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COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

No. 147

CHARLES K. WILSON,

Appellant.

20 Eagle Street
Albany, New York 12207
September 08, 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 MICHAEL J. GARCIA

Appearances:

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1 CHIEF JUDGE DIFIORE: The final matter on
2 this afternoon's calendar is number 147, People v.
3 Charles K. Wilson. Thank you. Thank you, sir.

4 MS. REARDON: Good afternoon, Your Honors.

5 CHIEF JUDGE DIFIORE: Good afternoon.

6 MS. REARDON: Kathy Reardon for the Monroe
7 County Conflict Defender's Office for Mr. Wilson.
8 May I request two minutes rebuttal please?

9 CHIEF JUDGE DIFIORE: You have two minutes.

10 MS. REARDON: In Justice Brennan's dissent
11 in Harris he observed, "To the extent that Miranda
12 was aimed at deterring police practices in disregard
13 of the Constitution, I fear that today's holding will
14 seriously undermine the achievement of that
15 objective. The court today tells the police that
16 they may freely interrogate an accused incommunicado
17 and without counsel and know that although any
18 statement they obtain in violation of Miranda cannot
19 be used in the State's direct case, it may be
20 introduced if a defendant has the temerity to testify
21 in his own defense. This goes far towards undoing
22 much of the progress made in conforming police
23 methods to the Constitution.

24 JUDGE GARCIA: He lost.

25 MS. REARDON: He lost.

1 JUDGE GARCIA: And the majority addressed
2 that issue?

3 MS. REARDON: Your Honor - - -

4 JUDGE GARCIA: And they said that they
5 weren't - - - while it might, they ruled that it - -
6 - this was admissible. So isn't it really a case-by-
7 case determination of whether or not there's bad
8 faith in a particular case?

9 MS. REARDON: Well, I think in this
10 particular case, in our case, but I think also the
11 dissent, he correctly foresaw that this was not going
12 to be the situation - - -

13 JUDGE GARCIA: But the Supreme Court hasn't
14 changed the rule.

15 MS. REARDON: The Supreme Court has not
16 changed the rule, but this court - - -

17 JUDGE STEIN: And we file - - - we've
18 followed that consistently for what - - -

19 MS. REARDON: This court has - - -

20 JUDGE STEIN: - - - forty-five years?

21 MS. REARDON: That's correct, Judge. You
22 have. And I - - - and I - - I submit that this is a
23 bold request to the court. But based upon - - - and
24 one case that I'll throw out is Dunbar from 2014 - -
25 - that in fact, this did not turn out to be the

1 speculative possibility of police misconduct that
2 they mentioned in Harris.

3 JUDGE GARCIA: But they precluded there.
4 So really this is a cross-examination issue, and it's
5 coming in for cross. And a trial judge has broad
6 discretion to preclude. In this case, which I think
7 is a miscellaneous case that you cite here, the - - -
8 it's a miscellaneous case where a judge precluded
9 this cross, right?

10 MS. REARDON: That's correct; yes. It was
11 a Monroe County case.

12 JUDGE GARCIA: And it's within the
13 discretion of the judge to say you know what, under
14 the Constitution this is admissible, under the
15 Supreme Court case and our precedent it's admissible,
16 but I find you did this with - - - in bad faith. I
17 think the officer testified in that case, admitted
18 that this was his intent. The judge certainly could
19 preclude it and did preclude it.

20 Here, you have a line in a cross-
21 examination of a detective-witness say I heard that
22 or I think I heard that. The judge doesn't preclude
23 this in - - - why - - - why are we going to make a
24 constitutional rule and overturn our own precedent to
25 say you can never use this, because that's what

1 you're asking?

2 MS. REARDON: Because - - - that's what
3 we're asking, Your Honor. And the reason is because
4 I think at some point, if this - - - this particular
5 client walks in there and he is read his Miranda
6 rights, and he unequivocally says I do not wish to
7 speak, that's it. And then they go ahead and they
8 continue to interrogate him above and beyond, at what
9 point do we say that's enough?

10 JUDGE GARCIA: The trial judge says that's
11 enough. The trial judge - - - you can't use it. I
12 mean, you can't use it in - - -

13 MS. REARDON: On direct.

14 JUDGE GARCIA: - - - the Constitution says
15 - - - you know, as interpreted by our court and the
16 Supremes - - - the Supreme Court - - - you can't use
17 that. So now it's a question of you can use it on
18 cross. You can, but it's still within the discretion
19 of the trial judge to exclude it as cross-
20 examination, which was done in that one case you
21 cite.

