
25 people about their - - - their unknown biases or known

1 biases and voicing those opinions is going to be addressed  
2 in one conversation. So I agree with Your Honor about the  
3 - - -

4 JUDGE RIVERA: Well, she said they apologized.

5 MR. METCALF: Some - - - I - - - I think some of  
6 them apologized because she - - -

7 JUDGE RIVERA: Well, what did she say?

8 MR. METCALF: She said - - - if you want me to  
9 refer to the record, I - - -

10 JUDGE RIVERA: No. I don't want you to do that.  
11 No. No.

12 MR. METCALF: I figured exactly what she said - -  
13 -

14 JUDGE RIVERA: No. No.

15 MR. METCALF: - - - but it wasn't going to be  
16 unresolved after that conversation - - - or it wasn't going  
17 to come to a complete resolve at the end of her inquiry.  
18 But it was also characterized as a joke or things along  
19 those lines. So we - - - at the end of the day, there is -  
20 - - there is a concern about race that's brought to a  
21 court. And we are dealing with a black defendant. So how  
22 can that not be addressed? And there is - - - the - - -  
23 there is - - - the courts have interpreted this in various  
24 different ways. So I don't know what the answer really is,  
25 but more should have been done here. An - - - an

1 investigation - - - if - - - if a mistrial is not the  
2 appropriate thing, there was another application later on  
3 where another - - - where the mistrial could have been  
4 granted. If you take all this in its totality, it could  
5 have been granted at a later time. The jury could have  
6 been instructed about implicit bias.

7 JUDGE TROUTMAN: Did - - -

8 MR. METCALF: They could - - -

9 JUDGE TROUTMAN: Were any of those other  
10 alternatives requested?

11 MR. METCALF: No. But that's where - - - if I  
12 were making the first appeal, I would have considered - - -  
13 even though I don't like to all the time - - - considered  
14 ineffective.

15 JUDGE HALLIGAN: But that's not - - - that's not  
16 - - -

17 MR. METCALF: That was not made, but - - -

18 JUDGE HALLIGAN: Okay. But that's not before us  
19 right now.

20 MR. METCALF: Yes. So I'm dealing with,  
21 ultimately, what is in front of the court, and that is the  
22 judge's discretion, balancing that carefully - - -

23 JUDGE CANNATARO: So did the judge - - -

24 MR. METCALF: - - - balancing that - - -

25 JUDGE CANNATARO: Did the trial judge abuse their

1 discretion?

2 MR. METCALF: In my position, I believe that they  
3 - - - under these circumstances.

4 JUDGE CANNATARO: In which of these many acts  
5 that we've been talking about?

6 MR. METCALF: It's a combination of the totality.  
7 The - - - the - - - in taking a less or more as a - - - as  
8 a approach to this situation, I don't - - - I - - - the - -  
9 - the Fourth Department - - - the dissent saw this  
10 specifically. You have to take into account the nature of  
11 the allegations. You have to take into account what people  
12 could have learned from statements being said.

13 So even if you are a juror who didn't say  
14 something and you are listening and you are hearing this  
15 and you are hearing, black people live a certain culture  
16 and they live a certain life, you may be impacted by this.  
17 First Department says, poll all the jurors.

18 The court makes a good point. We don't know  
19 which jurors to poll. We don't know if there's six, if  
20 there's more than six, if there's less than six. Who do  
21 you poll? Nothing else was done is my point. There should  
22 have been more. The mistrial should have been granted at  
23 that time or at a later time when they were deadlocked.

24 A - - - a - - - a note on implicit bias and  
25 bringing that to the forefront should have been mentioned



1 at that time and again when another note came out. There  
2 are different things that the court could have done in its  
3 discretion in balancing this careful and delicate  
4 situation. But what wasn't afforded was the fair trial to  
5 Mr. Wiggins. That's what really matters.

