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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

GALINDO (CARLOS).

NO. 2

Appellant.

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20 Eagle Street  
Albany, New York  
January 6, 2026

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:

HANNAH B. GLADSTEIN, ESQ.  
THE LEGAL AID SOCIETY  
Attorney for Appellant  
49 Thomas Street  
New York, NY 10013

CHRISTOPHER LARICOSA, ESQ.  
QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE  
Attorney for Respondent  
8002 Kew Gardens Road  
Kew Gardens, NY, 11415

Chrishanda Sassman-Reynolds  
Official Court Transcriber

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

3 MS. GLADSTEIN: Good afternoon.

4 CHIEF JUDGE WILSON: Afternoon.

5 MS. GLADSTEIN: Legal Aid Society, by Hannah  
6 Gladstein for Mr. Galindo. I'd like to reserve three  
7 minutes for rebuttal, please.

8 CHIEF JUDGE WILSON: Yes.

9 MS. GLADSTEIN: In this case, the defense put  
10 forth credible evidence that Mr. Galindo was fast asleep  
11 behind the wheel of a car in the middle of the night that  
12 was stuck in a snowbank outside his family's home, with the  
13 engine on, the heat on, the radio on, and the transmission  
14 consistently in park.

15 Mr. Galindo and his son both testified credibly  
16 that his only purpose for being in the car was to listen to  
17 music by himself, before heading back inside to go to  
18 sleep, and he had no intent to move the car.

19 The prosecution contended that Mr. Galindo had  
20 earlier driven the car while drunk, parked too close to a  
21 hydrant, and was sitting there because he intended to move  
22 the car again.

23 So defense counsel proposed a jury instruction  
24 that got right to the heart of the question that the jury  
25 had to answer in this case, which was - - - the language in

1 the instruction, was, you must find more than that he  
2 merely occupied the motor vehicle with the motor running.

3 JUDGE SINGAS: So is that the error that you're  
4 saying exists here that the judge didn't adopt the  
5 defendant's proposed charge, or that the judge misread the  
6 charge, or that the CJI is wrong?

7 MS. GLADSTEIN: The error is that the judge  
8 refused to deliver this charge. And what resulted from  
9 that error was that the jury misunderstood the CJI  
10 instruction in exactly the way that this charge attempted  
11 to head off. Because we see from the note - - - which was  
12 not read verbatim into the record, unfortunately - - - but  
13 what we see from the note, if you read the entire note,  
14 including the question which was not read, is that the jury  
15 misinterpreted the CJI instruction as allowing a finding of  
16 operation, either if you have intent to move the vehicle or  
17 if the engine is running.

18 JUDGE RIVERA: Could you develop the intent to  
19 move the vehicle at some period after first turning it on?  
20 You could turn it on, not with the intent of moving it just  
21 to sit there and warm up?

22 MS. GLADSTEIN: Yes.

23 JUDGE RIVERA: Okay. But that's not what the  
24 charge - - - the proposed charge says. So why is this  
25 charge correct? The proposed charge.

1 MS. GLADSTEIN: The proposed charge is correct in  
2 the ways that materially matter in this case. Whether when  
3 he formed the intent specifically - - -

4 JUDGE RIVERA: You must find beyond a reasonable  
5 doubt that he started the motor for the purpose of putting  
6 the automobile into motion, and you just told me you don't  
7 need to do that.

8 MS. GLADSTEIN: That is within the scope of the  
9 entire instruction we would submit. And just an isolated  
10 technical error that the court could have corrected. The  
11 People did not object to that language below.

12 JUDGE RIVERA: But the court could have rejected  
13 it because of that error. No?

14 MS. GLADSTEIN: The court - - - that error is not  
15 germane to the case. The People's position - - -

16 JUDGE RIVERA: But the judge could have decided I  
17 don't want to use this language, I think that's error - - -  
18 that's erroneous, and I think it's confusing. I prefer  
19 something else.

20 MS. GLADSTEIN: A judge could. What a judge also  
21 could have done in this case is delivered this language in  
22 addition to the CJI instruction.

23 The point of this instruction was to get before  
24 the jury the language, you must - - -

25 JUDGE TROUTMAN: But the judge does have

1 discretion with respect to the charges, correct? Unless  
2 there is a mandatory requirement of a specific charge - - -  
3 CJI charge?

4 MS. GLADSTEIN: The judge has discretion, but  
5 this court has said in cases such as People v. J.L., that  
6 when you view the facts in the light most favorable to the  
7 defense, if the - - - if there is a reading of the facts  
8 that support the charge, the discretion of the judge - - -

9 JUDGE RIVERA: But the judge was - - -

10 MS. GLADSTEIN: - - - to deny the charge is quite  
11 - - -

12 JUDGE RIVERA: But the judge was willing to give  
13 the charge, just not the language that was proposed. And  
14 you're admitting that the proposed language included an  
15 error. So how has the judge made an error to decline to  
16 give a proposed charge that has an error?

17 MS. GLADSTEIN: The judge could have amended the  
18 language and excised that portion, which would not have  
19 done any - - -

20 JUDGE RIVERA: How is that - - -

21 MS. GLADSTEIN: - - - damage.

22 JUDGE RIVERA: How is that different from the  
23 charge that the judge decided to give?

24 MS. GLADSTEIN: Well, the charge that the judge  
25 decided to give is a confusingly worded charge that is

1 subject to misinterpretation under the facts - - -

2 JUDGE TROUTMAN: Did the defense - - -

3 MS. GLADSTEIN: - - - of this case.

4 JUDGE TROUTMAN: - - - ask the judge to excise  
5 out the mistake?

6 MS. GLADSTEIN: No. No. She did not.

7 JUDGE TROUTMAN: And the judge was supposed to  
8 sua sponte do that; is that what you're suggesting?

9 MS. GLADSTEIN: Well, at the point when the judge  
10 decided this issue, the judge was aware that this issue of  
11 operation - - - not when he formed the intent, not the  
12 clause that we're discussing now, but that he must be doing  
13 more than operate the motor vehicle. Defense had made  
14 clear even before jury selection that this was the critical  
15 issue in the case.

