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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF PEOPLE,

Appellant,

-against-

No. 58

CONRADO JUAREZ; FRANCES ROBLES,

Respondent.

20 Eagle Street
Albany, New York
June 5, 2018

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Number 58, Matter of People
2 v. Juarez.

3 Counsel.

4 MS. PRINC: Your Honor, we would request two
5 minutes reserved for rebuttal.

6 CHIEF JUDGE DIFIORE: Of course you may. Please
7 take the podium.

8 MS. PRINC: May it please the court, Diane Princ
9 on behalf of the People, the appellant in this matter.

10 Your Honors, I will first discuss jurisdiction,
11 and then I will discuss the merits in the event this court
12 finds that there is jurisdiction to consider this appeal.
13 First, with - - - with respect to jurisdiction, the order
14 appealed from is a non-appealable order that arose in a
15 criminal proceeding, and it's a criminal proceeding because
16 it relates to a pending criminal action. An accusatory
17 instrument has been filed, indeed, the defendant has been
18 indicted.

19 JUDGE FEINMAN: All right. So - - - so assuming
20 that what is the statutory authorization to hear it?

21 MS. PRINC: There is no statutory authorization.

22 JUDGE FEINMAN: So in order to hear it we have to
23 create something out of whole cloth or, you know, where - -
24 - where do we get that authority? Under the Constitution
25 or someplace else? I mean - - -



1 MS. PRINC: If it's a criminal proceeding there
2 has to be statutory authorization found within the Criminal
3 Procedure Law.

4 JUDGE FAHEY: Well, but isn't the argument that
5 the case law at this point has been in place for a while
6 that allows this proceeding to go forward jurisdictionally,
7 I think the Newsday case being the most recent. And - - -
8 and on numerous Appellate Division cases - - - the most
9 prominent that sticks in my mind I think is the Marin case
10 from the Second Department that established an equitable
11 foundation for the argument that the appeal should be
12 allowed to go forward.

13 MS. PRINC: Your Honor, first with respect to
14 this court's decisions, this court has never found an
15 appealable order or deemed civil a subpoena arising after a
16 criminal action has commenced. Indeed, the two times it
17 was asked to do that in Santos and Matter of Hopes v - - -
18 or Morganthau v. Hopes, it expressly declined to do so, and
19 that is for a very important reason. The entire Criminal
20 Procedure Law is structured to limit appellant
21 proliferation in criminal actions. That is because both
22 parties, the defendant and the People - - -

23 JUDGE RIVERA: So what - - - what's the recourse
24 for a nonparty?

25 MS. PRINC: Well - - -



1 JUDGE RIVERA: I get - - - I get your point.
2 There's always the appeal process that the defendant can go
3 through. What about a nonparty?

4 MS. PRINC: A nonparty - - -

5 JUDGE RIVERA: What - - - what do they have
6 available?

7 MS. PRINC: A nonparty does have recourse.
8 First, if you look at this case, the trial court did
9 consider the merits of the - - - the motion to quash the
10 subpoena. This is a CPL 640.10 provision requiring the
11 attendance of a witness from out of state. So the court
12 determined - - - there is a judicial determination that she
13 was a material witness and that the People had set - - -
14 satisfied the three-prong showing for her test - - -
15 testimony with respect to nonconfidential news material.

16 Second, as this court has also recognized, a
17 third-party - - - if the third-party is dissatisfied with
18 the trial court's order, the third party can be held in
19 contempt, and that gives rise to an appealable order. And
20 so there will be appellate review in that circumstance.

21 JUDGE FAHEY: So basically, you're saying you've
22 got the article - - - an Article 78 and the possibility of
23 going to jail and being fined and then appealing that.

24 MS. PRINC: That is the - - - the recourse
25 available and it's - - - I'm not saying that, that's what



1 the legislature has envisioned. The legislature has not
2 granted third-party rights to appeal in these
3 circumstances, and as this court has recognized in prior
4 cases, those arguments are - - - should be directed towards
5 the legislature, not to the courts. It's not for the - - -

6 JUDGE WILSON: Well, are there - - - are there
7 prior cases involving a third party that - - - that we've
8 spoken to?

9 MS. PRINC: The - - - the Santos and the Hopes
10 decisions involve those parties, but the court did not base
11 its decision on the status of the parties before it. If
12 you look at the Santos decision, it based - - - the court
13 based its decision finding no jurisdiction on the fact that
14 a criminal action had commenced.

