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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

NO. 33

MELVIN BAEZ,

Appellant.

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20 Eagle Street  
Albany, New York  
March 12, 2024

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: Last case on today's  
2 calendar is People v. Baez.

3 MR. FERGUSON: Good afternoon, Your Honors.  
4 Harold Ferguson for appellant, Melvin Baez. We would  
5 request two minutes for rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MR. FERGUSON: Contrary to the Appellate  
8 Division's decision, the People did not establish by legal  
9 - - - legally sufficient evidence that the item that  
10 Officer Lin allegedly recovered from the ground at the  
11 scene of Mr. Baez's arrest was the exact item that  
12 Criminalist Osorio received and tested at the lab.

13 Bottom line was Officer Lin indicated that she  
14 recovered a badly torn open bag that was so badly damaged  
15 that the white substance that was within it was pouring  
16 out.

17 As a result, she took that single bag, put it  
18 within a latex glove, tied it shut, and later delivered it  
19 to an office at the 113th Precinct. But at the 113th  
20 Precinct, all she did was take that single latex glove and  
21 put it in an unsealed envelope. Although there is a - - -

22 JUDGE TROUTMAN: Was there evidence that what was  
23 put in the envelope was somehow in a different condition  
24 than that which it was when she put it in there?

25 MR. FERGUSON: Absolutely, Your Honor. Because

1 when Officer Lewis comes and retrieves the envelope, what  
2 he finds within it is not a single latex glove but two  
3 items.

4 JUDGE TROUTMAN: Does he say it's not in the  
5 condition that it was?

6 MR. FERGUSON: He says there is - - - within the  
7 envelope, there is a latex glove and another bag. Officer  
8 Lin did not put two items in that envelope.

9 JUDGE GARCIA: And where is that item in between?  
10 In between when she puts the item in the envelope and when  
11 the next person picks it up?

12 MR. FERGUSON: It is an - - - it's an  
13 unsubstantiated period of time between the time Officer Lin  
14 leaves the precinct - - -

15 JUDGE GARCIA: And the envelope is where?

16 MR. FERGUSON: It's on a desk, where there was  
17 supposedly some anonymous officer who is supposed to  
18 safeguard evidence. But there is no evidence in this  
19 record that in any way did Officer Lin - - -

20 JUDGE TROUTMAN: So are they required to call  
21 that evidence officer?

22 MR. FERGUSON: What they needed was at least some  
23 type of indication that Officer Lin spoke to that officer,  
24 told him - - - that officer what was there and to safeguard  
25 that evidence. There is nothing in this record to indicate

1 anything regarding the safety protocols in that office who  
2 had access to that office.

3 And when Officer Lewis comes hours later to the  
4 office, he does not talk about any security protocols in  
5 that office and does not mention that there is a single  
6 other officer in that office.

7 So there is a period of time where we don't know  
8 who is supervising this. And what we do know is that when  
9 Officer Lewis picks up the envelope - - -

10 JUDGE TROUTMAN: So when you're establishing  
11 chain of custody, you have to call every single solitary  
12 person from the time they took it out of the car - - - I'm  
13 sorry - - - from the time they retrieved it, every step in  
14 between? Anyone they encountered, they must call?

15 MR. FERGUSON: No, Your Honor. That's - - -  
16 Julian and Connelly did not require that. But what you  
17 have in this situation is that in Connelly it talks about  
18 when there is an undisclosed person who had access to it,  
19 and which we have here, and that there is a period of time  
20 in which there is nothing to - - - that describes who is  
21 supervising this. And most importantly, when Officer Lewis  
22 comes to the precinct, what he finds within the envelope is  
23 two distinct items.

24 JUDGE CANNATARO: Before he opens the envelope,  
25 Officer Lewis goes to the desk to - - - to - - - to take

1 the envelope?

2 MR. FERGUSON: That's correct.

3 JUDGE CANNATARO: And he finds it exactly where  
4 Officer Lin said it would be, doesn't he?

5 MR. FERGUSON: Yes, he does. But what Officer  
6 Lin said she put in the envelope is not what Officer Lewis  
7 finds in the envelope. What Officer Lewis finds in the  
8 envelope is two items: the plastic bag and the latex  
9 glove.

10 JUDGE RIVERA: So then what - - - what matters  
11 for your argument is these inconsistencies in the testimony  
12 that not - - - whether or not one knows was there a person  
13 there where the envelope was placed? What's the name of  
14 that person? Do they need to testify to these  
15 inconsistencies that suggest some other problems in this  
16 chain of custody?

17 MR. FERGUSON: Absolutely, Your Honor. That  
18 there was the possibility of tampering, and that we do  
19 have - - -

20 JUDGE RIVERA: If there were no inconsistencies  
21 and we still didn't know all the things you've already  
22 pointed to, would you still have an argument on the chain  
23 of custody?

24 MR. FERGUSON: Could you repeat that, Your Honor?

25 JUDGE RIVERA: If there were no inconsistencies

1 in the officer's descriptions, and - - - and I think her  
2 name is Augustia (sic) or Ceria (sic) or whatever the  
3 criminalist identifies, but we still didn't know about the  
4 placement of the envelope, whether or not someone was in  
5 that room, whether or not someone else entered that room  
6 and touched that envelope. If we didn't know those things,  
7 that there weren't the inconsistencies that you very  
8 clearly pointed out in the briefing, is there still - - -  
9 is there still an argument about the chain of custody?

10 MR. FERGUSON: Yes, there is. Because there is  
11 nothing in this record that indicate that what should have  
12 been sent to the lab for testing is the latex glove. That  
13 was sealed as a singular item, and there was only a single  
14 bag that's supposed to be within it. There is no  
15 description of Officer Lin of having forty-five glassine  
16 bags or anything else. And - - -

17 CHIEF JUDGE WILSON: I think Judge Rivera was  
18 asking you a different - - - sorry we're here - - - was  
19 asking you a different question. That is, suppose what we  
20 had is a single bag.

21 There's no discrepancy at the site of the arrest  
22 about what was collected. It's described one way with, you  
23 know, weight that, you know, the officer estimates is at  
24 the same weight that the criminalist weighs. That the  
25 condition of the bag is exactly fine. That the sticker

1 carries through.

2 The only defect is it was placed on a desk in an  
3 envelope. We don't know who was there. We don't know how  
4 much time elapsed. That's all - - - if we just had that,  
5 would that be a chain of custody problem?

