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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF GORMAN,

Appellant,

-against-

No. 190

RICE,

Respondent.

20 Eagle Street
Albany, New York 12207
October 16, 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 ABDUS-SALAAM

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: We're going to start
2 with one - - - 190, Matter of Gorman v. Rice.

3 Counselor, you want any rebuttal time?

4 MR. KUTNER: I don't think it'd be
5 necessary, Judge, but if I could, I could reserve
6 just two minutes.

7 CHIEF JUDGE LIPPMAN: Two minutes, you have
8 it. Go ahead.

9 MR. KUTNER: Before I comm - - - I
10 commence, may it please the court and members of the
11 court, I'd like to apologize for a typographical
12 error I just detected in the appellate field, the
13 lore of unending typographical errors, as I've been
14 told over the years. On page 14 of the reply, point
15 3, it was sen - - - it's - - - it used the double
16 negative and - - - but in the context, I'm sure the
17 court picked it up that it wasn't meant that way.
18 But it says, "The Appellate Division's finding was
19 not unsupported by the record." It was obviously our
20 position - - -

21 CHIEF JUDGE LIPPMAN: Counsel, it's
22 happened before. Not to worry.

23 MR. KUTNER: Well, it leads into my first
24 point - - -

25 CHIEF JUDGE LIPPMAN: Go - - -

1 MR. KUTNER: - - - the jurisdiction of this
2 court to hear the issue. The Appellate Division - -
3 -

4 CHIEF JUDGE LIPPMAN: Let - - - let me ask
5 you a question, first - - -

6 MR. KUTNER: Yes, Your Honor.

7 CHIEF JUDGE LIPPMAN: - - - counsel. Is
8 the issue here of whether or not there - - - is the
9 issue whether or not there was consent? Or is it
10 that whether consent was given?

11 MR. KUTNER: In a way, that's the flip side
12 of the coin. Is - - - the issue is whether or not
13 the mistrial ruling was actually rescinded because
14 the issue of consent - - -

15 CHIEF JUDGE LIPPMAN: That's the - - -

16 MR. KUTNER: - - - wouldn't even - - -

17 CHIEF JUDGE LIPPMAN: That's the question
18 I'm asking you.

19 MR. KUTNER: Yeah, the - - - the issue of
20 consent doesn't even come into play until you dec - -
21 - you know, there was a decision whether to rescind
22 it.

23 CHIEF JUDGE LIPPMAN: Well, what about when
24 the judge asked the attorney should he go forward?
25 Was that not a re - - - a - - - a - - - asking him

1 for consent?

2 MR. KUTNER: He twice posed the question,
3 but, no, he gave him the option of abandoning or
4 surrendering what he had, meaning the - - - the
5 double jeopardy bar by the unrequested unre - - -
6 unnecessary mistrial, giving that up, and then going
7 forward with the trial and the - - -

8 JUDGE SMITH: Well, but he - - - but the
9 judge - - -

10 MR. KUTNER: - - - at - - - at his client's
11 option.

12 JUDGE SMITH: The judge said he would
13 reconsider his ruling if you wanted him to.

14 MR. KUTNER: I might recon - - - yeah, I'll
15 reconsider.

16 JUDGE SMITH: Yeah, but was - - - was he -
17 - - was he - - -

18 MR. KUTNER: Or I - - - I might reconsider.

19 JUDGE SMITH: - - - allowed to say that? I
20 mean did he - - - did he still have the power to
21 reconsider his ruling - - -

22 MR. KUTNER: Yes.

23 JUDGE SMITH: - - - at that point?

24 MR. KUTNER: Yes, and so - - -

25 JUDGE SMITH: So why - - - why wasn't it

1 then - - - and you - - - and I gather it was you,
2 right?

3 MR. KUTNER: Yes.

4 JUDGE SMITH: Yeah, you - - - you consulted
5 with your client and you came back and said
6 reluctantly we'll take the mistrial. Why - - - yeah,
7 you - - - you had the option of going ahead. Why - -
8 - why - - - why wasn't - - - oh, yeah, how can you
9 claim double jeopardy after you did that?

10 MR. KUTNER: Because in 1974, one of my
11 first trials in - - - in district court in Nassau
12 County, I was told a valu - - - taught a valuable
13 lesson by the trial judge, where there was an issue
14 of outrageous remark made by the prosecutor and there
15 - - - some of the co-counsel, the four attorneys, two
16 made motions for mistrial and another one and I
17 reserved. The other - - - the fourth attorney was a
18 very experienced attorney.