16 She told the judge, even before they picked a  
17 jury, that she had a proposed jury instruction. She  
18 provided this language to the judge - - -

19 JUDGE TROUTMAN: But that's the point; proposed  
20 jury instruction. And as Judge Rivera just pointed out,  
21 the - - - it's up to the court to determine if it's  
22 appropriate, and if it's confusing, judges generally don't  
23 give them.

24 MS. GLADSTEIN: Yes. But what ended up happening  
25 here instead is that the language that the judge did read,

1 the standard charge, was confusing - - -

2 JUDGE RIVERA: Did counsel - - -

3 MS. GLADSTEIN: - - - in exactly the way - - -

4 JUDGE RIVERA: Did counsel inform the judge that  
5 the - - - the charge that the judge was going to give, and  
6 that they gave, was confusing?

7 MS. GLADSTEIN: Well, counsel submitted a  
8 proposed charge, which then - - -

9 JUDGE RIVERA: Right.

10 MS. GLADSTEIN: - - - the judge denied.

11 JUDGE RIVERA: Right.

12 JUDGE HALLIGAN: I thought that that - - - that  
13 happened first, and then the judge rejected that charge and  
14 said that the judge was going to - - - the court was going  
15 to give the standard CJI charge instead. Right?

16 MS. GLADSTEIN: Yes.

17 JUDGE HALLIGAN: Okay. So was there any further  
18 inquiry, suggestion, or objection from defense counsel  
19 after the judge stated that the standard CJI charge would  
20 be given?

21 MS. GLADSTEIN: No. There wasn't at that time.  
22 And then what ended up happening is that the judge gave the  
23 CJI charge. The jury returned a note that indicated that  
24 they had misheard the CJI charge in exactly the way that  
25 this charge was intended to address, but defense counsel

1 was prevented from - - - defense counsel - - - the judge  
2 did not read that note verbatim into the record.

3 JUDGE RIVERA: So now this is your other argument  
4 about the jury note?

5 MS. GLADSTEIN: Yes.

6 JUDGE RIVERA: So go ahead about the jury note.

7 MS. GLADSTEIN: So the jury asked a question.  
8 That question was, are both correct? And the answer to  
9 that question needed to be no.

10 But defense counsel never heard that question.  
11 The judge did not read that question into the record. And  
12 so defense counsel was prevented from providing the input  
13 that O'Rama and its progeny.

14 JUDGE RIVERA: If a trial judge does not read the  
15 note verbatim, is that always an O'Rama?

16 MS. GLADSTEIN: Yes. This court's - - - this  
17 court has been clear that O'Rama requires the actual  
18 precise content of the note.

19 JUDGE HALLIGAN: Is that really true in every  
20 case? So suppose the judge substitutes "the" for "a" or  
21 something along those lines? I took you to be arguing that  
22 the omission here had particular significance given the  
23 context. But now it sounds to me like you're arguing for a  
24 bright-line rule that anything other than a hundred percent  
25 verbatim reading is an O'Rama error, period?

1 MS. GLADSTEIN: Well, I think verbatim is the  
2 rule, but here it was violated in a nontechnical way. I  
3 mean, this - - - I think that this case really crystallizes  
4 why the O'Rama rule is so important, because here the piece  
5 of the note that was omitted was of such importance to  
6 defense counsel's understanding of where the jury was  
7 coming from and what an adequate response would have been.  
8 And defense counsel - - -

9 JUDGE SINGAS: But why doesn't the note before  
10 that "are they correct" convey the same meaning? Why  
11 couldn't the defense attorney make the same argument?  
12 Because basically the jury is saying, look, there's a  
13 portion that's stated operation is intent to move the  
14 vehicle. There was, however, another segment that states  
15 operation blah, blah, blah. I mean, I think the cues here  
16 from the jury are very clear, even without the "are they  
17 both correct"?

18 They're saying you said one thing. However, you  
19 also said something else. I think I - - - that was  
20 sufficient to allow the defense attorney to make the  
21 arguments that they needed to make. Or like, what  
22 additional arguments the - - - do you think could have been  
23 made based off the "are they both correct"?

24 MS. GLADSTEIN: Well, I think that if you don't  
25 hear the "are both correct", to your point, I think that

1 the - - - the two sort of phrases that the jury laid out  
2 before asking that question could also have been  
3 interpreted as just wanting to be sure that they had heard  
4 the language correctly. I think that that question, "are  
5 both correct", crystallizes that they saw these as two  
6 potentially discrete requirements, either one of which  
7 would have been sufficient.

8 And I don't think that without hearing that  
9 question, the issue is - - - is put as crisply as once you  
10 know.

11 JUDGE TROUTMAN: And what is - - -

12 MS. GLADSTEIN: I mean that that makes it obvious  
13 that this is what they - - -

14 JUDGE TROUTMAN: - - - the judge's responsibility  
15 when the judge receives the note from the jury?

16 MS. GLADSTEIN: The judge's - - - the judge's  
17 responsibility is very simply to read the note word-for-  
18 word into the record. That's it.

