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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

WAYNE HENDERSON,

No. 58
(papers sealed)

Respondent.

20 Eagle Street
Albany, New York 12207
March 24, 2016

Before:

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

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Our final matter this
2 afternoon is number 58, People v. Wayne Henderson.

3 MR. BLIRA-KOESSLER: May it please the
4 court, Chris Blira-Koessler, Office of the Queens
5 County District Attorney, for appellant. I'd like to
6 request two minutes of rebuttal time, Judge.

7 CHIEF JUDGE DIFIORE: Two minutes, sir?

8 MR. BLIRA-KOESSLER: Yes.

9 CHIEF JUDGE DIFIORE: Yes, you may.

10 MR. BLIRA-KOESSLER: Thank you.

11 Your Honors, this case is entirely unlike a
12 case like People v. Oliveras, where the defense did
13 nothing to investigate, prepare and present the
14 proper defense at trial. Quite the contrary, it's
15 the polar opposite. What - - - what they did here is
16 present - - - investigate, present and prepare three
17 complementary defenses that worked in total harmony
18 at trial, including a psychiatric defense.

19 Now, to support that psychiatric defense,
20 they've got probably one of the best witnesses that
21 they could have gotten, Dr. Stephen Billick, who's a
22 very experienced, educated and - - - and accomplished
23 psychiatrist, and they got him to do what they needed
24 him to do to support this defense, which is - - -

25 JUDGE RIVERA: How - - - how can you

1 thing here is that there was nothing misleading that
2 occurred, because if you look at the evidence about
3 the wounds, the experts had a correct description of
4 what the wounds were like. They were all over the
5 body. The photos reveal that a - - -

6 CHIEF JUDGE DIFIORE: How about the
7 snitching theory?

8 MR. BLIRA-KOESSLER: Well, again, that's a
9 theory. The prosecution had their theory. The
10 defense had many theories of how this happened. I
11 don't think in order to give an honest presentation
12 to the jury, you have to tell your expert about the
13 People's theory of the case.

14 You can prepare your own expert based upon
15 your own theory of the case. And the jury hears that
16 theory anyway, because it comes out at trial. So I
17 don't think there was anything unethical going on
18 here, and in fact, what went on here was quite within
19 the scope of what happened in Pavone. In fact, it
20 was - - -

21 JUDGE PIGOTT: Straighten this out for me,
22 then. I don't - - - I don't worry - - - I didn't see
23 anything ethical in this thing, but the People made a
24 big deal out of the very things you're saying, well,
25 it was okay for them to do. I mean, you - - - I

1 don't say you denigrated the defense, but in
2 summation, the People went after this expert and his
3 - - - his lack of knowledge of certain things and
4 failure to disclose certain things. And it - - - it
5 was - - - it seemed to me it was an important part of
6 your summation.

7 And now you're arguing, but none of that -
8 - - I mean, that - - - that's - - - that's - - -
9 that's not bad. It's okay that - - - that you don't
10 show him the pictures. It's okay that you don't do
11 other things. And that is not what you told the
12 jury.

13 MR. BLIRA-KOESSLER: Well, I mean, when - -
14 - when I say okay or not okay, this is all a matter
15 of strategy, and we have very little on this record
16 as to why they employed this particular strategy.
17 For all we know on this record, there could have been
18 one, two, three, ten experts before Dr. Billick.
19 Maybe they didn't want to testify because of this
20 motive theory, or because they saw the pictures, or
21 because they saw the medical records.

22 So if all that's true, why would they
23 repeat the same mistake with Dr. Billick? Why would
24 they disclose the same materials to him that
25 precluded these other experts from testifying in

1 their favor - - -

2 JUDGE PIGOTT: Is that what happened here?

3 MR. BLIRA-KOESSLER: - - - or offering an
4 opinion?

5 JUDGE PIGOTT: Is that what happened here?

6 They - - - that - - - they looked at ten experts
7 before this?

8 MR. BLIRA-KOESSLER: Well, I mean, we - - -
9 we have little information about what happened here,
10 because there hasn't been a 440. There's been no
11 hearing. There's been no post-judgment expansion of
12 the record. But I think it's a reasonable inference.
13 I mean - - -

14 JUDGE STEIN: Aren't you just really saying
15 that the fact that you use it for cross-examination
16 doesn't mean that it's ineffective assistance of
17 counsel in the first place?