6 CHIEF JUDGE WILSON: Thank you, Counsel.

7 MR. METCALF: Thank you.

8 MS. HEALY: May it please the court. Harmony  
9 Healy, on behalf of the People.

10 JUDGE TROUTMAN: When a court has brought to its  
11 attention the possibility of juror misconduct, the court  
12 has certain responsibilities, correct?

13 MS. HEALY: Correct.

14 JUDGE TROUTMAN: And discretion?

15 MS. HEALY: I agree.

16 JUDGE TROUTMAN: And the exercise of discretion,  
17 is it impacted by what's requested by the parties?

18 MS. HEALY: So I think that it is, and - - -

19 JUDGE TROUTMAN: And what was requested here - -  
20 -

21 MS. HEALY: What - - -

22 JUDGE TROUTMAN: - - - by the defense.

23 MS. HEALY: What was requested here was a  
24 mistrial. In fact, both the People and the defense counsel  
25 said that they thought that a person by person or further

1 investigation of the rest of the jurors, particularly in  
2 light of the fact that we didn't know which jurors that  
3 Juror 5 had been referencing, would have been too invasive  
4 as to the secrecy of the - - -

5 JUDGE RIVERA: But based on what the - - - the  
6 colloquy with the court and - - - and whatever other  
7 questions were asked by counsel with respect to Juror 5 and  
8 Juror 10, why wasn't that enough for a mistrial?

9 MS. HEALY: So I don't think that it was enough  
10 for a mistrial because I think that when you're looking at  
11 your prior case law and you're looking at People v. Kuzdzal  
12 - - - I hope I'm saying that right, but it's a hard one - -  
13 - I think that the court is em - - - em - - - empowered  
14 with this discretion, and it is a credibility  
15 determination. And so when - - -

16 JUDGE RIVERA: But the judge didn't explain - - -  
17 didn't give any reasons.

18 MS. HEALY: So he did - - -

19 JUDGE RIVERA: Or did I miss something? Is it  
20 somewhere in the record?

21 MS. HEALY: Well, there is a 330 motion that was  
22 filed. And in his decision in the 330 motion, he does say  
23 that Juror 10 expressly denied those allegations. And so I  
24 think there's an implicit credibility determination there.  
25 I think that - - - and what happened here is Juror 5

1 brought these allegations - - -

2 CHIEF JUDGE WILSON: Is Kuzdzal a little bit  
3 different, though, because - - - in - - - in terms of the -  
4 - - the need to assess credibility? Because you're  
5 dealing, not with a juror, but with a spectator. And so  
6 you're wondering about that person's motives and veracity  
7 and that sort of thing, where the fact that the person here  
8 reporting is a juror in and of itself - - - I'm not sure  
9 that I'm saying it boosts credibility, but it - - - because  
10 that person is in the deliberating jury, there's some  
11 effect of what that person has said on the jury. We know  
12 that's what's happened; whereas, when it's a spectator, we  
13 don't actually - - - we're - - - we're trying to judge a  
14 different level of credibility, which is, is this person  
15 telling us what they heard somebody else do, true? And is  
16 that going to affect the jury? It's - - - it's attenuated.

17 MS. HEALY: No. Yeah. I - - - I agree with  
18 that. I think that it is attenuated. And it is - - - it  
19 is different because there's a motivation. But I still  
20 think that the allegations themselves need to be assessed.  
21 And so in assessing the eval - - - or the allegations that  
22 were made they, the - - - she indicated that someone had  
23 said, all black people look alike in the dark. But when -  
24 - - and - - - and she said Juror 10 is the person who made  
25 that comment. When Juror 10 came in, Juror 10 said, well,

1 that's not how it was said and that's not how it was meant.  
2 And what we were talking about was actually - - -

3 JUDGE RIVERA: And suggests that something was  
4 said.

5 MS. HEALY: I - - - I think something was said.  
6 I think that Juror 10 admits that something was said. And  
7 Juror 10 indicates that we were talking about the video and  
8 whether or not it would be fruitful to rewatch the video.

