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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

DAVID W. SCHREIER,

No. 4
(Papers sealed)

Appellant.

20 Eagle Street
Albany, New York 12207
January 6, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Karen Schiffmiller
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Counsel, do you want
2 rebuttal time?

3 MR. MURPHY: Two minutes, please, Judge.

4 CHIEF JUDGE LIPPMAN: Two minutes. Go
5 ahead. Let's start and we'll see if this continues
6 to work.

7 MR. MURPHY: Thank you. May it please the
8 court, Your Honors, we're asking the court today to
9 interpret the "surreptitiously view, broadcast or
10 record" provision of the unlawful surveillance
11 statute to require that it be hidden from all public
12 view, not just from the view of those in - - -

13 CHIEF JUDGE LIPPMAN: Counsel, how is this
14 not surreptitious in this particular circumstance,
15 when there's the decorative window, you can't see
16 unless you're that high, you're using a glove, it's
17 dark.

18 MR. MURPHY: The analysis - - -

19 CHIEF JUDGE LIPPMAN: How is this not
20 surreptitious?

21 MR. MURPHY: Well, all that analysis goes
22 just to the vantage point of the complainant, the
23 person being surveyed. But we're ask - - -

24 JUDGE SMITH: You - - - you would concede
25 that he didn't want her to know he was there?

1 MR. MURPHY: Judge, that - - - and that's
2 true, and we - - - and we do not contest that - - -
3 the provision, "without such person's knowledge or
4 consent". What we're saying is that if you don't
5 interpret it the way that we're suggesting, you're
6 making that provision meaningless.

7 JUDGE GRAFFEO: But the - - - the
8 upskirting provision also uses the term
9 surreptitiously, doesn't it?

10 MR. MURPHY: Yes, Judge.

11 JUDGE GRAFFEO: And most of that upskirting
12 occurs in public places where people hold a cell
13 phone under - - - under a woman's skirt. It could be
14 on a sidewalk; it can be in a gymnasium. It can be
15 any - - - it can be in a workplace; it can be
16 anywhere.

17 MR. MURPHY: Yeah. What - - -

18 JUDGE GRAFFEO: You're saying there's two
19 different definitions of surreptitious in the two
20 different statutes?

21 MR. MURPHY: No. What - - - what I'm
22 saying, Judge - - - last month - - - this may help
23 explain this a little bit better. Last month, the
24 Third Department came out with Piznarski. And this
25 was - - - I think we probably all saw this case.

1 There's two very good examples of
2 surreptitiousness in that case. There's a digital
3 camera used. It's on a desk in a - - - in a - - - in
4 a school dorm, okay. And you have two different
5 complainants - - - victims in that case. One example
6 of surreptitiousness - - - and I think the Third
7 Department was correct about this - - - is that one
8 of the victims had her eyes closed, and she didn't
9 know the camera was on. That's one.

10 The second - - -

11 JUDGE GRAFFEO: Yeah, but you just said it
12 - - - it can't be in a public place, so I'm trying to
13 stick with the public place.

14 MR. MURPHY: Wait, it can't be - - - it
15 can't be seen by the public. The - - - the purpose
16 behind this statute is not just about privacy. It's
17 about technology that cannot be seen by anybody.
18 That's what makes it such a danger to privacy.

19 JUDGE GRAFFEO: And you don't think that
20 the facts of this case indicate that this defendant
21 was trying to avoid anybody seeing him doing this?

22 MR. MURPHY: No, Judge, I - - - well - - -
23 well, here's - - - here's our problem with this. The
24 theory of the prosecution is that you have a thin
25 wall between the complainant and - - - and the

1 defendant here. And he hears the - - - he hears what
2 he thinks is the shower, so he goes outside and
3 there's the recording.

4 The - - - the idea of using darkness here,
5 I think we need to be careful about. We're not going
6 to disagree on what surreptitious says from the
7 dictionary, but I think what the court needs to
8 accept is that it includes an intentional scheming,
9 if you will. It's not something that you use by
10 happenstance. Their theory is that - - -

11 JUDGE PIGOTT: Who - - - who are we going
12 to hurt if we were to affirm this? What - - - what -
13 - - what scenarios do you see that we're - - - that
14 we're hurting, if we were to uphold his conviction?

