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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant-Respondent,

-against-

No. 169

MATTHEW A. DAVIS,

Respondent-Appellant.

Appellate Division, Fourth Department
The Hon. Samuel L. Green Courtroom
50 East Avenue
Rochester, New York 14604
October 14, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Karen Schiffmiller
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The next matter on
2 the calendar is appeal number 169, the People of the
3 State of New York v. Matthew A. Davis.

4 MS. BITTNER: Good morning.

5 CHIEF JUDGE DIFIORE: Good morning,
6 counsel.

7 MS. BITTNER: May it please the court, my
8 name is Laura Bittner, and I'm here representing the
9 Niagara County District Attorney's Office. I don't
10 wish to reserve any time for rebuttal.

11 CHIEF JUDGE DIFIORE: Thank you.

12 MS. BITTNER: There was two points in our
13 brief to this court, and the first being that the
14 People proved beyond a reasonable doubt that the
15 assault that occurred on the victim in this case at
16 the hands of the defendant was a sufficiently direct
17 cause of the defendant - - - or, I'm sorry - - - of
18 the victim's death in this case.

19 JUDGE RIVERA: But didn't your expert
20 witness though from the M.E.'s office say "but for"?

21 MS. BITTNER: They did. That - - -

22 JUDGE RIVERA: So how does that satisfy
23 reasonable doubt?

24 MS. BITTNER: The only time that that "but
25 for" was used was during that testimony of the

1 medical examiner. I'd point out to the court that
2 the judge charged the jury properly. Obviously, the
3 jury is presumed to have followed those judge's
4 instructions. And what that "but for" causation was,
5 was simply a starting point. It's the first step in
6 the analysis.

7 So, yes, "but for" the defendant entering
8 the victim's apartment that day, beating him up, he
9 wouldn't have died. We're at step one. And then the
10 medical examiner went on after that point to explain,
11 okay, let's take this a step further. Why was this a
12 sufficiently direct cause? Because we had an obese
13 victim, who - - - given the information we know now
14 about obesity and the health problems that it can
15 cause, and the same way we consider, you know, an
16 elderly person might have health problems in that - -
17 - in some of the other cases this court has examined,
18 has the potential to have heart disease, to have
19 heart problems.

20 JUDGE ABDUS-SALAAM: Counsel, does the
21 court have to take into account the knowledge or
22 experience of the defendant? I mean, some people
23 might know that obesity causes heart failure or heart
24 disease. But what about a young person who isn't
25 thinking about things like that? I don't know how

1 old the defendant is here, but what about someone who
2 may not have that kind of life experience?

3 MS. BITTNER: I think considered - - -
4 considering the prevalence of that information, that
5 we have in the media now, the articles that are
6 written about it, things we see in the news about
7 just simply eating healthier, that - - - that
8 obesity, you can call it, can cause heart disease and
9 all these problems in that. I think that it is
10 within the average person's knowledge at this point
11 in the same - - -

12 JUDGE RIVERA: To - - - to understand if I
13 punch you in the jaw, you might have a heart attack,
14 because you're very, very overweight?

15 MS. BITTNER: Given this - - - when you
16 have a victim like this in front of you, yes. And
17 given the - - - the beating that occurred here too.
18 We're not just talking about one punch that broke his
19 jaw. We're not talk - - - we're talking about a
20 prolonged - - - blunt-force injuries that occurred
21 over and over again. And part of - - - I think what
22 the Fourth Department didn't address - - -

23 JUDGE RIVERA: And did the M.E. suggest
24 that that was the cause?

25 MS. BITTNER: What they suggested was that

1 - - -

2 JUDGE RIVERA: That prolonged struggle that
3 you seem to be talking about?

4 MS. BITTNER: The longer the struggle, the
5 more brutal it was, the more strain you're putting on
6 a person's heart. And when you have someone whose
7 heart is already somewhat damaged, you're looking at
8 increasing their - - - their blood pressure, you're
9 increasing their - - - their heart rate, and so the
10 longer it goes on, the more brutal it is, I think
11 that increases the risk, and that's what we have
12 here.

13 JUDGE RIVERA: Do you have to be obese or
14 just very heavy?

15 MS. BITTNER: I think - - - I guess
16 visually what, you know, this - - - this defendant
17 was looking at in front of him, whether he's making a
18 distinction between very heavy or whether he's, you
19 know, officially obese on your - - - your BMI, I - -
20 - I think visually - - -

21 JUDGE FAHEY: Well - - - well, there are -
22 - - there are some - - -

23 MS. BITTNER: - - - he could see this was
24 an overweight person.

25 JUDGE FAHEY: - - - some cases from the

1 Court of Appeals that on - - - on the issue of heart
2 attack involving elderly victims. I think Anthony M.
3 is one and the People v. Cable and also People v.
4 Ingram. And - - - and those cases, if - - - if
5 you're familiar with them, do - - - do you want to
6 address those? Because they - - - they seem to argue
7 that - - - they don't argue obesity, but you have to
8 be aware of the condition of the person, I guess, in
9 the analysis. That would be the fairest way to put
10 it.