9 JUDGE CANNATARO: So can we pause over Juror 10  
10 and - - - and I think that specific answer that you were  
11 referring to, this goes to the question of the abuse of  
12 discretion. So the - - - the questions are being asked.  
13 And the first question is whether I think, you know,  
14 anything racist was going on in the jury room. And Juror  
15 10 launches into a story about her daughter and her Asian  
16 background and goes on a little more. And - - - and she  
17 seems to insinuate that maybe some racist comments were  
18 made the Friday, but we were all being - - - we felt really  
19 rushed, and I'm - - - I'm not sure what that means. And -  
20 - - and then we get to that answer. When pressed about  
21 what - - - was anything like that said on Friday? And the  
22 answer is, not in that manner.

23 MS. HEALY: The answer by Juror 10?

24 JUDGE CANNATARO: The - - - yes. That is the  
25 answer. I think that was what she said, no, not in that

1 manner. And I think almost anyone who's used to asking  
2 questions would then say, well, in what manner were they  
3 said? But the - - - that's not what happened here. And  
4 I'm just wondering if maybe that is where an abuse of  
5 discretion may have occurred.

6 MS. HEALY: So I guess I would disagree a little  
7 bit on - - -

8 JUDGE CANNATARO: Okay.

9 MS. HEALY: - - - Juror 10's explanation because  
10 I don't think a further question was really necessary. I  
11 think that she's explaining the context of what was said.  
12 And the context is, we were talking about whether or not it  
13 would be fruitful to go back and watch this video. And I  
14 said, there's no point to it because you can't see anything  
15 other than the clothing. And so what - - - what is the  
16 point to going back and rewatching it? And I think that  
17 what Juror 10 is saying - - -

18 JUDGE TROUTMAN: So when Juror No. 5 has given a  
19 version, Juror No. 10 has given a version, what is the  
20 responsibility of the trial judge after hearing from both?

21 MS. HEALY: I think the responsibility of the  
22 trial judge is to evaluate the allegations and evaluate the  
23 credibility of the allegations. And I think it's also  
24 important to note that Juror 5 sort of backed off a little  
25 bit what she was saying - - -

1 JUDGE TROUTMAN: How did she back off?

2 MS. HEALY: She indicated that - - - well, she  
3 indicated that she was offended by what was said, and she  
4 indicated that they had all talked about it. When they  
5 went back into the jury room, everyone had a bit of  
6 discussion because she had been offended. And that led to  
7 kind of a - - - a discussion on what their potential  
8 implicit biases were.

9 And I think that that's honestly, a - - - a good  
10 thing for them to evaluate as they're going through the  
11 evidence. So what it led to, and this was noted by the  
12 Fourth Department in the majority opinion, that these - - -  
13 the - - - her - - - her reaction and her bringing that up  
14 to the rest of the jurors led to a deeper discussion with  
15 respect to the - - - the evidentiary value of - - - of all  
16 of the - - - the video and the rest of the evidence that  
17 came in. And so I think that we - - -

18 JUDGE TROUTMAN: Was there a clear understanding  
19 of the ability of Jurors 5 and 10 to serve thereafter as  
20 fair and impartial jurors? Were they inquired as to their  
21 ability to do so?

22 MS. HEALY: They were.

23 JUDGE TROUTMAN: And what - - -

24 MS. HEALY: They - - -

25 JUDGE TROUTMAN: - - - were their respective



1 answers?

2 MS. HEALY: They both indicated that they could  
3 be fair and impartial. And I think that going back to your  
4 question on what was the remedy and what was asked for by  
5 the parties, in People v. Bailey, which was not exactly the  
6 same situation, but sort of a similar situation, this court  
7 noted that because defense counsel had asked only for a  
8 mistrial and never advocated for an inquiry or a - - - or a  
9 - - - any other inquiry of any - - - of the rest of the  
10 jurors, that the - - - the argument that the rest of the  
11 jurors should have been polled is not really preserved for  
12 this court to review - - - or I mean, I guess it's  
13 preserved in the fact that you're asking whether or not  
14 it's a - - - an abuse of discretion. But that was not a  
15 remedy that was advanced by the trial attorney at that  
16 time.