15 MR. MURPHY: The purpose of the statute is
16 to address the gravest concern which is technology
17 that you cannot see that are surveilling. It hurts
18 because it doesn't address the reason why they
19 enacted the statute, and we know that from - - -

20 JUDGE PIGOTT: What's - - - what's - - -
21 can you give me an example of - - - of where, so we -
22 - - some defendant would - - - forget this one - - -
23 would be unjustly convicted under the statute?

24 MR. MURPHY: I need to change the facts a
25 little bit, but Zapata, which is not a case that

1 directly helps us. We - - - we try to distinguish
2 it. Zapata is such an unusual scenario. The guy is
3 in front of a museum. And he's supposedly taking a
4 picture of the beautiful building, which we know is
5 covered with scaffolding or something. He's really
6 trying to photograph the women in front.

7 It happens to be that the security officer
8 is specially trained from the - - - from the museum,
9 in detecting people taking pictures of people's - - -
10 under their skirts and so forth. It's such an
11 unusual circumstance. Usually - - -

12 CHIEF JUDGE LIPPMAN: This is not an
13 unusual circumstance that the guy hears the shower
14 next door, runs out to the front where he can't see,
15 and try - - - and - - - and in the darkness with a
16 gloved hand, try to - - - that's - - - that's not a -
17 - - a - - - a plot or a - - - a by-design to
18 surreptitiously video?

19 MR. MURPHY: But it's - - - but it's - - -
20 it's our position, Judge, that it has to be
21 intentionally surreptitiousness with regards to the
22 entire public. The - - - the part about the dark - -
23 -

24 CHIEF JUDGE LIPPMAN: What would make it
25 intentionally surreptitious, in relation to the

1 entire public here? If he did what, would it be
2 intentionally surreptitious?

3 MR. MURPHY: If it wasn't obvious that he
4 was using a camera and filming. Something that's
5 done in public - - -

6 CHIEF JUDGE LIPPMAN: You mean, if he had
7 it hidden?

8 MR. MURPHY: A hid - - -

9 CHIEF JUDGE LIPPMAN: If he was standing at
10 the - - - at the door, and didn't put his gloved hand
11 up, but in some way, was hidden in the part of his
12 clothing that - - - that went up through the back,
13 and - - - and got up high enough to take it? Does
14 that make sense?

15 MR. MURPHY: Some intent - - - some
16 intentional effort - - - affirmative effort by his
17 part to make it surreptitious, and not be seen by the
18 rest of the public.

19 JUDGE PIGOTT: So if - - - if - - - if - -
20 - not to make it silly, but if there's a whole bunch
21 of frat brothers that say, hey, this is cool; she's
22 in the shower. We can go - - - we can go - - - we
23 can get a film of her. As long as there's six of
24 them out there, that's not illegal?

25 MR. MURPHY: Well, it - - - it doesn't meet

1 what the - - - what the legislative intent was for
2 surreptitious. And it - - - it's not just about - -
3 -

4 JUDGE SMITH: To follow up on Judge
5 Pigott's hypothetical, if - - - if - - - if the guy
6 brings all his friends with him to spy on the woman,
7 then it - - - it doesn't violate the statute. But if
8 he sneaks off and doesn't let his friends know and
9 does it himself, it does?

10 MR. MURPHY: If - - - it has to be
11 something that the public cannot see. In other
12 words, it has to be a recording that is not - - -

13 JUDGE SMITH: So the answer - - - the
14 answer is yes?

15 MR. MURPHY: It - - - it would be, because
16 this statute is written this way.

17 JUDGE GRAFFEO: Where - - - where does - -
18 - in the legislative history, where are you getting
19 the fact that the public can't observe it?

20 MR. MURPHY: My - - - I - - - and I know
21 where you're going with that, Judge. It's a very
22 sparse legislative history.

23 JUDGE GRAFFEO: Because - - -

24 MR. MURPHY: But the enactment of the
25 statute was based on this woman whose - - - whose

1 landlord puts this little camera in the smoke
2 detector above her bed, that - - - that the reason
3 for the law - - - it's not just about privacy; it's
4 about hidden surveillance. Completely hidden.

5 JUDGE GRAFFEO: Well, surreptitious could
6 also mean that they wanted to protect against
7 legitimate uses of - - - of people filming certain
8 things.