15 JUDGE WILSON: And the - - - and the investigate
16 - - - if the subpoena had issued in aid of a grand jury
17 investigation, it would be appealable. Do you agree with
18 that?

19 MS. PRINC: Yes. That's well-settled, and the
20 court most recently in Facebook reaffirmed that.

21 JUDGE WILSON: And where is the CPL authorization
22 for that?

23 MS. PRINC: As this Court recognized in the
24 Cunningham decision, there - - - the analytical basis for
25 that line of reasoning is peculiar, but on the basis of



1 stare decisis the court reaffirmed it.

2 JUDGE GARCIA: But isn't it also considered not a
3 civil - - - criminal proceeding, right?

4 MS. PRINC: It is. And - - -

5 JUDGE GARCIA: That's the difference? It's hard
6 to say this isn't a criminal proceeding.

7 MS. PRINC: Yes, this is a criminal proceeding.
8 It relates directly to a pending criminal action.

9 JUDGE RIVERA: Well, it - - - it's a fiction
10 because the statute's about investigations, is it not?

11 MS. PRINC: I'm sorry?

12 JUDGE RIVERA: I mean you've got - - - you've got
13 a fiction that the court has come up with. You've got an
14 exception that the court has made that's driven by a
15 particular policy, so really the question is why - - - what
16 policy is there that supports the exception here? And
17 you're arguing there is none because it's exactly as it
18 would be if there is a - - - because you've got the
19 proceeding.

20 MS. PRINC: Exactly, Your Honor. And I would - -
21 -

22 JUDGE RIVERA: Okay. But what - - - but there is
23 a countervailing policy which is about the third party
24 which is I - - - why I asked you about what recourse they
25 have, and it does sound like your recourse is they get to



1 break the law. They get to break the law, be held in
2 contempt, right, refuse to comply with an order, and maybe
3 they'll find a judge that will disagree?

4 MS. PRINC: Well, that's what this court has said
5 in the past with respect to other - - -

6 JUDGE RIVERA: Well, but the question is what we
7 have now before us, so why - - - why can't we carve out
8 again an exception the way we have before? Those - - -
9 those are all based on fictions.

10 MS. PRINC: Because this - - - there is a strong
11 policy interest in having speedy resolutions of criminal
12 trials.

13 JUDGE RIVERA: Well, why doesn't what you've
14 suggested slow it down anyway?

15 MS. PRINC: That is what the - - - that is what
16 the legislature has envisioned.

17 JUDGE RIVERA: So - - - so let's go through what
18 you say is - - - is available to them. So they refuse - -
19 - the journalist refuses to turn it over. Held in
20 contempt; is that what you're saying?

21 MS. PRINC: If they - - -

22 JUDGE RIVERA: How would that work? Just walk me
23 through it. How would that work?

24 MS. PRINC: It's no different than any other
25 third party. I - - - I recognize that - - -



1 JUDGE RIVERA: But - - - okay. That's fine, but
2 just walk me through it.

3 MS. PRINC: And so the court - - - the third-
4 party witness - - -

5 JUDGE RIVERA: Yes.

6 MS. PRINC: - - - either a reporter or someone
7 else who has another privilege - - -

8 JUDGE RIVERA: Yes.

9 MS. PRINC: - - - spousal privilege, this court
10 wouldn't find jurisdiction just because of the - - - that
11 interest. There's a - - - there's a - - -

12 JUDGE RIVERA: No, no, no. Walk me through the
13 alternative that's available to the third party. Let's
14 just stay with the journalist here.

15 MS. PRINC: The third-party - - -

16 JUDGE RIVERA: She refuses. She's not going to
17 turn it over. She says I - - - I don't care what the judge
18 tells me. I'm not going to do it.

19 MS. PRINC: She's held in contempt, and that
20 gives rise to a final appealable order. And that's what
21 the legislature intended.

22 JUDGE RIVERA: And why - - - all I'm saying is
23 why doesn't that slow down the criminal process anyway?
24 And if it does that, why don't we just recognize here that
25 she can proceed as she had and it's appealable and she'll

1 work the process?

2 MS. PRINC: Because this - - - that would invent
3 this out of whole cloth, Your Honor. It's already done
4 that in - - -

5 JUDGE RIVERA: But - - - but you've said that
6 your concern is the policy, and I'm saying I don't see how
7 it's any different based on what you say is available to
8 her.