19 JUDGE TROUTMAN: And that is - - -

20 MS. GLADSTEIN: And provide the defense an  
21 opportunity to - - -

22 JUDGE TROUTMAN: And that's important, why?

23 MS. GLADSTEIN: And that's important for exactly  
24 the reason that we see here. Because defense counsel,  
25 without knowing - - - if you go back to a O'Rama itself, in

1 fact, the court speaks about how even just understanding  
2 the tone of the jury's note can provide important feedback  
3 for defense counsel about how to formulate the best  
4 possible response.

5 And here, had defense counsel heard that  
6 question, defense counsel could have said, we can't just  
7 read them the same language that has them entirely  
8 confused.

9 JUDGE TROUTMAN: So are we left to speculate,  
10 then, as to how the omission impacted defense?

11 MS. GLADSTEIN: Well, that's why the verbatim  
12 rule exists, because this court has made clear we don't  
13 speculate. We're not going to guess at what might have  
14 been said off the record. That's why the bright-line rule  
15 has been set forth by this court and was violated here in a  
16 really meaningful way.

17 JUDGE GARCIA: There's two traffic infractions  
18 left here, right? That's - - -

19 MS. GLADSTEIN: Yes.

20 JUDGE GARCIA: - - - all that's left of this?

21 Assume there's an O'Rama error, it would go to  
22 both of those infractions?

23 MS. GLADSTEIN: It goes to the 509.

24 JUDGE GARCIA: So just one?

25 MS. GLADSTEIN: Yes. The consumption of alcohol

1 in a motor vehicle does not involve this question of what  
2 is operation of a motor vehicle.

3 JUDGE GARCIA: And that would be the same for  
4 your first argument as well? Like your operation argument,  
5 right, has to be that doesn't apply to the second traffic  
6 infraction.

7 MS. GLADSTEIN: It applies to the 509.

8 JUDGE GARCIA: I'm sorry?

9 MS. GLADSTEIN: It does not apply to the second  
10 traffic infraction.

11 CHIEF JUDGE WILSON: So you're not asking us to  
12 overturn the consumption charge?

13 MS. GLADSTEIN: We're asking for Burwell relief  
14 and dismissal of the entire accusatory instrument because -  
15 - -

16 CHIEF JUDGE WILSON: Well, why would - - -

17 MS. GLADSTEIN: - - - these are really de minimis  
18 offenses at this point. And this is our second time before  
19 this court - - - thank you.

20 CHIEF JUDGE WILSON: Welcome back.

21 MS. GLADSTEIN: But just the amount of court  
22 resources versus the significance of what remains of this  
23 case - - -

24 JUDGE GARCIA: But if we don't disturb one  
25 infraction, why would we dismiss it if there's no legal

1 basis? You're arguing for disturbing the consumption  
2 conviction on that infraction. Why would we throw that  
3 out?

4 MS. GLADSTEIN: Well, I believe that that's how  
5 that would - - - is what would be required under People v.  
6 Burwell. Because there just is no further - - -

7 CHIEF JUDGE WILSON: But the - - - weren't the  
8 charges in Burwell interrelated to some degree?

9 MS. GLADSTEIN: Perhaps. But these are - - -  
10 these are traffic infractions that - - - I - - -

11 CHIEF JUDGE WILSON: Yeah. Okay.

12 Thank you.

13 MS. GLADSTEIN: I think my light is on, so.

14 MR. LARICOSA: May it please the court. Chris  
15 Laricosa for the Office of Melinda Katz, Queens County DA  
16 for respondent. Good afternoon, Your Honors.

17 CHIEF JUDGE WILSON: Good afternoon.

18 JUDGE TROUTMAN: What is the responsibility of  
19 the court when they - - - when the court receives a note  
20 from the jury?

21 MR. LARICOSA: Generally, the court should read  
22 the entire note. But this court has not always found a  
23 mode of proceedings error when the court has failed to do  
24 that.

25 CHIEF JUDGE WILSON: Could the court hand the

1 note to counsel and get on the record an acknowledgment  
2 that counsel has read the note? Would that be  
3 satisfactory?

4 MR. LARICOSA: Yeah. That - - - that's not on  
5 this record. The court simply - - -

6 CHIEF JUDGE WILSON: No, no. I'm just asking, is  
7 that an alternate procedure? If you don't feel like  
8 reading, you can put on the record? I've shown the note to  
9 counsel. Counsel, do you agree you've seen the note? That  
10 would work?

11 MR. LARICOSA: I don't see the problem with that.

12 CHIEF JUDGE WILSON: You could mark it as a court  
13 exhibit. Say, I've marked the juror note number 3 as Court  
14 Exhibit Number 4, made copies available to counsel. That  
15 would be sufficient?

16 MR. LARICOSA: Yeah. I mean, O'Rama sets forth -  
17 - -

18 JUDGE RIVERA: Some judges do do that?

19 MR. LARICOSA: Excuse me?

20 JUDGE RIVERA: Some judges do do that?

21 MR. LARICOSA: Some judges do that because the  
22 O'Rama procedure has suggested you can read the whole thing  
23 on the record. But if you get counsel's confirmation that  
24 they looked at the note, then that really should be enough.

25 I mean, it's always better to read every last

1 word in a note, but I don't think the three words that were  
2 left out here had any consequence - - -

3 JUDGE TROUTMAN: But the point of the note from  
4 the jury, before that note comes out, the jury is  
5 instructed by the court, if you have questions, put them in  
6 a note signed by your foreperson and send it out, and the  
7 court's going to address it. If it's not made clear the  
8 information, the - - - if you're not providing the  
9 information to all concerned as to what their issue is, how  
10 can it be meaningfully responded to?

11 MR. LARICOSA: I mean, I think the court did  
12 provide all the information. It read the note verbatim up  
13 until that point.

