

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS  
STATE OF NEW YORK

-----

PEOPLE

Respondent,

-Against-

BORIS SHAULOV

Appellant.

No. 43  
(papers sealed)

-----

20 Eagle Street  
Albany, New York 12207  
February 17, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
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

Appearances:

STUART D. RUBIN, ESQ.  
LAW OFFICE OF STUART D. RUBIN, ESQ.  
Attorney for Appellant  
26 Court Street  
Suite 2506  
Brooklyn, NY 11242

AMY APPELBAUM, ADA  
KINGS COUNTY DISTRICT ATTORNEY'S OFFICE  
Attorneys for Respondent  
Renaissance Plaza  
350 Jay Street  
Brooklyn, NY 11201

Sharona Shapiro  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 43, People v.  
2 Shaulov.

3 Counselor, you want any rebuttal time?

4 MR. RUBIN: Yes, two minutes, please, Your  
5 Honor.

6 CHIEF JUDGE LIPPMAN: Two minutes, sure.  
7 Go ahead.

8 MR. RUBIN: May it please the court. My  
9 name is Stuart Rubin. I represent Appellant Boris  
10 Shaulov.

11 CHIEF JUDGE LIPPMAN: What did the - - -  
12 did the - - - how did the judge abuse - - - the court  
13 abuse its discretion in this case?

14 MR. RUBIN: With respect to point two, Your  
15 Honor, there was a pre-trial Spicola ruling and, very  
16 specifically, the court ruled that with respect to  
17 both theories of prosecution, rape in the third  
18 degree, two theories - - -

19 CHIEF JUDGE LIPPMAN: Right.

20 MR. RUBIN: - - - one, statutory rape, the  
21 other - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. RUBIN: - - - a lack of consent, no  
24 means no. What happened here is, of course the  
25 defense attorney relied upon the prosecution's

1 statement that there would be no prompt outcry. And  
2 in reliance upon that, when a defense lawyer does an  
3 opening statement, when you're going to be very fact-  
4 specific, you do so at your peril if indeed the facts  
5 don't pan out. In this case, based upon the - - -

6 JUDGE ABDUS-SALAAM: Well, do we know - - -  
7 do we know when the prosecution learned that this - -  
8 - there was some sort of outcry of some sort? I  
9 don't even know if it is a prompt outcry if nobody -  
10 - - if - - - if the witness, who supposedly got the  
11 information, isn't the one saying that she told me  
12 something but - - -

13 MR. RUBIN: Well, I think it could come  
14 from two sources: one, from the complainant in this  
15 case; that would be the - - - the person that's on  
16 the witness stand testifying to it. And then it  
17 could, but it didn't in this case, come from the  
18 friend, who also did indeed testify.

19 But I think Your Honor's question could be  
20 answered - - - can be gleaned from the record. When  
21 the District Attorney was - - - when the facts first  
22 came out, I told her what happened; I just didn't  
23 tell her that I didn't want it to happen. Then there  
24 was the objection in the colloquy that followed, and  
25 the District Attorney stated that I want - - - I was

1           abo - - - I expected her to answer my further  
2           questions that we had intercourse. And she said it  
3           immediately, upon the court's inquiry, and she said  
4           it several different times.

5                         She also did state, at that time, that it  
6           came up at the last minute because the friend, who  
7           also did testify, did not remember that in the - - -  
8           in the phone call. But it was corroborated by the  
9           phone records; the- - - the first phone call that was  
10          made when she got out of the subway - - - when the  
11          complainant got out of the subway was to her best  
12          friend.

13                        CHIEF JUDGE LIPPMAN: Counsel, is it prompt  
14          outcry or is it like a partial disclosure?

15                        MR. RUBIN: Well, here it's - - - it's  
16          prompt outcry as to the statutory rape count. It's  
17          not prompt outcry as to the lack of consent count.  
18          And of course, he was only convicted of those counts  
19          that were associated with the prompt outcry. And of  
20          course, that was the first jury question: we want a  
21          read-back on what the complainant told her best  
22          friend in that phone call immediately when she got  
23          out of the subway.

24                        JUDGE PIGOTT: Can you explain to me how it  
25          could be a prompt outcry in one case and not in

1 another?

2 MR. RUBIN: I'm sorry, Your Honor?

3 JUDGE PIGOTT: You said it's prompt outcry  
4 when it comes to the statutory rape, but it's not  
5 prompt outcry when it came to the other charge.

