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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

Papers Sealed
No. 109

HOWARD S. WRIGHT,

Appellant.

20 Eagle Street
Albany, New York 12207
June 02, 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

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 109.

2 Counselor, would you like any rebuttal
3 time?

4 MR. KAPLAN: Yes, two minutes.

5 CHIEF JUDGE LIPPMAN: Two minutes, go
6 ahead.

7 MR. KAPLAN: May it please the court; my
8 name is David Kaplan. I'm representing appellant
9 Howard Wright in this matter. In this case, Howard
10 Wright was convicted of second-degree murder. The
11 People's case against him was based almost solely on
12 Y-chrom - - - Y-chromosome DNA testing. However, Y-
13 chromosome DNA testing only is useful for excluding
14 individuals, and if ind - - - individuals are not
15 excluded, there's no statistical significance to not
16 excluding individuals.

17 JUDGE RIVERA: Didn't that come out during
18 the cross of the People's expert? Wasn't that
19 information available to the jury when it was
20 rendering its verdict, when it was deliberating? Had
21 all that circumstantial evidence, the witnesses, and
22 then the - - - the cross of the People's expert?

23 MR. KAPLAN: Yes. In term - - - the - - -
24 the - - - the expert for the People did testify that
25 she couldn't identify the actual Y-chromosome DNA of

1 Howard Wright, yes. Did - - - did that answer your
2 question?

3 JUDGE RIVERA: Yes. That answered my
4 question. Of course, then - - - it then seems to me
5 the next question is, then, why isn't there enough
6 evidence before the jury? They already know that
7 there's a weakness in this particular science-based
8 evidence.

9 MR. KAPLAN: Because Howard Wright's DNA
10 was never identified on the victim or the crime
11 scene.

12 JUDGE STEIN: But there was other
13 circumstantial evidence in the case, right?

14 MR. KAPLAN: The only other circumstantial
15 evidence was the testimony of Evans, Keith Evans, and
16 Mildred Anderson. Keith Evans' testimony was that he
17 observed Howard Wright well before the time of death.
18 The time of death was between - - - estimated be - -
19 - be between 11:30 p.m. and 3:30 a.m. from November
20 28th to November 29th of 1995. Keith Evans testified
21 that he saw the victim and Howard Wright together at
22 - - - somewhere before 8 p.m. on November 28th, which
23 was at least three-and-a-half hours before the time
24 frame of death.

25 JUDGE RIVERA: Right. So the jury's got

1 evidence about people who see him before, see - - -
2 see the defendant with her, the victim, beforehand.
3 Don't - - - after the time, he's - - - he's - - -
4 they don't see her, they see him with the car, and
5 then they've got this evidence related to the Y-
6 chromosomes in the DNA.

7 MR. KAPLAN: But - - -

8 JUDGE RIVERA: And - - - and defense
9 counsel crosses the expert on that, so the jury hears
10 the weaknesses related - - - the limits - - - the
11 weaknesses and the limits related to that DNA. Why
12 isn't that enough - - -

13 MR. KAPLAN: Because the - - -

14 JUDGE RIVERA: - - - to support the
15 verdict?

16 MR. KAPLAN: Because the Y-chromosome DNA
17 did not connect Howard Wright - - -

18 JUDGE READ: But it didn't exclude him, did
19 it?

20 MR. KAPLAN: It didn't exclude him. But I
21 mean, if you had - - -

22 JUDGE READ: That's what the jury heard.

23 MR. KAPLAN: It - - - but not excluding
24 him, it had no statistical significance.

25 JUDGE READ: So it's your point - - -

1 JUDGE RIVERA: Right. So they could take
2 it for what it's worth, because defense counsel had
3 crossed their expert on that very issue.

4 JUDGE READ: It did exclude some people,
5 right? Did exclude some potential suspects?

6 MR. KAPLAN: Yeah. But the only people
7 that were excluded were people that were in the
8 reference sample, which is very tiny. It could - - -
9 they brought out in cross-examination that there
10 could have been many people in the courtroom that had
11 the same DNA profile.

12 JUDGE ABDUS-SALAAM: So coun - - - counsel,
13 isn't your point that that defense counsel failed to
14 object to statements in summation and possibly in - -
15 - in opening statements that Mr. Wright's DNA was
16 found on the ligature and in the panties of - - - of
17 this victim, this rape victim?