14 JUDGE RIVERA: Yeah. But if they're not - - -

15 MR. LARICOSA: All they asked is are those - - -

16 JUDGE RIVERA: - - - if you're not reading the  
17 actual question - - -

18 MR. LARICOSA: Well - - -

19 JUDGE RIVERA: - - - that's the jury's question.

20 MR. LARICOSA: But what the jury - - -

21 JUDGE RIVERA: That's what's not read. The rest  
22 of it is just statement.

23 MR. LARICOSA: But the jury first asked for  
24 clarification as to the first three counts. Asking at the  
25 end "are both correct", it's just along the same lines of

1 asking for - - -

2 JUDGE RIVERA: No. It's - - -

3 MR. LARICOSA: - - - clarification.

4 JUDGE RIVERA: - - - explaining what is the  
5 problem that they are finding confusing.

6 MR. LARICOSA: But they - - - they didn't  
7 indicate - - -

8 JUDGE RIVERA: It's nonsensical not to read the  
9 actual jury - - - the question that they have posed.

10 MR. LARICOSA: I think it's better, but it's not  
11 nonsensical. It's not nonsensical at all. They just  
12 asked, "are they correct"? They correctly stated the  
13 elements without - - - without even having the written  
14 charge before them.

15 JUDGE TROUTMAN: But doesn't it suggest "are they  
16 both correct" we're confused, and adding the question  
17 emphasizes that there is confusion - - - confusion there,  
18 and judge, help us.

19 MR. LARICOSA: But the problem is - - -

20 JUDGE RIVERA: If all you say is clarify, and all  
21 you do is reread what you - - - what was already read to  
22 them, it's not answering the question because their problem  
23 isn't I didn't hear you. The problem is I did hear you. I  
24 heard this and I heard this.

25 MR. LARICOSA: Right. Correct in stating - - -

1 JUDGE RIVERA: Correct? Because they sound like  
2 their intention. The jury is communicating that.

3 JUDGE HALLIGAN: Is it - - -

4 JUDGE RIVERA: And if you don't read that  
5 question, how does counsel know what kind of answer it  
6 might recommend to the judge?

7 MR. LARICOSA: But my whole point is that by  
8 saying "are both correct", you're essentially asking for  
9 the first thing you ask for clarification - - -

10 JUDGE HALLIGAN: But why is that so - - -

11 MR. LARICOSA: - - - of whether these were  
12 correct elements. The jury - - - I'm sorry, Judge. Go  
13 ahead.

14 JUDGE HALLIGAN: Why isn't the question something  
15 that goes to the interplay between the two, as opposed to  
16 clarify one and then clarify two completely distinctly?  
17 That - - - that seems to me to suggest I'm concerned about  
18 how they interrelate, which is a different concern than  
19 simply what does each one mean in isolation?

20 MR. LARICOSA: That's a great way of putting it.  
21 But the problem is the jury didn't put it that way.

22 JUDGE HALLIGAN: Well, the jury did ask - - -

23 MR. LARICOSA: They said - - -

24 JUDGE HALLIGAN: Well, the jury did ask the  
25 question which was not read. And what I'm asking is why

1 doesn't that question communicate to counsel that the  
2 concern is the interplay between the two? Not what does  
3 each one standing alone mean?

4 MR. LARICOSA: Because the jury could have easily  
5 said, judge, we're confused. Can we find guilt based upon  
6 one element or the other? Why didn't they say that?

7 JUDGE SINGAS: Where would you draw that line?

8 MR. LARICOSA: It's - - - it's very simple to say  
9 that.

10 JUDGE SINGAS: But where would you draw that  
11 line? I mean, we've been very clear that judges should  
12 read the notes as they get them from the jury, or put them  
13 into evidence, or hand them to counsel. I mean, we  
14 couldn't - - - we can't be any clearer. But where do you  
15 draw the line between a - - - distinguishing between saying  
16 "a" versus "the" and something like this when they're  
17 asking a question?

18 MR. LARICOSA: I mean if it's substantive like in  
19 Walston where intent was knocked out.

20 JUDGE SINGAS: Okay. So why is this not  
21 substantive?

22 MR. LARICOSA: Because asking if something is  
23 correct is the same as saying - - -

24 CHIEF JUDGE WILSON: But it - - - but it - - -

25 MR. LARICOSA: - - - did we recite the elements

1 correctly?

2 CHIEF JUDGE WILSON: But it's not - - -

3 MR. LARICOSA: Is that - - -

4 CHIEF JUDGE WILSON: - - - it's not is something  
5 correct, though?

6 MR. LARICOSA: - - - are those the elements?

7 CHIEF JUDGE WILSON: It's "are both correct".

8 Which, at least to me, implies that they're looking at this  
9 as a disjunctive set of conditions, not conjunctive.

10 That's what the - - - the "both" implies to me, which, I  
11 think, you would concede is wrong. Right?

12 Intent is an - - -

13 MR. LARICOSA: Well, I mean, yeah.

14 CHIEF JUDGE WILSON: Intent is an element?

15 MR. LARICOSA: They used that phrase in the  
16 disjunctive, it's - - -

17 CHIEF JUDGE WILSON: Intent - - - intent is an  
18 element, right?

19 MR. LARICOSA: Right, right.

20 CHIEF JUDGE WILSON: Right.

21 MR. LARICOSA: Purpose is an element.

22 CHIEF JUDGE WILSON: And don't you read the "are  
23 both correct" to mean can we show intent and find him  
24 guilty? Or can we also just show the engine is on and find  
25 him guilty?