11 MS. BITTNER: And in that same way, you're
12 looking at someone who, you know, you might not
13 exactly know that they're eighty-six years old, but
14 you know that they are elderly. And the same way you
15 might know - - - not know whether or not their exact
16 weight makes them officially obese, but you can look
17 at someone and see that they're overweight.

18 And in those cases, you know, we have even
19 a further attenuated - - - someone that died ten days
20 later in Anthony or someone that died fifty-five
21 hours later. This was almost immediate. When you
22 look at the - - - the evidence by the crime scene
23 experts and by the blood splatter experts, once Mr.
24 Bradberry went down, he never got back up again.

25 JUDGE FAHEY: Yeah.

1 CHIEF JUDGE DIFIORE: Counsel, is there any
2 significance we should attach to the fact that the
3 M.E. classified this death as undetermined?

4 MS. BITTNER: I think that that actually
5 perfectly so - - - showcases what the jury was
6 supposed to do here. The - - - in the - - - I
7 believe it was in the redirect, the M.E. explained
8 that they went with "undetermined", because it's not
9 simply a homicide. It's not simply someone walking
10 up, shooting someone in the heart, they're dead,
11 that's easier to determine. Nor is it, completely
12 natural causes either.

13 So you have to look at all of the - - - the
14 chain of causes that went into effect here to
15 determine the cause of death, and I think the M.E.
16 almost sa - - - said that's what the jury is here to
17 decide, is to look at, okay, we have this beating.
18 We have this strain that causes on a heart. We have
19 a person who, we're looking at as obese or overweight
20 in front of us. And that's what ultimate - - -
21 ultimately causes the death.

22 CHIEF JUDGE DIFIORE: Would you care to
23 address the admissibility of the video surveillance
24 tape?

25 MS. BITTNER: I believe those objections

1 went more so to the weight that was given of the
2 tape. As far as - - - there was extensive, I
3 believe, in Mr. Brandt's brief, as well as the
4 testimony at the court, as far as, you know, some of
5 the jumps in that that occur in the video. Something
6 for the jury to take into account as far as weighing
7 it's - - - as far as its weight, but not as its
8 ultimate admissibility.

9 JUDGE RIVERA: Is your position that they
10 preserved this question about the - - - the
11 foundational question about admissibility, the
12 question is all about the weight?

13 MS. BITTNER: Yes.

14 JUDGE RIVERA: Okay.

15 MS. BITTNER: Any further questions?

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 MS. BITTNER: Okay, thank you.

18 CHIEF JUDGE DIFIORE: Ms. McGrath?

19 MS. MCGRATH: Good morning, Your Honors.

20 My name is Patricia McGrath. I'm here on behalf of
21 Matthew Davis, and I would like to begin by - - - by
22 discussing the - - - the issue of the - - - of the -
23 - - of the heart attack. Heart rate's a little
24 interesting concept for me at the moment, but I will
25 soldier on here.

1 The - - - the - - - the medical examiner,
2 which, of course, is - - - is somebody who didn't
3 actually perform the autopsy but did have - - - did
4 have an opportunity to review the - - - the findings,
5 uses a "but for" test. And the - - -

6 JUDGE PIGOTT: Well, they - - - I know they
7 said that, but - - - but he's six-one, 270, right?
8 There's a bunch of them who are going to be playing
9 football on Sunday, right? And when they talked
10 about obesity, and when I first looked at this, I
11 thought, you know, we're looking at some lumbering
12 person who can barely get out of bed in the morning,
13 and, you know, sits in a chair all day, and that
14 wasn't necessarily the case here.

15 And isn't she right? The CJI was - - - was
16 followed to a T. And - - - and they said it's not
17 the "but for" test, it's a direct cause, and that's
18 what the jury was given and don't we - - - don't we
19 have to presume that they followed that instruction
20 and came to the conclusion they did?

21 MS. MCGRATH: Well, I - - - I think that as
22 the - - - as the Appellate Division stated, the - - -
23 the judge made the - - - made the correct - - - gave
24 the correct jury instructions, however, the
25 combination of - - - of her - - - her testimony and

1 the fact that the - - - the heart attack for someone
2 who is forty-one years old, unlike the - - - the
3 victims in - - - in Anthony M. and - - - and the - -
4 -

5 JUDGE PIGOTT: But the standard was right,
6 is - - - is my point. In other words, if we're
7 looking at the question of law as to whether or not
8 the jury was given the appropriate standard by which
9 to - - - to make a determination on the facts, they
10 got the right standard, and they reached a conclusion
11 that it was a murder; it was a homicide. So how - -
12 - how do we - - - how do we interfere with that?