9 MR. MURPHY: But - - - but when - - - when
10 you look at these two clauses, "surreptitiously view,
11 broadcast or record". Then you see, "without such
12 person's knowledge or consent". In order to give
13 effect - - -

14 JUDGE GRAFFEO: So this is no crime, what
15 he did?

16 MR. MURPHY: It - - - the element - - -
17 we're saying that the elements are not met here.

18 JUDGE GRAFFEO: This is no - - -

19 MR. MURPHY: Not - - -

20 JUDGE GRAFFEO: My question is, so there's
21 no crime here?

22 MR. MURPHY: That - - - this crime is not
23 committed. That is what we're saying, Judge. These
24 elements - - -

25 JUDGE GRAFFEO: Not this one. I'm asking

1 you, is there any crime that was committed here?

2 MR. MURPHY: Oh, I'm sorry. No, because he
3 was not trespassing at the time. I don't know of
4 another crime that he'd be committing, if he - - - if
5 he hadn't - - -

6 CHIEF JUDGE LIPPMAN: So every day he can
7 go and do this and there's no crime?

8 MR. MURPHY: Judge, under - - - under these
9 facts, no. It doesn't meet these elements is what
10 we're saying.

11 CHIEF JUDGE LIPPMAN: Every time he hears
12 the water run, shower, I'm going to go do this.

13 MR. MURPHY: I'm just saying, under this
14 statute, it doesn't meet these elements.

15 JUDGE SMITH: Could you - - - could you
16 spend a minute on the expectation of privacy?

17 MR. MURPHY: Oh, yes, Your Honor. As the
18 court knows, the County Court below cited to the
19 Wisconsin case, which directly rejected the idea that
20 you could apply the Katz reasonable ex - - -
21 expectation of privacy to this statute. What we're
22 asking the court to do is consider back to Justice
23 Harlan's concurrence in Katz. It seems to be the - -
24 -

25 JUDGE SMITH: Well, why - - - what's wrong

1 - - - what's wrong with the reasoning of the
2 Wisconsin court and the courts below that says law
3 enforcement is different?

4 MR. MURPHY: Well, the biggest problem is
5 that we're - - - we're charged under Subsection 1.
6 Subsection 3, there seems to be an itemization of
7 rules, which trigger a presumption of a - - - an
8 improper reason for viewing what you're viewing.
9 Because we're under Subsection 1, there has to be
10 some - - - some benefit paid at least to some extent
11 to the plain-view doctrine. It doesn't make sense
12 not to view this case by case. And what the
13 Wisconsin court was saying is that - - -

14 JUDGE SMITH: Well, I mean, I - - - I
15 assume that if - - - if - - - if she were standing in
16 - - - in her living room with - - - with the bli - -
17 - with the blinds open, and she just forgot the blind
18 was open, maybe her expectation of privacy wouldn't
19 be reasonable.

20 MR. MURPHY: I - - - but - - -

21 JUDGE SMITH: Why isn't this case
22 different?

23 JUDGE GRAFFEO: But, boy, is there any
24 place that you have a greater expectation of privacy
25 than your bathroom?

1 MR. MURPHY: And Judge, I - - - I can't
2 dispute with that - - - that principle. I can't,
3 except to say that we look at the Taborda case from
4 the Second Circuit, no matter where you are, if you -
5 - - if you put yourself out there sufficiently, then
6 there is not an expectation of privacy - - -

7 CHIEF JUDGE LIPPMAN: So once she opened
8 the door, expectation of privacy gone?

9 MR. MURPHY: Not - - - the fact that she
10 did not cover the windows is - - - was the theory at
11 trial.

12 JUDGE RIVERA: But - - - but the window is
13 - - - is decorative. And it's difficult - - - unless
14 you do what this individual did, you can't look
15 through. So why shouldn't she expect that people are
16 not going to break the law and look through a
17 decorative piece of glass?

18 MR. MURPHY: Can I - - - I - - - let me
19 address one thing with the decorative. I'm not - - -
20 and I know County Court repeated that several times.
21 It's not - - - I'm not saying it's a - - - he's an
22 excellent judge, and it's a very thorough decision,
23 but he keeps repeating decorative. Look at pages 87,
24 88, page 100; this is a clear, transparent window. I
25 just want to make that claim.