18 MR. BLIRA-KOESSLER: Yeah, I mean, just
19 because something comes up out cross, doesn't
20 automatically mean, oh, the - - - the attorney's
21 ineffective. I mean, this is something that happens
22 in every single case where a party puts on witnesses,
23 whether a lay witness, whether an expert witness. It
24 doesn't matter. No witness is bulletproof. Every
25 witness is going to be cross-examined. Every witness

1 is going to be impeached. If we turn - - -

2 JUDGE RIVERA: True, but is - - - isn't it
3 one thing to have a witness who gets put under some
4 very serious cross-examination and perhaps looks weak
5 in the course of that, versus not giving information
6 to the witness and preparing that witness, so that
7 what - - - the only result of that is going to be a
8 cross-examination that's going to show that the
9 witness' opinion should not be relied on. They're
10 just not credible. They don't have all of the
11 information.

12 And as the People tried to show, and
13 unfortunately, this defense counsel made clear to the
14 jury, it's because they - - - the attorney chose not
15 to give that information, because it would mean there
16 would be a very different opinion that's not
17 favorable to the defendant.

18 MR. BLIRA-KOESSLER: I mean, just - - -

19 JUDGE RIVERA: So aren't those different
20 things?

21 MR. BLIRA-KOESSLER: Dif - - - different in
22 the sense of you should fully - - - to fully prepare
23 the expert and give them everything? I mean, if it
24 costs you an expert's testimony in the end, if there
25 were other experts who refused to testify based upon

1 this info - - -

2 JUDGE RIVERA: Doesn't that tell you
3 something about your potential defense?

4 MR. BLIRA-KOESSLER: Well, this - - - these
5 - - - these are the cards that they were dealt. I
6 mean, this is what their client said. I blacked out.
7 I didn't know what I was doing. I had no intent.
8 They had to play the hand that they were dealt.

9 JUDGE ABDUS-SALAAM: Well - - -

10 MR. BLIRA-KOESSLER: And I - - - I think
11 they played it in the best way possible.

12 JUDGE ABDUS-SALAAM: Well, to that point,
13 counsel, what about defense counsel's statement to
14 the jury in summation that, I didn't show this expert
15 the - - - the photos because he probably would - - -
16 that would change his testimony or change his
17 diagnosis? What about that statement? We have that
18 statement as some evidence or some - - - in the
19 record - - -

20 MR. BLIRA-KOESSLER: Right.

21 JUDGE ABDUS-SALAAM: - - - that counsel
22 made a strategic choice not to provide this expert
23 with all the information.

24 MR. BLIRA-KOESSLER: Right. I mean, maybe
25 there were other ways to say that, and maybe anyone

1 in this room would have elaborated on that a little
2 bit more, but I think it's pretty clear what they
3 meant, given their position on the photographs, the
4 same position they took at trial.

5 And they kept telling the jury and
6 objecting at trial about the prejudicial impact of
7 these photos, that they're inflammatory. Don't let
8 sympathy sway you. So I think the jury was able to
9 read the comment in the context of the position they
10 took regarding the photos, and know what they meant.

11 I don't really think that these two
12 attorneys that put on this, you know, very vigorous,
13 very, you know, zealous defense, that all of a sudden
14 they're going to stand up in front of the jury and
15 just torpedo their own case. And that that's what
16 the jurors are going to think, like, oh, they - - -
17 they just admitted a fatal weakness to us. No - - -

18 JUDGE ABDUS-SALAAM: So do you see this as
19 one error or more than one error that the defendant
20 is pointing to?

21 MR. BLIRA-KOESSLER: No, I mean, I think
22 it's all - - - I mean, it all flows from the cross-
23 examination. That's essentially what led to the
24 reversal, the summation comments. Again, they all
25 flow from the cross-examination. So it's really one

1 error.

2 And you know, let's just talk about the
3 prosecutor's summation, because - - - because I don't
4 think I answered your question. The prosecutor hit a
5 lot of points. The - - - the fact that there were,
6 you know, other experts, two other experts, twice as
7 many as the defense had, that said, you know, this is
8 social conduct disorder. This is just, you know - -
9 - it has nothing to do with delusions. It has
10 nothing to do with blacking out and losing intent.