17 And I think that the other issue here is that  
18 because this was the conversation that came up during their  
19 evaluation of the evidence, it would have been intrusive to  
20 continue on asking these questions - - - not intrusive, but  
21 it would have invaded the privacy of the jury.

22 JUDGE TROUTMAN: So are you suggesting that it  
23 was a challenge to make an inquiry where they had already  
24 been engaged in the deliberative process?

25 MS. HEALY: Correct.

1 JUDGE RIVERA: Okay. Well, what - - - what - - -  
2 what is a judge to do? Here is - - - here is counsel  
3 asking Juror 5, I heard you say there are six members of  
4 our trial panel that expressed racist sentiments to you.  
5 You said today it's different, but do you have - - - can  
6 you give me any reassurance that the racial animus you have  
7 described - - - excuse me - - - have experienced has been  
8 extinguished? And then she says, I don't know if it's been  
9 extinguished. I cannot guarantee it. But they're aware of  
10 it and are looking more deeper into the trial than what - -  
11 - than - - - than which they would have on Friday.

12 MS. HEALY: Correct.

13 JUDGE RIVERA: She's saying, I can't - - - I  
14 can't guarantee that there is no more racial animus.

15 MS. HEALY: Well, I don't think that - - - I - -  
16 -

17 JUDGE RIVERA: I don't - - - I don't think of - -  
18 - of - - - of - - - of - - - of - - - I'll call it a  
19 finding - - - a finding that Juror 10 denies the statement  
20 gets to this. Where is this further explored? Maybe I  
21 missed something in the record.

22 MS. HEALY: Is it - - - are you asking, is Juror  
23 5's - - - I - - - I think she was kind of backing off. I  
24 think she was saying, we all talked about it, and after  
25 talking about it, this is where we are.

1 JUDGE RIVERA: And - - - and after talking about  
2 it, I don't know if it's been extinguished, the thing  
3 that's extinguished is the racial animus. I cannot  
4 guarantee it.

5 MS. HEALY: Well, I - - - I don't think that she  
6 really could necessarily guarantee it, but I think that - -  
7 -

8 JUDGE RIVERA: But isn't that what - - -

9 MS. HEALY: - - - it was Juror 10's explanation.  
10 It's - - -

11 JUDGE RIVERA: Isn't that what - - - isn't that  
12 what one needs to proceed with a trial? That it is not  
13 some kind of racial bias or racial stereotyping going on in  
14 the - - - in the jury room amongst the jurors?

15 MS. HEALY: So I, like - - - again, I think that  
16 what you need was to make the credibility assessment or the  
17 assessment of the allegations in conjunction - - -

18 JUDGE RIVERA: And so I agree with you. If the  
19 judge - - - I mean, if you're telling me it's in the 330,  
20 but I think all you said was that the judge says that Juror  
21 10 denied the statement. There's - - - she's talking about  
22 a lot more than that one statement. The - - - the judge  
23 could have said, I found Juror No. 5 incredible, which begs  
24 another question whether or not she should have stayed on  
25 the jury if she's making statements about racist statements

1 by other jurors. I mean, that - - - I don't know how you  
2 leave that person on, but that's for another - - - that's  
3 another issue.

4 MS. HEALY: Yes. Well, so I think that - - -

5 JUDGE RIVERA: I mean, is there any other  
6 statement where the judge says I do not credit Juror No. 5?

7 MS. HEALY: No. I think that it's an implicit -  
8 - - it's not expressly stated. I think that the fact that  
9 in answering those allegations with respect to the 330  
10 motion, his statement that the - - - that Juror 10 said  
11 that that didn't happen or it didn't happen in that way,  
12 and that she had misinter - - - she - - - his understanding  
13 or his assessment of the situation was that Juror 5 had  
14 misinterpreted the statements that were being made by other  
15 jurors.