6 MR. FERGUSON: I don't think it would be a chain  
7 of custody problem because there still would be an  
8 assurance of the identity of the item. But what you have  
9 here is you don't have Officer Lewis testify that I removed  
10 the latex glove, that I opened the latex glove; I took out  
11 an item from the latex glove and weighed it.

12 Instead what he talks about is the other item.  
13 And the latex glove disappears, not in the exhibit - - -  
14 the photographic exhibit that is presented as evidence at  
15 the trial. And so you have this Officer Lewis testifying  
16 about - - - and Officer Lewis, who, let's be honest, had  
17 committed perjury on multiple - - - multiple times in - - -

18 JUDGE GARCIA: And so let me - - -

19 MR. FERGUSON: - - - this particular case - - -

20 JUDGE GARCIA: Let me ask you - - - let me ask  
21 you a little bit different twist on that. Let's say, you  
22 had a great chain of custody here. You have the same  
23 testimony. I took this thing. I put it in the glove. I  
24 put it in this envelope. I sealed the envelope. I signed  
25 it. I hand it to the next officer. That officer testifies

1 I took it from the first officer. I took it. I carried it  
2 to the safe. I locked the safe. I got it back. I took it  
3 to the lab, and the lab says I received it from that  
4 officer. Same envelope. It's sealed. I open it up, and  
5 now it has the things that you've described it having. Do  
6 you have a problem or no?

7 MR. FERGUSON: I'm not sure what you're talking  
8 about - - -

9 JUDGE GARCIA: So same facts about - - -

10 MR. FERGUSON: Right.

11 JUDGE GARCIA: - - - what's in that envelope, but  
12 now you have a perfect chain of custody.

13 MR. FERGUSON: If you have a perfect chain of  
14 custody, there's no issue here. We wouldn't be here. And  
15 Judge Wilson would never have granted me leave in this  
16 case, but that's not what you have.

17 JUDGE GARCIA: Even though - - -

18 CHIEF JUDGE WILSON: Don't count on that.

19 JUDGE GARCIA: - - - you have something that  
20 she's testified to putting in that bag that doesn't match  
21 what comes out of that bag, right, in my hypothetical?

22 MR. FERGUSON: Okay. Then you do have a problem.  
23 And that's partly what you have here, is that the  
24 description is that it is a badly damaged bag that was  
25 recovered by Officer Lin.



1 JUDGE GARCIA: No, no. I understand. My  
2 question, though, is if you have the chain but you have the  
3 same facts on either end, you have the officer testifying,  
4 this is what I put in there, but it doesn't match what they  
5 took out in the lab, but the chain is perfect, what  
6 happens?

7 MR. FERGUSON: Something happened. We don't know  
8 what happened. There can't be a perfect chain of custody  
9 if the item has - - -

10 JUDGE GARCIA: But she could have made a mistake.

11 MR. FERGUSON: - - - somehow been transfixed.

12 JUDGE GARCIA: I made a mistake in what I thought  
13 I put in the bag.

14 JUDGE HALLIGAN: Like, there could have been a  
15 reporting error on one end or the other with respect to the  
16 description, right?

17 JUDGE GARCIA: So what happens?

18 MR. FERGUSON: Well, it's not - - - if - - - in a  
19 situation, if it's simply a reporting error. But this is  
20 not what you have. This is not a reporting error case.  
21 This is - - - this is a case in which the item doesn't  
22 match. What the criminalist received was an intact bag  
23 that had no damage to it.

24 JUDGE CANNATARO: It's even more, you know,  
25 troublesome - - - nettlesome than that because the - - -

1 the latex glove is not part of what was recovered from the  
2 defendant. The latex glove was something that Officer Lin  
3 decided needed to be used at the scene at the time she  
4 picked up the envelope because she thought, I guess, things  
5 were coming out of it.

6 So with respect to this notion of reporting  
7 errors, it seems as if it's possible that someone decided  
8 to remove the latex glove because that was not part of the  
9 evidence that was collected from the defendant and either  
10 failed to report that they discarded it or didn't think  
11 that they had to do that.

12 MR. FERGUSON: Your Honor, but that's not what  
13 happened here. When Officer Lewis says that what he found  
14 inside the envelope was the latex glove, which had been  
15 tied shut by Officer Lin.

16 JUDGE CANNATARO: Yeah.

17 MR. FERGUSON: Officer Lewis does not say that I  
18 removed the latex glove, I untied it, took something out of  
19 that. What he says is there's a latex glove in the  
20 envelope and also this bag that is badly damaged and forty-  
21 five glassine bags. Those are two separate and distinct  
22 things. If Officer Lewis had testified, I removed the bag,  
23 I untied it, I pulled those items - - -

24 JUDGE CANNATARO: Counsel - - -

25 MR. FERGUSON: - - - out of it - - -



1 JUDGE CANNATARO: - - - that would - - -

2 MR. FERGUSON: - - - but he didn't.

3 JUDGE CANNATARO: That would suggest to me that  
4 officer - - - if there's a latex glove and a bag that has  
5 another bag inside of it with forty-five smaller bags  
6 inside of that - - - a lot of bags. But if - - - if - - -  
7 if Officer Lewis testified that he saw these two things,  
8 that suggest to me that maybe Officer Lin, when she  
9 previously had the evidence, took those things out of the  
10 latex glove. She might have left the latex gloves there,  
11 but she removed them.

12 MR. FERGUSON: That's not her testimony. Her  
13 testimony is she put the tied latex glove in the envelope.  
14 That is the sole thing that she did in that office. She  
15 did not testify that she removed anything from it. That  
16 she had tied it shut because the bag was so badly damaged  
17 that everything was pouring out.

18 JUDGE CANNATARO: And that's a serious  
19 inconsistency in the record. I'm just not sure how it goes  
20 to the chain of custody because everything is where it is  
21 supposed to be and being cataloged along the way.

22 MR. FERGUSON: Your Honor, but what you have is  
23 one item cannot become two items. And that's what you have  
24 here. Officer Lin put a singular item into the envelope, a  
25 latex glove that was tied shut.

1           What Officer Lewis finds in the bag is a latex  
2           glove and these bags. Those are two distinct differences.  
3           And those indicates that somewhere between the time that  
4           Officer Lin put the latex glove into the envelope, someone  
5           else put a bag into that envelope as well. It was - - -

6           JUDGE RIVERA: I thought Officer Lewis also  
7           testified that the - - - differently about the contents at  
8           different points in time.