6 MR. RUBIN: Well, what - - - what happened  
7 here was the complainant testified that she called  
8 her friend, she told her that - - - that something  
9 happened, and the court interpreted that as that they  
10 had intercourse, and the attorney said, by inference,  
11 she said they had intercourse. And the prosecutor  
12 said that she was about to bring that word into it.  
13 She did not say that it was done by force. So the  
14 lat - - - there was two different theories of  
15 prosecution here, both rape in the third degree and  
16 the associated sexual abuse counts and so on, but the  
17 prompt outcry was that yes, we had sex; I later told  
18 my brother-in-law everything later. And then she  
19 went to the District Attorney and made her further  
20 allegations about lack of consent.

21 So there were two different theories here  
22 of prosecution, and the expert, when she came on to  
23 testify, testified that it's common for people to  
24 tell a partial disclosure, because they don't want to  
25 say everything at the beginning - - -

1                   JUDGE ABDUS-SALAAM: Counsel, I'm trying to  
2 get back to the question I - - -

3                   MR. RUBIN: Sorry.

4                   JUDGE ABDUS-SALAAM: - - - asked about when  
5 the prosecutor might have known that there was going  
6 to be any testimony regarding - - - if - - - if it is  
7 prompt outcry, anything like that. Because, as I  
8 understand it, one of your arguments is that the  
9 defense was totally surprised by this, obviously, and  
10 that - - - and by opening on this is not - - - you're  
11 not going to hear anything about a - - - essentially,  
12 a prompt outcry; you're going to hear that - - - that  
13 this victim tells someone months later, that that  
14 totally lost - - - by doing that, the defense counsel  
15 totally lost credibility with the jury and was - - -  
16 you know, his whole strategy was thrown off. So I'm  
17 trying to pin down when do you think the prosecutor  
18 learned about this so that she could not have  
19 informed either the court or defense counsel about  
20 this?

21                   MR. RUBIN: She had to learn about it well  
22 before opening statements, because the sequence of  
23 events was the court gave preliminary instructions,  
24 the prosecutor then immediately opened; there was no  
25 recess. Defense immediately opened; no recess. The

1           complaining witness got on the witness stand; no  
2           recess.  When the issue came up, the prosecutor told  
3           the court I wanted to go - - - after the witness  
4           testified, I immediately called my girlfriend and  
5           told her what happened; I just didn't tell her that I  
6           didn't want it to happen, the prosecutor wanted to go  
7           further with that inquiry.  And the prosecutor, in  
8           the record, and in the appendix, is - - -

9                         JUDGE ABDUS-SALAAM:  So - - - so, if the  
10           prosecutor had been as surprised as defense counsel  
11           to hear this information, would that have changed  
12           anything for the defense?

13                        MR. RUBIN:  If - - - if the prosecutor was  
14           as surprised, then the prose - - - then the  
15           prosecutor certainly would have had no obligation to  
16           revisit the court's Spicola ruling before opening  
17           statements.  But here, the prosecutor clearly knew  
18           that the complainant had told her friend about  
19           intercourse, because in the court's inquiry, she said  
20           - - - the prosecutor says it in about three different  
21           occasions within that long colloquy that happens on  
22           this issue, that she was trying to elicit that they  
23           had intercourse, she expected the witness to say that  
24           she had - - - that they had intercourse.  It was that  
25           her friend did not recall the conversation.



1 MR. RUBIN: It was debunked immediately.

2 JUDGE STEIN: Would it have made any  
3 difference at all if the defense counsel had learned  
4 what was going to come out from the victim before he  
5 opened - - - I mean, any time before he opened?

6 MR. RUBIN: Certainly. The defense lawyer  
7 wouldn't have opened on that subject. And he did so  
8 at his peril, but he did so because he detrimentally  
9 relied upon the prosecutor's proffer at the beginning  
10 of the case that there would be no prompt outcry.  
11 Clearly, the prosecutor knew that there was going to  
12 be prompt outcry, but only as to intercourse, not as  
13 to force.