9 MS. PRINC: The policy is one consideration, but
10 this court also has to reaffirm the - - - the statute at
11 issue, the Criminal Procedure Law which does not give rise
12 - - -

13 JUDGE RIVERA: But we've already come up with an
14 exception to that in the grand jury context because the
15 statute covers investigations too.

16 MS. PRINC: And this court should not extend that
17 after criminal actions have commenced.

18 JUDGE RIVERA: Yes, and I've asked you why. And
19 you've told me it's the policy and again - - - you can
20 correct me if you think I'm wrong. That's what I'm asking
21 you about. It seems to me that the alternative that you
22 concede is available also slows down the process.

23 MS. PRINC: But - - -

24 JUDGE RIVERA: Because she's not going to turn it
25 over.



1 JUDGE STEIN: Can I ask you this? So she doesn't
2 turn it over and there's a - - - there's a separate
3 proceeding and an appeal from that, does that necessarily
4 affect whether the criminal proceeding goes forward?

5 MS. PRINC: No, Your Honor. We can go forward -
6 - -

7 JUDGE RIVERA: Well, if - - - well, if you want
8 the evidence, what are you going to go - - -

9 MS. PRINC: Well - - -

10 JUDGE RIVERA: Isn't that the point?

11 MS. PRINC: That bleeds into the merits. But I
12 will say that this is the - - -

13 JUDGE RIVERA: No, no, no. If you want - - - if
14 the People want the evidence aren't you going to wait to
15 see what happens in that other proceeding?

16 MS. PRINC: That is a bridge that we would have
17 to cross if we determine that the evidence was that
18 critical.

19 JUDGE RIVERA: But is - - -

20 MS. PRINC: But in this case - - -

21 JUDGE RIVERA: But aren't you asking us now to
22 decide whether or not these other available avenues are
23 good enough?

24 MS. PRINC: What I'm asking this court to decide
25 is to apply the law as it is settled and that these - - -



1 these policy discussions we're having are better left to
2 the legislature. As this court has said in the past and
3 reaffirmed, once we're in the - - - the land of criminal
4 proceedings you have to have statutory authorization for
5 the appeal.

6 CHIEF JUDGE DIFIORE: Counsel, let's move to the
7 merits issue.

8 MS. PRINC: Assuming this court finds that there
9 is jurisdiction, the Appellate Division was incorrect in
10 reversing the trial court's order. Quite frankly, Your
11 Honor, this evidence is critical to our case. It is likely
12 to turn a juror's head. In this case, the defendant's
13 confession is the sole evidence linking - - - linking him
14 to the commission of this crime. And the defendant's
15 inculpatory statements and a freely given interview with
16 the journalist in which he reaffirmed his admission
17 regarding the relationship with the victim, the child, his
18 access to her, and the inculpatory statement that he
19 disposed of her body, as well as the demonstrably false
20 explanation for her death. He told the journalist - - -

21 JUDGE RIVERA: Can I just be clear what you're
22 trying to get to? So - - - so the journalist publishes in
23 the article certain statements. Obviously, you want her to
24 testify about that, correct?

25 MS. PRINC: Yes, absolutely. And I - - -



1 JUDGE RIVERA: Okay. But you also want the notes
2 that may contain her recollections of what he has said, her
3 impressions and so forth, that never made it to the
4 article, correct?

5 MS. PRINC: If - - - we don't know if they - - -
6 what the - - - the notes are unpublished, but what they
7 contain as far as we can tell - - - I see that my light has
8 - - -

9 CHIEF JUDGE DIFIORE: You may continue.

10 MS. PRINC: Thank you. Are that her recollection
11 to the best of her memory of what he said to her during
12 that interview. And so we haven't seen the notes yet. The
13 court ordered them for in camera review. But it's a fair
14 inference based on that statement that they contain
15 critical evidence given that the article contains critical
16 evidence. And that was published, so there is no privilege
17 with respect to that. Keep in mind.

18 CHIEF JUDGE DIFIORE: Thank you, counsel.

19 MS. PRINC: Thank you.

20 CHIEF JUDGE DIFIORE: Counsel. Counsel, where's
21 the statutory authority?

22 MS. BOLGER: Your Honor, Katherine Bolger, by the
23 way. There is no statutory authority of the kind that I
24 think you're asking me about. But the Shield Law was
25 enacted after Cunningham was decided, and Cunningham which



1 unequivocally says that subpoenas to third parties in
2 criminal proceedings and actions are appealable. But - - -

3 CHIEF JUDGE DIFIORE: Yeah, but what about the
4 fact that that was dealing with a grand jury investigation
5 prior to the filing of an accusatory instrument?