19 And I reserved because he did and then I
20 found out that he said I'm not going to - - - I'm not
21 going to ask until I see which way the trial court's
22 leaning and then - - - because you can always try to
23 get double jeopardy. It's one of the avenues that
24 you could pursue later on in case the court is going
25 to grant and it's found not to be manifestly

1 necessary. So at the time the - - - the mistrial was
2 granted I knew that there was a double jeopardy bar.
3 That it was not manifestly necessary to grant it
4 based upon the colloquy that occurred.

5 JUDGE SMITH: And yet - - - and you didn't
6 - - - you didn't - - - and you didn't - - -

7 MR. KUTNER: But I - - - and I didn't want
8 to give it up.

9 JUDGE SMITH: And you didn't want a - - -
10 you - - - you - - - you - - - you basically - - - you
11 said you wanted the mistrial because you wanted to
12 keep the benefit of the double jeopardy bar. Is that
13 what you're saying?

14 MR. KUTNER: No, I didn't say I wanted a
15 mistrial. I - - - I said regrettably we're going to
16 go with the mistrial, meaning I'm not going to just
17 give up and ask the court to rescind it - - -

18 JUDGE SMITH: Counsel, but what - - -

19 MR. KUTNER: Because I already have it - -
20 - I already have it.

21 JUDGE READ: Did the court have to - - -

22 CHIEF JUDGE LIPPMAN: What - - - what is

23 that your acquiescence to go forward - - - your

24 acquiescence to end the - - - the - - - the trial.

25 What - - - what - - - what - - - what does that mean?

1 MR. KUTNER: What? I'm sorry, Judge, I'm
2 not under - - -

3 CHIEF JUDGE LIPPMAN: What you did - - -
4 what - - - when you - - - when you spoke to the judge
5 and the judge asked you a question - - -

6 MR. KUTNER: Yeah.

7 CHIEF JUDGE LIPPMAN: - - - what did your
8 answer mean?

9 MR. KUTNER: The regrettably comment? That
10 I regret because of the - - - the four days lost and
11 all of the time and expense. But - - - and I regret
12 because we had just had a conversation with my
13 client's family outside about the expense of - - - of
14 the judge's ruling. If it - - - if it was going to
15 stick, end in mistrial. That's why we didn't - - -
16 we didn't want to give up what we had. We wanted
17 this trial - - -

18 CHIEF JUDGE LIPPMAN: But you didn't want
19 to go forward in front of this judge?

20 MR. KUTNER: No, I - - - I - - - I would
21 have, and it was very simple to correct that. All he
22 had to do was - - - if he just had signed the
23 subpoena for that critically exculpatory information.
24 Here we had the troopers arresting someone, claiming
25 she was falling down dead drunk, couldn't even walk.

1 And yet a Nassau County Police Officer, when she was
2 lodged there for detention overnight, checked off on
3 the suicide screening, "No sign of intoxication or
4 drug abuse."

5 JUDGE PIGOTT: You make it sound, though,
6 like you and the judge are - - - are doing a little
7 bit of a dance to see who can - - - who can one-up
8 the other. Because he - - - he was concerned - - - I
9 mean this is your second trial. And all of a sudden,
10 you know, a subpoena pops up that, if you read - - -
11 if you read the record, you - - - that - - - that
12 subpoena should have been issued six months before.

13 And so he - - - he says, you know, I'm
14 going to grant a mistrial. And what you're now
15 saying is I had him, and I wasn't going to give that
16 up. I had him because if - - - if I consented to it,
17 then I'm going to lose my double jeopardy. But I had
18 him, so I wasn't, you know - - - so I wasn't going
19 to, you know, do anything to let - - - allow him to
20 reconsider his decision, when, in fact, he has the
21 right to reconsider his decision.

22 MR. KUTNER: Absolutely, he does, but he
23 didn't do it.

24 JUDGE READ: Well, couldn't he have said -
25 - -

1 MR. KUTNER: And that - - - and what Judge
2 - - - I'm sorry.

3 JUDGE READ: - - - does he - - - does he
4 have to say I rescind my order declaring a mistrial?

5 MR. KUTNER: No. No, ma'am. All the judge
6 would have to do is say that, you know, my - - - the
7 mistrial has been vacated, say something indicating
8 that he was going to do it. He never said that.