11 The doctor's own test revealed that this
12 defendant might have been faking his own symptoms.
13 He mentioned this evidence that came out at trial
14 about a drawing of a tree. Dr. Billick had the
15 defendant draw a tree, and he tried to make it seem
16 as if, you know, the tree is falling down. The
17 prosecutor was, like, well, it's standing straight
18 up. And he mentioned that and said, you know, he's
19 just trying to give him a pass.

20 And he mentioned other evidence as well.
21 The fact there are no injur - - - there was no sign
22 of injury or intoxication when the police came upon
23 him shortly after the crime. He was basically
24 sitting in his room, playing video games with the co-
25 defendant, which is a - - - kind of a strange way to

1 spend your time after you nearly kill your best
2 friend in - - - in, like, a black-out stage. You lie
3 to the police.

4 What all this shows, basically, is that,
5 again, the defense was dealt a bad hand. They had to
6 make the most of it. And it wasn't just an adequate
7 defense, it was the best defense. And I see my time
8 is up.

9 CHIEF JUDGE DIFIORE: Thank you, sir.

10 MR. BLIRA-KOESSLER: Thank you.

11 CHIEF JUDGE DIFIORE: Counsel?

12 MS. HULL: Good afternoon. Leila Hull from
13 Appellate Advocates for respondent. The Appellate
14 Division - - -

15 JUDGE RIVERA: Let me ask a little bit - -
16 - a question a slightly different from what - - -
17 what the People are arguing about this is the - - -
18 the hand that's dealt to the defendant and to defense
19 counsel and they're making the best of it.

20 It - - - didn't defense counsel come up
21 with a particular view of the evidence, right? One
22 of these defenses, this is - - - this is what
23 occurred. The victim is lying, C.P. is not to be
24 trusted, right, sort of - - - that's - - - isn't that
25 really the presentation that the defense counsel or

1 that's the defense that the defense counsel is trying
2 to present to the jury. And so in that line, that's
3 how they prepared their expert?

4 This is - - - my - - - the defendant has
5 this story. And if this is the story, I prep my
6 expert for that story, because that's what I'm
7 presenting to the jury, versus the People have a
8 whole different story that occurred. The - - - you
9 know, the victim has their own story. We say that's
10 not the story. This is the story, and the expert is
11 testifying based on that story.

12 MS. HULL: I think I would disagree
13 slightly. To a certain extent, I - - - I understand
14 what you're saying in the - - - in - - - its - - -
15 the expert's testimony does credit Hen - - -
16 Henderson's version of events. But for that to work,
17 it would also have to play into the diminished
18 capacity, the psychiatric defense. So the two - - -
19 so there is, to a certain extent, a challenge to the
20 complainant's version of events.

21 But also, even if the complainant's version
22 of events is - - - is - - - the jury can credit, it's
23 about Henderson's point of view, what is he thinking,
24 what is he feeling, what is he believing is
25 happening. And given that this is a psychiatric

1 defense, the jury didn't have to completely dis - - -
2 disregard the complainant's version in order to
3 credit the psychiatric defense here. So - - -

4 CHIEF JUDGE DIFIORE: So counsel, the jury
5 rejected your - - - the defendant's defense of
6 justification, essentially finding that that was not
7 credible. So does that undermine the expert's
8 opinion with - - - who relied on the defendant's
9 version?

10 MS. HULL: I think the two are
11 interrelated. The - - - the id - - - the
12 justification defense always takes into account the
13 state of - - - the su - - - the subjective - - -
14 partly the subjective state of mind of the person
15 claiming self defense. If that - - - to a certain
16 extent, the psychological condition of that - - - of
17 our defendant is part of that analysis. If the jury
18 was - - - I would - - - I would rechange - - - switch
19 up the order, in other words.

20 They disre - - - they - - - they didn't
21 credit the diminished capacity defense, therefore
22 they couldn't credit the justification defense,
23 because the two are interrelated, at least ha - - -
24 as it was presented. This wasn't simply - - - they
25 weren't mutually exclusive arguments. They were put

1 together to a certain extent.

2 And the - - - this actually goes back to
3 the central point here. Dr. Billick's testimony was
4 the cornerstone for all of this, and once that came -
5 - - once that was pulled out, everything tumbles
6 down.