22 MS. REARDON: That's true.

23 JUDGE GARCIA: So why would be put a
24 blanket rule in place so that in a case where that's
25 not what happened, but maybe there's a defect in the

1 Miranda warnings or maybe he blurts something out or
2 there's some kind of casual conversation, we're now
3 going to have a one-size-fits-all constitutional rule
4 because of the case you give us as an example, which
5 could be handled by the discretion of the judge?

6 MS. REARDON: Because I think at this
7 point, Your Honor, and especially in this case - - -
8 and I'll go back to it - - - he invokes that right.
9 He invokes his right to remain silent. And he's
10 understood that that's it, I have nothing further to
11 say. This is where the interrogation ends. And
12 we're submitting that anything beyond that, it's not
13 a voluntary statement after that. He's being - - -

14 JUDGE PIGOTT: Yeah, but what - - - it gets
15 a little more complicated when - - - and when we were
16 discussing this at the time. You have the right to
17 remain silent does not mean that you can embellish
18 your testimony at trial. Remember, when there's a
19 number of those cases - - -

20 MS. REARDON: Right. Right.

21 JUDGE PIGOTT: - - - where he says well,
22 what else happened, and he says, well, it was really
23 in self-defense. And then somebody - - - well, you
24 didn't say that, you know, when you gave your
25 statement. And you know, we get into that.

1 So it seemed to me that there ought to be a
2 rule - - - and this one came close, because I think
3 on - - - at the suppression the questions were asked,
4 you know, weren't you trained in this? Right?

5 MS. REARDON: And - - - and there was
6 discussion as to - - - it happens to be a lieutenant
7 - - - a retired lieutenant from the Rochester Police
8 Department who wrote a book "We Get Confessions", and
9 then had - - - had taught courses, apparently,
10 throughout the country, exactly how to do this.

11 JUDGE PIGOTT: But you can't - - - I tend
12 to agree with Judge Garcia that you can't simply say
13 all right, once the administration of Miranda rights
14 and the invocation, everything stops, because, I
15 mean, you can't underestimate the stupidity of some
16 people, and if they just want to go on and talk, you
17 know, you say well, geez, now he's going in high
18 spill on the whole thing, but because I gave him the
19 Miranda warnings, stupid me, I - - - you know, even
20 though I didn't ask him, now he's giving the whole
21 confession or something like that. Right?

22 MS. REARDON: That - - - that's true. But
23 - - - but at what point does - - - when they
24 continue, after - - - after he says I want to invoke;
25 I have nothing further to say to you, and they jump

1 back in and start asking him questions that are
2 coming towards a confession. In this particular
3 case, what they tried to get at was do you know the
4 co-defendant. Because at that point, there was no
5 association between the two of them. They couldn't
6 link the two of them together.

7 And they instigated a conversation with him
8 about this particular individual and asked him - - -

9 JUDGE PIGOTT: Could the ruling then, in
10 that case - - - Judge Renzi, was it?

11 MS. REARDON: It was Judge Connell.

12 JUDGE PIGOTT: Okay. Could - - - could the
13 judge have then said, one way or the other, you know,
14 well - - - you know, he invoked. You continued. I'm
15 not allowing this. You'd say yes, that's what - - -
16 you want the hard rule.

17 MS. REARDON: Right.

18 JUDGE PIGOTT: But - - -

19 MS. REARDON: Right.

20 JUDGE PIGOTT: - - - it's also possible you
21 could say, well, that was just innocent conversation
22 as he's getting up and leaving and going someplace,
23 and I'm going to allow it. That would be okay too,
24 right?

25 MS. REARDON: Harris didn't discuss

1 willfulness and - - - and intentionalness.

2 JUDGE PIGOTT: Right.

3 MS. REARDON: I think in this particular
4 case, in - - - in the case that the Court's referring
5 to, but also in this particular case, I would submit
6 that there were - - - that there was a willful and
7 intentional violation.

8 JUDGE GARCIA: But you want a rule that
9 doesn't look at that. You want a blanket bright-line
10 rule, post-Miranda.

11 MS. REARDON: I - - - I - - - again, I
12 think that's a bold request. I - - I would like to
13 see that it happen, because I think at some point,
14 this is just going to go on and on and on. So - - -

15 CHIEF JUDGE DIFIORE: Should we not be
16 concerned, counselor, that that rule, such as you
17 boldly - - -

18 MS. REARDON: Yeah.

19 CHIEF JUDGE DIFIORE: - - - suggest, would
20 not be an invitation to fabricate testimony with
21 impunity?

22 MS. REARDON: And - - - and that has been
23 discussed in some of these cases.

24 CHIEF JUDGE DIFIORE: Um-hum.

25 MS. REARDON: That it allows him to go in

1 and perjure themselves.