9 JUDGE ABDUS-SALAAM: Well if he - - -

10 MR. KUTNER: He said I might reconsider if
11 you - - -

12 CHIEF JUDGE LIPPMAN: You're saying he can
13 but he didn't?

14 MR. KUTNER: Exactly.

15 JUDGE ABDUS-SALAAM: Well, counsel, what -
16 - - what was the point of giving you and your client
17 the option of considering whether to go forward or
18 not with this particular judge if he wasn't
19 rescinding?

20 MR. KUTNER: He - - - I - - - if I made the
21 application - - - I think what you're asking is if I
22 made the application to rescind the mistrial ruling
23 and he considered it and - - - and grant it - - -
24 then he was going to decide whether to grant it or
25 not. I - - - I don't know.

1 JUDGE ABDUS-SALAAM: No, what I was asking
2 is - - -

3 MR. KUTNER: I'm sorry.

4 JUDGE ABDUS-SALAAM: - - - the judge
5 himself decided that maybe he realized what you
6 realized, that if he declared this mistrial without
7 your consent that you have a doubt - - - a double
8 jeopardy issue. So the judge realizing that says,
9 well, you know, I'll reconsider. Do you want to go
10 forward with me or - - - or not and gives you and
11 your client an opportunity to discuss it. So what
12 was the point of that if he wasn't reconsidering?

13 MR. KUTNER: Because he still - - - he
14 didn't say I will res - - - resume the trial if you
15 and your client want to. He said I'll consider it.
16 He still didn't indicate which way he was going.

17 JUDGE SMITH: In your - - - your - - - in -
18 - -

19 MR. KUTNER: He left the bench there times
20 and was getting - - -

21 JUDGE SMITH: In your position, I mean,
22 you're - - - you're - - -

23 MR. KUTNER: I'm sorry?

24 JUDGE SMITH: You're stating - - - you're
25 saying - - - you're saying clearly and candidly - - -

1 I think you're consistent but it's - - - it's - - -
2 you're taking a - - - essentially, a formalistic
3 position, aren't you, that you're saying - - - you -
4 - - you don't dispute that he could have said I
5 hereby rescind my - - - my order granting a mistrial
6 and if you wish to make a motion for a mistrial I
7 will grant that motion. If he'd said that you and
8 you'd made the motion, we wouldn't be here, right?

9 MR. KUTNER: Yes, sir.

10 JUDGE SMITH: And you say that what
11 happened here is not - - - yeah, it may look like
12 that but it's not because he never said I rescind my
13 motion and you never said I move for a mistrial.

14 MR. KUTNER: No, and I think the - - - the
15 respondent's position proves that out because they
16 are trying to rely heavily on implied consent and - -
17 - and - - -

18 CHIEF JUDGE LIPPMAN: Yeah, but - - - but
19 didn't he restore - - -

20 MR. KUTNER: And there was no need if there
21 was a - - - it was an expressed decision.

22 CHIEF JUDGE LIPPMAN: Counselor?

23 MR. KUTNER: Yes, Judge?

24 CHIEF JUDGE LIPPMAN: Didn't he restore to
25 you the choice as to whether to complete the trial?

1 MR. KUTNER: No. No, Your Honor.

2 CHIEF JUDGE LIPPMAN: He didn't restore?

3 MR. KUTNER: No, I - - -

4 CHIEF JUDGE LIPPMAN: He didn't give you a
5 choice - - -

6 MR. KUTNER: I think - - -

7 CHIEF JUDGE LIPPMAN: - - - that you made
8 and - - - and then the argument comes in that you
9 consented to the trial termination and to a retrial -
10 - -

11 MR. KUTNER: No, Your Honor, the plain - -
12 -

13 CHIEF JUDGE LIPPMAN: - - - based on the
14 fact that he gave you the choice. Why - - - why
15 isn't - - - from a common-sense perspective, what
16 else does it mean, what transpired between the - - -

17 MR. KUTNER: The plain - - -

18 CHIEF JUDGE LIPPMAN: - - - two of you?

19 MR. KUTNER: The plain import of the
20 language is that he'll give - - - he'll consider the
21 option. Well, first he gave us the option of
22 deciding whether to go forward or to - - -

23 CHIEF JUDGE LIPPMAN: Right.

24 MR. KUTNER: - - - keep the mistrial.

25 CHIEF JUDGE LIPPMAN: So what does that

1 mean?

