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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 80

LICIUS (RICHECARDE),

Appellant.

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

3 MR. GREENBERG: Can I reserve two minutes for
4 rebuttal, please?

5 CHIEF JUDGE WILSON: Yes.

6 MR. GREENBERG: Good afternoon. Simon Greenberg,
7 on behalf of Mr. Licius. The prosecution did not declare
8 trial readiness at any point before the court's closure on
9 the 90th day of the criminal action.

10 JUDGE RIVERA: But why doesn't General
11 Construction Law Section 19 apply - - - the "midnight to
12 midnight?"

13 MR. GREENBERG: General Construction Law 19 and
14 20 do not apply here, because the issue in this case is the
15 meaning of the phrase, "ready for trial." It - - - well,
16 it's both ready for trial and that it has to happen within
17 ninety days. It's not merely a question of counting how
18 many days have gone by.

19 JUDGE RIVERA: I understand, but - - - I
20 understand that point, but the reality is, if they had
21 filed it in person at 4:59, no one's holding a trial at - -
22 - seconds after that.

23 MR. GREENBERG: That's true, Your Honor. But the
24 prosecution still needs to be - - - the - - - an off
25 calendar statement of readiness still needs to be filed at

1 a time when the prosecution could have gone into court and
2 said, we're ready to start a trial now. And there - - -
3 you know, this - - - there are still things that can happen
4 at 4:59. There aren't that many things, but there are - -
5 - are a few things - - -

6 JUDGE RIVERA: Well, what if - - - what if they
7 file it - - - I'll give you 9 a.m. - - - but the judge is
8 on vacation that day?

9 MR. GREENBERG: If they file the - - -

10 JUDGE RIVERA: 9 a.m., the last day.

11 MR. GREENBERG: Yes.

12 JUDGE RIVERA: But the judge happens to be on
13 vacation that day. Again, no one's going to trial.

14 MR. GREENBERG: Well, the - - - if the judge is
15 on vacation that day, they could file an off-calendar
16 statement of readiness in in the clerk's office. If - - -

17 CHIEF JUDGE WILSON: And what if the clerk
18 doesn't review it for a while? It sits - - - they take a
19 new - - -

20 MR. GREENBERG: Well, that goes to the question
21 of what is the - - - how does the EDDS rule apply?

22 CHIEF JUDGE WILSON: Uh-huh.

23 MR. GREENBERG: And the language of the EDDS rule
24 is unambiguous that a document may not be considered filed
25 until the moment when it's reviewed by a clerk.

1 JUDGE CANNATARO: So I - - - I'm sorry - - -

2 CHIEF JUDGE WILSON: So if People filed a - - -

3 People file it a week early, but the clerk - - - clerk's
4 office is incredibly busy or something like that, and they
5 don't get to it for ten days, People are out of luck.

6 MR. GREENBERG: I think, Your Honor, that the - -
7 - the EDDS was created to be - - - to make it more
8 convenient to deliver documents to the court. It wasn't
9 created - - - it was created as a delivery system that was
10 supposed to make it more convenient to deliver documents to
11 a court.

12 JUDGE RIVERA: Yes. But the rule is that it - -
13 - whenever the clerk gets to it, that's only to confirm
14 that everything has been filed appropriately. It is still
15 treated as effective as of the time it was actually
16 electronically submitted.

17 MR. GREENBERG: Well, that's not correct, Your
18 Honor, because the - - - the language of the rule is
19 unambiguous that - - - that filing cannot be deemed to
20 occur until the review - - -

21 JUDGE GARCIA: I think the judge's point is it's
22 deemed to occur then, but it's effective as of the date you
23 actually filed. And the risk you take is you haven't done
24 the thing correctly, in which case, it's deemed never to
25 have been filed, right?

1 MR. GREENBERG: Well, the word deemed is - - - in
 2 this - - - in this context, it means that the - - - fact
 3 that the - - - the act of reviewing the document is what
 4 causes the document to be deemed filed. It's not a grant
 5 of power - - -

6 JUDGE GARCIA: Under your system - - - I think,
 7 as the chief judge was getting to - - - litigants just have
 8 no idea whether this filing is going to be timely, because
 9 it will depend on the staffing and the vacation schedules
 10 of the office.