14 JUDGE RIVERA: So the prosecutor didn't say  
15 the same thing?

16 MR. RUBIN: I'm sorry, Your Honor?

17 JUDGE RIVERA: The prosecutor didn't also  
18 open with the same statement?

19 MR. RUBIN: The prosecutor - - -

20 JUDGE RIVERA: I mean, didn't they both say  
21 the same thing?

22 MR. RUBIN: Well, I agree, Your Honor, they  
23 - - - the prosecutor did open with respect to that,  
24 but the prosecutor when - - - and - - - and  
25 hindsight, of course, is twenty-twenty, but what the

1 prosecutor was later talking about clearly was the  
2 force issue and was ignoring this - - -

3 CHIEF JUDGE LIPPMAN: Should have - - -  
4 what should have the judge done when this happened?

5 MR. RUBIN: Well, there were two remedies  
6 at the time. One was striking the testimony and one  
7 was declaring a mistrial. And the reason why a  
8 mistrial should have been declared at that point is  
9 because the defense lawyer only opened on two - - -  
10 on two theories. One was witness credibility, as - -  
11 - and the prime example was the delayed outcry. And  
12 the other was the fact that the probation officers  
13 were in the location.

14 CHIEF JUDGE LIPPMAN: Okay, counselor.  
15 You'll have your rebuttal.

16 MR. RUBIN: Thank you, sir.

17 CHIEF JUDGE LIPPMAN: Let's hear from your  
18 adversary.

19 MS. APPELBAUM: May it please the court.  
20 My name is Amy Appelbaum.

21 CHIEF JUDGE LIPPMAN: Counselor, what  
22 happened here? What did the - - - what did the  
23 prosecution know, and what was it thinking when this  
24 came out, since it had to have a pretty good idea of  
25 what was going to be said? What was the - - - the

1 thought process for the prosecutor?

2 MS. APPELBAUM: Your Honor, I - - - I don't  
3 know when the prosecutor learned that the complainant  
4 was - - - was going to say that she had had  
5 intercourse, but certainly she learned it before the  
6 - - -

7 CHIEF JUDGE LIPPMAN: Right.

8 MS. APPELBAUM: - - - complainant said it.  
9 And she should have let the defense and the court  
10 know about that, but she didn't. It seems that the  
11 prosecutor didn't really understand what a prompt  
12 outcry was and also perhaps didn't quite get the  
13 prior inconsistent statement concept either.

14 But nonetheless, the court didn't abuse its  
15 discretion in denying the request for a mistrial  
16 because it was the same witness, the - - - the  
17 victim, who - - - who made that statement that she  
18 had called her friend and told her what happened but  
19 not what really happened. That was - - - the victim  
20 was the one who testified to everything that happened  
21 here.

22 So certainly if the jury was going to  
23 believe her about her testimony about the crime, it  
24 really wouldn't matter that she also added, oh, and I  
25 called my friend and told - - - and told my friend

1 what happened for - - -

2 CHIEF JUDGE LIPPMAN: But what about your  
3 adversary, that they're opening and saying, look,  
4 you're going to hear that the victim didn't say  
5 anything for a lengthy period of time. What - - -  
6 what's the effect on them and the theory that they're  
7 trying to espouse to the - - - to the jury?

8 MS. APPELBAUM: Well, they - - - they both  
9 did open on that. They both basically did say the  
10 same thing - - -

11 CHIEF JUDGE LIPPMAN: It seems so odd - - -

12 MS. APPELBAUM: - - - on - - -

13 CHIEF JUDGE LIPPMAN: - - - that they're  
14 both opening and then you get that testimony.

15 MS. APPELBAUM: I think that - - - again, I  
16 think, Your Honor, that - - -

17 CHIEF JUDGE LIPPMAN: You just don't think  
18 it's relevant?

19 MS. APPELBAUM: - - - that goes to the  
20 prosecutor's misunderstanding here of the - - - the  
21 legal concepts.

22 CHIEF JUDGE LIPPMAN: Yeah, but what - - -  
23 but my point is, I guess - - - but I get you and I  
24 hear you on that, that maybe that wasn't the perfect  
25 way for the prosecutor to approach this, not exactly

1 understanding the theories. But I guess what I'm  
2 trying to focus on, so what's the consequence on them  
3 - - - on - - - on the defendant, and I recognize what  
4 you're saying, that it really wouldn't have made a  
5 difference. Would it have made a difference, though,  
6 in their strategy as how they, you know, decided  
7 they're going to try the case? Is that enough?

8 MS. APPELBAUM: I think - - -

9 CHIEF JUDGE LIPPMAN: Or is it totally - -  
10 - when that situation comes up, is it really totally  
11 a matter of discretion for the judge?