2 MR. KUTNER: But he doesn't say that if you
3 want to go forward, I'm going to - - - he isn't - - -
4 he doesn't indicate he's going to rescind. He
5 doesn't say I'm rescinding the mistrial and if you -
6 - -

7 CHIEF JUDGE LIPPMAN: Isn't he - - -

8 MR. KUTNER: As he - - -

9 CHIEF JUDGE LIPPMAN: But wasn't he, for
10 all practical purposes, putting this in your lap?

11 MR. KUTNER: No, Your Honor. He's still
12 keeping it - - - still keeping the card, basically,
13 up his sleeve of making the ultimate decision
14 himself. It's - - - it's quite similar to - - -

15 JUDGE PIGOTT: That's the - - - so you say
16 - - - so you say - - - you - - -

17 MR. KUTNER: - - - Catten-Murphy and to - -
18 -

19 JUDGE PIGOTT: You say he's keeping it up
20 his sleeve. I mean that - - - that's - - - that's
21 the way this whole thing seem - - - I mean the two of
22 you were - - - were - - - it was entertaining.

23 MR. KUTNER: Judge, I didn't want it to be.

24 JUDGE PIGOTT: But didn't he - - - as - - -
25 as my notes say, he - - - he says he's going to give

1 you five minutes to discuss with Gorman what you want
2 to do. "If you and your client want me to preside
3 over this trial, then I'll reconsider it." And then
4 when he returned you said, "Judge, after consulting
5 Mrs. Gorman and her husband, Jim, and the family and
6 weighing all the options, regrettably, we're going to
7 go with a mistrial." So didn't you ask for it?

8 MR. KUTNER: No, no, sir. I don't - - - I
9 don't - - -

10 JUDGE GRAFFEO: I - - - I've been - - -

11 MR. KUTNER: I submit that wasn't
12 requesting a mistrial.

13 JUDGE GRAFFEO: I've been listening to all
14 this, but I'm trying to figure out - - -

15 MR. KUTNER: Yes, Judge.

16 JUDGE GRAFFEO: - - - what the rule is that
17 you want us to adopt. It sounds like you want us to
18 say that a judge has to affirmatively state on the
19 record that he or she is rescinding - - -

20 MR. KUTNER: It - - - that's what Catten-
21 Murphy - - -

22 JUDGE GRAFFEO: Is it - - - okay.

23 MR. KUTNER: - - - and Dawkins and all of
24 the - - - the precedent says. In each case, the - -
25 -

1 JUDGE GRAFFEO: You have - - - you have to
2 use that - - - that term?

3 MR. KUTNER: No, the - - - the judge can
4 just say a mistrial is - - - is withdrawn. We're
5 going to continue the trial. Or don't even say
6 withdrawn, don't say rescinded. Just say you know
7 what, we're going to continue the trial. He never
8 said that. He never said you know what, you can ask
9 and if - - - I'm going to rescind my ruling and we're
10 going to continue. If you want to make the motion, I
11 will consider that again. That status had - - -

12 JUDGE SMITH: So your - - - your - - - so
13 your - - -

14 MR. KUTNER: - - - never changed, Judge.

15 JUDGE SMITH: Your point is, that although
16 he said if you and your client decide you want me to
17 preside over this trial than I'll reconsider it, but
18 he didn't you tell you how he was going to come out -
19 - -

20 MR. KUTNER: Exactly.

21 JUDGE SMITH: - - - when he reconsidered
22 it?

23 CHIEF JUDGE LIPPMAN: Okay, counsel.

24 MR. KUTNER: Never stated.

25 CHIEF JUDGE LIPPMAN: Let's hear from your

1 adversary and then you'll have your rebuttal.

2 MR. KUTNER: Thank you.

3 MS. KORNBLAU: Thank you. Good afternoon,
4 Barbara Kornblau for the respondent.

5 CHIEF JUDGE LIPPMAN: Counselor, what do
6 you think transpired between the judge and - - - and
7 defense counsel?

8 MS. KORNBLAU: Well, I think that - - -
9 that counsel saw that the case was not going in his
10 favor, not the way he wanted to. He felt that the
11 judge may have been biased in - - - in favor of the
12 People, and that he chose to take his chance in front
13 of another jury at another time.