11 MR. GREENBERG: I think that - - - that the risk
 12 that that could happen is built into the electronic
 13 document delivery system because it's a delivery system - -
 14 -

15 CHIEF JUDGE WILSON: There's some - - - it seems
 16 like there's some tension between that and the proposition
 17 you advanced earlier is that what - - - what we care about
 18 is the People are actually ready for trial. So my
 19 hypothetical, they were actually ready for trial a week
 20 ahead of time, but because of backups in the clerk's
 21 office, or maybe the papers got stuck under a stack of
 22 something and nobody noticed him for a while. They were
 23 actually ready for trial, but because of a clerk's office
 24 screw up, it's not actually filed until after the deadline.
 25 And that doesn't - - - that seems to be in tension with the

1 basic proposition.

2 MR. GREENBERG: Well, Your Honor, the - - - the
3 case law is clear that a document - - - that the People
4 aren't actually ready for trial until this - - - or if - -
5 - if they - - - if the way that they - - - stating ready
6 for trial is a - - - is an elemental prerequisite of being
7 ready for trial, so that they can't actually be ready for
8 trial until the document is filed.

9 JUDGE HALLIGAN: But it seems like under your
10 reading, it makes it really difficult to ascertain exactly
11 when that happens, because it is a function of when the
12 clerk happens to review it. That - - - you know, if you
13 are spending a lot of time litigating in court, that seems
14 like it would create a lot of heartburn.

15 MR. GREENBERG: I think that the - - - that - - -
16 that's a risk that any party using the EDDS system takes.

17 JUDGE HALLIGAN: Well, so what's - - - what - - -
18 what is one supposed to do then? You file it - - - let's
19 suppose you file it the morning of - - - 9 a.m., I think
20 someone said - - - are you supposed to call and find out if
21 it's been reviewed. And if it hasn't been reviewed, what
22 are you supposed to do?

23 MR. GREENBERG: The - - - you know, the system
24 has a warning, and in fact, the warning is given
25 repeatedly, so I think that, yes, you could call and - - -

1 and see if - - -

2 JUDGE HALLIGAN: And what if - - - what if you're
3 told the clerk is on vacation today?

4 MR. GREENBERG: I think - - - the EDDS system - -
5 - it's a delivery system that was meant to make sending a
6 document more convenient and not to be used when you're up
7 against a deadline. And so I - - - yes - - -

8 JUDGE HALLIGAN: So it seems like you're
9 suggesting that, in fact, using the system is, you know, at
10 the litigant's peril.

11 MR. GREENBERG: It is at the litigant's peril,
12 Your Honor. And that's something that they're repeatedly
13 warned of on multiple pages when they actually start the
14 process of delivering the - - - yes - - -

15 CHIEF JUDGE WILSON: Where is the - - - what is
16 the last thing you filed in court where you're not up
17 against a deadline?

18 MR. GREENBERG: I think People usually are - - -
19 they're - - - yes, litigants are very often up against a
20 deadline - - -

21 JUDGE HALLIGAN: Well, it seems like it renders
22 the system effectively unusable, which would be a peculiar
23 result.

24 MR. GREENBERG: The - - - the - - - you know,
25 the language is clear and the warning is clear - - -



1 JUDGE TROUTMAN: But isn't e-filing created to
2 help facilitate systems - - - participation - - - making it
3 more user friendly? What you're suggesting is that perhaps
4 we get away from e-filing. It's abolished.

5 MR. GREENBERG: Well, EDDS is different from
6 NYSCEF. NYSCEF is a filing system, and the language of the
7 rule in NYSCEF is - - - is clear that - - - yes - - -

8 JUDGE TROUTMAN: Well, but if it's going to have
9 such harsh results - - -

10 MR. GREENBERG: Yes.

11 JUDGE TROUTMAN: - - - it disincentivizes anyone
12 to do anything but in-person filing and then wait there - -
13 - I demand that you look at it right now because that's
14 what you say. It's not even effective until the clerk
15 looks at it.

16 MR. GREENBERG: You know, I think EDDS is - - -
17 you know, I - - - my understanding is that courts are
18 moving toward trying to get all trial courts on the NYSCEF
19 system. And the court also has the power to change the
20 rule if it - - - because it's a court rule that was passed
21 through the authority given to courts to pass the rule, so
22 if the - - -

23 JUDGE RIVERA: So what would be the change?

24 MR. GREENBERG: The change would be to - - - to
25 change the rule to say that a document that is sent to the



1 courts through EDDS - - -

2 JUDGE RIVERA: Right.

3 MR. GREENBERG: - - - is - - - you could graph
4 language onto the current rule to say that it shall be
5 deemed filed as of the moment when it was received, so the
6 - - - you know, that would make it clear that even though
7 the review doesn't happen until after the document is
8 received, that - - -