12 MS. APPELBAUM: It is a matter of  
13 discretion, and the judge properly exercised his  
14 discretion, for a few reasons, but it - - - the - - -  
15 the primary strategy of - - - of the defense was that  
16 - - - that the - - - the victim didn't tell anybody  
17 about what really happened for a long time. So the  
18 fact that she testified at trial that she told her  
19 friend that they had sex but didn't tell her what  
20 really - - -

21 JUDGE STEIN: But isn't it curious that - -  
22 - that ultimately he was convicted on the age-related  
23 crimes, of which she testified she did tell her  
24 friend, she did make a prompt outcry, but not on the  
25 - - - on the forcible issues? Doesn't that back up -

1 - -

2 MS. APPELBAUM: Your Honor, the - - -

3 JUDGE STEIN: - - - the - - - the defense  
4 argument?

5 MS. APPELBAUM: We could look at that two  
6 ways. First, again, even though that is the on - - -  
7 those were the only counts they convicted him of,  
8 again, it was still just the victim testifying to  
9 that, so it seems like it wouldn't add any additional  
10 weight to her testimony about the crime. For  
11 example, Your Honor - - -

12 JUDGE STEIN: But they didn't believe her  
13 on everything, obviously, or they would have  
14 convicted him of all of the charges.

15 MS. APPELBAUM: Well, Your Honor, I - - - I  
16 can't really speculate about the jury's rationale  
17 here for why they chose the statutory counts in that  
18 - - -

19 JUDGE FAHEY: Was there ever a charge - - -  
20 did any - - - did anyone either - - - did anybody  
21 request a prompt outcry charge at all?

22 MS. APPELBAUM: Um - - -

23 JUDGE FAHEY: Because a charge is normally  
24 given when you - - - when you talk about the  
25 credibility of the witnesses and - - - and there's a

1 prompt outcry charge in the CJI. Did anyone request  
2 that? I didn't think they did.

3 MS. APPELBAUM: I don't know, but I - - - I  
4 don't recall that. I- - - I'm not sure, Your Honor.

5 Your Honor, I just - - - just to go back to  
6 your point for a moment. Let's say the witness had  
7 said not only I called my friend and told her what  
8 happened, but I called my sister, my brother, my  
9 teacher, would that - - - would her saying that have  
10 made her overall testimony any more credibil - - -  
11 any more credible? I think it wouldn't. And also,  
12 in this case, the defense counsel was actually able  
13 to use her testimony about calling her friend to his  
14 advantage, to an extent, because he was able to - - -  
15 to impeach her by saying - - -

16 JUDGE ABDUS-SALAAM: Did you say that a  
17 victim telling a number of people that something  
18 terrible happened to her would be irrelevant?

19 MS. APPELBAUM: Well, those people didn't  
20 testify. Here the friend didn't testify to confirm  
21 that. So again, all we have is her - - - her word  
22 that the event ha - - -

23 JUDGE RIVERA: Oh, but the friend testified  
24 that there was a call, and you've got the phone  
25 records. That makes her look more credible than if

1           you didn't have that.

2                       MS. APPELBAUM: Well, her friend - - - her  
3 friend testified that - - - that they had had - - -  
4 yes, her friend did testify about the- - -

5                       JUDGE RIVERA: And his - - -

6                       MS. APPELBAUM: - - - series of phone calls  
7 - - -

8                       JUDGE RIVERA: - - - his whole defense is  
9 you believe me, not her; she's not telling the truth.  
10 And it's not just my word against hers; it's that she  
11 didn't tell anybody and it's also that other people  
12 showed up to this apartment and were there at the  
13 time that she claims she's being raped.

14                      MS. APPELBAUM: Well, Your Honor, I could -  
15 - - I could address that point, the point concerning  
16 the probation officers. There actually was - - -  
17 there - - - there was no evidence presented, through  
18 the probation records or otherwise, that the officers  
19 actually entered the apartment. And there was no  
20 testimony that the victim and the defendant were at  
21 each other's sides the entire time that she was in  
22 the apartment.

23                      JUDGE RIVERA: Well, I understand your  
24 argument that it might not be very persuasive, it  
25 might be weak, but the - - - the point of the defense

1 is she's not credible, it's not believable. And  
2 certainly if - - - if she says I did call someone,  
3 and then you've got an expert that says, yes, yes,  
4 someone in this kind of situation might actually say  
5 only partially what happened, initially. Why doesn't  
6 that undermine the defense? And shouldn't he have  
7 known that in advance?