1 MR. LARICOSA: I think you have - - -

2 CHIEF JUDGE WILSON: Are both correct?

3 MR. LARICOSA: I think you have to read way too  
4 much into the note to get to that point. This - - - this  
5 is a very - - - I've seen a lot of jury notes.

6 JUDGE HALLIGAN: Isn't that the focus of - - -

7 MR. LARICOSA: This is a very articulate - - -  
8 sorry. Go ahead.

9 JUDGE HALLIGAN: Isn't that the purpose of the  
10 rule that it be read verbatim?

11 MR. LARICOSA: Sure. But that doesn't - - -

12 JUDGE HALLIGAN: Some questions are clearer than  
13 others.

14 MR. LARICOSA: Right.

15 JUDGE HALLIGAN: And having it read is what  
16 allows counsel to make an assessment of what it might mean.

17 MR. LARICOSA: I'm not here saying that the judge  
18 did their job one hundred percent and should be  
19 congratulated. Every judge should read should read every  
20 word - - -

21 JUDGE TROUTMAN: Judges aren't expected to be  
22 perfect.

23 MR. LARICOSA: Right. Exactly.

24 JUDGE TROUTMAN: But there are certain things,  
25 like reading the note. The judge doesn't get to reauthor

1 the note. It's the - - - and the judge even instructs the  
2 jury. You have questions, write them down in a note.

3 But it serves dual purpose. It's to clarify it  
4 for the jury. But the attorney and the defendant - - -  
5 both attorneys have the right to know what the actual  
6 question is. Because if you don't know, then you don't  
7 necessarily give an accurate response to the court as to  
8 how the jury should be advised when they return to the  
9 court.

10 MR. LARICOSA: But at the end of the day, we're  
11 talking about three words that were just asking - - -

12 JUDGE HALLIGAN: Three words.

13 JUDGE RIVERA: That both - - - but the - - -

14 MR. LARICOSA: We can't read this much into it -  
15 - -

16 JUDGE RIVERA: But the three words - - -

17 JUDGE RIVERA: That they were - - -

18 JUDGE RIVERA: Yes. You can.

19 MR. LARICOSA: Sorry, Judge.

20 JUDGE RIVERA: The three words are the question  
21 that are explaining the nature of the clarification they  
22 are looking for.

23 MR. LARICOSA: Right.

24 JUDGE RIVERA: That's the point.

25 MR. LARICOSA: And the nature of the clarify - -

1 -

2 JUDGE RIVERA: That's why I don't understand why  
3 the judge wouldn't read that question. It explains what  
4 they need clarified. Not sort of as a general concept, oh,  
5 please clarify the law for us. It - - - it's telling the  
6 judge this is what we need clarified.

7 MR. LARICOSA: I think perhaps - - - I'm not  
8 going to speak for the judge - - - maybe she just felt it  
9 was de minimis. That they were just asking for  
10 clarification.

11 JUDGE TROUTMAN: And Counsel, that is why - - -  
12 because judges are concerned about missing a word, they go  
13 through the procedure of reading the note, giving it to the  
14 attorneys, and getting an affirmation on the record that  
15 they, the defendant, all have had an opportunity to review  
16 same. So it is important.

17 Three words. One word. It depends on what that  
18 word is, can in fact be important. It's not a good  
19 argument, I don't believe, to just write off a word and  
20 say, well, they didn't need that. They put it in their  
21 note.

22 MR. LARICOSA: Well, yes - - -

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

24 MR. LARICOSA: - - - but what's - - -

25 JUDGE RIVERA: Let me ask you this - - -



1 MR. LARICOSA: We have to ask that too.

2 JUDGE RIVERA: What what if, instead of writing  
3 "are both correct", they said what's correct?

4 MR. LARICOSA: Just what's correct?

5 JUDGE RIVERA: Yes.

6 MR. LARICOSA: Just those words?

7 JUDGE RIVERA: Could the judge have chosen not to  
8 read that?

9 MR. LARICOSA: I don't really know. The judge  
10 could have asked for clarification because that doesn't  
11 sound very clear to me.

12 CHIEF JUDGE WILSON: How about is - - -

13 MR. LARICOSA: "Are both correct" is clear to me  
14 - - -

15 CHIEF JUDGE WILSON: How about is - - -

16 MR. LARICOSA: - - - are they correct statements?

17 CHIEF JUDGE WILSON: How about how about is  
18 either correct? Suppose that had been the three words?

19 MR. LARICOSA: Is either correct?

20 CHIEF JUDGE WILSON: Yeah.

21 MR. LARICOSA: I mean, a different phraseology,  
22 the court could have clarified it.

23 CHIEF JUDGE WILSON: No. I mean is that - - -

24 MR. LARICOSA: But here we don't have that - - -

25 CHIEF JUDGE WILSON: So that's - - -



1 MR. LARICOSA: "Are both correct?" The answer's  
2 yes, they are correct.

3 CHIEF JUDGE WILSON: No, I'm - - -

4 MR. LARICOSA: That's it.

5 CHIEF JUDGE WILSON: I'm asking whether that  
6 would be an O'Rama violation, if you - - -

7 MR. LARICOSA: If "are either correct?"

8 CHIEF JUDGE WILSON: Is either correct?

9 MR. LARICOSA: I mean, is either one correct?  
10 Basically the answer is still yes, both of them are  
11 correct, either is correct.

12 CHIEF JUDGE WILSON: So I'm sorry. So that's not  
13 an O'Rama violation if it hadn't been admitted?

14 MR. LARICOSA: I - - - I don't know that that  
15 would.

16 CHIEF JUDGE WILSON: Okay. How about is either  
17 sufficient?

18 MR. LARICOSA: That's now - - - using the word  
19 "sufficient" is getting a little bit closer to sufficiency,  
20 as in is that sufficient for a conviction? That may be a  
21 more borderline case. But again, we don't have that here.