13 MS. MCGRATH: Be - - - because as - - - as
14 the - - - the cases - - - the line of cases that talk
15 about the - - - the necessity for felony murder, that
16 there be a sufficiently direct connection between the
17 - - - the incident and - - - and the death. And, you
18 know, we have - - - we have a - - - a discussion by
19 the - - - by the M.E. on the - - - on the witness
20 stand with - - - with regard to time of death,
21 although we don't know the time of death.

22 JUDGE GARCIA: But counsel, it's a giv - -
23 - to Judge Pigott's point in a different way a little
24 bit maybe, isn't - - - with this instruction,
25 wouldn't we have to say there is no version of the

1 M.E.'s testimony and the rest of it that would
2 support this verdict? I mean, that would really be
3 the standard, right? We would have to say there is
4 no rational way this jury could have applied the
5 correct instructions and come up with a guilty
6 verdict?

7 MS. MCGRATH: Un - - - under - - - under
8 legal sufficiency?

9 JUDGE GARCIA: Right.

10 MS. MCGRATH: Yes, yes.

11 JUDGE FAHEY: You know, I - - - I - - -
12 it's kind of an interesting question, be - - -
13 because of - - - of how we look at causality. So are
14 we talking about that this - - - that the only way
15 that this - - - this victim would have passed away
16 would have been because of robbery, or are we talking
17 about that it was a significant contributing factor
18 in causing it? And which is it for your argument?

19 The reason I ask that is because Anthony M.
20 and some of those cases talk about it being a link in
21 the chain and - - - and the language is used that the
22 actual contributing factor forged a link at - - - in
23 the chain at the cause of events, which is kind of
24 normal, proximate cause. And - - - but if we
25 accepted your argument, I think we'd be saying that

1 there has to be, "but for" this happening, he
2 wouldn't have had a heart attack. It wouldn't have -
3 - - it wouldn't happen. It's got to be the sole
4 contributing factor almost.

5 Do you see the distinction I'm making here
6 between a number of factors that could be significant
7 that - - - to cause it or the sole factor that could
8 cause it? And - - - and that's the problem I'm
9 having with your argument, that - - - that - - - that
10 you're - - - you're arguing that almost would have to
11 be the sole factor that caused it.

12 MS. MCGRATH: Oh. Our - - - our argument,
13 Your Honor, is that, while it does not have to be the
14 sole contributing factor, that it has to be, you
15 know, more significant than wha - - - than what was -
16 - - was - - - was testified to - - -

17 JUDGE FAHEY: So let's assume that's true,
18 then. We'll - - - we'll take that in - - - so then
19 how is not appear a jury question, in weighing the
20 different factors? Because obviously there's more
21 than one factor. Obviously, weight was a factor in
22 causing it. Stress. You know, that happens over
23 time. It's not just at this - - - this particular
24 moment. There are a number of factors, but this is a
25 - - - was this a significant contributing factor?

1 How - - - how do we distinguish those here as a
2 matter of law?

3 MS. MCGRATH: I - - - I think that because
4 we have testimony by the medical examiner that it - -
5 - the report itself as I think, perhaps it was Judge
6 Rivera had - - - had indicated - - - that the report
7 itself shows undetermined - - - maybe - - - I
8 apologize, it might have been you, Judge. But the -
9 - - the cause of the death was - - - was a question
10 for - - - that the - - - I'm not, I apologize - - -
11 the manner of death is - - -

12 JUDGE FAHEY: So what you're really saying
13 is, we should look at the - - - the testimony then of
14 the - - - the medical examiner in making our
15 determination. And so you're saying that's what
16 insufficient.

17 MS. MCGRATH: With - - - with respect to
18 the - - - the - - - the felony murder. Then - - -
19 then, of course, we have the - - - the issue as well
20 with respect to the - - - the videotape - - -

21 JUDGE PIGOTT: Well, before you get there,
22 I want to just go - - -

23 MS. MCGRATH: Sure.

24 JUDGE PIGOTT: - - - go back on his death
25 again. Your argument seems to end up being because

1 the - - - the medical examiner's report, because the
2 - - - you know, says what it says, you can move to
3 dismiss this right at - - - right at the grand jury,
4 then, because it says - - - it says cardiac event.
5 QED, I win. It's not homicide. Unless the C.M.E.,
6 or the medical examiner, says it's a homicide, the DA
7 has no right to charge to charge somebody with
8 murder.