1 JUDGE RIVERA: But it's high up, and it's -
2 - -

3 JUDGE GRAFFEO: It's - - - it's one of the
4 little eyebrow windows that are high on the door.

5 JUDGE RIVERA: Yeah, it's high up; it's to
6 let in light.

7 MR. MURPHY: Well, respectfully, we don't
8 think the record supports that, and here's why. I
9 would - - - I'd refer to pages 110 and 113 of the
10 record. The investigator that goes there later on,
11 he's six foot, two. In fact, the window starts at
12 five foot, eight. It does not appear really to be
13 this thing that just above everyone's height of
14 average height. It doesn't appear to be that. I
15 know County Court said that.

16 JUDGE GRAFFEO: The photo is Exhibit 1,
17 right. So we can - - -

18 MR. MURPHY: Yes, Judge.

19 JUDGE GRAFFEO: - - - look at Exhibit 1,
20 and that shows the two doorways.

21 MR. MURPHY: Yes, Judge.

22 CHIEF JUDGE LIPPMAN: Okay, counsel.

23 MR. MURPHY: Thank you, Your Honor.

24 CHIEF JUDGE LIPPMAN: Thanks, you'll have
25 your rebuttal.

1 MS. FANTIGROSSI: May it please the court,
2 this is a case about the invasion - - -

3 CHIEF JUDGE LIPPMAN: Counsel, your
4 adversary says it's not surreptitious. How do you -
5 - - how do you answer that?

6 MS. FANTIGROSSI: I disagree, Your Honor.
7 It was surreptitious, not only in conduct, but also -
8 - - more importantly, it's surreptitious to the
9 victim and to the public at large - - -

10 JUDGE PIGOTT: Well, he - - - his - - -

11 JUDGE SMITH: But he says - - -

12 MS. FANTIGROSSI: - - - based on the facts
13 in this case.

14 JUDGE SMITH: He says you make the statute
15 redundant, because it already says without her
16 knowledge or consent. And the - - - and if
17 surreptitious just means hidden from her, why - - -
18 why say it at all?

19 MS. FANTIGROSSI: It's not redundant, Your
20 Honor, and if you look at the practice commentaries,
21 it's clear that the legislature intended to emphasize
22 the covertness or the stealthiness of the conduct
23 itself.

24 CHIEF JUDGE LIPPMAN: Was he hidden from
25 the public?

1 MS. FANTIGROSSI: He was, on the facts of
2 this case, Your Honor.

3 CHIEF JUDGE LIPPMAN: Well, how so? Say?

4 MS. FANTIGROSSI: It was 7:30 in the
5 morning on Christmas eve, when likely most people
6 were not going to be out in that courtyard getting
7 ready to go to work - - -

8 JUDGE SMITH: By the way, did anyone - - -
9 did anyone look up when sunrise was that day? It
10 seemed like, sort of, an obvious thing. It - - -
11 presumably that's a knowable fact.

12 MS. FANTIGROSSI: I don't believe they did,
13 Your Honor. On the facts of this case, the testimony
14 established that it was dark outside but starting to
15 get light. He held a small black camera, which I
16 believe the court has, in a black gloved hand - - -

17 JUDGE PIGOTT: He's - - - if I understand
18 counsel's argument, though, these are nice facts to
19 go to a jury on. I mean, I don't think anybody's
20 thrilled with what happened here. But the - - - the
21 concern - - - let's assume for a minute that there's
22 a security camera just inside that door. All right?

23 MS. FANTIGROSSI: Okay.

24 JUDGE PIGOTT: And you got a security guard
25 and he's sitting there watching the cameras. There's

1 twelve of them, because it's a complex. And all of a
2 sudden this lady pops up, you know, her bathroom door
3 opened for legitimate reasons, no doubt, and he
4 thinks that's cooler than hell. I mean, has he just
5 violated the law?

6 MS. FANTIGROSSI: No, Your Honor, because
7 again, it would go to the conduct. His conduct in
8 that situation would not be surreptitious.