18 MR. KAPLAN: That - - - that was the - - -

19 JUDGE ABDUS-SALAAM: Rape victim.

20 MR. KAPLAN: - - - yeah, that's our second
21 issue that there was ineffective assistance of
22 counsel because of this failure to object to
23 prosecutorial misconduct. The - - - the DA equated
24 Y-chromosome DNA testing to traditional autosomal
25 testing where you can determine to a high probability

1 the identity of an actual person's DNA. Here, you
2 have Y-chromosome DNA which could have been any - - -
3 it was impossible to determine that this was a
4 specific person's DNA, Howard Wright's DNA or anybody
5 else's Y-chromosome DNA. So the fact that the DA
6 repeated over and over again that it was actually
7 Howard Wright's DNA was highly prejudicial to my
8 client.

9 JUDGE STEIN: Which DNA - - - what - - -
10 what was so prejudicial? I mean, there - - - there
11 was clearly some evidence that the defendant was with
12 the victim at some time that night.

13 MR. KAPLAN: Right.

14 JUDGE STEIN: So - - - so the DNA that
15 was - - - you know, whether there - - - there was
16 sexual contact or not, the DNA would - - - would
17 confirm that indeed, he was with her at some time.
18 How - - - how does that point to - - - to - - - to
19 him being responsible for her death?

20 MR. KAPLAN: The DNA did not confirm that
21 he was with her. It never confirmed anything. That
22 could - - -

23 JUDGE STEIN: Well, it could - - - if - - -
24 if - - - if take - - - if taken the way the
25 prosecutor presented it, that's what I'm saying. I'm

1 - - - I'm looking at - - - I'm looking at whether
2 this was, you know, ineffective assistance of
3 counsel.

4 MR. KAPLAN: Oh, okay.

5 JUDGE STEIN: Okay.

6 MR. KAPLAN: Right.

7 JUDGE STEIN: And so my question is what is
8 - - - what is the tremendous significance of the - -
9 - of the prosecutor's comments? What did it est - -
10 - what would it establish if believed that there was
11 no proof of in - - -

12 MR. KAPLAN: If believed, it established
13 that it was Howard Wright's actual DNA on the - - -
14 the swabs from the victim.

15 JUDGE STEIN: Right. But we knew he was
16 with her, so - - - there was other proof that he was
17 with her. So - - - so why - - - right?

18 MR. KAPLAN: Well, yeah. I mean that's an
19 additional point in his favor that he was with her
20 earlier in the evening.

21 JUDGE STEIN: Um-hum.

22 MR. KAPLAN: And so - - -

23 JUDGE RIVERA: I thought he made some
24 statement that he had oral sex with her?

25 MR. KAPLAN: Yeah. He did. So yeah, I

1 mean, he was with her, but it doesn't - - -

2 JUDGE RIVERA: You got statements, not just
3 that he's with her but that he's been - - - he's had
4 some intimate physical contact with her.

5 MR. KAPLAN: But - - - but this doesn't - -
6 - you can't infer from that that he murdered her
7 during - - -

8 JUDGE RIVERA: Well, correct.

9 MR. KAPLAN: - - - the time frame of death.

10 JUDGE RIVERA: The question was whether or
11 not, as - - - as you're suggesting, that counsel is
12 so ineffective given that you've got circumstantial
13 evidence that's presented to the jury and the
14 opportunity by defense counsel to have cross-examined
15 the People's expert witness related to the
16 limitations of the DNA evidence.

17 MR. KAPLAN: But - - - but the D - - - the
18 - - - the Y-chromosome DNA is substantially different
19 from traditional autosomal DNA. The Y - - - using
20 the Y-chromosome DNA, the DA inferred that that was
21 Howard Wright's actual DNA, but there's no - - -

22 JUDGE STEIN: Okay. Are you referring to
23 the - - - on - - - on the - - - on the ligature that
24 was used to - - -

25 MR. KAPLAN: On the ligature, on the - - -

1 JUDGE STEIN: Because that's what we're
2 concerned with? That's the point of the - - -

3 MR. KAPLAN: Yeah. On the ligature, on the
4 hand ligature, on the panties ligature, on the
5 vaginal swab, that - - - that it was - - - she stated
6 over and over again that it was Howard Wright's
7 actual DNA, and that was impossible to determine.
8 Her own witness said that she could not determine
9 that that was Howard Wright's DNA. I mean, it could
10 have been any number of people. This woman - - - the
11 - - - the victim - - -