9 MS. MCGRATH: No, I'm not saying that, Your
10 Honor.

11 JUDGE PIGOTT: Okay, so that means that
12 because the sit - - - the medical examiner said it
13 was a heart attack, does not necessarily mean it
14 would not be a homicide. The jury was given the
15 instructions that it has to be a direct cause or
16 whatever. They made a factual determination based
17 upon that standard using that medical examiner
18 report. What's the flaw?

19 MS. MCGRATH: Your Honor, as I said, I
20 think that the - - - the flaw is that there has to be
21 some sufficiently direct as to - - - to - - - to use
22 the language of the cases, sufficiently direct
23 connection between the - - - the action and between
24 the - - - even though, it's not a "but for" test, it
25 still has to have some - - - some significance.

1 JUDGE STEIN: Well, what makes this in - -
2 - insufficiently direct as a matter of law? What - -
3 - what is it that - - - that's missing as a matter of
4 law that says that a jury could not take this
5 expert's testimony and find defendant guilty?

6 MS. MCGRATH: I honestly can't say that it
7 - - - it would be as a matter of law, so that it
8 really goes to the - - - the decision that - - - of
9 the Appellate Division and its - - - its analysis
10 which they have, of course, the - - - the ability to
11 do, and - - - and they - - - they agreed with - - -
12 with our argument that it was insufficiently direct,
13 and consequently it wasn't reasonably foreseeable - -
14 -

15 JUDGE RIVERA: But the - - - but the - - -

16 MS. MCGRATH: - - - you know, we - - -

17 JUDGE RIVERA: The People - - - the People
18 are also arguing that in addition to the M.E.'s
19 testimony, and you're correct it's not the M.E. who
20 did this particular autopsy, but the M.E.'s testimony
21 and what we can get from it, that there's other
22 evidence anyway, so that the blood splatter and the
23 fact that it's a struggle to draw on. Let's assume
24 that one - - - one would be persuaded by your
25 argument about the M.E.'s testimony. Why doesn't the

1 rest of the evidence, though, get you past the
2 hurdle? Because you focused only on the M.E.'s, but
3 I'm saying the People have argued, but there's other
4 evidence.

5 MS. MCGRATH: Yes, there - - - the - - -
6 the ev - - - the - - - the blood - - - blood splatter
7 evidence shows that there was a struggle, but we also
8 know from the - - - from the - - - the autopsy report
9 that there - - - there were no serious injuries.
10 There, you know, there was - - - there was some
11 contusions, there - - - there was, you know, a
12 fractured jaw - - -

13 JUDGE ABDUS-SALAAM: Does there have to be
14 injury? What if - - - what if instead of just having
15 a fist-fight with the defendant, the victim came to
16 the door or the defendant barged in and had a gun and
17 then the victim immediately has a heart attack and
18 dies? Would you say there's no direct connection
19 between what the defendant did, barging in with a
20 gun, and the heart attack?

21 MS. MCGRATH: Well, I - - - I think that
22 goes to the question of foreseeability, Your Honor,
23 because, you know, I think it's a lot more
24 foreseeable that somebody would react in such a way
25 with a - - - if a gun is being pointed at them, then

1 if they're getting, you know - - -

2 JUDGE ABDUS-SALAAM: So it has to be a
3 weapon?

4 MS. MCGRATH: No, I'm not saying it doesn't
5 have to be a weapon, but - - - but - - - but I - - -
6 I think your - - - your hypothetical, you know, has a
7 - - - is a fact pattern that I think would - - -
8 would more - - - more reasonably support the
9 foreseeability.

10 CHIEF JUDGE DIFIORE: Ms. McGrath, would
11 like to move to the admissibility of video
12 surveillance?

13 MS. MCGRATH: Yes, as - - - as we indicated
14 in our - - - our briefs, I think that - - - first
15 off, I think that the matter was preserved, because
16 there was - - - there was an immediate motion upon
17 the testimony of the expert that this really did not
18 - - - was not a fair and accurate representation of
19 what took place on the evening in question. That - -
20 - that - - - that motion, in and of itself, as well
21 as the renewal of it at the time of the trial order,
22 I think sufficiently preserves the - - - the matter
23 for our consideration today.

24 I - - - I think that although you know
25 there are certainly a number of arguments proffered

1 by the appellant's brief with respect to how you
2 authenticate a video that, you know, the one that
3 they didn't get to is the one that - - - that we - -
4 - we believe the most troubling, which is that it's
5 not a fair and accurate representation.

6 Consequently, you know, that comes out, then it's a
7 little bit like a house of cards with respect to the
8 underlying (indiscernable).

9 CHIEF JUDGE DIFIORE: Thank you, counsel.

10 MS. MCGRATH: Thank you.

11 (Court is adjourned)

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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Matthew A. Davis, No. 169, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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