2 CHIEF JUDGE DIFIORE: Um-hum.

3 MS. REARDON: There are obviously other
4 things that a prosecutor can do if that were the
5 case. If he were - - - if my client, in particular,
6 would get up there and testify and say yeah, I didn't
7 know him, and then they get up there and say, well,
8 you said that you did, or you didn't, they certainly
9 could bring charges for perjury against - - -

10 CHIEF JUDGE DIFIORE: Perjury?

11 MS. REARDON: - - - the individual. If he
12 testified and - - - and - - - you know.

13 JUDGE GARCIA: Could you use the statements
14 in a perjury trial?

15 MS. REARDON: I suppose - - - I suppose
16 they might be able to. I - - - I mean, but - - - but
17 then that would - - - that would undercut, you know,
18 the argument here.

19 JUDGE PIGOTT: Yeah, but if you're charged
20 with murder, perjury's no - - - not - - - not your
21 worry.

22 MS. REARDON: Right.

23 JUDGE GARCIA: But going back to just Judge
24 Pigott's point, as following through on his question.
25 It would be a post-Miranda rule? If you're

1 Mirandized, you invoke - - -

2 MS. REARDON: Yeah. This - - - this is a -
3 - - a little bit different - - -

4 JUDGE GARCIA: Wouldn't that encourage, if
5 now, the next edition of "I Get Confessions" would be
6 don't Mirandize yet. Kind of talk to them first,
7 then Mirandize - - -

8 MS. REARDON: Well - - -

9 JUDGE GARCIA: - - - and then, you know,
10 you - - -

11 MS. REARDON: Which was done in Seibert.
12 That's - - -

13 JUDGE PIGOTT: Yeah, there's just case law
14 that says you can't do that, right?

15 MS. REARDON: Right, and that's exactly
16 what happened in Seibert. They talked - - -

17 JUDGE RIVERA: You want to avoid the - - -
18 you want to avoid the script you had in Dunbar.

19 MS. REARDON: Correct. Yeah, exactly.

20 JUDGE RIVERA: They're not going to be
21 doing that - - -

22 MS. REARDON: Yeah, because they go in - -
23 -

24 JUDGE RIVERA: - - - where - - - not you.

25 MS. REARDON: Right.

1 JUDGE RIVERA: Sorry about that.

2 MS. REARDON: Where they go in and they
3 give this preamble and say, okay, you know, go ahead,
4 we're going to talk to you - - -

5 JUDGE RIVERA: So you - - - can you just,
6 perhaps, clarify what - - - you've already told us
7 what your - - - as the Chief says - - - as you say,
8 the bolder approach - - - the more narrow approach,
9 which I - - - I understood to be that when you have
10 police officers who are specifically trained and
11 directed - - -

12 MS. REARDON: Exactly.

13 JUDGE RIVERA: - - - to attempt to subvert
14 Constitutional rights, that that's what makes this
15 case of a different - - -

16 MS. REARDON: And that's exactly the - - -

17 JUDGE RIVERA: - - - tenor than the other
18 cases.

19 MS. REARDON: And that's exactly what
20 happened here. You've got willfulness. You've got
21 in - - - an intentional - - -

22 JUDGE RIVERA: Well, how - - - how is that
23 - - - how - - - why isn't it just the police officers
24 are informed of the state of the law? Because that's
25 what we want. We want police officers to know the

1 law. Correct?

2 MS. REARDON: We want them to know the law,
3 but we don't want them to go above and beyond the
4 law. They know that if they go in there and they - -
5 - and they Mirandize this individual, and he says I
6 invoke, they know if they continue and they get some
7 sort of information and it's some - - - you know,
8 some sort of confession, that at the very least, they
9 can use it on cross or they can use it on - - - on
10 rebuttal.

11 CHIEF JUDGE DIFIORE: Have we ever looked
12 at the subjective intent of the police officer?

13 MS. REARDON: We're - - - we're not looking
14 at the subjective in - - - intent, but there's a - -
15 - I mean, especially in this case, Your Honor. I
16 would submit that there's an objective view that this
17 - - - this officer, to his credit, did - - - the
18 investigator did say, yeah, I'm familiar with this.
19 I - - - I know what this is all about. And so they
20 go ahead, and - - - and at the very least, they keep
21 these individuals off the stand knowing - - -

22 JUDGE PIGOTT: But he didn't go the extra
23 step, right? He didn't say I know about all this,
24 and that's why I did it.