6 MS. BOLGER: Cunningham makes no such
7 distinction. It makes no distinction on the - - - on the
8 state of the criminal proceeding, and in fact, that was the
9 argument that was made by the deputy attorney general.
10 They actually made their argument based on exactly the same
11 provision of the CPL - - - CPL that the district
12 attorney's office does today, and the court rejected
13 exactly that argument - - - exactly the same argument
14 that's made today.

15 But I - - - just to talk a little bit about
16 authority, I wanted to just focus for a second on - - - in
17 the Matter of Codey case, which is actually a case about
18 Section CPL 640.10. It is about a subpoena to a journalist
19 for nonconfidential newsgathering materials, and it is
20 about that journalist's attempt to seek appellate review.
21 In that case, this court said that because this is an - - -
22 because, "An application conducted pursuant to CPL 640.10
23 is analytically analogous to a motion to quash a subpoena,
24 it is deemed civil in nature." And then it concluded it
25 was appealable.



1 There was no statutory authority in Codey. This
2 court filled the hole, as it is entitled to do, by making a
3 Common Law rule that a Section 640.10 order could be
4 appealed because it was civil. It was determined by a
5 Supreme Court, which sits in both civil and criminal
6 jurisdiction, and it was therefore appealable.

7 Codey was followed by this court in 2013 in the
8 Holmes case, which was also a 640.10 subpoena involving a
9 journalist. And in that case, this court actually didn't
10 address the issue of appealability, but it made what I
11 think is really an interesting comment. And I think it
12 goes to your point, Judge Rivera. The court said - - -
13 this court said, "No legitimate purpose would be served by
14 requiring the witness to go through the formality of
15 appearing before the trial court only to refuse to answer
16 questions concerning the information sought." That's the
17 practical piece I think of what's at issue here. The - - -
18 practically speaking, the option of going into contempt or
19 having to bring an Article 78 proceeding is not going to
20 cause - - -

21 JUDGE STEIN: But isn't it a question not whether
22 it's practical or not but whether it is within our
23 jurisdiction or any appellate court's jurisdiction or
24 whether it is a separation of powers issue? That means if
25 the legislature wants to do that - - - obviously, these are



1 - - - these are strong policy considerations on both sides.
2 But - - - but - - - and of course what we do on this court
3 involves policy sometimes. But when it is creating
4 something out of whole cloth that is specifically not
5 within the statutory authorization of our jurisdiction, why
6 shouldn't the legislature be looking at those policy issues
7 and making those determinations?

8 MS. BOLGER: Two answers to that. The first is
9 that you have determined this over the course of 80 years.
10 You determined it in Cunningham; you determined it in
11 Newsday; you determined it in Codey.

12 JUDGE STEIN: Well, but - - - but let's just
13 start with Cunningham for a second. We do sometimes as a
14 court say things that go beyond what the issues are before
15 us, but it's pretty generally accepted that when we do that
16 it's dicta. So why isn't it dicta in Cunningham?

17 MS. BOLGER: Because you doubled down on it in
18 Newsday, Your Honor. In Newsday, it wasn't dicta. In
19 fact, in Newsday the court went out of its way - - - it was
20 a footnote.

21 JUDGE STEIN: In - - -

22 MS. BOLGER: It actually wasn't even - - -

23 JUDGE STEIN: Excuse me.

24 MS. BOLGER: It was a search warrant case and
25 this court chose to drop a footnote saying we'll still



1 maintain the vitality of the appealability of motions to
2 quash subpoena. So I agree that occasionally there's loose
3 language and - - - and like any good lawyer, I try to hold
4 onto the loose language. But this wasn't loose language.

5 JUDGE STEIN: But it was - - -

6 MS. BOLGER: This is language you doubled down
7 on.

8 JUDGE STEIN: It was also loose language in
9 Newsday because it didn't involve a subpoena in Newsday.

10 MS. BOLGER: Well, it's hard to say it's loose
11 language when you all made the choice to put it in a
12 footnote. And it certainly isn't loose language in Codey.
13 It is a specific articulated discussion in Codey. And it
14 was then followed again in Winter. And I - - - and I think
15 that's really the - - - the compelling thing here is that
16 in this context in a out-of-state subpoena to a reporter
17 who doesn't live in New York for nonconfidential
18 newsgathering materials this court determined such an order
19 is appealable.