9 JUDGE PIGOTT: But what - - - what - - -

10 MS. FANTIGROSSI: He's doing his job, and
11 he happens to see the woman in her home. Here, you
12 have to look at what the defendant did. He
13 manipulated and calculated and was very - - -

14 JUDGE SMITH: You're - - - you're saying he
15 has to actually attempt concealment from the victim?

16 MS. FANTIGROSSI: Absolutely, Your Honor.
17 And that's what he did here.

18 JUDGE SMITH: And you say that can be - - -
19 that can be inferred from these facts.

20 MS. FANTIGROSSI: Yes, it can, Your Honor.

21 CHIEF JUDGE LIPPMAN: Could she - - - or
22 would she reasonably have covered up that window - -
23 - that - - -

24 MS. FANTIGROSSI: No, Your Honor. I think
25 - - -

1 CHIEF JUDGE LIPPMAN: - - - area that makes
2 any sense in this case?

3 MS. FANTIGROSSI: To accept that argument
4 made by defense counsel, would mean we all need to
5 live in a tomb where no one can see in or out of our
6 windows at all.

7 JUDGE PIGOTT: No, you - - - you can - - -
8 I don't mean to be flippant, but you can close the
9 bathroom door.

10 MS. FANTIGROSSI: She did close the
11 bathroom door while she was in the shower. And she
12 opened it to let the steam out. She testified that
13 she had blinds on all of the other windows in her
14 home. Her son was sleeping at the time, so it's not
15 as if he was going to come out and observe her. The
16 door was locked. She was on the second floor of her
17 home. To think - - -

18 JUDGE SMITH: Suppose - - - suppose - - -
19 suppose the next occupant of that home decides to use
20 that same bathroom to cook meth, and a police
21 officer, a six foot, two police officer looks in.
22 Does - - - does that person have a rea - - - does the
23 person cooking the meth have a reasonable expectation
24 of privacy?

25 MS. FANTIGROSSI: I would think not, Your

1 Honor, if it was in plain view, if the officer could
2 see through that window. Again, I think that's a
3 different question, because the legislature here
4 specifically does - - -

5 CHIEF JUDGE LIPPMAN: What is the officer
6 couldn't see within - - - and he had to do something
7 like, you know, above his height, and whatever he had
8 to do to see it?

9 MS. FANTIGROSSI: I think that might fall
10 into the category of enhanced vision, which then he
11 might not have a reasonable expectation of privacy.

12 But here the legislature specifically
13 included in 250.40[1], the definition of reasonable
14 expectation of privacy in this context. So that's
15 why I would submit the Fourth Amendment analysis does
16 not apply. It can be instructive, as Judge Smith
17 pointed out. If she was standing in front of her
18 window with the blinds down, parading around naked in
19 her living room, she would not have a reasonable
20 expectation of privacy in that - - -

21 JUDGE SMITH: Even - - - even - - - even if
22 she just forgot. She - - - I'm not - - - we're not
23 talking - - - we're not talking about exhibitionist
24 here, just a perfectly normal woman who forgot the
25 blinds were drawn, then anybody who wants to look,

1 can look. Or anybody who wants to take pictures, can
2 take pictures.

3 MS. FANTIGROSSI: I think the recording is
4 an important element of what you just said, and I
5 think the problem and the reason that this statute
6 was enacted - - -

7 JUDGE SMITH: But - - - but that's - - -
8 but that's true then - - - if - - - if - - - if, yeah
9 - - - if you want to film a woman who happened to
10 forget to draw the blinds on her living room, you can
11 do it?

12 MS. FANTIGROSSI: I think the testimony
13 would need to establish that this was a one-time
14 situation, and she made a mistake - - -

15 CHIEF JUDGE LIPPMAN: What if you're hiding
16 behind the bushes and the - - - and the - - - you're
17 concealing yourself, but the blinds are left open.
18 It's surreptitious, then?

19 MS. FANTIGROSSI: That would be the
20 surreptitious conduct.

21 JUDGE SMITH: But it - - - but there's
22 still a reasonableness problem, isn't there?
23 Reasonable expectation problem?

24 MS. FANTIGROSSI: I think it would depend
25 on what the victim testified to. On - - - if this

1 was just an isolated incident, or did the defendant
2 know - - - was he sitting there watching, waiting for
3 her to do this? I think, you know, you'd have that
4 surreptitious component that would come into play.

