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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

NO. 79

FUENTES (HENRY),

Respondent.

20 Eagle Street
Albany, New York
September 11, 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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Christian C. Amis
Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon. The first
2 case on today's calendar is People v. Fuentes.

3 Counsel?

4 MS. SCHAEFER: May I proceed?

5 CHIEF JUDGE WILSON: Sorry?

6 MS. SCHAEFER: May I proceed?

7 CHIEF JUDGE WILSON: Yes, of course.

8 MS. SCHAEFER: Good afternoon. May it please the
9 court. My name is Amanda Shaeffer, from the office of
10 Laurette Mulry, on behalf of the appellant, Mr. Fuentes.

11 Disciplinary records relate to the subject matter
12 of the case - - -

13 CHIEF JUDGE WILSON: Counsel, do you want to save
14 time for rebuttal, or no?

15 MS. SCHAEFER: Yes, Your Honor. May I request
16 three minutes for rebuttal, please?

17 CHIEF JUDGE WILSON: Yes.

18 MS. SCHAEFER: Thank you. Disciplinary records
19 relate to the subject matter of the case when they relate
20 to the credibility of a witness in the case. Further,
21 section 245.20 does not limit the People's discovery
22 obligations based upon the outcome of an internal affairs
23 investigation.

24 Here, the Appellate Term's constricted reading of
25 section 245.20 contravene the plain language of the statute

1 and the legislative history underlying the discovery
2 reforms. Because the People failed to exercise due
3 diligence to obtain the disciplinary records for the
4 arresting officer, this court should reverse.

5 First, I would like to address the amendments
6 which became effective to Article 245 last month. The
7 plain language of the amended statute supports that the
8 legislature only intended for it to apply prospectively.
9 In Gleason v. Gleason - - -

10 JUDGE RIVERA: But do they apply?

11 MS. SCHAEFER: Excuse me?

12 JUDGE RIVERA: Do they apply to the case - - - to
13 the amendments?

14 MS. SCHAEFER: No, Your Honor.

15 JUDGE RIVERA: The amended statute apply?

16 MS. SCHAEFER: No, Your Honor. The appellant's
17 position is that the amendments do not control the outcome
18 of this case. And when you look at the plain language of
19 the amended statute, it provides that it applies to pending
20 criminal actions, but a criminal action is a proceeding
21 that occurs before a criminal court. And in Section 10.10
22 of the Penal Law, a criminal court includes the superior
23 and local courts, but not a court exercising appellate
24 jurisdiction. And in People v. Colwell, the Third
25 Department held that an appeal is not part of a criminal

1 action or criminal proceeding. Therefore, I believe that
2 this court can resolve the retroactivity issue based upon
3 the plain language of the amended statute - - -

4 JUDGE SINGAS: Can we talk about what you think
5 the amendment - - - adding the related to the subject
6 matter into that subsection (k) - - - what that effect is?
7 What do you think?

8 MS. SCHAEFER: Yes, Judge. Even though Appellant
9 believes that the outcome of this appeal should be decided
10 based upon the pre-amendment statute, the amendments to
11 Article 245 support Appellant's position that the
12 legislature intended to afford Defendant's broad discovery
13 of impeachment materials, and the phrase relate to the
14 subject matter of the case. Specifically, the plain
15 language of that phrase supports that impeachment material
16 can cover even bad acts that don't involve the defendant or
17 the defendant's case. These - - -

18 JUDGE SINGAS: Well, how is that? If you're
19 saying that related to the subject matter of the case - - -
20 seems to me it's a - - - is a limiting clause. You don't
21 see it that way?