8 MS. APPELBAUM: Your Honor, I - - - I do  
9 understand what you're saying now. The - - - the  
10 part - - - I - - - I hadn't really thought about that  
11 - - - that just the fact that a phone call was made  
12 could have - - - could have helped the prosecution,  
13 but again, that would - - - that would be a - - - a  
14 very minimal amount of help, because we don't know -  
15 - -

16 JUDGE RIVERA: That may be all it takes  
17 with this kind of a case.

18 MS. APPELBAUM: Well - - - well, Your Honor  
19 - - -

20 JUDGE RIVERA: It's not one the prosecution  
21 has shied away from, that's for sure.

22 MS. APPELBAUM: Excuse me?

23 JUDGE RIVERA: You didn't shy away from it;  
24 the prosecution didn't shy away from the - - - using  
25 the evidence.

1 MS. APPELBAUM: That's - - -

2 JUDGE RIVERA: There were more questions  
3 asked of the complainant. You've got the phone  
4 records. You've got the friend saying, well, I don't  
5 remember, but she did call me.

6 MS. APPELBAUM: That's - - - that's true,  
7 Your Honor, but I - - - but again, without the friend  
8 actually corroborating what the victim said, it  
9 really was - - - would have been of minimal value to  
10 the prosecution and - - -

11 CHIEF JUDGE LIPPMAN: But wouldn't - - -  
12 shouldn't the judge have seriously considered a  
13 mistrial at that point?

14 MS. APPELBAUM: At the point of the friend  
15 testifying?

16 CHIEF JUDGE LIPPMAN: At the point of this  
17 coming out.

18 MS. APPELBAUM: Oh, at - - - well, Your  
19 Honor, the judge - - - the judge explained on the  
20 record, basically, what I've been saying here, that -  
21 - - that it - - - that the - - - the ultimate  
22 question was for the jury to decide the - - -

23 CHIEF JUDGE LIPPMAN: So your basic - - -

24 MS. APPELBAUM: - - - witness' credibility.

25 CHIEF JUDGE LIPPMAN: Your basic argument

1 is the judge was weighing it, it's discretionary, and  
2 felt it was of limited harm.

3 MS. APPELBAUM: But I think the judge - - -  
4 to the extent that the judge might take into account  
5 the prosecutor - - - he didn't talk about this, but  
6 to the extent that he might be thinking of or taking  
7 into account whether the - - - whether this was done  
8 on purpose, I think it's evident from the record that  
9 although the prosecutor - - - this really shouldn't -  
10 - -

11 CHIEF JUDGE LIPPMAN: But the motive - - -

12 MS. APPELBAUM: - - - have happened - - -

13 CHIEF JUDGE LIPPMAN: But I agree with you  
14 that - - - that maybe it just reflected a lack of  
15 knowledge about the law. But regardless of the  
16 motive, I guess what the judge has to consider is, so  
17 what's the consequence of - - -

18 MS. APPELBAUM: But - - - but - - -

19 CHIEF JUDGE LIPPMAN: - - - this happening,  
20 and your - - - your basic view - - - and I'm not  
21 saying this in a negative sense; I'm just trying to -  
22 - - your basic view is that's a discretionary  
23 decision by the judge at - - - at that point in time?

24 MS. APPELBAUM: Yes, it - - - it is  
25 discretionary. And again, here the defense counsel

1 was able to use - - - use that to his advantage to  
2 try to further impeach the witness, because he did  
3 bring out her grand jury testimony where she said she  
4 had told no one for many months. So that also worked  
5 in his favor. And - - -

6 JUDGE RIVERA: I'm sorry. Wasn't there  
7 expert testimony that - - - that - - - again that - -  
8 -

9 MS. APPELBAUM: Well - - -

10 JUDGE RIVERA: - - - giving only partial  
11 information soon afterwards is not uncommon? So  
12 isn't it a little bit of a difficult position for the  
13 defendant to really try and use that information to  
14 impeach?

15 MS. APPELBAUM: Well, Your Honor, he did -  
16 - - he did bring out - - - the - - - it's two  
17 different issues. The fact that the - - - that there  
18 was expert testimony on the issue doesn't - - -  
19 doesn't undercut the fact that the witness said one  
20 thing to the grand jury and said another thing at  
21 trial.