16 CHIEF JUDGE WILSON: So what if we, instead of  
17 looking at each of these different events over - - - sort  
18 of do what counsel is sometimes asking us to do, which is,  
19 look at everything that happened here. The first thing  
20 that happens is, defense counsel wants Juror 5 removed  
21 because she's - - - she's asleep during the instructions,  
22 right? And she's polled and says, no. My head was down,  
23 and my eyes were closed, but I was listening. And then  
24 part of her subsequent improper note when she violates the  
25 instructions that things have to come through the

1 foreperson is, I went - - - this was nondrowsy medicine I  
2 got from Dollar Tree. The - - - you know, then there's  
3 everything we've been talking about, and then there's a  
4 hung jury when the jury comes back and says, we can't reach  
5 a decision after everything that Judge Rivera just  
6 described as well. In the totality of the circumstances,  
7 don't we have a concern that so many things have gone wrong  
8 here, without putting a finger on Juror 10 or Juror 5 or  
9 the six unidentified - - - unidentified jurors that this is  
10 just a mess, and to give this guy a fair trial, you have to  
11 have a mistrial?

12 MS. HEALY: So I think that you have to balance  
13 that with the rest of the trial as it unfolded. And I  
14 think that when you're balancing it with everything  
15 altogether, in light of the explanations of both jurors in  
16 the end, even though they couldn't reach a determination -  
17 - -

18 CHIEF JUDGE WILSON: Well, she's also complaining  
19 in the note that there's somebody in the audience who's  
20 staring at her and is looking at her over the other juror.  
21 And the juror who actually confirms to her that this person  
22 was looking at her is Juror No. 10. It just does - - - it  
23 just seems kind of like - - - and there's no allegation  
24 that the defendant did anything to cause any of this to  
25 happen, right?

1 MS. HEALY: Right. Yeah. I don't - - -

2 CHIEF JUDGE WILSON: Yeah.

3 MS. HEALY: - - - think there's any allegation  
4 that the - - -

5 CHIEF JUDGE WILSON: Yeah.

6 MS. HEALY: - - - defendant caused any of this to  
7 happen.

8 CHIEF JUDGE WILSON: Yeah. So certainly not  
9 ideal.

10 MS. HEALY: I - - - I don't think it's ideal, but  
11 I think, like, in the - - - the prior case law, and I - - -  
12 I noted it in my brief, there is no perfect trial, and  
13 there is no perfect jury. And at the end of the day, you  
14 kind of have to - - -

15 JUDGE RIVERA: No. But - - - but what she's  
16 describing implicates many members of the jury.

17 MS. HEALY: But I think - - -

18 JUDGE RIVERA: I mean, if she's saying, she's - - -  
19 - she's telling them - - - she's telling them, I'm  
20 offended. That's racist. And - - - and then that they're  
21 apologizing. I mean, how can one proceed under those  
22 circumstances as, obviously, something has gone on.  
23 Something is broken in that jury room.

24 MS. HEALY: I think that when - - - it's sort of,  
25 like, human nature - - - when someone comes to you and

1 says, you offended me when you said this, it's sort of  
2 human nature to be like, well, I'm sorry, I didn't mean to  
3 offend you, right? So I don't think the fact that  
4 everybody apologized is enough to really - - -

5 JUDGE SINGAS: But that's - - - but that's not  
6 what Juror 10 said, right? I mean, I think we have to use  
7 the language that was used in the record. So Juror 5 makes  
8 those at - - - well, under - - - under questioning by  
9 defense counsel, he says, no discussion surfaced about  
10 racial bias? Juror 10, no. Or something that would smack  
11 of racial bias? Juror 10, no. The only thing I said was  
12 about my daughter. I would hate to be there and somebody  
13 accusing my daughter of something, and they can't see her.  
14 So is your position that the judge hearing and seeing Juror  
15 No. 10 and comparing her to Juror No. 10 - - - to Juror No.  
16 5 when faced, as Judge Troutman said, with two different  
17 versions made a credibility finding?