7 JUDGE FAHEY: But - - - but don't you - - -

8 JUDGE GARCIA: Counsel, isn't it - - -

9 JUDGE FAHEY: Go ahead, counsel.

10 JUDGE GARCIA: Isn't that - - - look, they
11 find an expert witness who's highly credentialed,
12 defense counsel, and they make a tactical decision on
13 prep that happens every day. And that explodes on a
14 cross-examination which is highly effective. And so
15 when they get to the jury, they have to explain that,
16 and you all may have explained it differently than
17 this defense counsel did, but why is that ineffective
18 as opposed to any other kind of tactical trial
19 decision you make that doesn't work? You get an
20 adversary who takes advantage of it.

21 MS. HULL: No, I understand. So I think
22 there's two responses to that. One, the way they
23 thought to explain it in summation was affirmatively
24 detrimental to the - - - to the defense. This wasn't
25 just a losing tactic. This - - - this turned into a

1 liability.

2 JUDGE GARCIA: So it's the - - - without
3 the explanation, would this have been ineffective?

4 MS. HULL: I think it would have been a
5 closer call. With the explanation, it certainly
6 became ineffective, and it really shows how this case
7 stands in contrast to Pavone, where the summation
8 comment was an explanation where the - - - the
9 attorney was doubling down on the theory. He wasn't
10 undermining it. He explained his reasoning. It
11 would - - - it wasn't that he didn't believe in this
12 expert. He didn't - - - he believe - - - that
13 attorney still thought that the testimony or the
14 information that he gave that expert was enough. The
15 transcripts were enough.

16 Here, this is - - - this is - - - these are
17 defense attorneys who are telling the jury, they
18 don't have faith in the evaluation. If your
19 attorneys don't have faith in your defense, why would
20 a jury? And that is what makes this very detrimental
21 to this client.

22 JUDGE ABDUS-SALAAM: Counsel, if - - - if
23 it's not ineffective to, for example, call a doctor
24 who testifies - - - you called the doctor. A
25 defendant hires a doctor to testify that the

1 defendant didn't know what he did was wrong, and then
2 the doctor testifies that the defendant did know that
3 what he did was wrong, and we found that not to be
4 ineffective assistance of counsel. Why would we find
5 this, where the doctor hasn't really said - - - all
6 he said is I didn't have this information and it
7 might - - - it may not even have changed my
8 diagnosis. So why would we find that ineffective?

9 MS. HULL: Because you have defense counsel
10 admitting to the jury that they think it may change
11 his diagnosis. They don't have faith in it. They
12 don't believe in it. And we can see the strategy
13 laid out. There's no further inquiry.

14 JUDGE ABDUS-SALAAM: I - - - I - - - I'm
15 still - - - I'm sorry - - - I still don't see the
16 distinction. Defense counsel calls a doctor to
17 testify one way. The doctor testifies in a way that
18 completely destroys the defendant's defense, and we
19 said that's not ineffective assistance of counsel.

20 MS. HULL: Well, you did in Bennett. And
21 that is actually - - - so you have found in those
22 situations counsel ineffective, because they failed
23 to prepare the defense. And that's what happened
24 here.

25 And the other thing that I think is

1 critical is that - - -

2 JUDGE PIGOTT: Well, let me stop you there
3 for a minute. I - - - I - - - I've had witnesses go
4 south on me and I'll argue it's on me. It's not - -
5 - it's not my witness' fault. Blame me. I didn't
6 prepare him or her correctly. I should have given
7 him that piece of evidence. That's just good - - -
8 well, mediocre lawyering, but that - - - but that's
9 what lawyers do, I mean, you know, as - - - as your
10 opponent keeps saying that, you know, you got dealt a
11 bad hand.

12 I - - - as I read the record, this case was
13 going south when - - - when the defendant testified.
14 I mean, I don't want to say that was ineffective,
15 but, you know, this seemed to me to be almost a side
16 show after - - - you know, after what was presented
17 to the jury at that point. So you know, then to say,
18 because of the summation, it's wrong, I - - - I'm
19 just missing it.

20 I - - - if - - - if you're stuck, and it
21 seemed to me they were stuck, and you finally get a
22 doctor - - - finally get a doctor - - - you know, as
23 you can put on, and you say, I've got three prongs to
24 this, you know, with respect to his me - - - his - -
25 - and you - - - and you tell him that and ask him if

1 he can testify to that, it seems to me you've done a
2 pretty good job. I - - -

3 MS. HULL: Well, there's a big difference
4 between taking the hit, which I think the attorney in
5 Pavone did, and saying to the jury, don't bo - - -
6 don't bother crediting this and - - - when especially
7 since that testimony - - - Billick's testimony - - -
8 goes to the very core of the entire defense.