22 CHIEF JUDGE LIPPMAN: Okay, counselor.

23 MS. APPELBAUM: Thank you.

24 CHIEF JUDGE LIPPMAN: Thanks, counsel.

25 Let's have the rebuttal.

1 MR. RUBIN: Just briefly. I think this  
2 issue of the prosecutor not understanding what prompt  
3 outcry is - - -

4 CHIEF JUDGE LIPPMAN: Well, does it matter?

5 MR. RUBIN: Well, as a - - -

6 CHIEF JUDGE LIPPMAN: Does it matter the -  
7 - -

8 MR. RUBIN: - - - practical consequence, it  
9 doesn't.

10 CHIEF JUDGE LIPPMAN: Does it matter the  
11 motive? I mean, what's the difference - - -

12 MR. RUBIN: Well, the prac - - - as a  
13 practical matter, it doesn't. But there's plenty in  
14 this record to suggest that the prosecutor knew what  
15 was going on.

16 CHIEF JUDGE LIPPMAN: That they did it  
17 intentionally?

18 MR. RUBIN: Yes. And that's simply because  
19 of the - - -

20 CHIEF JUDGE LIPPMAN: But why - - - in  
21 answer to her basic argument, which is, it's up to  
22 the judge; it's a matter of discretion at that point.  
23 Is - - - is that - - - why is that not the case?

24 MR. RUBIN: Opening statements are not  
25 evidence, but they are very important when a defense

1 lawyer takes on a factual issue - - -

2 CHIEF JUDGE LIPPMAN: Your view is - - -

3 MR. RUBIN: - - - and it's debunked in the  
4 first minute.

5 CHIEF JUDGE LIPPMAN: - - - you got started  
6 with a tremendous disadvantage, given - - -

7 MR. RUBIN: A tremendous disadvantage. If  
8 - - - if there's a touchdown on the opening kickoff,  
9 it's a disadvantage. If there's a penalty, it's  
10 called back. This should have been called back - - -

11 JUDGE RIVERA: Can I go back and clarify -  
12 - -

13 MR. RUBIN: - - - to use a football  
14 analogy; I apologize.

15 JUDGE RIVERA: - - - what you said were the  
16 two defense theories of the case?

17 MR. RUBIN: I'm sorry, Your Honor?

18 JUDGE RIVERA: Can you go back and just  
19 clarify what you say were the two defense theories of  
20 the case, because I thought that - - -

21 MR. RUBIN: Thank you've - - -

22 JUDGE RIVERA: - - - the theory was she's  
23 just not credible; you believe my story or hers.

24 MR. RUBIN: Yes, but the other - - - the  
25 other issue, and it's very important, was what- - -

1 both parties are in agreement now, and not so at  
2 trial, so hindsight's twenty-twenty, but at trial,  
3 Exhibit C, we both agree now, is conclusive proof  
4 that the probation officers were there in the  
5 evening. At trial, they contested it, and the  
6 attorney utterly failed to prove that fact. He  
7 didn't publish Exhibit C, he didn't put it on a board  
8 and argue it to a jury, he didn't have Probation  
9 Officer Usamah testify to it. It was completely lost  
10 on the jury, and I don't think that - - -

11 JUDGE RIVERA: That's going to what theory?

12 MR. RUBIN: That was going to the theory  
13 that - - - that the incident didn't happen; they  
14 weren't together that - - - that they were not  
15 together that night, they weren't in that apartment  
16 together, because the probation officers who come in,  
17 look around, verify that somebody lives where they  
18 say they're living. So both issues were - - -  
19 counsel's fault and then the prosecutor's fault; both  
20 issues were debunked. And that resulted in not a  
21 fair trial - - -

22 CHIEF JUDGE LIPPMAN: Okay, counselor.

23 MR. RUBIN: - - - for this defendant.

24 CHIEF JUDGE LIPPMAN: Thank you both.

25 MR. RUBIN: Thank you very much. Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHIEF JUDGE LIPPMAN: Appreciate it.

(Court is adjourned)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the court of Appeals of Matter of People v. Boris Shaulov, No. 43, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Sharona Shapiro*

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

AAERT Certified Electronic Transcriber CET\*\*D-492

Agency Name: eScribers

Address of Agency: 700 West 192nd Street  
Suite # 607  
New York, NY 10040

Date: February 24, 2015