9 JUDGE TROUTMAN: Would a court - - -

10 MR. GREENBERG: - - - that it could be deemed to
11 have occurred earlier - - -

12 JUDGE TROUTMAN: Could a court decision do the
13 same thing?

14 MR. GREENBERG: I'm sorry?

15 JUDGE TROUTMAN: Could a court decision say it's
16 deemed filed when it's filed?

17 MR. GREENBERG: I thi - - - a court could not do
18 that, Your Honor, because the - - - the legislature - - -
19 the Constitution and the legislature both gave the courts
20 power to pass rules and make them have the force of law.
21 And here, EDDS specifically says that documents can't be
22 sent to the court using the EDDS system, except - - -
23 except as explicitly provided in this rule. And so courts
24 can't just go around rules that are clear and had - - - and
25 are binding on them.

1 And to get back to the question of whether the
2 prosecution has to state ready before the court is closed.
3 I think it's undisputed here that that's always how stating
4 ready has - - - has functioned since the legislature
5 enacted 30.30 in 1972.

6 JUDGE RIVERA: So what do the additional seven
7 hours matter?

8 MR. GREENBERG: I'm sorry?

9 JUDGE RIVERA: Or 4:59 to 11:59. I know why it
10 matters in your case.

11 MR. GREENBERG: Yes.

12 JUDGE RIVERA: Sort of a systemic matter.

13 MR. GREENBERG: Well, I think - - - as I've said,
14 the - - - there are things that can be done, you know, up
15 until the moment that the court closed. The court can tell
16 parties, get your witnesses together.

17 JUDGE RIVERA: Well, let me ask you this - - -

18 MR. GREENBERG: Yeah.

19 JUDGE RIVERA: - - - because you're relying on
20 that rule. But you know, the GCL does say that it applies
21 to all statutes, right, adopted afterwards - - - 30.30 is
22 adopted afterwards. So of course, a statute trumps any
23 rule. Why - - -

24 MR. GREENBERG: Yeah. Yes.

25 JUDGE RIVERA: Again, circling back to where I

1 started with you, why doesn't the GCL just resolve this
2 issue for us?

3 MR. GREENBERG: The GCL doesn't resolve this
4 issue, Your Honor, because the GCL has an exception. It
5 says - - - in Section 110, the GCL says this - - - this
6 chapter applies only if it - - - unless it's inconsistent
7 with the context of the language construed or the object of
8 the statute. And here, the object of 30.30 is that the - -
9 - is that the is that the prosecution must have completed
10 all of its prerequisites to being ready for - - -

11 JUDGE RIVERA: And be ready for trial. That
12 doesn't mean the trial is starting the minute they file it.

13 MR. GREENBERG: It - - - that's correct, Your
14 Honor, but they have to be able - - - they have to have
15 come - - - gotten the case to a point where it - - - it - -
16 - it - - - they could go into court and say to a judge,
17 we're ready to start a trial now.

18 JUDGE HALLIGAN: I'm just trying to understand
19 how the practical objective of 30.30, which you're
20 identifying - - -

21 MR. GREENBERG: Yes.

22 JUDGE HALLIGAN: - - - is implicated here. So I
23 agree with you. I think you said to the Chief that, yes,
24 many lawyers file close to a deadline. Right. Maybe
25 that's human nature. So if I have a brief due or some

1 other filing due on Friday, I mean, really, what would I
2 do? Would I call the clerk's office and say, can you
3 confirm the clerk will be there and available to review?
4 And if I file on Friday - - - I am not sure that a flood of
5 phone calls like that would be met with a lot of
6 enthusiasm, might not be the best use of time, and so how
7 does - - - how does a lawyer actually operate under that
8 scheme?

9 MR. GREENBERG: I think the answer, Your Honor,
10 is that as you - - - you asked me earlier - - - a lawyer
11 does use this system at their peril. And they could - - -
12 you know, if they really needed to be absolutely sure that
13 a document is going to be filed, they could go to the
14 courthouse and file it - - -

15 JUDGE HALLIGAN: But how does that - - - how does
16 that serve the objectives of 30.30? That - - - you know,
17 either abandoning the system altogether because of the
18 risk, or some flurry of phone calls to ensure that,
19 actually, my filing will be reviewed if I get it in by the
20 right hour.