9           MR. FERGUSON: Oh, absolutely, Your Honor. I  
10          mean - - -

11          JUDGE RIVERA: It's not just the bags.

12          MR. FERGUSON: No.

13          JUDGE RIVERA: It's also the actual criminal  
14          substance.

15          MR. FERGUSON: I mean, at times, he originally -  
16          - - in the felony complaint, the felon - - - this case,  
17          again, began through perjury. The felony complaint said  
18          Officer Lewis signed, under penalty of perjury, that he  
19          recovered two twist bags containing four ounces of cocaine  
20          from Mr. Baez's person. That's what started this case.

21                 Jurisdiction was obtained over my client through  
22          perjury. At the grand jury, he again commits perjury,  
23          where he says that he recovered two bags from Mr. Baez,  
24          each containing nine grams of cocaine.

25                 Only until we get to the suppression hearing does

1 Officer Lin even come to the forefront, where it indicates  
2 that, oh, by the way, he recovered nothing at the scene of  
3 the arrest.

4 It was Officer Lin who recovered something. And  
5 then he talks about - - - that his voucher doesn't match  
6 up. He does - - - he says he weighed things, and then he  
7 sent it to the police lab. But the problem with it is  
8 there's no damaged bag at the criminalist. Osorio doesn't  
9 find a damaged bag. She finds an intact bag. So something  
10 happened. Someone repackaged something.

11 JUDGE CANNATARO: The bag was - - - was admitted  
12 into evidence at trial, right?

13 MR. FERGUSON: A bag was admitted into evidence.

14 JUDGE CANNATARO: A bag - - -

15 MR. FERGUSON: A bag was admitted into evidence.  
16 But what officer - - - what - - - what Criminalist Osorio  
17 testified to was that what she received was an intact bag  
18 that had no tears or anything in it.

19 So therefore, even what Officer Lin had said from  
20 the beginning, such a badly damaged bag that everything was  
21 pouring out, you couldn't have weighed it because it was so  
22 badly torn open.

23 JUDGE CANNATARO: You agree, though, don't you,  
24 that we have bags on bags on bags. There is a larger bag  
25 with another bag and then forty-five glassine envelopes

1 within that bag. So I'm - - -

2 MR. FERGUSON: That's what Officer Lewis  
3 testifies to, but that's not what Officer Lin, who's the  
4 recovering officer, testifies to. She returns to a single  
5 bag that contained a white substance.

6 JUDGE RIVERA: And what - - - what about Ocasio's  
7 (sic) assessment of what is actually in the bag that Ocasio  
8 (sic) analyzed?

9 MR. FERGUSON: She says that - - -

10 JUDGE RIVERA: How does it differ from the  
11 testimony?

12 MR. FERGUSON: That it's - - - that she found  
13 5.35 grams of cocaine, which she described as loose solid  
14 material. At different points, Officer Lewis refers to it  
15 as in rock form and sometimes it's in rock and powder form.

16 There were so many different versions of what has  
17 occurred in this case that there is - - - there - - - it is  
18 inconceivable to me that you - - - that someone can say  
19 that the item that was allegedly recovered at the scene is  
20 the item that officer - - - that Criminalist Osorio tested.

21 And because of that, there is these defects in  
22 the chain of custody as to both the identity as well as the  
23 opportunities to tamper with it. Someone put another bag  
24 into that envelope. That establishes under Connelly and  
25 under Julian that this isn't the same item that was

1 recovered by Officer Lin, and therefore, Mr. Baez's  
2 conviction should be overturned and the case dismissed.  
3 Thank you, Your Honors.

4 MR. BLIRA-KOESSLER: Good afternoon, Your Honors.  
5 Chris Blira-Koessler for the Office of Melinda Katz, the  
6 Queen's County DA, for respondent. Just - - - just to  
7 address the point about the glove at the precinct with the  
8 bags in it, Officer Lewis testified - - - this is on page -  
9 - - I'm - - - I'm looking at my adversary's appendix, page  
10 A-221.

11 He was asked by Mr. Baez on cross-examination - -  
12 - Mr. Baez represented himself. And he said question: you  
13 said you recovered two twist bags. What did you recover?  
14 How many bags? Was it separated? Was it one? Was it  
15 five, ten? And the answer was: when it was - - - when it  
16 first initially fell on the southwest corner, the little  
17 baggie was inside the big baggie. So that's how it was  
18 vouchered.

19 Question: was it one bag? Answer: I took it  
20 apart. So the - - - the contact he had with that bag is  
21 back at the precinct. Lin left it at the precinct, told  
22 him where she left it, left it on his desk.

23 He goes to the precinct - - - and she left it in  
24 - - - in a narcotics envelope. He goes to the precinct and  
25 finds it in the exact same place. That testimony shows

1 that he took it out of the bag and separated it. He also  
2 testified he photographed it, the photograph in our  
3 appendix - - -

4 CHIEF JUDGE WILSON: But what about Officer Lin  
5 saying she put one bag in the glove?

6 MR. BLIRA-KOESSLER: Right.

7 CHIEF JUDGE WILSON: And what about Officer Lin  
8 saying the bag was damaged, and Lewis saying the bag was  
9 damaged, and the criminalist saying there was no damaged  
10 bag?

11 MR. BLIRA-KOESSLER: Well, the criminalist said  
12 she didn't see any holes in the bag. But if you look at  
13 the prosecutor's opening and summation - - -

14 CHIEF JUDGE WILSON: I think she says - - -

15 MR. BLIRA-KOESSLER: - - - summation - - -

16 CHIEF JUDGE WILSON: - - - it was intact. I  
17 think there was a lot of examination about that.

18 MR. BLIRA-KOESSLER: I don't recall if she used  
19 the word intact. I know she said she didn't see any holes  
20 in the bag. But when the prosecutor described the bag,  
21 which was in evidence during his opening and closing - - -

22 CHIEF JUDGE WILSON: A bag - - -

23 MR. BLIRA-KOESSLER: - - - he said it had - - -

24 CHIEF JUDGE WILSON: A bag was in evidence,  
25 right?





1 MR. BLIRA-KOESSLER: No. Both bags were in  
2 evidence.

3 CHIEF JUDGE WILSON: Oh, we don't know how many  
4 bags they were, right?

5 MR. BLIRA-KOESSLER: Oh, we - - - we know exactly  
6 how many bags they were. Lin, when she first - - - when -  
7 - - when Lin testified, she explained - - - and I can give  
8 you the page cite to this. This is Lin at A308. She  
9 testified, I didn't count it. I just put it inside the  
10 gloves.