9 JUDGE FAHEY: So - - -

10 JUDGE GARCIA: Billick didn't - - -

11 JUDGE FAHEY: - - - so just take a step
12 back then. You're saying this is not a single error
13 case?

14 MS. HULL: No. It can - - - actually, we
15 would argue that under either analysis, it would - -
16 -

17 JUDGE FAHEY: Okay, well, then - - -

18 MS. HULL: - - - but we see this as a
19 series of errors.

20 JUDGE FAHEY: I tend to see it as a single
21 error case. So - - - so tell me un - - - under how
22 this qualifies under a is - - - our jurisprudence
23 under a single error case?

24 MS. HULL: So Blake, when it describes an
25 error that taints the entire representation, this was

1 a critical component of the defense. And if those -
2 - -

3 JUDGE STEIN: Well, I - - - I thought that
4 it talked about - - - that the single error standard
5 was that it - - - it was - - - it was decisive, it
6 was - - - and it was determinative, in that - - -

7 JUDGE FAHEY: It was dispositive, that's
8 right.

9 JUDGE STEIN: It was dispositive, thank
10 you. That's a little bit different from what you
11 said.

12 MS. HULL: Well, I mean, also you al - - -
13 you have a different ruling in Clermont, where you
14 actually found it not to be dispositive, but it
15 certainly was a single error. So I mean, in - - - in
16 a sense it needs to over - - -

17 JUDGE STEIN: Clermont was a completely
18 different issue.

19 MS. HULL: I understand, but it's also a
20 question of whether it overshadows the entire
21 representation. And here, I don't - - - where you
22 have an attorney signaling to the jury that they do
23 not credit - - - they do not believe in their own sic
24 - - - their own expert witness.

25 JUDGE PIGOTT: What - - - what - - - what -

1 - -

2 MS. HULL: That would - - -

3 JUDGE PIGOTT: - - - where do you point in
4 summation for that point?

5 MS. HULL: The statement, "And also, I
6 submit" - - - "I also" - - - "And also, I submit that
7 those photos would have changed possibly his
8 evaluation." It's on page 915 to 916.

9 JUDGE STEIN: Is that saying whether he - -
10 - don't believe what he said?

11 MS. HULL: But that's what the jur - - - I
12 understand. That is overstating it. So the - - -
13 the point here is - - -

14 JUDGE PIGOTT: Well, don't - - - don't - -
15 - don't - - -

16 MS. HULL: - - - it's signaling to the jury
17 - - -

18 JUDGE PIGOTT: Don't skate past that so
19 quickly, I mean, that's kind of my point. I mean,
20 didn't she say, you know, that he was not there to
21 diagnosis the complainant's injuries, that he was
22 there to, you know, to - - - I mean, that - - -
23 that's not - - - I mean, that's not throwing your
24 expert under the bus.

25 MS. HULL: If he had left it at that, I

1 would agree with you, Your Honor.

2 JUDGE PIGOTT: She.

3 MS. HULL: But she didn't - - - she didn't
4 leave it at that. She we - - - she took the added
5 the step of saying, it could change his evaluation.
6 And that - - -

7 JUDGE GARCIA: But he said that. The
8 doctor said it might but it might not.

9 MS. HULL: He was - - -

10 JUDGE GARCIA: And that's the evidence,
11 right? What the doc - - - what the expert said. And
12 he said it might or it might not. And that's what
13 they're arguing to the jury.

14 MS. HULL: Then they should never have
15 guided him to those subjects on direct. They should
16 have prepared him. The - - -

17 JUDGE GARCIA: But what's the - - -

18 MR. BLIRA-KOESSLER: The cornerstone of - -
19 -

20 JUDGE GARCIA: What is the devastating
21 error there? I'm trying to figure it out. But - - -
22 yes, it's a bad cross. And you don't want your
23 expert to ever have to say it might, it might not.
24 But then in the summation, they're dealing with that
25 as best you can, by saying it might. It might not.