5 JUDGE ABDUS-SALAAM: What about the Zapata
6 case, counsel, where the - - - the girls are sitting
7 on the museum steps and not paying attention to the
8 way that they're sitting? They're sitting in skirts
9 or dresses and they're - - - you know, their legs
10 gapped, so that the defendant could, you know, film
11 them - - -

12 MS. FANTIGROSSI: Sure.

13 JUDGE ABDUS-SALAAM: - - - without their
14 knowing it?

15 MS. FANTIGROSSI: I think that's conduct
16 that this statute was designed to criminalize. I
17 mean, the defendant is sitting across the street, and
18 unknowing to these young girls, he's videotaping them
19 with his camera, underneath their skirts. I mean,
20 that's illegal, and that's exactly what this was
21 designed to prevent from happening.

22 I don't think it's very different from this
23 case. In this case, as well, she's up on the second
24 floor bathroom in her house, just getting out of the
25 shower, performing her morning routine. She has a

1 reasonable expectation of privacy in that situation,
2 and should not be subjected to somebody standing
3 outside of her door, while they know that she's in
4 the shower, and putting a camera in a black-gloved
5 hand, and secretly videotaping her in her home.

6 JUDGE ABDUS-SALAAM: Wouldn't those girls
7 on the museum step have less of a privacy concern,
8 then the woman in the bathroom?

9 MS. FANTIGROSSI: I think the facts would
10 be stronger for the people in the case we have at
11 hand, but again, they're girls who are being
12 surreptitiously videotaped as they're doing something
13 that they're entitled to do, sit on the steps of a
14 museum.

15 CHIEF JUDGE LIPPMAN: Okay, counsel.

16 MS. FANTIGROSSI: Thank you.

17 CHIEF JUDGE LIPPMAN: Thanks.

18 Counsel, rebuttal?

19 MR. MURPHY: Your Honors, one - - - one
20 comment about the Donnino treatise, and we go back
21 and forth, but page 12 of the People's brief, they
22 give an excerpt from Judge Donnino. And I don't
23 disagree it's an act of - - -

24 CHIEF JUDGE LIPPMAN: Donnino, yeah.

25 MR. MURPHY: Donnino, excuse me. The - - -

1 the next sentence after their excerpt, the judge
2 indicates that the terms "knowledge or consent are
3 set forth in the alternative". And I'm not sure if
4 the judge is indicating that you can either look at
5 the surreptitious clause in the alternative to the -
6 - - without knowledge or consent or not - - - I would
7 disagree with that analysis, though. I used judge -
8 - - the judge for the - - - for the rest of my
9 argument with reasonable expectation of privacy.

10 I would like to point out about Zapata is -
11 - - is an unusual circumstance, because you have
12 someone with - - - with expertise on picking out what
13 this guy is doing with the camera. That's a very
14 unusual circumstance. Even more unusual than ours, I
15 would argue, Judge.

16 And I would also - - - the last point I
17 would make. Despite the statute having a definition
18 of reasonable expectation of privacy, we think it
19 just makes sense - - -

20 JUDGE SMITH: I'm losing you. What's the
21 relevance of the expertise in Zapata?

22 MR. MURPHY: It - - - I - - - I think he is
23 employed by the museum, and he - - - he's actually an
24 expert in detecting - - -

25 JUDGE SMITH: I understand the facts, but

1 why is that relevant to anything?

2 MR. MURPHY: Because it's not going to be
3 as apparent to the public. You're not - - - it's an
4 unusual circumstance to have someone standing on - -
5 -

6 JUDGE SMITH: So that - - - that - - - that
7 makes it - - - you mean, it's surreptitious because
8 it can only be discovered by an expert?

9 MR. MURPHY: Right. Right. It - - - it's
10 just very unique.

11 And we are charged under Subsection 1 here.
12 If we were charged under Subsection 3, you'd have the
13 itemization of the different rooms that - - - that
14 give a - - - a presumption that what you're doing is
15 not proper. We don't have that here. We think the
16 plain-view doctrine has to apply when you're looking
17 at things case by case, however you come down on it.

18 CHIEF JUDGE LIPPMAN: Okay, counsel,
19 thanks. Thank you both; appreciate it.

20 (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. David W. Schreier, No. 4 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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Date: January 14, 2014