21 MR. GREENBERG: I think it - - - well, one reason
22 it serves 30.30, Your Honor, is that I think that when
23 30.30 was enacted, it wasn't - - - it's true that - - -
24 that parties are often up against a deadline, but what was
25 not expected is that prosecutors would be pushing, getting

1 ready to trial until the very last minute of the day.

2 CHIEF JUDGE WILSON: So on a - - - in a court
3 that is on NYSCEF, right, I could file a statement of
4 readiness off calendar at 10 o'clock at night?

5 MR. GREENBERG: If it is on NYSCEF?

6 CHIEF JUDGE WILSON: If it is on NYSCEF.

7 MR. GREENBERG: You cannot, Your Honor, because
8 of the - - - the court business hours still are the
9 deadline for when a party - - - when - - - for when the
10 prosecution could stay ready for trial because - - -

11 JUDGE RIVERA: I thought you we're making a
12 distinction before between NYSCEF and EDDS, unless I missed
13 it - - -

14 MR. GREENBERG: Yeah - - - I am making a
15 distinction because there's two issues here - - - or you
16 can think of the case as involving two issues. One is what
17 is the last time that the prosecution - - - can I finish my
18 answer, Your Honor?

19 CHIEF JUDGE WILSON: Yes, please.

20 MR. GREENBERG: The last time that the
21 prosecution can state ready for trial is when the court is
22 closed. And - - - but in order to do that off calendar,
23 they have to file it. But if they're using a system that
24 has a specific definition of filing, the filing could not -
25 - - may not happen until the next day, even though - - -

1 even though they - - -

2 CHIEF JUDGE WILSON: Wait, so I'm missing
3 something - - - yeah - - - I'm not - - -

4 MR. GREENBERG: There's two different questions
5 here. One is the meaning of filing, and one is when do
6 they actually have to declare readiness.

7 CHIEF JUDGE WILSON: Yeah. But it sounds like
8 you're saying that whether you file by EDDS or whether you
9 file on NYSCEF, you can't file after 5 o'clock.

10 MR. GREENBERG: You can't file after 5 o'clock or
11 what the court - - - the regular business hours of that
12 court are.

13 CHIEF JUDGE WILSON: Oh, that's right. Yes. So
14 in some ways, your argument doesn't - - - the EDDS rule
15 doesn't really matter to your argument. You can't file - -
16 - once the court is closed, nobody can file.

17 MR. GREENBERG: Well, our - - - the EDDS matters
18 for our argument - - - well, it doesn't matter in this
19 particular case, Your Honor, because the prosecution did
20 submit the document after the court was closed. But in a
21 case where they submitted it before the court was closed,
22 when they could have stated ready, they are still taking
23 the risk that the - - - the requirement of filing, which is
24 a - - - a requirement of being ready for trial might not
25 actually happen until the next day.

1 CHIEF JUDGE WILSON: Okay.

2 MR. GREENBERG: And so there are - - - you know,
3 that - - - there are two issues, and we - - - yeah - - -

4 JUDGE RIVERA: I'm sorry. Because the - - - the
5 clerk will not review it and confirm that it's been
6 properly submitted and filled out and the fees paid. Is
7 that what you mean?

8 MR. GREENBERG: Yes, Your Honor. Even if the
9 prosecution could state ready for trial, but if the
10 document is not actually reviewed until the next day, it's
11 - - - they're still out of time - - -

12 JUDGE RIVERA: Well, you have a point there. I
13 mean, you have - - - I'll give you this, you have the - - -
14 you do have a point the peril, even for someone who goes in
15 person, with only two minutes to remain. First of all,
16 they might tell you to leave. That's unlikely. But they
17 take it, and in those two minutes, they say there's
18 something missing. We won't accept it.

19 MR. GREENBERG: Yes.

20 JUDGE RIVERA: You probably don't have two
21 minutes to correct it, I mean, depending on what it is.
22 But if it's something that takes more than two minutes,
23 you're out. So you're right in that sense.

24 MR. GREENBERG: I think that's right, Your Honor.
25 I think that if you come to court and - - - I mean, the

1 prosecution statement readiness is fairly simple thing - -
2 -

3 JUDGE RIVERA: But at least you know in the
4 moment, right? I mean, you - - - yes, you're taking that
5 risk, you know in the moment. Maybe I can correct whatever
6 the problem is in the moment. But with the filing that the
7 clerk is going to look at it the next day, that's a much
8 higher risk.