11 CHIEF JUDGE WILSON: Lin at 357 - - -

12 MR. BLIRA-KOESSLER: So she didn't take it apart.

13 CHIEF JUDGE WILSON: Lin at 357: No, the  
14 envelope - - - the plastic security envelope that I  
15 received was not ripped in any way. Were there any holes  
16 in the bags? Which bags? Any of the bags? No.

17 MR. BLIRA-KOESSLER: Sorry, that's 350 - - -

18 CHIEF JUDGE WILSON: Were the bags ripped in any  
19 way? There were no rips. I mean, 357. It's - - - it's -  
20 - - she's unequivocal.

21 MR. BLIRA-KOESSLER: This is at 357, you said?

22 CHIEF JUDGE WILSON: Yeah.

23 MR. BLIRA-KOESSLER: But also, let me - - - let  
24 me just go through the summation of the opening point I  
25 wanted to make.

1 CHIEF JUDGE WILSON: Well, summation is not  
2 evidence as far as I was taught.

3 MR. BLIRA-KOESSLER: No, no. But the summation  
4 is discussing evidence that is in evidence. And without  
5 objection, the prosecutor said there's scuff - - -

6 CHIEF JUDGE WILSON: There isn't - - -

7 MR. BLIRA-KOESSLER: - - - marks on it - - -

8 CHIEF JUDGE WILSON: I'm sorry.

9 MR. BLIRA-KOESSLER: - - - tears, rips. Mr. Baez  
10 didn't object and Mr. Baez had a lot to say during trial.

11 CHIEF JUDGE WILSON: You and I have a very  
12 different - - - you and I have a very different view of  
13 evidence, I guess, which is that if the prosecutor says  
14 something that is not in evidence and there's not an  
15 objection, that makes it in evidence.

16 MR. BLIRA-KOESSLER: I - - - I don't think we  
17 have a different view of evidence. What I'm saying is that  
18 the prosecutor's remarks were not objected to.

19 CHIEF JUDGE WILSON: So what?

20 MR. BLIRA-KOESSLER: If that bag was not  
21 described - - -

22 CHIEF JUDGE WILSON: So what?

23 MR. BLIRA-KOESSLER: - - - that way - - - if the  
24 bag didn't look - - -

25 CHIEF JUDGE WILSON: So what?

1 MR. BLIRA-KOESSLER: - - - like that, somebody  
2 would have objected. His silence speaks volumes about it.

3 CHIEF JUDGE WILSON: He's a pro se litigant and  
4 you're saying that we should then treat this as evidence.  
5 This is really beyond the pale.

6 MR. BLIRA-KOESSLER: This is - - - this is a pro  
7 se litigant - - - this is a pro se litigant who, if he went  
8 to law school, probably would make a great lawyer because  
9 he had a lot to say, right? He was never silent.

10 CHIEF JUDGE WILSON: But we still have - - -

11 MR. BLIRA-KOESSLER: He objected to everything.

12 CHIEF JUDGE WILSON: So - - - so why don't you  
13 get back to my question, which is we have sworn testimony  
14 from the officers, both of them, that the bags were torn.  
15 That material was falling out of them. They had to be put  
16 in a latex glove to secure the evidence. And what gets to  
17 the criminalist, there are no torn bags, no rips, no  
18 nothing. Isn't that troubling?

19 MR. BLIRA-KOESSLER: The criminalist said that  
20 she didn't - - - no, no, it's not a problem because all the  
21 voucher numbers matched up. It's the same voucher number.  
22 So what about that? That - - - that means nothing that it  
23 had the same narcotics number, the same voucher number - -  
24 -

25 CHIEF JUDGE WILSON: That means - - -



1 MR. BLIRA-KOESSLER: - - - same bag number. It  
2 was sealed when it got there. Maybe she just made a  
3 mistake. Maybe she didn't see it. All the numbers match  
4 up. You can't discount that evidence based on - - -

5 JUDGE RIVERA: I'm sorry. What are all the  
6 numbers that match up? Let's do the little breadcrumbs.  
7 What are all - - -

8 MR. BLIRA-KOESSLER: Okay.

9 JUDGE RIVERA: - - - the numbers that match up?

10 MR. BLIRA-KOESSLER: The first is the invoice  
11 number that's on the voucher that lists the evidence. The  
12 second number is what's called the Pitts narcotics number.  
13 That's on the narcotics envelope. Then the voucher and the  
14 envelope and the evidence are put inside another bag that's  
15 got a third number on it. All three of those numbers match  
16 up.

17 Everything was sealed and signed when Osorio  
18 received it. She testified to that. And she said she  
19 resealed it. At trial they both testified that, yeah,  
20 these are the same numbers. That's my name. She testified  
21 to her name on the report.

22 JUDGE RIVERA: So then you - - -

23 MR. BLIRA-KOESSLER: So - - -

24 JUDGE RIVERA: - - - you - - - you understand  
25 that to mean, they both made mistakes in their

1 descriptions?

2 MR. BLIRA-KOESSLER: Osorio made a mistake.

3 JUDGE RIVERA: Because whatever is in - - -  
4 whatever went through despite the fact that each of them  
5 are saying - - - all three of them are saying something  
6 different, the numbers match up regardless of the fact that  
7 at some point in time, the prosecutor failed to put into  
8 evidence - - - there's a point in time when it appears no  
9 one is supervising the envelope.

10 MR. BLIRA-KOESSLER: Well, I - - - I mean, a - -  
11 - I don't think we have to put in that person. You know, I  
12 mean, look at Hawkins. The evidence was not - - -

13 JUDGE RIVERA: What do you do with all these  
14 discrepancies?

15 MR. BLIRA-KOESSLER: With the - - -

16 JUDGE RIVERA: It doesn't trouble - - -

17 MR. BLIRA-KOESSLER: I - - - I - - -

18 JUDGE RIVERA: - - - your office that you have  
19 these officers who don't even know what - - - what they're  
20 picking up, when they picked it up, how it gets in - - - in  
21 one place and ends up looking completely different in the  
22 other place?