22 CHIEF JUDGE WILSON: I understand.

23 MR. LARICOSA: They set forth the elements. They  
24 asked, are they correct? Answer is yes.

25 JUDGE HALLIGAN: If we were to - - -

1 MR. LARICOSA: The answer is yes.

2 JUDGE HALLIGAN: If we were to disagree with you,  
3 what's your position on the relief that would be  
4 appropriate, and the Burwell issue?

5 MR. LARICOSA: I mean, you know, Burwell is one  
6 case. Another case this court decided was Conceicao, where  
7 there was a criminal possession of a controlled substance  
8 in the seventh-degree charge, and this court found the  
9 penological purpose to sending the case back.

10 You know, here we have a crime. Although it's a  
11 violation, it's still unlicensed operation of a motor  
12 vehicle, involves public safety. I think that there is a  
13 penological purpose to sending this back. You know, even  
14 more so, even though it's a lesser charge than in  
15 Conceicao.

16 And I think that's the last case this court  
17 decided where this penological purpose argument came up.  
18 So this a penological purpose for sending a minor  
19 misdemeanor drug possession case back, why not a case like  
20 this involving operation of a motor vehicle?

21 CHIEF JUDGE WILSON: Well, now we're down to a  
22 traffic infraction instead of a minor misdemeanor.

23 MR. LARICOSA: Down to a traffic infraction.  
24 Right. And second time before this court.

25 JUDGE RIVERA: Do you want to address the first

1 issue?

2 MR. LARICOSA: Yeah. No. Sure. I mean, that -  
3 - - the problem with the first claim is that it's  
4 unpreserved. You know, all counsel did submit is a charge.  
5 Right?

6 CHIEF JUDGE WILSON: Well, why isn't that enough  
7 to preserve it?

8 MR. LARICOSA: What's been preserved, that's the  
9 question.

10 CHIEF JUDGE WILSON: Failure to give that charge.

11 MR. LARICOSA: The failure to give the charge  
12 why, though? No arguments were advanced. So it - - - it's  
13 kind of like you're operating blind. Like, why was it an  
14 abuse of discretion - - -

15 JUDGE TROUTMAN: Is the court - - -

16 MR. LARICOSA: - - - not to grant this charge?

17 JUDGE TROUTMAN: - - - required to give a charge  
18 that's - - - just because it's submitted by the defense?

19 MR. LARICOSA: No. Not at all. I think Judge  
20 Rivera hit the nail on the head. It had an element in  
21 there that's not in the law. Just based on that.

22 JUDGE TROUTMAN: And what about the suggestion  
23 the court should have just sua sponte fixed it?

24 MR. LARICOSA: Meaning fix - - -

25 JUDGE TROUTMAN: Could it?

1 MR. LARICOSA: I mean, that's - - - that's  
2 something the parties have to present. I mean, the judge  
3 can't - - -

4 JUDGE RIVERA: What if the - - -

5 MR. LARICOSA: - - - wouldn't know to do that.

6 JUDGE RIVERA: What if the proposed charge was  
7 not inaccurate, just different wording from the CJI?

8 MR. LARICOSA: I mean, the CJI is still the  
9 preferred phraseology.

10 JUDGE RIVERA: I understand. But the judge  
11 doesn't have to - - -

12 MR. LARICOSA: No. No. Not at all.

13 JUDGE RIVERA: Even if it sounded better? Even  
14 if - - - even if it sounded right, unless counsel gets up  
15 and - - -

16 MR. LARICOSA: Right.

17 JUDGE RIVERA: - - - argues, well, there's a  
18 problem with the CJI.

19 MR. LARICOSA: Right. I mean, the CJI  
20 incorporated their - - - the CJI charge incorporated their  
21 defense. You have to sit behind the wheel with the purpose  
22 of moving the car. Now that - - - that was built right in.  
23 It's not like these cases like J.L. or Medina where  
24 statutory terms weren't defined.

25 Here, you had that very statutory term in there.

1 The CJI was revised in 2008 to include that statutory term.  
2 So basically a defendant doesn't even have to ask the  
3 judge. The defendant doesn't have to say, hey, view the  
4 evidence in light most favorable to me and grant me this  
5 charge. It's already baked in there. You know, the  
6 purpose language is already there, you know.

7 Their charge beyond that, it said you have to  
8 operate with the intent to drive - - - you know. I mean,  
9 operation goes beyond driving. So that's, I think, another  
10 flaw there, you know. It can be just mere motion, just  
11 moving an inch or two.

12 It twice stated for some reason that - - - you  
13 know, the defendant cannot just occupy the vehicle. I  
14 mean, that's true. There's no reason to state it twice.  
15 So you know, these - - - these are multiple reasons why I  
16 think if this court reaches the issue, you can find that  
17 the court did not abuse its discretion in refusing to grant  
18 the requested charge.

19 CHIEF JUDGE WILSON: So what happens if he's  
20 sitting in an electric car with the heat on and it doesn't  
21 have an engine to run?