14 CHIEF JUDGE LIPPMAN: You think he - - -

15 MS. KORNBLAU: And I - - -

16 CHIEF JUDGE LIPPMAN: - - - he - - - he
17 agreed to a retrial?

18 MS. KORNBLAU: I absolutely do. You know,
19 I also want to address the point regarding the word
20 "rescission" or what a judge has to do to actually
21 rescind his - - - his declaration of a mistrial in
22 order so that defendant can then consent. And the
23 bottom line is the judge did not have to say
24 anything. The judge did not have to rescind
25 anything. A mistrial declaration does not end the

1 trial. And until that trial ends, the judge - - -

2 CHIEF JUDGE LIPPMAN: What ends the trial?

3 MS. KORNBLAU: The discharge of the jury.

4 CHIEF JUDGE LIPPMAN: So until the jury is
5 discharged, judge can do anything in one direction or
6 another?

7 MS. KORNBLAU: That is correct. And - - -
8 and - - - and so can counsel. If it was counsel's
9 motion for a mistrial, he could withdraw that prior
10 to the time that the jury is discharged. I'd like -
11 - -

12 JUDGE SMITH: Well, he - - - the - - - this
13 - - - you're not saying that this - - - that his - -
14 - that the judge's original ruling was made on
15 counsel's motion, or are you?

16 MS. KORNBLAU: No, I am not.

17 JUDGE SMITH: And - - - and, in fact, if
18 the judge's original ruling - - - if nothing else had
19 happened and he'd simply gone ahead and discharged
20 the jury, there's no doubt he would have triggered
21 double jeopardy, is there?

22 MS. KORNBLAU: That's correct. That's
23 correct unless there was implied consent, and I would
24 like to direct this court's attention to a case that
25 this court decided back in - - -

1 JUDGE SMITH: Does - - -

2 MS. KORNBLAU: - - - 2011.

3 JUDGE SMITH: Does - - - does consent - - -

4 I mean you - - - you - - - as I understand it, Mr.

5 Kutner's trying to draw a distinction between consent

6 and actually seeking a mistrial. You think that's a

7 false distinction?

8 MS. KORNBLAU: I think that they both have

9 the same consequence and that is that double jeopardy

10 does not bar a retrial where the defendant - - -

11 JUDGE SMITH: Or if - - - if the judge - -

12 - if the judge says because - - - as it happened

13 here, because he lost patience, perhaps

14 understandably, and he says - - - really without a

15 good reason he says this is it. It's a mistrial,

16 forget about it. The jury's going home. And the

17 lawyer sits there completely silent, doesn't say a

18 word, even though he could have protested, does that

19 - - - would that trigger double jeopardy?

20 MS. KORNBLAU: No, it wouldn't. And I'd

21 like to direct this court's - - -

22 JUDGE SMITH: Why - - - why isn't that then

23 - - -

24 MS. KORNBLAU: - - - attention to *Marte v.*

25 - - - *v. Berkman*, which is a case that was decided by

1 this court back in 2011. I apologize; unfortunately,
2 it was inadvertently left out of my brief, although
3 it was in my brief to the Appellate Division. In
4 that case, the judge declared a mistrial. There was
5 - - - the jury sent in a note that they were at an
6 impasse. The trial judge declared a mistrial, and
7 during the discussions before they brought the jury
8 back in the judge said, you know, does anybody want
9 to be heard on this? Defense counsel did not
10 respond. The judge then called in the jury and took
11 what was a partial verdict at the time. After taking
12 the partial verdict, the judge said does anybody wish
13 to be heard? Counsel did not respond. And the judge
14 then discharged the jury.

15 Double jeopardy was - - - was held not to
16 bar a retrial on the remaining counts in that
17 indictment. So that case is very clear that the
18 consent can be through silence, if - - - if a
19 defendant has a sufficient opportunity to object.