12 JUDGE RIVERA: Didn't defense counsel also
13 reference the weaknesses and the limitations of the
14 Y-DNA evidence?

15 MR. KAPLAN: I don't know that - - - I
16 mean, he did some cross-examination in which that was
17 brought out, yes.

18 CHIEF JUDGE LIPPMAN: Okay, counsel.
19 Thanks. You'll have your rebuttal.

20 MR. KAEUPER: Good afternoon, Your Honors,
21 Geoffrey Kaeuper for the People.

22 CHIEF JUDGE LIPPMAN: Counsel, what about
23 the summation? I mean, that way overstated, if - - -
24 if - - - you don't think it's ineffective counsel
25 that - - -

1 MR. KAEUPER: No. Not - - -

2 CHIEF JUDGE LIPPMAN: - - - not to object
3 to that?

4 MR. KAEUPER: Certainly not.

5 CHIEF JUDGE LIPPMAN: Would you not object
6 to that?

7 MR. KAEUPER: I think - - - I think in this
8 context, I probably would not have objected. I - - -

9 CHIEF JUDGE LIPPMAN: But why would you - -
10 - why would you not have?

11 MR. KAEUPER: Well, first of all, because
12 there was no - - - there was no question that the
13 jury understood what this DNA evidence did and didn't
14 show. That was laid out from the beginning.

15 CHIEF JUDGE LIPPMAN: Yeah, yeah. But the
16 - - - but the - - - but the counsel, the prosecutor,
17 is saying something that's just not the case.

18 MR. KAEUPER: Well, I - - - I wouldn't
19 agree with that. But - - - but - - -

20 CHIEF JUDGE LIPPMAN: But - - - but why is
21 - - - what - - - what did he say that's true about
22 that they found his DNA in this place, in that place,
23 and the other place? What is true about that?

24 MR. KAEUPER: Well, I think - - - and I
25 tried to lay this out in my brief - - - I think

1 that's an argument about what all of the evidence
2 shows, so that when she's talking about the DNA, she
3 says you have to understand the DNA in the context of
4 all the evidence. I think - - -

5 CHIEF JUDGE LIPPMAN: But she says very
6 specifically.

7 MR. KAEUPER: Yeah. So - - - so - - -

8 CHIEF JUDGE LIPPMAN: That - - - that's an
9 overstatement, to be kind.

10 MR. KAEUPER: Okay. And I - - - I - - -

11 CHIEF JUDGE LIPPMAN: What - - - how - - -
12 why would you not object to that?

13 MR. KAEUPER: A couple reasons.

14 CHIEF JUDGE LIPPMAN: And I understand you
15 don't object.

16 MR. KAEUPER: Yeah. No.

17 CHIEF JUDGE LIPPMAN: But wouldn't defense
18 counsel?

19 MR. KAEUPER: But okay. If - - - if we
20 decide that that's - - - that that's not an argument
21 about what the totality - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. KAEUPER: - - - of the evidence, the -
24 - - the - - - let's - - -

25 CHIEF JUDGE LIPPMAN: Let's assume it's

1 just - - -

2 MR. KAEUPER: Okay.

3 CHIEF JUDGE LIPPMAN: - - - it's just very

4 - - -

5 MR. KAPLAN: That it's - - - it's a
6 misstatement. It's - - -

7 CHIEF JUDGE LIPPMAN: - - - very
8 prejudicial misstatement.

9 MR. KAEUPER: It's an over - - - it's an
10 overstatement of - - - of the evidence.

11 CHIEF JUDGE LIPPMAN: Yes. Yes.

12 MR. KAEUPER: For one thing, the DNA
13 evidence was not the key to this crime - - to this
14 prosecution.

15 CHIEF JUDGE LIPPMAN: Isn't that the most
16 significant evidence or no?

17 MR. KAEUPER: I think the most significant
18 evidence is the time line combined with the physical
19 evidence, the - - - the placement of the sock, so
20 forth.

21 JUDGE PIGOTT: In your brief, you said that
22 it was a circumstantial case, and I think you're
23 right.

24 MR. KAEUPER: Absolutely.

25 JUDGE PIGOTT: If that's true, and then at

1 the - - - at the summation, the prosecutor says, they
2 thought they had gotten away with it, but they left
3 their DNA all over the crime; she argued that the
4 hair found on - - - in Daggett's vaginal area comes
5 back to Christopher Gifford (ph.). She stated that
6 "When we examined the vaginal swab, there were two
7 contributors, and the sperm fraction of the vaginal
8 swab matched Y-profile of the defendant and Gifford."
9 Is there any doubt that all of that DNA belonged to
10 the defendant, in your mind?