22 MS. SCHAEFER: No, Your Honor, because when you
23 think about what the case means, what's included in the
24 concept of a case, it includes the People's witnesses. And
25 in order for the People to meet their burden of proof,

1 their witnesses need to be credible. In this case, the
2 arresting officer was - - -

3 JUDGE TROUTMAN: So is there any limitation as to
4 what you can get to a witness called by the People?

5 MS. SCHAEFER: Well, the statute provides that
6 the defense should receive disclosure of all evidence and
7 information, including that which is known to police or
8 other law enforcement acting on the government's behalf.
9 That tends to impeach. And this court's prior - - -

10 JUDGE TROUTMAN: So would you agree, at a
11 minimum, it's limited to, tends to impeach?

12 MS. SCHAEFER: Yes. That is the plain language
13 of the statute, Your Honor. This court's decisions in
14 People v. Walker and People v. Smith support that
15 impeachment material can derive from prior bad acts that
16 don't involve the defendant or the defendant's case.

17 In People v. Smith, this court held that
18 defendant should have been permitted to cross-examine law
19 enforcement witnesses regarding prior bad acts alleged in
20 federal civil rights lawsuits. Although, in cert - - -
21 some of the cases in Smith, the court did find that the
22 error was harmless.

23 And when we look at the plain language of
24 245.20(1)(k), there are several aspects of the statute
25 that's a - - -

1 JUDGE HALLIGAN: But isn't there an exoneration
2 here?

3 MS. SCHAEFER: Yes, Your Honor.

4 JUDGE HALLIGAN: So why is it still impeachment
5 evidence?

6 MS. SCHAEFER: So the police department here did
7 determine the allegation to be exonerated, but the
8 underlying allegation actually was made in a Section 1983
9 federal civil rights lawsuit. And in People v. Smith, this
10 court held that - - -

11 JUDGE TROUTMAN: And was that information
12 provided in another manner?

13 MS. SCHAEFER: So the People in this case did
14 provide us with a copy of the plaintiff's complaint when
15 they filed their supplemental certificate of compliance on
16 July the 28th.

17 JUDGE SINGAS: So what other information do you
18 think you would have needed?

19 MS. SCHAEFER: Well, if you look at the
20 plaintiff's complaint, the only place where the arresting
21 officer is named by name is in the caption of the case.
22 But in the factual allegations, the complaint does not
23 specify what she's alleged to have done. It's only when we
24 later receive these associated internal affairs records
25 that we learn exactly what she was alleged to have done.

1 And just to finish my answer to Judge Halligan's
2 question, nothing in the plain language of Section 245.20
3 limits the People's disclosure obligations based upon
4 whether the police department exonerated the officer or
5 deemed the allegations unfounded. And I would liken this
6 to a disposition where the alleged prior bad act just was
7 not formally proven at trial. It can still - - -

8 JUDGE HALLIGAN: Wait. How is that the same as
9 an exoneration?

10 MS. SCHAEFER: Well, an exoneration issued by the
11 Internal Affairs Bureau means that the alleged act did
12 occur, but that the police department found that it was
13 legal, necessary, and proper. And if you look at the plain
14 language of subdivision (1)(k), it still requires the
15 prosecution to turn over the information, even if the
16 prosecutor does not credit the information.

17 JUDGE SINGAS: And where are you getting that
18 information, that that's what exoneration means?

19 MS. SCHAEFER: That's the definition that was set
20 forth in case law, including the Suffolk County Supreme
21 Court's decisions in People v. Randolph, in People v.
22 Portillo - - -

23 JUDGE SINGAS: So that's specific to the Suffolk
24 County Police Department?

25 MS. SCHAEFER: That's my understanding, yes.

1 JUDGE CANNATARO: What would be the outcome if it
2 was determined that the alleged acts didn't even occur?
3 Would that be unfounded or something like that?

4 MS. SCHAEFER: My understanding of the
5 definitions as set forth in those cases is that an
6 unfounded allegation is when the police department finds
7 that there's evidence to show that the act did not occur.

8 JUDGE CANNATARO: So that would be the correct
9 designation for a finding that it didn't even happen at
10 all?

11 MS. SCHAEFER: That would be the designation for
12 the police department's view that it did not happen.

13 JUDGE HALLIGAN: And would you view that as
14 discoverable, or no - - -

15 MS. SCHAEFER: If the underlying - - -

16 JUDGE HALLIGAN: - - - if it was labeled
17 unfounded.

18 MS. SCHAEFER: If the underlying allegation tends
19 to impeach, then yes.

20 JUDGE HALLIGAN: Even if the conclusion is that
21 it was unfounded, and - - - and as you just indicated, that
22 that suggests that the Department concluded it didn't
23 occur?