9 MR. GREENBERG: It is a higher risk, but the - -
10 -

11 JUDGE RIVERA: Which means, again, you've
12 disincentivized.

13 MR. GREENBERG: But prosecutors are - - - in any
14 party - - - in any case - - - is repeatedly warned that the
15 system might cause their filing to be delayed. So the
16 warning has to - - - the warning is given for a reason, and
17 it specifically tracks the explicit language of the rule.

18 JUDGE RIVERA: Well, they're warned that it might
19 not be accepted if they don't comply, right?

20 MR. GREENBERG: We read the warning, and I think
21 the - - - the most - - - the unambiguous language of both
22 the rule and the warning is that the filing cannot occur
23 until the moment that the document is reviewed.

24 But I'll save the rest of my argument for
25 rebuttal. Thank you.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. JOIRIS: Good afternoon. Julian Joiris, for
3 the People, respondent.

4 The People communicated the readiness to the
5 Court before the end of the 90th calendar day. That
6 statement of readiness was timely. The availability of
7 court facilities to hold or begin a trial is immaterial to
8 the People's readiness. It is all about whether the People
9 - - -

10 JUDGE RIVERA: But when 30.30 was enacted, courts
11 were not open past 5. It was regular business days, right?
12 That you could only go in while the clerk's office was
13 open. Why aren't we then limited to having to recognize
14 that 30.30 was passed with the intention that you're
15 submitting papers until the court - - - while the court is
16 open, and that's it?

17 MR. JOIRIS: Well, first of all, I'm not sure
18 that the premise of the question is accurate. Even now,
19 hours among courts throughout the state vary widely. You
20 might have some local criminal courts with a part-time
21 justice who - - -

22 JUDGE RIVERA: Uh-huh.

23 MR. JOIRIS: - - - sits a couple days a month
24 with limited hours, and those hours, of course, might not
25 be the same hours that the clerk's office is open to accept



1 filings. Whereas - - -

2 JUDGE RIVERA: That's true. But the legislature
3 could have understood that there will be courts that do
4 close at 5. Let's just stay with 5. That that's generally
5 the case, and that's it. You can't go later than that.

6 MR. JOIRIS: I will say that's generally the case
7 for most purposes, I would guess in many courts, Your
8 Honor. But of course, we have - - - in New York City, we
9 have seven days a week. The arraignment parts are up
10 sixteen hours a day, going to 1 or 2 a.m. So again, I
11 don't think that we can make any generalization about when
12 courts are open, when they might be expected - - -
13 accepting filings, when they might be able to hold
14 proceedings, whether those two things are going to be
15 coextensive or not.

16 So all of which is to say, if the legislature had
17 meant to say 5 p.m. or close of business or something like
18 that, the legislature would have said that. The
19 legislature knows how to say that. It says that in other
20 statutes when that's what it means. It said ninety days;
21 it meant ninety days. And here, I - - -

22 JUDGE GARCIA: Counsel - - - I'm sorry.

23 MR. JOIRIS: Yes?

24 JUDGE GARCIA: Right here. There's one part of
25 your argument - - - and maybe I have it wrong - - - that I



1 was struggling with a bit. You say that if you do choose
2 to use this system to do this, you don't have to follow the
3 rules. Is that part of your argument, or did I
4 misunderstand?

5 MR. JOIRIS: Not quite, Your Honor. I think
6 there - - - there's two distinct arguments going on here.
7 One is about what does 30.30 - - - what does the statute
8 30.30 mean?

9 JUDGE GARCIA: Okay.

10 MR. JOIRIS: Right. Which is ultimately this
11 court - - - and, on the way, the lower appellate courts - -
12 - construing, what does it mean to be ready for trial,
13 which is the - - -

14 JUDGE GARCIA: Okay.

15 MR. JOIRIS: - - - same - - - the phrase used in
16 30.30. The other argument is about what do the EDDS rules
17 mean.

18 JUDGE GARCIA: Right.

19 MR. JOIRIS: And my point is, for purposes of
20 statutory interpretation, whether it's people are ready for
21 trial or what it means to file something for purposes of
22 certain statute, this court controls and this court
23 decides. Right. The - - - obviously, the practices and
24 policies of the lower courts can, as a practical matter,
25 affect how and when and where you can file - - -

1 JUDGE GARCIA: So let me ask you a hypothetical.
2 Maybe you can clear it up a little bit. So I think I
3 talked about this a little bit before. You file in the
4 system.

5 MR. JOIRIS: Yes.

6 JUDGE GARCIA: You file it in the right day, late
7 at night, whatever. Clerk reviews it the next day and
8 says, you know what, there's a defect in this filing.