20 And I also think it's consistent with the policy
21 of the State of New York, and I don't just mean for
22 reporters. I'll talk about reporters in a second. But I'm
23 an attorney. In a position an attorney is put in where an
24 attorney seeks to assert an attorney-client privilege over
25 client communications and a trial court rules they have to



1 be turned over, realistically, an attorney in the state of
2 New York can't have the luxury of saying put me in contempt
3 so I can appeal, right? It forces the - - - it would force
4 disclosure or potentially force the disclosure of
5 communications with attorney - - - with the - - - with that
6 client. These are significant interests.

7 In the case of the reporter, of course, this
8 court has said time and time again - - - and it's something
9 about the state of New York that I'm very proud of - - -
10 that we are more protective of free speech rights and free
11 press rights than anywhere else. We have staked our claim
12 on it. It is one of Judge Kaye's great contributions to -
13 - - to the canon of - - - of New York law. To now say that
14 we will change a rule that has been in existence for 80
15 years such that - - - and that's undeniable because there's
16 the Marin case, there's the Bagley case, there's the many
17 cases that are cited - - -

18 JUDGE GARCIA: But - - - I'm sorry. Did all
19 those cases involve grand jury subpoenas?

20 MS. BOLGER: Marin does not, that's the Second
21 Department case. There's also - - -

22 JUDGE GARCIA: All right. All right. But I mean
23 our cases. We've never ruled on a trial subpoena, right?

24 MS. BOLGER: But Codey does not - - - Codey does
25 not and Winter does not. In both the Codey case and the



1 Winter case, those cases were trial subpoenas that came to
2 this court through the 640.10 proceeding. Those cases were
3 trial subpoenas to reporters for their newsgathering
4 materials in the Codey case and the confidential source in
5 the Winter case. Those were these cases. So for this
6 court to conclude that a reporter must be held in contempt
7 when in other states in the nation reporters do not have to
8 be held in contempt would be a tremendous retreat from our
9 position as one of the - - - the most protective courts in
10 the country.

11 As to the merits, very quickly, Ms. Princ said
12 that this was evidence that was likely to turn a juror's
13 head. Likely to turn a juror's head, of course, is not the
14 standard. The standard is that the information must be
15 critical and necessary to the maintenance of the
16 prosecution. In the - - - in O'Neill, this court described
17 critical and necessary as, "Essential to the maintenance of
18 a claim." Here there is videotaped evidence that has
19 already been deemed admissible without Ms. Robles's
20 testimony. It's videotaped evidence of the interrogation
21 of the defendant, of the confession of the defendant, and
22 the State also has the ability to bring in the police
23 officers who took that testimony and the DA who took that
24 confession. It has all of that evidence.

25 It - - - it does not need - - - it is not



1 essential to the prosecution to call in a reporter who
2 spoke to the defendant four days later and who the
3 defendant, I would remind you, said was - - - he told the
4 reporter he had been coerced by the police into test - - -
5 into confessing and in fact he had not done it. That can't
6 be critical and necessary here. I think in particular that
7 efforts to liken this case - - -

8 JUDGE RIVERA: Can I ask about what actually got
9 into the article that's public? She says that has no
10 protection.

11 MS. BOLGER: Your Honor, the law is - - - is
12 particularly clear that information that is published is
13 not protected and we're not asserting the privilege over
14 it. The - - - the defendant in this case has articulated
15 that he intends to seek very broad cross-examination of the
16 newsgathering ability - - - of the newsgathering
17 activities. And of course, when you take into account what
18 is protected by the Shield Law you would take into account
19 both the direct and cross-examination that's the bigger
20 case, the Eisinger case in our - - - in our papers. And so
21 that's where the Shield Law comes in, in addition to the
22 notes. So yes, Your Honor, I agree that the article - - -
23 authenticating the article would not be as a matter of law
24 protected.

25 But I did just want to make one distinction



1 between the Combest case and this case. The - - - the
2 People rely very heavily on Combest. I think Combest is
3 completely sui generis, but in Combest what was at issue
4 was the videotape evidence of the confession. It was the
5 video itself. It wasn't something else. It was the only
6 evidence of the videotaped confession, which the police,
7 for some reason, had agreed to give to a video company.
8 And in fact, this court expressed some annoyance that this
9 material should have been turned over by the police, not by
10 the video company. So Combest doesn't particularly
11 communicate broadly on really anything other than that sort
12 of unique situation. If it could be said to say anything
13 it would be about a defendant's rights against the Shield
14 Law, but that of course is not - - - not at issue here.
15 Unless you have any further questions, I'll sit down.