24 MS. SCHAEFER: Yes. Even - - - as long as the
25 underlying allegation itself has a tendency to impeach.

1 And in People v. Walker, this court defined
2 impeachment as a form of cross-examination whose purpose is
3 in part to discredit the witness and demonstrate to the
4 finder of fact that the witness is not credible. One way
5 of achieving this is to demonstrate, through questioning,
6 that the witness has been guilty of prior criminal, immoral
7 - - -

8 JUDGE TROUTMAN: But what if there is no
9 determination that that person was guilty of some prior bad
10 act?

11 MS. SCHAEFER: I would not liken an internal
12 affairs disposition to an acquittal after a trial, or maybe
13 a finding of no liability after - - -

14 JUDGE TROUTMAN: So are you suggesting,
15 essentially, that if there's an accusation made, that every
16 document contained in an officer's IAB file must be turned
17 over?

18 MS. SCHAEFER: Well, if the accusation tends to
19 impeach, that is.

20 JUDGE TROUTMAN: Okay. So what do you define
21 that as?

22 MS. SCHAEFER: I would turn to this court's well-
23 settled case law on the definition of impeachment in People
24 v. Walker. As I had alluded to previously, this court
25 found that it is something - - - it's - - - it can be

1 demonstrated through questioning that the weakness has been

2 - - -

3 CHIEF JUDGE WILSON: What if it's a - - - what if
4 it's an anonymous accusation?

5 MS. SCHAEFER: May I ask Your Honor to please
6 repeat that?

7 CHIEF JUDGE WILSON: Sure. What if it's an
8 anonymous accusation that's in the file?

9 MS. SCHAEFER: I don't believe that the Section
10 245.20 limits disclosure based upon the anonymity of the
11 complainant.

12 CHIEF JUDGE WILSON: And what if it's something
13 where the complainant completely retracts and says, I made
14 this up?

15 MS. SCHAEFER: I believe that that could be
16 something that the prosecutor should also have to turn
17 over. However - - -

18 JUDGE TROUTMAN: Why? Why is that impeaching if
19 it's determined that it was, in fact, made up?

20 MS. SCHAEFER: Well, at bottom, because
21 subdivision (1)(k) says that the prosecutor must turn over
22 the information, irrespective - - -

23 CHIEF JUDGE WILSON: And what if the complainant
24 is prosecuted for making a false police report and
25 convicted of that?

1 MS. SCHAEFER: Then I believe that that would be
2 akin to an acquittal after a trial, which this court has
3 previously held would not be proper fodder for cross-
4 examination.

5 In this case - - -

6 JUDGE GARCIA: Counsel, before you - - - can you
7 just step back? And I'm just trying to get an
8 understanding of how the statute works, which is a little,
9 honestly, confusing to me. So this is a certain time limit
10 on this discovery. Tied to what?

11 MS. SCHAEFER: Tied to the People's ability to
12 declare ready for trial.

13 JUDGE GARCIA: Ready for trial. Which may happen
14 in a certain number of days, depending on the charge,
15 right? So as I read the statute, there's three
16 requirements, and we've been talking about two of them,
17 which is it needs to go to - - - impeach some impeachment
18 value and this - - - whether or not it needs to be related
19 in some way to the case, right, as a possible third, which
20 I understand is disputed here, but it also says, testifying
21 prosecution witness. As I understand that, getting ready
22 for hearing. I have material on testifying witness.
23 Whatever it is in suppression, I turn it over. So how do
24 you know it's a test - - - I - - - and understand that's
25 not here, but I just - - - curious, what's the test for a

1 testifying witness?