22 MR. LARICOSA: It has a battery instead.

23 CHIEF JUDGE WILSON: Well, there's a battery, but  
24 nothing's turning.

25 MR. LARICOSA: Okay.

1 CHIEF JUDGE WILSON: The battery's powering the  
2 electric heater.

3 MR. LARICOSA: Right.

4 CHIEF JUDGE WILSON: But it's not - - - car's not  
5 going anywhere, and there's nothing running, like an  
6 engine.

7 MR. LARICOSA: That's - - - that's a very  
8 interesting question, you know. And I don't really - - -  
9 you know, I - - - I think operation - - -

10 CHIEF JUDGE WILSON: How's the -

11 MR. LARICOSA: - - - that supplies the - - -

12 CHIEF JUDGE WILSON: How is the CJI instruction  
13 going to read on that, about the engine running?

14 MR. LARICOSA: Well, I mean, I think you would  
15 first need some testimony about the car itself. You don't  
16 have, like, much of a record as to how, as to the motor  
17 power of the car or the - - - the - - - the motor function  
18 of the car. So if you're going to get into an electric  
19 vehicle, you would probably need to develop the record in  
20 that respect to say, hey, you know, this is not operation  
21 or operation is a different definition when it comes to an  
22 electric vehicle.

23 JUDGE TROUTMAN: Well, what does happen when the  
24 CJI doesn't fit the particular case?

25 MR. LARICOSA: Well, when it doesn't - - -



1 JUDGE TROUTMAN: What's the court supposed to do  
2 then?

3 MR. LARICOSA: When it doesn't fit, the judge  
4 should enhance the charge either through more - - - further  
5 definitions. Or if - - - you know, a standard defense does  
6 not account for the facts of a particular case, if viewing  
7 those facts in a light most favorable to the defendant  
8 additional language is required, that language should be  
9 granted. But again, here the CJI drafters have already  
10 done the job. They already put that purpose language in  
11 there, you know.

12 It's not phrased in the disjunctive. It's not  
13 like it says - - - you know, purpose behind sitting behind  
14 a wheel is to move, or moving, or the engine's running. It  
15 - - - it's not phrased like that. It can't be interpreted  
16 like that. You know, that's why this is the preferred  
17 phrasing.

18 And again, going back to the jury note issue, I -  
19 - - I don't think there's any indi - - - the jury could  
20 have easily said that. They could have easily - - - one  
21 sentence, can we find him guilty based upon the engine  
22 running or motion? They didn't say that.

23 JUDGE TROUTMAN: But they - - -

24 MR. LARICOSA: They didn't say that.

25 JUDGE TROUTMAN: They are laypersons and - - -

1 MR. LARICOSA: True.

2 JUDGE TROUTMAN: - - - they don't get to take the  
3 charge back with them most often in our courts.

4 They're just - - - it's - - - there's an example  
5 that they give where a professor walks in the room, you're  
6 not going to be able to have a book, and at the end of it  
7 you're going to get a test. That's why juries come back  
8 and they ask the court. That's why the - - -

9 MR. LARICOSA: Right.

10 JUDGE TROUTMAN: - - - court has such an  
11 important role.

12 MR. LARICOSA: I totally agree with your example.  
13 Except here, just to read the jury note, we would like  
14 clarification on the law regarding the first three charges.  
15 There is a portion that states that operation is intent to  
16 move the vehicle. There was, however, another segment,  
17 that segment that stated that operation is if the engine is  
18 running. Are both correct?

19 That's a very articulate note written by a jury  
20 that remembered both elements. Many jury notes are almost  
21 incomprehensible. This jury actually listened and could  
22 repeat - - -

23 JUDGE TROUTMAN: I - - - I would agree - - - I  
24 would - - -

25 MR. LARICOSA: - - - the elements without it

1 written in front of them.

2 JUDGE TROUTMAN: - - - agree with you, it's a  
3 well-written question.

4 MR. LARICOSA: It's pretty good.

5 JUDGE TROUTMAN: And when they added the end "is  
6 it correct?" Emphasis added. We're confused.

7 MR. LARICOSA: But - - - but they could have said  
8 we're confused.

9 JUDGE TROUTMAN: Thank you.

10 MR. LARICOSA: They just said, did we get that  
11 right?

12 And I would also submit that this had nothing to  
13 do with the unlicensed operation because they said, how  
14 does this apply to the first three charges?

15 JUDGE RIVERA: Now, see this is - - - this is the  
16 proof in the pudding here. Because everything we're going  
17 through, if the judge had just read this question, counsel  
18 would have known, oh, there's a problem in that jury room.  
19 They have certain confusion. Let's try and resolve it,  
20 judge. It sounds like X. It sounds like Y. I propose  
21 this. I propose that.

22 MR. LARICOSA: I - - - I - - -

23 JUDGE RIVERA: But the counsel can't know unless  
24 you read the question.

25 MR. LARICOSA: I think this is way more akin to a

1 - - - a Williams situation, and we submitted that case, you  
2 know, prior to oral argument - - - than a Walston  
3 situation, where a critical term was left out.

4 In Williams, the term clarification was left out,  
5 and the exact same arguments were made. The exact same  
6 arguments. Oh, well, without knowing that term, counsel  
7 won't know what to do.

8 But this term is - - - it's - - - how is it any  
9 different from asking for clarification?

10 JUDGE RIVERA: It's not a term, it's the actual -  
11 - -

12 MR. LARICOSA: Is that correct, Judge? Yes.

13 JUDGE RIVERA: It's not - - - it's not a term.  
14 It's the actual question. It is the question.

15 MR. LARICOSA: But - - - but the question is are  
16 both correct?

17 JUDGE RIVERA: Right. And that's what - - -

18 MR. LARICOSA: And the answer is yes. It's  
19 that's simple.

20 JUDGE RIVERA: And that's what - - - but the  
21 judge didn't read that. It's great that it's simple, but  
22 the judge didn't read that.

23 MR. LARICOSA: I - - - I would still submit that  
24 it's - - - that it's de minimis. It's exactly like the  
25 first term. They use clarification. That's our position

1 on it.