9 MR. JOIRIS: Uh-huh.

10 JUDGE GARCIA: It's not effective. Have you
11 filed and declared readiness or not in my hypothetical?

12 MR. JOIRIS: I would say that - - - that would
13 probably depend on the nature of the defect, you know, just
14 as a matter of general experience. I know often, if
15 there's a sort of ministerial defect, such as, oh, you got
16 the docket number off by one digit, that kind of thing,
17 generally, you'll get a call from clerk's office going
18 peerless - - -

19 JUDGE GARCIA: But is that because it's a 30.30
20 filing, or is it just because that's the way the system
21 works?

22 MR. JOIRIS: Just, in general, that's - - -
23 that's the way the system works. Right. If there were a
24 really substantive - - - if you said, oh, I'm filing my
25 statement of readiness, and it was just turned out to be a

1 blank piece of paper, that would probably be not good, you
2 know. And I'm sorry to speak in sort of generalizations -
3 - -

4 JUDGE GARCIA: No. No. But you would then
5 accept that you would be bound by the procedural rules of
6 the filing system.

7 MR. JOIRIS: Right. Well, that's what the - - -
8 I think the EDDS system says.

9 JUDGE GARCIA: Uh-huh.

10 JUDGE RIVERA: Except if I'm understanding you,
11 you're saying if the defect is nonsubstantive - - - purely
12 ministerial - - - got the wrong number, just - - - or one
13 digit off of the number, that that would not render the
14 submission late?

15 MR. JOIRIS: That would be my position. You
16 know, obviously, this has not come up in this case, but my
17 overall point - - -

18 JUDGE RIVERA: That's not even what the rule
19 says.

20 MR. JOIRIS: Well, my - - - and this is why it's
21 a little hard to respond to these hypotheticals other than
22 in, you know, very general terms - - -

23 JUDGE RIVERA: Uh-huh.

24 MR. JOIRIS: - - - that I do think it would
25 depend on the nature of the defect. And some would be more

1 substantive; some would be less substantive.

2 JUDGE RIVERA: Well, let's say someone goes in at
3 4:59 - - -

4 MR. JOIRIS: Uh-huh.

5 JUDGE RIVERA: - - - hands it to the clerk. The
6 clerk notices a defect that cannot be corrected in that
7 moment, but if they went back to the office, they could
8 correct it and bring it right back, but they're not going
9 to get back by 5 in this hypothetical.

10 MR. JOIRIS: Again, if - - -

11 JUDGE RIVERA: They fail to file on time because
12 the clerk refuses to accept the filing until that
13 ministerial - - - we'll stay with ministerial for the
14 moment - - - defect is corrected?

15 MR. JOIRIS: I would say, as a general matter, if
16 the clerk says, I will not accept this - - - go back and
17 come back when you fixed it - - - that means that you
18 weren't able to file it on time. Whereas, if the clerk
19 says, I'll take this for now, but you have to fix this
20 within, you know, five days or three days or something,
21 then that would constitute the clerk accepting it.

22 JUDGE RIVERA: That's a lot of power for a clerk.

23 MR. JOIRIS: Well, they do have a certain role in
24 reviewing the documents and making sure that they are - - -

25 JUDGE RIVERA: Yeah.



1 MR. JOIRIS: - - - correctly filed.

2 JUDGE RIVERA: How much time do I have to give
3 you to correct it?

4 MR. JOIRIS: Again, speaking in generalities, it
5 - - -

6 JUDGE RIVERA: Well, they'll stamp it filed.

7 MR. JOIRIS: Right.

8 JUDGE RIVERA: And let's say you never correct
9 it. What's going to happen to that document then?

10 MR. JOIRIS: Then you've never filed - - - if
11 you've never corrected it - - - if the - - - if there's - -
12 -

13 JUDGE RIVERA: Well, what does the clerk do with
14 it? They put it on the side and give you a couple of days
15 you don't show up, and what do they do? Mail it back to
16 you?

17 MR. JOIRIS: I mean, in my experience - - -

18 JUDGE RIVERA: Yes.

19 MR. JOIRIS: - - - they say - - - I actually had
20 this somewhat embarrassingly happened with an Appellate
21 Division brief. Clerk's office had sent an email to a
22 person who was no longer with our office saying, you got
23 the docket number wrong, please fix this. A few days
24 later, they send another email, which finally made its way
25 to me saying you got the docket number wrong. Please fix



1 this. And we did. You know, at a certain point, I believe
2 they say, we gave you a few warnings. We're rejecting it.
3 You know, and again, we're - - - necessarily - - - because
4 this isn't the fact of this case - - - necessarily speaking
5 in sort of generality. So it's the kind of thing that can
6 happen, and I can't speak to every possible eventuality.