23 MR. BLIRA-KOESSLER: No, no. I'm not saying our  
24 office doesn't encourage accuracy in police paperwork.  
25 Sometimes it doesn't happen. Then this - - -

1 JUDGE RIVERA: And so discouraging  
2 inaccuracy - - -

3 MR. BLIRA-KOESSLER: This paperwork is not a  
4 model of clarity admittedly, but again, that goes to  
5 weight. It doesn't go to the chain of custody. It doesn't  
6 go to admissibility. Just to go back for a minute, Officer  
7 Lin testified it was one bag.

8 Then we have the testimony from Officer Lewis  
9 about finding the glove that Lin said that she left in the  
10 office in the exact place where she said she left it.  
11 That's why he says he took it apart. He photographed it.  
12 It's clearly two bags, right?

13 So any discrepancy there is explainable. Lin  
14 didn't look at it when she first recovered it. Why? It  
15 was spilling out. She - - - she isn't going to take it  
16 apart there in the street, but he - - -

17 JUDGE CANNATARO: Does the record also have - - -

18 JUDGE RIVERA: And he was also wrong that he  
19 thought he had recovered it from Mr. Baez? Just to  
20 clarify.

21 MR. BLIRA-KOESSLER: No. I - - - they - - - they  
22 - - - they call that perjury. I - - - I think that's just  
23 - - -

24 JUDGE RIVERA: No, no, no. You - - - you  
25 understand and recognize that's a discrepancy?

1 MR. BLIRA-KOESSLER: No.

2 JUDGE RIVERA: You're trying to - - -

3 MR. BLIRA-KOESSLER: No, that's not a discrepancy  
4 at all.

5 JUDGE RIVERA: It's not a discrepancy, but he  
6 thought he recovered it.

7 MR. BLIRA-KOESSLER: Right.

8 JUDGE RIVERA: And you have another officer who  
9 says I recovered it.

10 MR. BLIRA-KOESSLER: She picked it up off the  
11 floor, but they're partners recovering the same evidence.  
12 He vouchered it. If anything, his role in the process is  
13 more important than hers. Just picking it up off the floor  
14 is not how evidence is recovered.

15 JUDGE RIVERA: So it's a misunderstanding in - -  
16 -

17 MR. BLIRA-KOESSLER: You got to voucher it too.

18 JUDGE RIVERA: It's a misunderstanding in  
19 terminology?

20 MR. BLIRA-KOESSLER: Yeah. Yeah. I - - - I'd  
21 just say maybe he spoke in a broad fashion about the fact  
22 that he recovered it along with his partner.

23 JUDGE CANNATARO: What about twist bags - - - two  
24 twist bags with four ounces of cocaine. And I checked on  
25 Google, four ounces of cocaine is about 120 grand.

1 MR. BLIRA-KOESSLER: It's a difference, yeah.

2 The - - -

3 JUDGE CANNATARO: It's a lot.

4 MR. BLIRA-KOESSLER: The - - - the common way  
5 criminal complaints are written up in the five boroughs is  
6 that the ADA or the paralegal writes them up. Officers  
7 don't write them up. I - - - I don't know how it's done in  
8 other counties. He obviously didn't read through this  
9 carefully enough before he signed it.

10 JUDGE CANNATARO: So that's just bad record  
11 keeping on his part?

12 MR. BLIRA-KOESSLER: That's - - - that's bad  
13 record keeping on everybody's part. It was a mistake that  
14 shouldn't have been made.

15 JUDGE RIVERA: He just doesn't know what it is?

16 MR. BLIRA-KOESSLER: Excuse me?

17 JUDGE RIVERA: He doesn't know what it is?

18 MR. BLIRA-KOESSLER: I'm - - - I'm not - - -

19 JUDGE RIVERA: He doesn't know what it is on the  
20 record keeping, and - - - and this discrepancy doesn't know  
21 what it is he's identifying in the record?

22 MR. BLIRA-KOESSLER: No. He - - - he did  
23 identify it on the record by his name and by the numbers  
24 that he assigned to it. There, I think he just didn't read  
25 the complaint accurately and that led to the discrepancy.



1 I think what's more important here is that this evidence  
2 was kept in police custody at all times. It wasn't like  
3 the evidence in Hawkins that was left - - - just left alone  
4 in a room - - -

5 JUDGE HALLIGAN: So - - - so to go to Judge  
6 Garcia's question to your adversary, is it your view that  
7 if the chain is established, really, very cleanly, that no  
8 discrepancy would be problematic no matter how severe?

9 MR. BLIRA-KOESSLER: I mean, that's - - - that's  
10 basically what this court said in Connelly. I mean,  
11 reporting errors in paperwork don't change the essential  
12 nature of what's recovered. There's nothing on this record  
13 that the actual evidence itself changed in any way.

14 JUDGE HALLIGAN: Okay. Well, what if it was a  
15 different substance?

16 MR. BLIRA-KOESSLER: Such as?

17 JUDGE HALLIGAN: Instead of - - - of, you know -  
18 - - instead of what was recovered, it was a different type  
19 of drug altogether?

20 MR. BLIRA-KOESSLER: A different type of drug,  
21 like - - -

22 JUDGE HALLIGAN: Yes.

23 MR. BLIRA-KOESSLER: - - - from cocaine to  
24 heroin? Then that's - - - that's - - - that's a problem.  
25 Yeah.

1 JUDGE HALLIGAN: Okay.

2 MR. BLIRA-KOESSLER: Well, that is a problem.

3 JUDGE HALLIGAN: So there's some change - - -  
4 some discrepancies that would give rise?

5 MR. BLIRA-KOESSLER: But - - - but not in  
6 paperwork. I'm talking about the actual substance.

7 JUDGE HALLIGAN: No. I'm talking about the  
8 paperwork.

9 MR. BLIRA-KOESSLER: No.

10 JUDGE HALLIGAN: There's - - - so no matter what  
11 it is, no matter how varying the descriptions are, that's  
12 irrelevant to a chain of custody inquiry period?

13 MR. BLIRA-KOESSLER: Well, it's not irrelevant.  
14 It does go to weight. It doesn't go - - -

15 JUDGE HALLIGAN: Yeah. I understand.

16 MR. BLIRA-KOESSLER: - - - to admissibility. So  
17 - - - and that's - - - and that's where it begins and ends.  
18 That's Connelly.