11 MR. KAEUPER: No. I think - - - I think
12 the context makes it clear that that is the
13 defendant's DNA.

14 JUDGE PIGOTT: Doesn't he - - -

15 MR. KAEUPER: I think that's the argument,
16 but - - -

17 JUDGE PIGOTT: Mr. Kaplan makes the point,
18 it doesn't. I mean all - - - all it says is that he
19 might be part of a 100,000 or a million people. She
20 made it sound like there's only two of you.

21 MR. KAEUPER: I mean, again - - - again I -
22 - - I think that's an argument about what - - - about
23 what the other evidence allows you to conclude about
24 the DNA. But - - - but if you don't accept that,
25 let's - - - let's say that that's - - - that's a

1 misstatement, that that's an overstatement of what
2 the DNA shows. She's also just said what is
3 indisputably true, this is - - - this is evidence
4 that shows simply you can't exclude someone, you
5 can't quantify it. She lays all that out before she
6 starts - - -

7 JUDGE PIGOTT: No, no.

8 MR. KAEUPER: But - - -

9 JUDGE PIGOTT: She said this is a case of
10 common sense and science.

11 MR. KAEUPER: Right.

12 JUDGE PIGOTT: And then she says DNA, DNA,
13 DNA, DNA.

14 MR. KAEUPER: Well, she starts out with - -
15 - with the - - - with the - - - with the time line
16 and with the - - - the sock and so forth, the
17 physical evidence, which I think is - - - is really
18 the heart of this case, but - - - but with respect to
19 that DNA evidence, let's say she's overstating that -
20 - - what - - - what that shows. The jury's not going
21 to misunderstand this. The defense has set it up
22 from the get go, from his opening statement he said
23 rem - - - remember, listen to what - - - that
24 testimony carefully. What's the - - - what - - -
25 what is that testimony actually going to show you,

1 when it said - - - says not excluded. It's not going
2 to show you much of anything.

3 JUDGE PIGOTT: Yeah. So if it says it's
4 not excluded, and she says that the DNA comes back to
5 Christopher Gifford, who's right?

6 MR. KAEUPER: So - - - so - - - so you - -
7 - you object if you're - - - if you're afraid that
8 the def - - - that the jury might actually
9 misunderstand. Oh, you know, despite all that
10 testimony and so forth, I - - - I think the DNA - - -
11 -

12 JUDGE PIGOTT: The Judge is saying it's not
13 - - -

14 MR. KAEUPER: It's - - -

15 JUDGE PIGOTT: It's not true.

16 MR. KAEUPER: And - - - and so - - - I
17 mean, yeah, you could object to that, and the
18 objection - - - you - - - the - - - the result of the
19 objection would be you get an instruction from the
20 judge saying, remember the statements of - - - of
21 attorneys - - -

22 JUDGE PIGOTT: Okay. But the judge - - - I
23 mean the judge might be very clearly and say, Ms.
24 Doorley, if you do that once more, I'm going to grant
25 a mistrial in this case because you damn well know

1 that this is a Y chromosome and it's not - - - and
2 it's not definitive at all so you cannot say that
3 it's the defendant's DNA. I mean, it's not just - -
4 - I mean, you're about to - - -

5 MR. KAEUPER: It's - - -

6 JUDGE PIGOTT: - - - to suggest that - - -
7 that the judge was going to blow it off, which
8 sometimes happens, but - - -

9 MR. KAEUPER: Well, I - - - I think what
10 you get - - -

11 JUDGE PIGOTT: But - - -

12 MR. KAEUPER: - - - I think you're likely
13 to get a pretty - - - a pretty run - - rundown kind
14 of instruction that's not going to do a lot more than
15 what the defense has already done in his opening
16 statement, in his cross-examination, in his re-cross
17 of Clement and in his summation. He's - - - he said
18 this over and over again.