7 JUDGE RIVERA: They do that for everybody? Pro
8 se complainant in a civil case comes in, says, well, I'll
9 take it, but you got to fix this in a couple of days.

10 MR. JOIRIS: Your Honor, I - - -

11 JUDGE RIVERA: If you don't know, you don't know.
12 It's okay.

13 MR. JOIRIS: - - - I've never - - - I - - - I'm
14 sorry to say - - - or maybe not sorry to say - - - I've
15 never been a party to a civil case, so I really couldn't
16 speak, even - - -

17 JUDGE RIVERA: Fair enough.

18 MR. JOIRIS: - - - from general experience there.
19 You know, I like to think the clerks at the Appellate
20 Division are very nice and understanding people - - -

21 JUDGE RIVERA: Yes.

22 MR. JOIRIS: - - - so I don't see why they
23 wouldn't do that. And in general, I think courts tend to
24 be more forgiving of your pro se litigant than they are of
25 people like us who are supposed to know what we're doing.



1 JUDGE RIVERA: Except if you got those two
2 notices.

3 MR. JOIRIS: Well, nobody's perfect.

4 JUDGE RIVERA: That's true.

5 MR. JOIRIS: So I do think here, you know, just
6 getting back to the overall 30.30 issue. I think under
7 Keynesian styles, it's incredibly cut and dry. Frankly,
8 even if it weren't, the general constructional definition
9 of a day - - - even if we didn't have styles saying we're
10 applying the general construction law to 30.30 time limits,
11 the general construction law definition of a day - - - as a
12 calendar day - - - "midnight to midnight" - - - that's the
13 common meaning of a day. A day is a day is a day. So if
14 the legislature meant to say something else, it would have.
15 I think, under styles, again, it's really that simple. We
16 have not only here's what the words mean, but here's what
17 the court has already said the words mean.

18 I think to the extent - - - well, I'll keep on
19 addressing the EDDS rules issue. The defendant's
20 interpretation would make EDDS - - - I - - - frankly, worse
21 than useless because it would mean - - - well, it would
22 apply to any party using that system in any case, including
23 whether it's pro se civil litigants up against a statute of
24 limitations, whether it's the People filing 30.30 statement
25 of readiness, whether it's the defense - - - you know, I

1 think it's a five-day time limit under 190.50 if you're
2 going to move to dismiss an indictment under that
3 provision. Almost every litigant, almost all the time is,
4 in fact, operating under a deadline.

5 So if EDDS is really just, you know, sending it
6 into the void and cross your fingers and hope that
7 something happens, that would mean that, well, at least the
8 lawyers would know the system isn't worth using, and it
9 would just become a trap for unaware, unknowing, pro se
10 litigants.

11 CHIEF JUDGE WILSON: Do you know if your office
12 has filed statements of readiness on NYSCEF after 5?

13 MR. JOIRIS: So NYSCEF is just in the process - -
14 - I believe the NYSCEF criminal.

15 CHIEF JUDGE WILSON: Yep.

16 MR. JOIRIS: Rolling out NYSCEF to criminal
17 courts is just in the process of happening in Kings County.
18 So I think, under NYSCEF, obviously, we wouldn't have - - -
19 even under the defense reading, we wouldn't have this issue
20 with the filing system rules. I believe that that would be
21 entirely appropriate under 30.30, and I believe that there
22 would be no dispute as to - - - to the filing time as - - -
23 under the NYSCEF rules, but we haven't yet started using
24 that case. It's the - - - they're just - - - they're just
25 kind of spinning that wheel up.



1 CHIEF JUDGE WILSON: In the - - - yep.

2 MR. JOIRIS: And you know, I think, frankly, to
3 the defendant's point, that in passing 30.30, the
4 legislature couldn't have possibly contemplated that the
5 People might announce ready on the last day. They gave us
6 ninety days. We don't want to use all ninety - - - I mean,
7 the incentives of 30.30 are such that if you can announce
8 ready on day eighty-nine, you won't wait until day ninety.
9 If you announce ready on day eighty-eight, you won't wait
10 until day eighty-nine. You don't want to announce ready
11 and then have zero days left of wiggle room.