19 JUDGE GARCIA: But you've got a problem.

20 MR. BLIRA-KOESSLER: That's blackletter law.

21 JUDGE GARCIA: You've got a problem in testimony.  
22 You've established what went in the bag here went through  
23 the process and ended up here. Well, I don't understand  
24 the drugs because you don't know what it is they tested.  
25 But you have something that goes on here, comes out the end

1 here. You think it's the same thing, it just doesn't match  
2 the description of the person who put it in the inputs. To  
3 me, that seems like a testimonial problem, not a chain of  
4 custody problem, right? There's a problem with the  
5 testimony.

6 MR. BLIRA-KOESSLER: I mean, it was described - -  
7 - I mean, look, it - - - it was cocaine. That's how it was  
8 recovered. That's how it was tested. In the voucher, it  
9 was described as rock. Powder was left out. They made a  
10 big deal about that at trial.

11 But the criminalist testified that, yeah, it was  
12 a loose solid material, which would include rock and  
13 powder. You know, just because he left out the powder  
14 description doesn't mean it's a different substance.

15 Again, these are reporting errors. There was no  
16 claim ever made that what was entered into evidence that it  
17 changed in any way, that it went from a solid to a liquid  
18 or to a different matter.

19 JUDGE TROUTMAN: So do you agree with Judge  
20 Garcia, it's a - - - it's not a chain of custody issue but  
21 it's a weight consideration?

22 MR. BLIRA-KOESSLER: Basically, it's a weight  
23 consideration. And all the discrepancies - - -

24 JUDGE RIVERA: And what does that mean? What  
25 does that mean? That the court has to decide I just don't

1 believe you?

2 MR. BLIRA-KOESSLER: No, I mean the - - -

3 JUDGE RIVERA: When - - - when the court is  
4 hearing the testimony, it's deciding, I think that's  
5 incredible. I don't believe you.

6 MR. BLIRA-KOESSLER: If the court just doesn't  
7 believe - - -

8 JUDGE RIVERA: Is that what you mean by - - - I  
9 just want - - -

10 MR. BLIRA-KOESSLER: No, no, no. It goes - - -  
11 it - - - it - - - it becomes a jury question at that point.

12 JUDGE RIVERA: But again the weight is - - -

13 MR. BLIRA-KOESSLER: And it's something for the  
14 jury.

15 JUDGE RIVERA: - - - the - - - is the issue of  
16 the weight.

17 MR. BLIRA-KOESSLER: Right.

18 JUDGE RIVERA: Is a credibility determination, or  
19 something else. That's what I'm asking.

20 JUDGE HALLIGAN: Right.

21 MR. BLIRA-KOESSLER: Yeah. I mean - - -

22 JUDGE RIVERA: You say it goes to the weight.

23 MR. BLIRA-KOESSLER: - - - it's not so much the  
24 credibility of only the testimony but also the  
25 inconsistencies, how to resolve them, and finally deciding

1 the case. As far as admissibility goes, I - - - I - - - I  
2 don't know if your question is, do you take those into  
3 consideration in terms of the weight - - -

4 JUDGE TROUTMAN: What's the value of the - - -

5 JUDGE RIVERA: I'm trying to - - -

6 MR. BLIRA-KOESSLER: - - - analysis and  
7 admissibility.

8 JUDGE RIVERA: I'm trying to appreciate the  
9 acquittal of the other counts.

10 MR. BLIRA-KOESSLER: Right. The - - - it  
11 was - - -

12 JUDGE RIVERA: So that's why I'm asking is it a  
13 credibility issue or it's something else, because perhaps  
14 that might explain the actual verdict.

15 MR. BLIRA-KOESSLER: Yeah. I mean, I think it's  
16 something else that goes to the verdict. For example, he  
17 was acquitted of the possession charge. So - - -

18 JUDGE RIVERA: Yeah.

19 MR. BLIRA-KOESSLER: - - - maybe the judge  
20 accounted for the fact that the forty-five glassines  
21 weren't reported. That would go to the third-degree  
22 possession - - -

23 JUDGE RIVERA: Okay.

24 MR. BLIRA-KOESSLER: - - - count because, you  
25 know, intent to sell. He was acquitted of the tampering

1 charge, you know. So maybe the fact that that wasn't  
2 recorded in the voucher - - - I - - - I don't know for a  
3 fact, maybe that entered into the judge's logic. Maybe,  
4 you know, you throw him a freebie and said, okay, here,  
5 fine. It wasn't recorded. I'll give you the acquittal on  
6 that.

7 JUDGE CANNATARO: You're talking about the  
8 judge's fact finder, not the judge's - - -

9 JUDGE GARCIA: Yeah. This is a bench trial,  
10 right?

11 MR. BLIRA-KOESSLER: Right. Right. It's a bench  
12 trial. I mean, as far as admissibility goes, you know,  
13 this is - - - this is actually more than enough. This is -  
14 - - this is more than you had in Hawkins, you know.

15 JUDGE RIVERA: What you had in?

16 MR. BLIRA-KOESSLER: Hawkins at - - - at 11  
17 N.Y.3d. It - - - you know, the evidence wasn't even left  
18 alone for a long period of time. The arrest or the  
19 incident occurred at 11:21 or so on February 4th of 2014.  
20 It's brought to the precinct. It's not clear when the  
21 exact time Lin drops it off at the precinct, but - - -

22 JUDGE RIVERA: Let me - - - it's a similar  
23 question to Judge Halligan's, but I think slightly  
24 different. What if the testimony is consistent that what  
25 went in to - - - let's stay with the glove that then goes

1 in the envelope is in rock form, not - - - not in a powder,  
2 smooth - - - just rock form. But when the criminalist  
3 opens it, there are no rocks. Would that - - -

4 MR. BLIRA-KOESSLER: And - - -

5 JUDGE RIVERA: Do you say that goes also to the  
6 weight?

7 MR. BLIRA-KOESSLER: You mean, it's in powder  
8 form instead of - - -

9 JUDGE RIVERA: Yes, yes, yes.

10 MR. BLIRA-KOESSLER: - - - rock form?

11 JUDGE RIVERA: As opposed to the crystals, the  
12 rocks, yes.

13 MR. BLIRA-KOESSLER: I mean, it probably would go  
14 into weight because it could be crushed during the  
15 transportation process. I mean, you know, there's some  
16 explanation for it. I think it'll be okay. But, you know,  
17 again, we're talking about the form of the actual substance  
18 now. We're not talking about reporting errors, which  
19 consistently courts have held only to the weight not - - -

20 JUDGE RIVERA: And if the criminalist said, if it  
21 was a rock, it would not, in transport, have ended up with  
22 this kind of - - - of powdery residue?