25 MS. REARDON: He didn't - - - he wasn't

1 asked the question. He wasn't asked that question.

2 I - - -

3 JUDGE STEIN: And -- and if he was, then
4 the court in its discretion could have suppressed the
5 statement, right?

6 MS. REARDON: The - - - the court could - -
7 - I would - - - I would hope the court would have - -
8 - would have done that but - - -

9 JUDGE ABDUS-SALAAM: Counsel, you - - - you
10 started to say something. You keep these individuals
11 off the stand. Were you making the argument that
12 defendants would be precluded, essentially, from
13 testifying in their own defense, because they would
14 be afraid of what would be - - -

15 MS. REARDON: Certainly they are.

16 JUDGE ABDUS-SALAAM: - - - brought out on
17 cross?

18 MS. REARDON: Certainly that they are. And
19 it's not just - - - its' not just the content of the
20 statement. In our case it was yes, I know him; no, I
21 didn't know him. But then he gets up there and the -
22 - - the prosecutor would say well, were you lying
23 then or were you lying now? I mean, essentially, it
24 puts him in a position of I can't get up there and
25 testify in my own defense, because of this statement.

1 And that's exactly what happened - - -

2 JUDGE RIVERA: No, you - - - you can't get
3 up and perjure yourself. That's the law. You can't
4 get up and perjure yourself.

5 MS. REARDON: Well, again, I - - - you
6 know, how he would testify - - -

7 JUDGE RIVERA: You can testify in your own
8 defense, you just can't get up and lie, because you
9 risk that someone's going to point the lie out to the
10 jury.

11 MS. REARDON: And then I guess the - - -
12 the question is, is there a balancing act? You know,
13 what's more important? And I know the court has said
14 well, you know, it's more important that, you know,
15 we prevent these things from happening. But at some
16 point, the defendants' rights have to come into play.

17 And - - - and, you know, I noted - - - and
18 I understand I'm running out of time here - - - but
19 in my brief I noted that there was empirical data
20 showing that this - - - this kind of thing has gone
21 on and on, and the police are pushing it further and
22 far - - - further. And at what point do we say - - -
23 and maybe it's more fact-specific to this case - - -
24 stop, you can't do this anymore?

25 CHIEF JUDGE DIFIORE: Thank you, Ms.

1 Reardon.

2 MS. REARDON: Thank you.

3 CHIEF JUDGE DIFIORE: Counsel?

4 MR. SHOEMAKER: May it please the court,
5 Robert Shoemaker for the People. Defendant's post-
6 Miranda statements here were admissible for
7 impeachment, for rebuttal, and to hold otherwise
8 would not only overturn decades of precedent, but it
9 would allow defendants to commit perjury unshackled.

10 JUDGE PIGOTT: If you do it intentionally,
11 should there be some type of sanction?

12 MR. SHOEMAKER: Well, that's not the rule
13 now. If it - - -

14 JUDGE PIGOTT: Okay.

15 MR. SHOEMAKER: - - - were the rule, that
16 is not this case.

17 JUDGE PIGOTT: If it - - - I'm looking for
18 it. What do you think?

19 MR. SHOEMAKER: You think that - - - what
20 do I think about this case?

21 JUDGE PIGOTT: No, Judge Shoemaker, what -
22 - - what would you do if they said, yeah, I knew, you
23 know, that he had a right to remain silent, and he
24 invoked it, but I also know that I can keep him off
25 the stand if I keep him talking, so I kept him

1 talking. And now he said he knew the co-defendant
2 and he's not getting on the stand, because if he
3 does, he's cooking his goose.

4 MR. SHOEMAKER: Well, I don't know if it's
5 appropriate for me to be making the new law. But the
6 state of the law currently, I would follow. And the
7 state of the law currently is if it's voluntary, it's
8 admissible.

9 JUDGE PIGOTT: If it's - - - if it's in bad
10 faith?

11 MR. SHOEMAKER: If it's - - - as long as
12 it's voluntary, it's admissible to the cases.

13 JUDGE PIGOTT: Even if it's in bad faith?

14 MR. SHOEMAKER: Yes. Those are the cases
15 that I've seen. I have not seen a good-faith
16 requirement in this state. I know some of the cases
17 that are in appellant's brief argue for one or there
18 are in other states. But I've seen - - - in this
19 state, if it's a voluntary statement, I've seen where
20 the police officer makes false promises that leads to
21 - - -

22 JUDGE PIGOTT: Here's the - - - here's
23 issue. If you do that, I - - - I think Ms. Reardon's
24 arguing this - - - then why have Miranda at all? Why
25 not say we're giving you the Miranda warnings. You

1 got them. You sign them. Done. Now let's talk
2 about your case. And he says well, I don't want to.
3 Well, guess what, pal; if you don't, you're going to
4 be here all night. And you're going to be here all
5 day tomorrow and the day after. So you better 'fess
6 up.