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 MS. BOLGER: Thank you.

18 CHIEF JUDGE DIFIORE: Counsel.

19 MS. PRINC: Thank you, Your Honor. First, I want
20 to clarify Codey did not involve a trial. At the very
21 beginning of the decision, the court said and references
22 that a grand jury investigation was pending, so this court
23 has never found appealable an order arising after a
24 criminal action has commenced. Holmes of course - - - or
25 Winter was a trial in Colorado, not in this state so that



1 is just incorrect.

2 Turning to the - - - the merits briefly, Your
3 Honor, the statute says critical or necessary. And this
4 court has - - - in Combest, it never endorsed a finding
5 that our claim has to rise or fall on this material. And
6 in this case, yes, we have a videotaped confession, but
7 that is the sole evidence of this defendant's guilt. This
8 is a case that went unsolved - - -

9 JUDGE RIVERA: But isn't - - - I'm sorry. But
10 isn't the argument about the voluntariness and isn't that
11 what the jury can observe by looking at the video as
12 opposed to whatever the journalist may have - - - what
13 impression the journalist may have noted in - - - on some
14 piece of paper when she walked out of that prison?

15 MS. PRINC: We're not going to ask the
16 journalist's impressions. What we're asking the journalist
17 to testify about are the defendant's inculpatory statements
18 to her in what is undisputedly a voluntarily given
19 interview. And his false exculpatory explanation - - -

20 JUDGE RIVERA: No, I'm saying that question about
21 voluntariness, isn't the jury going to observe the video
22 and learn from that and make the conclusion based on that?

23 MS. PRINC: Well, as this court recognized in
24 Combest, a jury's analysis of the voluntariness and
25 truthfulness, which it's supposed to consider both, can



1 turn on intangibles beyond what is said to the defendant.
2 And in this case, there isn't an - - -

3 JUDGE RIVERA: Yes, but in Combest, it's the
4 intangibles of - - - of the interaction between the
5 defendant and the interrogator, and you're going to get
6 that on the video, no?

7 MS. PRINC: You can get that on the video, but
8 you also have a defendant's repeated admissions to a third
9 party in what is undisputedly a voluntary interview. That
10 is critical evidence that a jury should consider when
11 determining whether that defendant's confession to law
12 enforcement was truthful and voluntary.

13 JUDGE RIVERA: Your concern is that he's made
14 some statement during that interview that somehow one could
15 infer, if it's not expressed, that his statements to the
16 police were absolutely voluntary even though what the
17 journalist writes is that he says it's coerced?

18 MS. PRINC: He doesn't just say it's coerced. He
19 also gives a demonstrably false explanation for her and
20 that is - - -

21 JUDGE RIVERA: For? I'm sorry.

22 MS. PRINC: For the - - - for the child's death.
23 He said she fell down - - - fell down the stairs. The
24 medical evidence shows that's not true. She - - - the - -
25 - Ms. Robles is the only source of that evidence. He



1 didn't give that false exculpatory statement to the police.
2 And in these circumstances, if this court finds that this -
3 - - there is jurisdiction for this appeal - - - I see that
4 my time is out. I'll briefly conclude. It was critical or
5 necessary. But we do ask this court to find - - -

6 JUDGE FEINMAN: So on that last question, you
7 want us to reverse with a direction to the Appellate
8 Division to dismiss the appeal?

9 MS. PRINC: Yes. Because if this court lacks
10 jurisdiction - - -

11 JUDGE FEINMAN: I just want to be clear what
12 you're - - -

13 MS. PRINC: Yes.

14 JUDGE FEINMAN: - - - asking. You're not asking
15 us to dismiss this appeal. You're asking us to reverse
16 with a direction to the Appellate Division to dismiss?

17 MS. PRINC: Yes.

18 JUDGE FEINMAN: Okay.

19 MS. PRINC: Because they'd also lack
20 jurisdiction.

21 JUDGE FEINMAN: All right.

22 MS. PRINC: Thank you, Your Honor.

23 CHIEF JUDGE DIFIORE: Thank you.

24 (Court is adjourned)

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

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of People v. Conrado Juarez; Frances Robles, No. 58 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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