23 MR. BLIRA-KOESSLER: If - - - if the criminalist  
24 said?

25 JUDGE RIVERA: Said that - - - what you just

1 described as the explanation was not possible, will you  
2 still say that still all goes to the weight?

3 MR. BLIRA-KOESSLER: I - - - I think it would go  
4 into the weight because that - - - that would be pretty  
5 strange testimony that - - - that a rock could not go into  
6 powder. I mean, cocaine can easily crumble. I mean,  
7 that's - - - you know, you could have rocks - - -

8 CHIEF JUDGE WILSON: Well, let's say - - -

9 JUDGE RIVERA: So my - - - my - - - my - - - my -  
10 - -

11 CHIEF JUDGE WILSON: Let's say it starts as  
12 powder and ends up as rock?

13 JUDGE RIVERA: Or the other way, yeah.

14 MR. BLIRA-KOESSLER: Yeah. I mean, I - - - I  
15 think what goes to admissibility would be more of a more  
16 drastic change than that, like in color or real change,  
17 like, from say, a solid to a liquid or something, where  
18 it's clearly - - - it can't be the same thing. But for  
19 rock cocaine to go to powder and then you say it's not the  
20 same thing - - -

21 JUDGE HALLIGAN: Some change condition - - -

22 MR. BLIRA-KOESSLER: That's - - - that's just not  
23 the way it is.

24 JUDGE HALLIGAN: So some change conditions,  
25 you're saying, can go to admissibility and not weight?



1 MR. BLIRA-KOESSLER: Some change conditions, but  
2 I'd say it has to be pretty drastic. I - - - I don't think  
3 it's just rock to powder. I mean, I - - - I think that can  
4 be discounted. And if the criminal said that fine, but,  
5 you know, it's up to the judge to make that ultimate  
6 determination - - -

7 JUDGE RIVERA: So then - - -

8 MR. BLIRA-KOESSLER: - - - as to admissibility.

9 JUDGE RIVERA: Yes. So then you - - - when you  
10 are talking about weight, you say it's not about  
11 admissibility, it goes to the weight, it's about a  
12 credibility determination.

13 MR. BLIRA-KOESSLER: I - - - I - - -

14 JUDGE RIVERA: I believe you, I don't believe  
15 you. I believe that the criminalist says that's what they  
16 found or I don't.

17 MR. BLIRA-KOESSLER: I think weight is - - - that  
18 goes to more of what the jury does - - - the - - - the fact  
19 finder does not in the process of determining whether - - -

20 JUDGE RIVERA: But again that's - - -

21 MR. BLIRA-KOESSLER: - - - something is  
22 admissible.

23 JUDGE RIVERA: - - - that's what I was trying to  
24 get to, what - - - what you mean by weight. I mean, left  
25 with - - -

1 MR. BLIRA-KOESSLER: That's - - -

2 JUDGE RIVERA: - - - it must be - - -

3 MR. BLIRA-KOESSLER: That's run by - - -

4 JUDGE RIVERA: - - - a credibility determination.

5 MR. BLIRA-KOESSLER: You know - - -

6 JUDGE RIVERA: - - - unless the criminalist said,  
7 no, there's an explanation. This change is certainly  
8 possible.

9 MR. BLIRA-KOESSLER: In - - - in terms of your  
10 example with the rock into powder or - - -

11 JUDGE RIVERA: Or the powder to rock, either way.

12 MR. BLIRA-KOESSLER: I mean, she - - - she could  
13 say that. I - - - I don't think that's the kind of change  
14 that cases talk about where it becomes inadmissible, you  
15 know, something going from rock - - - just rock to powder  
16 form. If there's, like, a change in color, I mean, that -  
17 - - that would be quite odd. If there was a change, again,  
18 from solid to liquid or something like that.

19 JUDGE RIVERA: And you would - - -

20 MR. BLIRA-KOESSLER: - - - you know.

21 JUDGE RIVERA: - - - say, then that doesn't go to  
22 the weight?

23 MR. BLIRA-KOESSLER: That - - - that will go more  
24 to admissibility, like - - - like, a drastic - - -

25 JUDGE RIVERA: Because it's simply impossible?

1 MR. BLIRA-KOESSLER: - - - change in what the  
2 substance is.

3 JUDGE RIVERA: Because it's simply impossible?

4 MR. BLIRA-KOESSLER: Because it just wouldn't  
5 make sense unless explained. If - - - if it can be  
6 explained, that's another thing. You know, if it changes  
7 color because of the testing process, let's say, and the  
8 criminalist testifies to that.

9 JUDGE RIVERA: And you say here there is an  
10 explanation in your view?

11 MR. BLIRA-KOESSLER: With all the  
12 inconsistencies, yeah.

13 JUDGE RIVERA: Yeah.

14 MR. BLIRA-KOESSLER: I mean, Lin says one bag.  
15 He took it apart and saw two. Criminalist says, yeah, I  
16 saw the forty-five bags in there, which is what he saw at  
17 the precinct. In the arrest report, he's charged with  
18 sale. That's another thing they brought up. But he was  
19 never formally charged with sale.

20 CHIEF JUDGE WILSON: And if - - -

21 MR. BLIRA-KOESSLER: He's only charged with  
22 possession.

23 CHIEF JUDGE WILSON: If what Lin got was - - -  
24 everything is the same except what Lin got was some white  
25 material that turned out to be cocaine in a pickle jar.

1 That's weight? Place a label on it?

2 MR. BLIRA-KOESSLER: That'll be quite - - - that  
3 - - - that'll be extremely odd, Judge. And, you know - - -

4 CHIEF JUDGE WILSON: Yeah.

5 MR. BLIRA-KOESSLER: It would deserve a very  
6 thorough inquiry. It's not what happened here. I have  
7 never heard of that happening. And I hope that never  
8 happens. Because that - - - that - - - that will be pretty  
9 bad. But yeah, I mean, they - - - you know, a case like  
10 that kind of arose in - - - I think the case was Dunham v.  
11 Mellie, where somebody brought blood to a lab, right? Gave  
12 it to somebody they didn't identify or couldn't identify.

13 And then the person at the lab put a label on it.  
14 And then the person that tested said, well, the vial  
15 doesn't have the label. The label was on the box instead.  
16 And the Third Department - - - it was a 1961 case - - - the  
17 Third Department ruled that there wasn't enough to meet the  
18 chain of custody because of this mislabeling.