2 MS. SCHAEFER: Judge, the Appellate Term in
3 People v. Hamizane, which is the decision that we were
4 relying on in the court below, actually answered this
5 question by saying that the People have to disclose the
6 disciplinary records for all potential law enforcement
7 witnesses who are listed in their certificate of
8 compliance. But that - - - the court doesn't need to reach
9 that question in this case, because here, Officer Congedo -
10 - -

11 JUDGE GARCIA: Well, it does sort of go to what
12 is a reasonable expectation in this statute, right?
13 Because the broader you cast the net for a potential
14 testifying witness, the more difficult it seems to me it
15 will be to collect relevant materials that won't get you
16 thrown out on speedy trial grounds. Right? So if we
17 define the universe without related to the case, right, you
18 have a bigger universe of potential witnesses than if we
19 do. So should that factor - - - does, say, testifying
20 witness relate somehow to how we view what - - - whether
21 related to the case applies to this subdivision or not?

22 MS. SCHAEFER: I think - - - to answer that
23 question in a vacuum - - - again, without reference to any
24 specific case - - - facts - - - if it were not a witness
25 that were essential to the People meeting their burden of

1 proof, it might make it a closer call, but this is not that
2 case.

3 JUDGE GARCIA: Well, I'm not so much interested
4 in a particular cases, as in a - - - in a rule, because the
5 broader the rule, the more onerous the burden in a
6 relatively short period of time and one that has fatal
7 consequences for the prosecution's case. So should we,
8 through that lens, view whether there is that modification
9 of related to the case?

10 MS. SCHAEFER: Well, in this case, I think that
11 that language is satisfied because Officer Congedo was a
12 necessary witness for the People - - - People to call in
13 order to meet their burden of proof.

14 And the other important aspect of this statute is
15 the presumption in favor of openness, which is codified in
16 subdivision 7. And notably - - -

17 JUDGE SINGAS: But isn't this really a question -
18 - - I think - - - just to piggyback on what Judge Garcia is
19 asking you - - - a question of timing? Because why doesn't
20 it make sense that the legislature would decide that the
21 information that's tied to this case gets handed over very
22 expedited - - - in a very expedited fashion, within
23 whatever it is now - - - what is it, twenty-five, thirty
24 days? But then over the long term, information that the
25 People find out - - - if they determine that another

1 witness will be testifying - - - that the defense will be
2 entitled to it. It's not like - - - the argument isn't
3 that the defense won't be entitled to it. The argument is,
4 is it automatic discovery? Is that information to be
5 handed over within a relatively short period of time?

6 MS. SCHAEFER: Yes, Judge. I believe that,
7 first, the concerns about cases getting dismissed because
8 something isn't turned over, the statute provides that the
9 statement of readiness, the People's Certificate of
10 Compliance, and their statement of readiness can't be
11 invalidated unless, again, they don't exercise due
12 diligence and make reasonable inquiries. So that will of
13 course factor into the analysis before we get to a stage
14 where a court would consider dismissing a case.

15 And just as a general matter, the People also
16 would have had to have exhausted their speedy trial time as
17 well.

18 In this case, there is - - - Officer Congedo was
19 a necessary witness for the People to call in order for the
20 People to meet their burden of proof.

21 And also, if you look at the first four words of
22 subdivision (1)(k), it provides that the People should
23 disclose all evidence and information.

24 And my respond - - - the respondent here argues
25 that the legislature intended to codify this court's

1 decision in Garrett, which, of course, was a decision about
2 the People's obligations under Brady v. Maryland.

3 If the legislature wanted to codify the People's
4 Brady obligations, they could have said the People must
5 disclose evidence - - - evidence and information which is
6 favorable to the defense and which is material to either
7 guilt or punishment. They could have just stated the Brady
8 rule. But here, the legislature intended to go beyond the
9 People's constitutional discovery obligations and provide
10 defendants with broad disclosure of impeachment material.