19 CHIEF JUDGE LIPPMAN: You think - - - you
20 think that outweighs the damage that - - - that could
21 very conceivably be done by that kind of, whatever
22 you want to call it, overstatement? I mean sometimes
23 there are areas, as we know from the law, that's just
24 so egregious; to let - - - to let - - - if you were
25 making an argument, to let you say the DNA of this

1 defendant is all over the plaintiff - - - all - - -
2 all over the complainant in this area, in that area,
3 in the other area, isn't - - - couldn't that be
4 terribly, terribly prejudicial, so much that it's an
5 egregious error not to object?

6 MR. KAEUPER: In - - - in context,
7 something like that could certainly be. I think - -
8 - I think really the test ultimately is, is it - - -
9 it - - - for it to be misconduct - - - or for it to
10 be ineffective assistance to not object to misconduct
11 in the summation, I think it has to be a summa - - -
12 a summation that would get you a mistrial if you
13 object to it. I don't think - - - I think if - - -
14 if the defense objects here and asks for a - - -

15 CHIEF JUDGE LIPPMAN: Or - - - or - - - or
16 - - -

17 MR. KAEUPER: - - - and the judge sustains
18 and even gives the - - -

19 CHIEF JUDGE LIPPMAN: Or a very strong
20 reprimand, as Judge Pigott said.

21 MR. KAEUPER: Yes, gives - - - gives a
22 strong reprimand. He's still not going to get a
23 mistrial, because this - - - this statement did not
24 deprive the defendant of a fair trial.

25 JUDGE RIVERA: You've got some

1 clarification for the jury. I mean, the letters DNA
2 have meaning, they're compelling, especially when the
3 - - - the prosecutor is saying this is about common
4 sense and science, as Judge Pigott has already
5 mentioned. I - - - you're not just talking about,
6 you know, his - - - his hat was left at the scene.
7 Maybe that has some meaning, too.

8 MR. KAEUPER: Right. Right. But - - -

9 JUDGE RIVERA: But isn't there something in
10 particular about referring to the scientific
11 quote/unquote "objective evidence" that's different?

12 MR. KAEUPER: That - - -

13 JUDGE RIVERA: It's the one thing that
14 connects this defendant - - -

15 MR. KAEUPER: Right.

16 JUDGE RIVERA: - - - according to the
17 People, to this actual crime, as opposed to everyone
18 else just sees him with her before and sees him with
19 the car afterwards and he's got his own - - -

20 MR. KAEUPER: Yeah. I - - -

21 JUDGE RIVERA: - - - statements that he's
22 had oral sex with her?

23 MR. KAEUPER: Well, I - - - and I certainly
24 don't - - - don't agree that the circumstantial proof
25 outside of the DNA is not strong. I think it's very

1 strong, but - - -

2 JUDGE RIVERA: I'm not saying it is or
3 isn't strong.

4 MR. KAEUPER: No, I - - - I understand.

5 JUDGE RIVERA: But obviously, the - - - the
6 People thought there was something really important -
7 - -

8 MR. KAEUPER: Right.

9 JUDGE RIVERA: - - - about this DNA, even
10 with their own expert on cross admitting the limits
11 of that DNA.

12 MR. KAEUPER: Right. Right. But I think
13 that's the key, is - - - is that - - - that - - -
14 that the - - - because I think it is true with
15 scientific evidence that there's sort of special
16 dangers about - - - about the jury potentially
17 misconstruing, but all of that gets laid out very
18 clearly in the - - - in the opening statements, in
19 the testimony.

20 CHIEF JUDGE LIPPMAN: Yeah. But - - - but
21 - - - but DNA in some ways is easily understandable
22 today. People watch TV. They know the power of DNA,
23 and to make such a bold statement is so damaging that
24 - - - that isn't it, in your mind, possible that it
25 outweighs everything else?

1 MR. KAEUPER: No. Judge, because - - -
2 because the jurors still listened to the evidence.
3 They've been instructed to listen to the evidence.
4 They've been instructed that the arguments of counsel
5 are not evidence. The evidence here was - - -

6 CHIEF JUDGE LIPPMAN: You mean the jury - -
7 -

8 MR. KAEUPER: - - - very, very clear about
9 that.

10 CHIEF JUDGE LIPPMAN: - - - the jury would
11 say to themselves, yeah, the prosecutor said that his
12 DNA was found all over the victim in all these
13 different places, but - - -

14 MR. KAEUPER: Which is inconsistent with
15 the evidence we heard.

16 CHIEF JUDGE LIPPMAN: - - - but we've heard
17 - - - but we've heard the other evidence, so we'll
18 just kind of zone that out. We know this is a
19 special kind of DNA test. We know that it really
20 wasn't found all over the victim, that they didn't
21 eliminate him. So they're going to make all those
22 very educated judgments instead of saying, wow, you
23 know, that maybe we got it wrong. The DNA of the
24 defendant was all over the victim.