18 MS. HEALY: I'm - - - that is - - - that is my  
19 position. I think that he evaluated the evidence as it  
20 came forth before him and inquiring of both Juror 5 - - -

21 JUDGE SINGAS: Is there any other evidence of  
22 this racial bias in the jury other than what's been going  
23 on with Juror No. 10 and what we've heard with Juror No. 5?

24 MS. HEALY: Is there any other evidence beside -  
25 - -

1 JUDGE SINGAS: Yeah.

2 MS. HEALY: No.

3 JUDGE TROUTMAN: And with respect to the exercise  
4 of discretion, I'm sure you would agree that another judge  
5 may have acted differently under the circumstances. Would  
6 you agree with that?

7 MS. HEALY: I think that there is sometimes a  
8 wide range of what judges will do under any circumstances.

9 JUDGE TROUTMAN: But it doesn't necessarily mean  
10 that just because I would have handled the situation in a  
11 different manner, that this trial judge necessarily abused  
12 his discretion. Would that be correct?

13 MS. HEALY: I would agree with that.

14 JUDGE RIVERA: Let me ask you this. Reading the  
15 transcript, can you walk away from that transcript saying,  
16 I have no doubt that there was no racial issue? Can you  
17 walk away and say that?

18 MS. HEALY: I can. I - - -

19 JUDGE RIVERA: You can based on?

20 MS. HEALY: Based on Juror 10's explanation. And  
21 - - - and also, I - - -

22 JUDGE RIVERA: And - - - and her explanation of -  
23 - -

24 MS. HEALY: - - - I would have to see - - -

25 JUDGE RIVERA: - - - of even referring to the

1 race of her child and - - - somehow persuades you that one  
2 can walk away from the transcript saying racial bias is not  
3 an issue?

4 MS. HEALY: So what I think is that none of us  
5 were there, and - - -

6 JUDGE RIVERA: That's for sure.

7 MS. HEALY: - - - the judge was able and  
8 positioned to evaluate the statements and the demeanor of  
9 the people that were coming before him, and - - -

10 JUDGE RIVERA: But see, this is my problem with  
11 this argument. Let's say you're right. Let's say I accept  
12 this argument that the judge concluded that he couldn't  
13 credit Juror No. 5. Something's broken. If you're saying  
14 she has basically told you something is not true about a  
15 racial bias encounter in the jury room - - -

16 MS. HEALY: So I - - - I - - -

17 JUDGE RIVERA: - - - I - - - I don't understand  
18 that.

19 MS. HEALY: I think that when you're talking  
20 about an actual racial - - - racial bias - - -

21 JUDGE RIVERA: Yeah.

22 MS. HEALY: - - - I don't think necessarily that  
23 that is what happened. And there were interpretations of  
24 things that were said on the next - - -

25 JUDGE RIVERA: Well, remember - - - look, for

1           whatever it's worth, she says that that was part of the  
2           problem. That she is a black woman who was trying to  
3           explain to the other jurors that she was offended by  
4           statements that they initially did not think were  
5           offensive. Whichever way you - - - you see that, right?

6                   MS. HEALY: Right.

7                   JUDGE RIVERA: And I'm saying, if - - - if the  
8           judge does not credit this, I'm hard pressed to see how one  
9           continues.

10                  MS. HEALY: I think that what the judge is not  
11           crediting necessarily is Juror 5's interpretation of things  
12           that happened in the jury room.

13                  JUDGE RIVERA: Okay.

14                  MS. HEALY: And so that would be my explanation  
15           for it. And if there are no other questions, I will rest  
16           on my brief.

17                  CHIEF JUDGE WILSON: Thank you.

18                  MR. METCALF: I acknowledge I far exceeded my  
19           time, so I wanted to thank everyone. Thank you, Your  
20           Honors.

21                  CHIEF JUDGE WILSON: Thank you very much.

22                           (Court is adjourned)

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

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Wiggins (Jaylin), No. 99 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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