11 And Garrett is distinguishable also because the
12 legislature built in its own possession provisions into
13 (1)(k) and (2). (1)(k) includes information that's known
14 to the police or other law enforcement acting on the
15 government's behalf. And so - - -

16 JUDGE SINGAS: Again, I'm not - - - I think my
17 quibble isn't with Garrett generally. It's just tied to
18 this automatic discovery. Why is it that you think your
19 reading is better? That the prefatory language related to
20 the subject matter of the case has no application - - -

21 MS. SCHAEFER: I don't - - -

22 JUDGE SINGAS: - - - under subdivision (k)?

23 MS. SCHAEFER: No, I believe that it does have
24 application either under the pre-amendment or amended
25 statute. I believe that that's the language the

1 legislature used to indicate its intent that this
2 subdivision (b) construed broadly.

3 And even if we look at the amended statute, I - -
4 -

5 JUDGE HALLIGAN: But just to stay on the pre-
6 amend - - - on the, you know, prior statute. So then your
7 view is that "relates to the subject matter of the case"
8 encompasses any of the material that - - - that is at issue
9 in this case because it could be impeachment evidence?

10 MS. SCHAEFER: Yes, Judge. Specifically because
11 in the opening clause of the pre-amendment statute, the
12 opening clause ends with the words, "including, but not
13 limited to," so it's our position that the legislature
14 included, by definition, all of the categories of automatic
15 discovery in what relates to the subject matter.

16 JUDGE HALLIGAN: So then what exactly is your
17 position about how the words relating to the subject matter
18 of the case interact with subdivision (k) - - - if I have
19 the number right.

20 MS. SCHAEFER: With respect to the pre-amendment
21 statute - - -

22 JUDGE HALLIGAN: Yeah.

23 MS. SCHAEFER: - - - I believe that subdivision
24 (1)(k) is included by definition within the scope of what's
25 related to the subject matter of the case. Even the - - -



1 looking at the amended statute, it's clear that the
2 legislature intended for subdivision (1)(k) to have a
3 broader interpretation, because they narrowed the scope of
4 other subdivisions with narrower language relate to the
5 subject matter of the charge.

6 Your Honors, I - - -

7 JUDGE HALLIGAN: But if that - - - sorry, may I
8 just - - - one quick - - - if that's right, it seems like
9 there would be a way of drafting the statute differently,
10 which would be to segregate (k) and - - - and not put it as
11 something that is subsumed under relating to the subject
12 matter of the case. Wouldn't that have been a clearer way
13 to draft it?

14 MS. SCHAEFER: I see that my light is on. May I
15 answer the question?

16 CHIEF JUDGE WILSON: Please do, yes.

17 MS. SCHAEFER: No, Your Honor. I think that the
18 construction that the legislature used supports the broader
19 application. And recently, the Appellate Division in
20 People - - - People v. Coley adopted this interpretation.
21 In order to relate to the subject matter of the case, it
22 needs to relate to the credibility of a witness.

23 I will reserve my remaining arguments for
24 rebuttal if there are no further questions.

25 CHIEF JUDGE WILSON: Thank you.



1 MS. LATO: Good afternoon, Your Honors, Ms.
2 Schaefer. I am ADA Karla Lato, for the respondent.

3 We are here asking that this court make a
4 reasonable determination that IAB reports and files that
5 are unrelated to the subject matter of a defendant's case
6 are not subject to automatic disclosure under 245.20.

7 CHIEF JUDGE WILSON: The old statute or new
8 statute?

9 MS. LATO: Your Honor, it is our contention that
10 the new statute can be applicable in this case since the
11 Appellate Term had reinstated the accusatory instruments in
12 its decision in 2023. However, whether you look under the
13 old statute or the new statute, it is our contention that
14 245.20(1)(k)(iv) is read identically. However, I think
15 that we need to look at the 2025 amendments for
16 reinforcement as to what was the state's - - - the
17 legislature's intent under the 2020 amendments.

18 JUDGE HALLIGAN: Can I ask you just on the 2020
19 amendments, what's your response to the argument that your
20 reading would result in a curious interpretation of
21 subsection (p) and subsection (q). I think that the
22 Gehlhaus suggests that.

23 MS. LATO: One moment, please. The statute - - -
24 if you look at the practice commentaries of the statute
25 under 2020, it does reference subsection (k) as including a



1 codification of Brady and Giglio. And if you look at what
2 has been required to be turned over with regard to
3 impeachment material under Brady and Giglio, the People
4 have only been required to turn over some basic information
5 that would tend to impeach. It has never been required
6 that we turn over entire files.