12 In some cases, unfortunately, we do have to use
13 all ninety days, as in this one. Some cases we don't. The
14 number of cases that have a fairly late-in-the-game
15 statement of readiness obviously has increased since the
16 passage of 245 since we're - - - you know, trial assistants
17 are, obviously, not only having to make sure they have a -
18 - - essentially, a triable case and a triable accusatory
19 instrument, but to gather all the voluminous discovery.

20 So - - - and obviously, you can see in this case,
21 the information was filed on June 22nd. That wasn't what
22 was delaying it. It was the issue of gathering discovery.
23 So I think, in terms of statutory interpretation, again,
24 ninety days means ninety days. And I do think that is - -
25 - that's - - - it's about as - - - about as straightforward

1 as it can get.

2 The fact that now the court has rolled out
3 electronic filing systems, the court can do that, right?
4 Just as the court could have said, well, now our clerk's
5 office is going to be open until 6, or now, clerk's office
6 is going to close at 4:30. The court could have said,
7 well, you know what, now, we have an afterhours drop box,
8 so you can just leave things - - - hard copy - - -
9 technology that was perfectly available in the 1970s when
10 30.30 was written; in 1985, when Keynesian was decided,
11 there would have been no problem with the court doing that
12 either.

13 So I think nothing here about the fact that it
14 was via EDDS, and nothing here about the fact that it was
15 an electronic filing, really turns this into some sort of
16 novel situation that shouldn't be allowed for under 30.30.

17 If there are no further questions.

18 CHIEF JUDGE WILSON: Thank you.

19 MR. JOIRIS: Thank you.

20 MR. GREENBERG: Thank you very much. So to Judge
21 Rivera, to your question about what happens if a clerk says
22 not everything's here, fix it and come - - - fix it and
23 come back, in our opening brief, we did cite federal rules
24 which say that if something - - - if there's a defect in a
25 filing, a clerk has the power to say, fix it and come back,

1 and it'll be deemed filed at the - - - at the time when you
2 first attempted to file it. No such language appears in
3 the EDDS rule. The only language that appears in the rule
4 is that the document shall not be deemed filed until it's
5 reviewed by a clerk. And again, just to go back to the
6 warnings, the warnings make clear that a party is using
7 this system at their peril. It may not be the best system
8 of - - - but the language is clear, and the warnings make
9 it clear - - -

10 JUDGE GARCIA: What does deemed mean in that
11 sentence? Why isn't - - -

12 MR. GREENBERG: Well, I think - - - yes, Your
13 Honor?

14 JUDGE GARCIA: - - - what people reading - - - it
15 isn't filed until - - - what's deemed - - -

16 MR. GREENBERG: Deemed, in that context, Your
17 Honor - - - I'm sorry for interrupting.

18 JUDGE GARCIA: No. No, please.

19 MR. GREENBERG: Means that the - - - once the
20 clerk reviews it, that that is the act that causes the
21 document to be deemed filed. It doesn't - - - it's not a
22 grant of authority - - -

23 JUDGE GARCIA: But why isn't it just filed? It
24 won't be filed until - - - that would be bad. It won't be
25 filed until the clerk approves, and then you know, hey,



1 when the clerk approves, it's filed, but it's deemed filed.
2 Seems to me to indicate deemed as the time you actually
3 brought it.

4 MR. GREENBERG: Well, to that - - - to your
5 point, Your Honor, we cited a number of rules and statutes
6 in our brief that showed that when a court or a legislature
7 wants to say that something can be deemed to occur before
8 something else, it will be explicit in saying - - - there
9 are rules that say a document that is submitted at X time
10 and then determined to have defects that are later fixed
11 will be deemed to have actually been filed earlier, as long
12 as the defects are fixed.

13 JUDGE RIVERA: Yeah. But your - - - as several
14 people have been asking you - - - and as he's argued, of
15 course - - - your interpretation would render this system
16 practically useless.

17 MR. GREENBERG: It's not useless, Your Honor,
18 because it still provides a more convenient way for parties
19 to send documents to courts, perhaps not near a deadline
20 where time is really of the essence, but at other times
21 during the litigation it still could be more convenient.

22 And the last point I wanted to make was that my -
23 - - my adversary talks about courts that have irregular
24 hours that aren't open at all times of the day, that aren't
25 open on all days of the week. That was a problem that

1 always existed. Prosecutors were still able to comply with
2 their obligation to be ready for trial. And the fact that
3 there is now a way to send documents electronically didn't
4 somehow create a problem that didn't previously exist.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. GREENBERG: Thank you, Your Honor.

7 (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. Licius (Richecarde), No. 80 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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