19 So, you know, that predates Connelly. I don't  
20 know anymore if that might go to more of a weight question  
21 or an admissibility question because it's still the same -  
22 - - because the log is the same vial of blood, you know.  
23 Your question of the - - - of a pickle jar, it's - - - that  
24 - - - I hope that never happens. That's - - -

25 CHIEF JUDGE WILSON: Me too.

1 MR. BLIRA-KOESSLER: That's - - - that's how I'll  
2 answer that. I - - - I - - - I hope we never get a case  
3 like that, because that's a much more difficult argument.  
4 But this case, it's pretty simple. It was always in police  
5 custody. You have the voucher numbers. You have three  
6 witnesses, not just Officer Lewis, testifying to the chain.  
7 There is no evidence of tampering. There's speculation of  
8 tampering.

9 But what he's saying about the bags, nobody  
10 planted the bag. That's explainable by the testimony and  
11 the fact that Lewis took everything apart at the precinct.  
12 So for all those reasons, the chain was made out.  
13 Everything else goes to weight. And we ask you affirm the  
14 Appellate Division's decision.

15 CHIEF JUDGE WILSON: Thank you.

16 MR. FERGUSON: Your Honors, it's not simply  
17 paperwork errors. Look at Officer Lewis' grand jury  
18 testimony. When he says - - - there's no mention of  
19 Officer Lin at all. He says he personally recovered the  
20 two items from the ground. Each one contains multiple  
21 Ziploc bags and crack cocaine in the form of small rocks, a  
22 white substance and powder.

23 And what - - - and what - - - no one - - - and my  
24 adversary has not been able to dispute is, there were two  
25 items in the envelope. Officer Lin only put one item in

1 the envelope. She put in the envelope a tied latex glove.  
2 She did not put in a tied latex glove and a bunch of other  
3 bags.

4 Officer Lewis does not testify, I removed the  
5 latex glove. I cut it open. I removed it and then weighed  
6 those items. His testimony is, what I received was on that  
7 desk in that envelope was two items: one, a latex glove,  
8 which disappears and is never seen again. He does not  
9 testify he opened it or did anything to it. He did not  
10 photograph it.

11 But what he also says is he recovered a second  
12 item, which is the bags that are in question. That showed  
13 up between the time Officer Lin put the stuff in the  
14 envelope, the latex glove. And when hours later, Officer  
15 Lewis came to the precinct, he finds two items in that.  
16 That establishes that what Officer Lin recovered is not  
17 what was sent to Criminalist Osorio for testing.

18 JUDGE GARCIA: Let's say - - - let's say - - -  
19 I'm sorry to go back - - - and I hate to do this more - - -  
20 but same facts here. Officer Lin takes the envelope, seals  
21 it. We don't see that, but she comes in, she puts it on  
22 the desk. There's a video camera there, and it's watching  
23 this 24/7. The next officer comes in, takes it on video  
24 camera, brings it to the lab on video camera. The lab  
25 opens it, dumps it out, and it's different things than what

1 she says she put in the envelope.

2 MR. FERGUSON: Then her - - -

3 JUDGE GARCIA: What's the end result of that?

4 MR. FERGUSON: Her testimony would not - - -  
5 would have been false at that point because it's on - - -

6 JUDGE GARCIA: What if she misremembered it or  
7 she made a mistake, and isn't that what you mean by weight?  
8 Because - - -

9 MR. FERGUSON: No.

10 JUDGE GARCIA: - - - depending on how strong the  
11 chain of custody is depends on what happened here, right?  
12 So if your chain of custody is bullet proof, that it's this  
13 thing that was put in the envelope that got to the lab,  
14 then a mistake has to be made at this end in terms of what  
15 she thinks she put in that envelope, what she remembers she  
16 put in that envelope, what she wrote down she put in that  
17 envelope. So isn't that what we're really getting at here?  
18 How firm is the chain of custody? So how much does that  
19 indicate that she made a mistake versus there was tampering  
20 somewhere along the way?

21 MR. FERGUSON: She did not make a mistake. Her  
22 testimony was crystal clear throughout her testimony, that  
23 she recovered a single bag that was torn from the ground  
24 that was so badly damaged that she needed to put it into a  
25 latex glove.

1 JUDGE GARCIA: How long after that event was she  
2 testifying? How long after she recovered the drugs did she  
3 testify in court?

4 MR. FERGUSON: It was - - - you know, it was a  
5 long period of time afterwards. But the - - - she has - -  
6 - and Officer Lewis also testifies that she put the bag  
7 into the latex glove. So it's not simply Officer Lin  
8 testifying that she put the bag into the latex glove.  
9 Officer Lewis also testify that she put the bag into the  
10 latex glove. So therefore - - - so when - - - when she  
11 then testifies that she put that into the envelope and then  
12 Officer Lewis comes hours later and finds two items in that  
13 - - -

14 JUDGE GARCIA: But under my - - -

15 MR. FERGUSON: - - - that came from somewhere  
16 else.

17 JUDGE GARCIA: - - - scenario's same testimony,  
18 we'd have to assume they made a mistake, right?

19 MR. FERGUSON: I don't believe she - - - they  
20 made a mistake.

21 JUDGE GARCIA: No, no, in mine where the whole  
22 thing is on video after?

23 MR. FERGUSON: If it was on - - - if it was on  
24 video, then you would have the proof that she  
25 misremembered. Here, you have both officers testify what



1 Officer Lin did at the arrest scene, and that was to put  
2 the bag into the latex glove and to tie it shut. But  
3 what's in the envelope is two separate and distinct items.

4 If he had testified that he removed the latex  
5 glove, opened it, we'd be in a different situation, but he  
6 doesn't. The latex glove disappears, never photographed.  
7 And by the way, Criminalist Osorio does not identify the -  
8 - - they had the photograph that Officer Lewis took.

9 The People never asked Criminalist Osorio, is  
10 this what you received. They didn't ask her that question.  
11 There is a gap - - -there are gaps in the chain of custody.  
12 This evidence was tampered with, and Mr. Baez's conviction  
13 should be overturned. Thank you, Your Honors.

14 CHIEF JUDGE WILSON: Thank you.

15 MR. FERGUSON: And I'll see you next month on  
16 search and seizure day.

17 (Court is adjourned)

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

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Melvin Baez, No. 33 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Brandon Deshawn*

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

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Date: March 18, 2024