7 As - - - if you look at the People putting
8 forward a defendant who has - - - as a prosecution witness
9 - - - who has a prior criminal record, we are only required
10 to turn over a disposition. We are not required to turn
11 over the entire underlying criminal file related to that
12 certificate of disposition. And it's our contention that,
13 with regard to a police officer who is a prosecution
14 witness, there should be no different standard.

15 What I would like the court to note is that the
16 enactment of this automatically - - - automatic disclosure
17 statute was for the purpose of expediting the disposition
18 of cases. It was not to broaden the scope of discovery.
19 It was encompassing the scope of discovery. And discovery
20 has never - - - when it comes to impeachment material - - -
21 has never extended to the disclosure of collateral or
22 extrinsic evidence.

23 In this case, although it was not necessary, the
24 People did turn over the exonerated report of Police
25 Officer Congedo. That report, it is our contention, had

1 absolutely no value as impeachment material, and because it
2 did not have the value of impeachment - - -

3 JUDGE RIVERA: But the - - - did the prosecution
4 at the time - - - I just want to follow up on your point
5 there - - - at the time, tell the court that it did not
6 view that it had any duty and obligation to turn that over?
7 In other words, did it preserve an argument that it had no
8 duty to do so?

9 MS. LATO: We did state that we only had a duty
10 to turn over substantiated and unsubstantiated reports. So
11 - - - and we did go further, I believe, in our response
12 papers to the motion to dismiss that there was no
13 obligation to turn the report over. And because we had no
14 obligation to return - - - to turn the report over, the
15 trial court need not reach the issue of due diligence;
16 although, we did argue that we did act with due diligence.

17 I would also like the court to consider, in
18 conjunction with the automatic discovery statute, CPL
19 245.55. Now, under automatic discovery, it was required
20 that the prosecutor offices set up some sort of an
21 exchange, a portal, a communication between all of the
22 different law enforcement agencies with the prosecution
23 office. And under 245.55, the legislature stated that law
24 enforcement is to make available files related to the
25 investigation of a case or the prosecution of defendant.



1 It does not state that full - - - full IAB files are
2 required to be disclosed.

3 The IAB report does - - - exonerating Officer
4 Congedo was unrelated to this specific case, and it did not
5 show that there was any immoral, bad act - - - conduct
6 committed by the police officer.

7 JUDGE SINGAS: Well, can't credibility - - - why
8 wouldn't the credibility of a witness relate to a case?

9 MS. LATO: Credibility of a witness does relate
10 to a case. However, there needs to be a good-faith basis
11 in - - - in order to challenge that credibility, and an
12 exonerated report on its face does not provide a good-faith
13 balance to - - -

14 JUDGE SINGAS: Well, let me ask you this.
15 Suppose that there was an allegation that this officer did
16 something in connection with this case, that she used
17 excessive force or that she - - - let's say it was a drug
18 bust, that she took money, and it was this case. Do you
19 think, in that scenario, that the People would have to turn
20 over any information within the automatic discovery time
21 period?

22 MS. LATO: Yes, because that would be related to
23 the subject matter of the case.

24 JUDGE SINGAS: Okay. So then if it didn't relate
25 to the subject matter of the case, is your position that it

1 might have to be turned over, just not within the expedited
2 time period?

3 MS. LATO: At some point, it would have to be
4 turned over to fulfill our Brady-Giglio obligations, yes.

5 JUDGE SINGAS: Okay.

6 MS. LATO: If the court has no further questions.
7 Thank you.

8 CHIEF JUDGE WILSON: Thank you.

9 MS. SCHAEFER: May I proceed?

10 CHIEF JUDGE WILSON: Please.

11 MS. SCHAEFER: Thank you. The respondent's
12 proposed construction of the statute would result in
13 defendants being entitled to less material than they are
14 normally entitled to under constitutional standards.