25 MR. KAEUPER: And no, I - - - I think

1 they're not going to do that, because that wasn't the
2 testimony, and because the defense attorney made sure
3 that they understood that wasn't the testimony.

4 JUDGE PIGOTT: Well, let's assume for a
5 minute that the summation was the defendant's DNA is
6 inside her, on her underwear, on the ligature that
7 binds her.

8 MR. KAEUPER: Um-hum.

9 JUDGE PIGOTT: What's the jury supposed to
10 do with that?

11 MR. KAEUPER: Well, I mean, again, I guess
12 I - - - I can't say - - - say enough that I think the
13 - - - that the fact that the defense counsel makes
14 this argument very clear and the fact that the
15 testimony is very clear really limits that prejudice
16 significantly. But if I can make - - - make one
17 other separate point.

18 JUDGE PIGOTT: You can say that - - - okay.

19 MR. KAEUPER: What?

20 JUDGE PIGOTT: Go ahead.

21 MR. KAEUPER: I beg your pardon, Your
22 Honor.

23 CHIEF JUDGE LIPPMAN: No, no. Go ahead.

24 MR. KAEUPER: But if I can make one other -
25 - - one other point, which is the defense did not

1 rest - - - did not live or die on the DNA, just like
2 the prosecution didn't live or die on - - - on the
3 DNA. The defense makes this argument, and I think
4 this is why Mr. Kaplan takes issue with the defense's
5 opening statement. The defense is making a different
6 argument. They're - - - they're say - - - they - - -
7 they're saying, you know, this isn't his - - -
8 they're not going to be able to prove this is his
9 DNA. Be careful about that testimony. But even if
10 it is, because he's - - - he's going to come in here
11 and he's - - - he's not going to contest that he had
12 sexual inter - - - relations with this woman that
13 night. He cross-examines extensively about
14 transference, about how - - - how, you know, this is
15 a small DNA sample, that's why you have to use the Y-
16 STR testing on it.

17 JUDGE STEIN: But to - - - to me the - - -
18 the linchpin is is the ligature, because whether he
19 was with her, whether he had sex with her, all of
20 that, the jury could say well, that doesn't really
21 prove anything. But once you have that prosecutor
22 saying his DNA was all over -- it was on the ligature
23 that tied her up, I mean that's, you know, like end
24 of game.

25 MR. KAEUPER: Well, but I - - - but I think

1 that's not the way the defense is presenting the
2 case, and I think the defense has - - - has
3 counterarguments to that, and - - - and again, I'll
4 go back to the fact that the jury hears - - - the
5 jury hears the evidence. They hear - - - they don't
6 just hear these isolated statements from the
7 prosecutor, they hear - - - the defense has made this
8 very clear from the get-go.

9 CHIEF JUDGE LIPPMAN: Okay, counsel.

10 Thanks, counsel.

11 Counselor, rebuttal?

12 MR. KAPLAN: Yes. I'd - - - I'd just like
13 to make another point on our insufficiency of
14 evidence argument that the DNA evidence, the Y-
15 chromosome DNA evidence coupled with the observations
16 of the witnesses Evans and Mildred Anderson, were
17 insufficient to convict my client. There was no
18 evidence that he had any contact or access to the
19 victim during the time frame of the period of death.
20 The DNA, the Y-chromosome DNA evidence didn't provide
21 that, Evans' testimony didn't provide that,
22 Anderson's testimony didn't provide that.

23 In fact, they had only seen him with the
24 victim over three-and-a-half hours prior to the time
25 frame of death, and when he did see Evans during the

1 time frame of death, it was on the street when they
2 were talking and they saw the car go down the street,
3 the victim's car go down the street, without being
4 able to identify any one in it, but the fact was that
5 the car went down the street. So there's nothing
6 that shows that my client had access to the victim at
7 the time she died.

8 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
9 you both. Appreciate it.

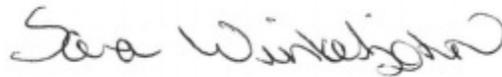
10 (Court is adjourned)

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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 People v. Howard S. Wright, No. 109 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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