2 And with that, we ask you to affirm the  
3 conviction.

4 CHIEF JUDGE WILSON: Thank you.

5 MR. LARICOSA: Thank you.

6 MS. GLADSTEIN: Just a couple of - - -

7 JUDGE RIVERA: So why isn't he correct that the -  
8 - - there's no need for the question because the simple  
9 fact of asking for clarification should have signaled to  
10 counsel that there's some lack of clarity, there's some  
11 uncertainty?

12 MS. GLADSTEIN: Well, I think - - -

13 JUDGE RIVERA: Or confusion?

14 MS. GLADSTEIN: - - - for the reasons that the  
15 court identified, which is the difference between hearing  
16 these as disjunctive versus conjunctive. I think the  
17 question clarification could have just been as - - - as we  
18 said before, asking - - - confirming that they had heard  
19 the language correctly. But it's that question puts a  
20 point on the exact nature of the jury's confusion, and what  
21 the jury needed to hear was the answer no.

22 And instead they heard the same language which  
23 they had been confused about. As we can see - - -

24 JUDGE RIVERA: Well, he says the answer was yes.

25 CHIEF JUDGE WILSON: I know. That puts a real

1 point on it, doesn't it?

2 JUDGE HALLIGAN: Why the Burwell relief? Is it  
3 simply - - - is your argument simply because of the  
4 relatively minor nature of the offense?

5 MS. GLADSTEIN: Yes. Burwell is a vehicle for  
6 this court to grant broad, equitable relief. Conceicao,  
7 which my adversary was talking about, was a misdemeanor.

8 What we have here are two traffic infractions  
9 which at this point have been litigated - - -

10 JUDGE GARCIA: But why couldn't we - - -

11 MS. GLADSTEIN: - - - quite extensively.

12 JUDGE GARCIA: Why couldn't we affirm the one  
13 infraction which this error does not affect and then  
14 dismiss as to the other, so there's nothing else to do?

15 MS. GLADSTEIN: Well, that is alternate relief  
16 that's available to this court. But Burwell - - -

17 JUDGE GARCIA: But what would be the purpose of  
18 dismissing a charge we've affirmed? Is that in any of the  
19 cases?

20 MS. GLADSTEIN: I don't have a case at hand for  
21 that, Your Honor. But Burwell does authorize this court to  
22 do that.

23 CHIEF JUDGE WILSON: He served the sentence on  
24 both; is that right?

25 MS. GLADSTEIN: He has served his sentence on

1 both.

2 JUDGE RIVERA: Was he deported?

3 MS. GLADSTEIN: Yes.

4 JUDGE HALLIGAN: And does - - - does vacating the  
5 additional charge that is not affected here have any  
6 consequence?

7 MS. GLADSTEIN: Well, in light of the fact that  
8 he is not a citizen, I think that it could have a  
9 consequence in terms of potential benefits that he might  
10 wish to seek were he to reenter the country after his  
11 removal.

12 JUDGE HALLIGAN: But I take it there are no  
13 examples that you can point us to where we've reached  
14 beyond the offenses that are implicated by whatever the - -  
15 - the argument is before the court to vacate additional  
16 convictions on other offenses that are not in play; is that  
17 right?

18 MS. GLADSTEIN: No.

19 JUDGE HALLIGAN: Okay.

20 MS. GLADSTEIN: I don't have that today.

21 I do want to just return to People v. Parker,  
22 because I do want to just reiterate in - - - in 2018 - - -  
23 Williams was in 2005, I believe - - - this court reaffirmed  
24 meaningful notice means notice of the actual specific  
25 content of the jurors' request.



1           And to this question about could the court have  
2 just sort of done enough here? Parker really foregrounded  
3 the responsibilities of the court. It speaks of the  
4 court's responsibility to create a record. And it also  
5 speaks of the core responsibility of providing counsel with  
6 notice of the precise contents of a jury note, so that  
7 counsel may participate in designing a response.

8           JUDGE RIVERA: Well, the - - -

9           MS. GLADSTEIN: And then finally, I did just - -  
10 -

11          JUDGE RIVERA: It eliminates an appellate issue  
12 and eliminates an automatic reversal. Strikes me as  
13 incentive enough for any judge to read the note verbatim or  
14 give it to counsel, either one.

15          MS. GLADSTEIN: Agreed. Agreed.

16          JUDGE RIVERA: I think it's better reading  
17 verbatim - - -

18          MS. GLADSTEIN: It would have been very simple  
19 her to comply with that rule.

20          JUDGE RIVERA: - - - than put it - - - than give  
21 it to them, but okay.

22          MS. GLADSTEIN: And then just - - - I know my red  
23 light is on. But just to respond to one final thing very  
24 quickly.

25          The People did not argue in their papers that the

1           - - - that we - - - that trial counsel had not preserved  
2           the issue of the court's refusal to give the - - - the  
3           instruction. We agree that an issue involving the  
4           sufficiency of the CJI instruction was not preserved. But  
5           when the - - - when counsel requested the instruction and  
6           the court denied it, that preserved the issue. And the  
7           People actually conceded as much in their papers. So I was  
8           surprised to hear a contrary argument in this courtroom  
9           today.

10                         And then, finally, just as far as the court's  
11           question about when is alternate language appropriate.  
12           It's our position that even if the CJI charge is  
13           technically correct, if the facts of the case give rise to  
14           a risk that a jury might misinterpret the CJI charge, under  
15           those circumstances, the defense is entitled to a charge  
16           that would eliminate the risk of misinterpretation.

17                         CHIEF JUDGE WILSON: Thank you.

18                         MS. GLADSTEIN: Thank you.

19                         (Court is adjourned)

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

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Galindo (Carlos), No. 2 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020

Date: January 12, 2026