15 JUDGE TROUTMAN: But what about the fact that she
16 mentioned it's just a matter of timing, not that
17 information that otherwise would be discoverable is not
18 turned over. It's just a matter of timing.

19 MS. SCHAEFER: Well, their interpretation is that
20 it wouldn't be automatically discoverable under the
21 statute, but it's our position that the plain language of
22 the statute, which, again, is designed to incentivize
23 compliance with discovery requirements in order for them to
24 declare ready for trial supports that he is entitled to it.

25 And in *People v. Wright*, this court decided that

1 a defendant was entitled, under Brady, to information that
2 the complainant was a confidential informant for the police
3 in prior cases, and that pro - - - provided a motive for
4 why the police in that case believed the complaining
5 witness and not the defendant. So that - - - the
6 information that the complaining witness was a - - - was a
7 confidential informant related to prior cases.

8 JUDGE RIVERA: I'm not clear - - - I may have
9 missed it, so my apologies if you have to repeat. What - -
10 - how - - - what is the response to the timing question
11 from Judge Troutman?

12 MS. SCHAEFER: Subdivision (1)(k) - - -

13 JUDGE RIVERA: Yeah.

14 MS. SCHAEFER: - - - unique from all the other
15 subdivisions in 245.20 - - - requires the prosecution to
16 turn over the material under (1)(k) expeditiously upon its
17 receipt, even before their time for automatic discovery
18 lapses. And that's what the legislature provided for in
19 this case.

20 JUDGE HALLIGAN: But I thought you said that this
21 results in less discovery than what had previously been
22 available. And I thought that the response was material
23 has to be turned over, just not on the early - - - in the
24 early phase, but later. So what material exactly is not
25 available to a defendant at any point in the case - - - at

1 some point in the case that would have been available
2 previously?

3 MS. SCHAEFER: Well, Your Honor, the respondent's
4 proposed construction of what relates to a subject matter
5 of a case would exclude all impeachment material that
6 occurred in incidents that are not involving the defendant
7 specifically - - -

8 JUDGE HALLIGAN: Is that a function of timing or
9 whether it ever gets turned over?

10 MS. SCHAEFER: My understanding of the arguments
11 made is that it's - - - it's their position that that
12 relates to its discoverability, not just to the timing.
13 And all - - -

14 JUDGE HALLIGAN: You mean with respect to other
15 events outside the scope of the case, yes?

16 MS. SCHAEFER: Yes.

17 JUDGE HALLIGAN: Okay.

18 MS. SCHAEFER: And ultimately, it's the defense
19 attorney who's in the best position to analyze and assess
20 the weight of the impeachment material, because the defense
21 attorney is the single-minded advocate for the defendant,
22 knows the defense's trial strategy, and knows best how that
23 information could be used.

24 I just want to touch upon what was mentioned
25 about the decisional law in Suffolk County at the time this



1 motion was being litigated. The People did rely on the
2 Randolph decision from Suffolk County Supreme Court. But
3 that decision, first of all, it doesn't address squarely
4 the situation that we have in this case, where there's a
5 Section 1983 lawsuit also involved alongside the internal
6 affairs investigation. Under Smith, the allegations that
7 are memorialized in the internal affairs records are
8 related to allegations of tortious conduct made in a
9 federal lawsuit, and so they would have been proper fodder
10 for cross-examination.

11 And finally, I just wanted - - - excuse me, Your
12 Honor - - -

13 CHIEF JUDGE WILSON: Go ahead and finish your
14 thought.

15 MS. SCHAEFER: May I sum - - -

16 CHIEF JUDGE WILSON: Yes.

17 MS. SCHAEFER: - - - sum up? Thank you.

18 Under section 245.55 subdivision (1), that
19 subdivision specifically requires the People to maintain a
20 flow of information to obtain discoverable material, and it
21 specifically references subdivision (1)(k) in its language.

22 If there are no further questions, I would rest
23 on the brief submitted.

24 CHIEF JUDGE WILSON: Thank you.

25 MS. SCHAEFER: Thank you.



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(Court is adjourned)



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

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Fuentes (Henry), No. 79 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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