1 And the testimony, which is the evidence, not the
2 summation, is it might but it might not.

3 So the jury was free to believe his - - -
4 his - - - the jury would have remained the same.

5 MS. HULL: This cross was predictable.
6 They guided them to those subjects.

7 JUDGE GARCIA: It's always predictable
8 after it happens, right?

9 MS. HULL: Then he shouldn't have been put
10 on the stand. There was ample evidence of a
11 psychiatric defense here without him. This was a - -
12 -

13 JUDGE PIGOTT: So how do you do the - - -

14 MS. HULL: - - - fifteen-year-old kid.
15 Sorry.

16 JUDGE PIGOTT: Now - - - now you're talking
17 tactics, though, because if she hadn't put a - - - a
18 shrink on the stand, you know, we - - - I assume
19 you'd be here arguing, and they didn't even get an
20 expert with respect to the psych - - - the psychia -
21 - - the psychology of this thing.

22 MS. HULL: They - - -

23 JUDGE PIGOTT: So - - -

24 MS. HULL: We couldn't do that without a -
25 - - without a 440, without them saying we had a

1 reason for that. Here the reason was problematic.

2 We - - -

3 JUDGE PIGOTT: Losing tactics is, I - - - I
4 guess, what - - - what you're confronted with here,
5 right?

6 MS. HULL: This is not a losing tactic.
7 This was a grenade set to go off in the middle of
8 trial. That's what distinguishes this from other
9 types of cases.

10 CHIEF JUDGE DIFIORE: Thank you, counsel.

11 MS. HULL: Thank you so much.

12 CHIEF JUDGE DIFIORE: Counsel?

13 MR. BLIRA-KOESSLER: I just wanted to
14 address what my adversary said about that there was
15 pretty much no doubt that these questions would be
16 asked. What - - - what you have to realize on this
17 record is that there was absolutely no indication
18 what the prosecutor would get once he asked these
19 questions, you know.

20 There was no indication that the motive
21 theory had been disclosed to the expert. No
22 indication whether the expert had seen the photos of
23 the medical records. In fact, it seemed as if the
24 expert had seen the photos and the medical records,
25 because he gave an accurate description of the

1 wounds.

2 So, you know, you got to ask yourself, is
3 my adversary going to ask this question? Is he going
4 to take the chance? Because if you don't know the
5 answer to a - - - to - - - to a question, it can
6 basically just blow up in your face. So just because
7 they went to these topics, doesn't mean that the
8 prosecutor would venture into this area and
9 necessarily ask this experienced expert - - - and
10 this wasn't his time testifying, and he was a guy who
11 really, really liked to talk, are you - - -

12 CHIEF JUDGE DIFIORE: Is he going off the
13 script here?

14 MR. BLIRA-KOESSLER: What's that? Sorry,
15 Judge.

16 CHIEF JUDGE DIFIORE: Is he just going off
17 the script?

18 MR. BLIRA-KOESSLER: Did - - - did Dr.
19 Billick go off the script?

20 CHIEF JUDGE DIFIORE: Is that what he's
21 doing, just going off the script?

22 MR. BLIRA-KOESSLER: Well, I've - - - if
23 you tell the courtroom about, you know, that Queen
24 Elizabeth has just knighted you, I mean, yeah, that's
25 - - - that's something he actually said when he went

1 through his CV and that may have been a little bit
2 off the script. But, you know, I think he impressed
3 the jury with his knowledge. He - - - he was an
4 impressive expert, and, you know, I can't imagine a
5 better expert for this case, and who actually offered
6 them an opinion, which is what they needed to sell
7 this defense.

8 It's hard enough with an expert. How are
9 you going to do without one? By putting the
10 defendant and his mom on the stand, two of the most
11 biased witnesses in the whole courtroom, or just
12 having him take the stand and offer no opinion, and
13 just, you know, go through a few general things? I
14 mean, the prosecutor's going to hit that even harder
15 on cross.

16 So again, I just want to - - - just want to
17 say again - - - again, as - - - as the court
18 recognizes, they were dealt a bad hand, but - - - but
19 they played it exceedingly well.

20 I'm sorry; does Your Honor have a question?

21 JUDGE PIGOTT: No, no.

22 MR. BLIRA-KOESSLER: Oh, okay, I'm sorry.

23 They - - - they were dealt a bad hand.

24 They played that hand exceedingly well, and for that
25 reason, the Second Department's decision should be

1 reversed. Thank you.

2 CHIEF JUDGE DIFIORE: Thank you, counsel.

3 (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. Wayne Henderson, No. 58, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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