20 CHIEF JUDGE LIPPMAN: Once they're - - -
21 once they're given the choice, double jeopardy
22 doesn't apply?

23 MS. KORNBLAU: Once they're given the
24 choice and the opportunity to respond.

25 CHIEF JUDGE LIPPMAN: Right, once it's put

1 back in your lap - - -

2 MS. KORNBLAU: That's correct.

3 CHIEF JUDGE LIPPMAN: - - - no double
4 jeopardy?

5 MS. KORNBLAU: That is the law. That is
6 correct.

7 CHIEF JUDGE LIPPMAN: Okay, what else,
8 counsel, anything?

9 MS. KORNBLAU: Unless the court has any
10 other questions?

11 CHIEF JUDGE LIPPMAN: Okay, thanks,
12 counsel.

13 MS. KORNBLAU: Thank you.

14 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

15 MR. KUTNER: Yes, the irony here - - - it -
16 - - the court's familiar with the record. Twice I
17 did seek mistrials for things that a - - - I thought
18 would poison a jury permanently against my client:
19 once in jury selection when a clearly challenge-for-
20 cause juror was apparent - - - trying to be
21 rehabilitated in order to force me to take one for -
22 - - as a perempt; and later, in a case involving all
23 Irish people and drinking, the district attorney made
24 an anti-Irish slur in cross-examining someone, said
25 you - - - you said your family doesn't drink and your

1 name - - - maiden name's McBride? And I let it sit
2 overnight and then made the application. And again,
3 twice those applications, based upon something in the
4 record, were denied.

5 JUDGE SMITH: Well, the judge - - - the
6 judge thought you were trying to bait him into a
7 mistrial.

8 MR. KUTNER: And, you know, Judge, it
9 started out that way at the first instance because
10 the prior, quotes, "trial" was not a trial. During
11 jury selection in that case, before a different
12 judge, two members of the venire - - - of - - -
13 seated in the box began to talk about all these
14 people who get to this point of trial are guilty.
15 I've been in AA, they - - - they're all guilty.
16 They've done it. And as far as I'm concerned, you
17 can't stop it. The court officer didn't stop them
18 from talking. It was while I was in the back with
19 the district attorney speaking to the judge. And it
20 was later reported and the judge just disbanded the
21 venire.

22 CHIEF JUDGE LIPPMAN: Counsel - - -

23 MR. KUTNER: So there was no real prior
24 trial.

25 CHIEF JUDGE LIPPMAN: Counsel?

1 MR. KUTNER: Yes.

2 CHIEF JUDGE LIPPMAN: After this exchange -
3 - -

4 MR. KUTNER: Yes, Your Honor.

5 CHIEF JUDGE LIPPMAN: - - - what did you
6 say to yourself as to what had just happened?

7 MR. KUTNER: I - - - first of all, I felt
8 awful that that - - - I - - - my remark to Judge
9 Spergel should have been couched a little different.
10 I was trying to impress on him his single course of
11 conduct - - - as you read the record, as the court
12 did, you find a - - - a bias. At - - - at a later
13 trial I had him before him, you know, he wore a - - -
14 he wears a shield on his robe, a detective shield.

15 CHIEF JUDGE LIPPMAN: But what - - - what
16 was going through your mind - - -

17 MR. KUTNER: As far as what?

18 CHIEF JUDGE LIPPMAN: - - - right after
19 that happened as to what now happens with this case?
20 What were you thinking to yourself based on this
21 exchange?

22 MR. KUTNER: You mean what the court was
23 going to do?

24 CHIEF JUDGE LIPPMAN: What - - - no, once -
25 - -

1 MR. KUTNER: Sorry.

2 CHIEF JUDGE LIPPMAN: - - - once - - - once
3 you had your exchange, once the court did whatever it
4 did, what did you think had happened in terms of how
5 it impacted on - - -

6 MR. KUTNER: I had to re - - - I did the
7 research that night or the next morning very early.
8 And at that point to decide - - - or to find out if I
9 was correct that double jeopardy did apply, I then
10 made a motion - - -

11 JUDGE SMITH: The - - - the - - - the short
12 answer's you thought you'd won the case?

13 MR. KUTNER: I thought I had a bar to a
14 further prosecution, yes. And - - - and then her - -
15 - her mon - - - Ms. Gorman's money wouldn't have been
16 wasted for the first part of the - - - of the case.

17 CHIEF JUDGE LIPPMAN: Okay, thanks. Thank
18 you both.

19 MR. KUTNER: Thank you.

20 JUDGE ABDUS-SALAAM: Thank you.

21 CHIEF JUDGE LIPPMAN: Appreciate it.

22 (Court is adjourned)

23

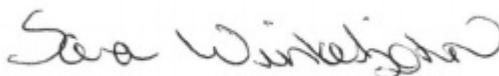
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Gorman v. Rice, No. 190 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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