7 And what's he supposed to do? And then you
8 - - - and then you get a confession, and you say
9 well, hey, the Court of Appeals says we can do this,
10 and that you're right, we can't use it on direct, but
11 I guarantee you, he's not getting on the stand.

12 MR. SHOEMAKER: So I - - - I guess I have
13 three answers to that. One is, the point of the
14 Miranda in that case is that we can't use it for our
15 case-in-chief, as we couldn't in this case. The
16 other two things are, if there - - - if they do keep
17 him overnight - - - all day and all night, that would
18 be a prolonged interrogation - - -

19 JUDGE PIGOTT: Well, I'm exaggerating, but
20 even go back to - - - to Dunbar. I mean, Dunbar was
21 fifteen minutes. I mean, just call him in and say
22 before we give you Miranda rights, you know, we want
23 to tell you, you've got this opportunity to tell us.
24 And they hopped. I mean, we didn't like that either.
25 Because you're - - - you're undermining the Mir - - -

1 the whole point of Miranda. And you don't want to do
2 that, right? You're - - -

3 MR. SHOEMAKER: Right. In this case, what
4 happened with - - - what is supposed to happen with
5 Miranda is what happened, is we were precluded from
6 using this evidence in our case-in-chief.

7 JUDGE PIGOTT: Right.

8 MR. SHOEMAKER: We were allowed to use it
9 for impeachment if defendant took the stand and lied.
10 We can't just use - - -

11 JUDGE PIGOTT: If he took the stand.

12 MR. SHOEMAKER: I'm sorry?

13 JUDGE PIGOTT: If he took the stand.

14 MR. SHOEMAKER: To impeach - - - we could
15 use it to impeach him or for rebuttal.

16 JUDGE PIGOTT: If he took the stand. I
17 mean, so he - - - he gets on and says whatever he's
18 going to say, and you say, by the way, didn't you
19 also tell us that you - - - that you knew that
20 Boykins shot himself? Therefore isn't it also true -
21 - - in other words, there's - - - there's risk to the
22 defendant about what you're going to do with the po -
23 - - with the post-Miranda statement, right?

24 MR. SHOEMAKER: Right.

25 JUDGE PIGOTT: Okay.

1 MR. SHOEMAKER: There - - - there's
2 definite risk. And but as all the cases say, the - -
3 - it's a balancing act. Miranda's important. The
4 trial's truth-seeking function is more important.
5 And that's why we allow these statements to come into
6 - - -

7 JUDGE PIGOTT: No, no, no. I mean, if - -
8 - I'm dominating this. I don't mean to. But if - -
9 - if it was more important, then why would we have
10 Miranda at all? If you say that truth-seeking is
11 more important than Miranda, well, then why have
12 Miranda. Why not just beat the crap out of him and
13 get the truth?

14 MR. SHOEMAKER: We have - - - we have
15 Miranda to make sure that the - - - a) to make sure
16 the statement's voluntary, but I - - - I really do
17 think the cases say that the trial's truth-seeking
18 function is more important.

19 JUDGE STEIN: Should - - - should there be
20 a different rule for statements that are simply
21 unwarned versus - - - as opposed to the statement
22 here in which there were Miranda warnings and - - -
23 and then he was questioned anyway?

24 MR. SHOEMAKER: It might depend on the
25 case. But I don't think there is a different rule,

1 because I think Harris v. New York, the original case
2 back in the 70s, was a case where there were no
3 warnings. In this case, there were warnings.

4 JUDGE GARCIA: Counsel, you say these
5 statements are admissible. But for example, Nelson,
6 which your opponent cites - - - it's a trial court
7 decision - - - the judge precludes them under Harris
8 and says this is a fact-specific decision, and making
9 the appropriate balancing judgments as to future use,
10 you can't use them for rebuttal.

11 Now, you agree the trial judge has
12 authority to do that?

13 MR. SHOEMAKER: Yes, absolutely.

14 JUDGE GARCIA: Right. So it's not that
15 they automatically come in. It's that they don't
16 automatically - - - they're not automatically
17 excluded?

18 MR. SHOEMAKER: Right. It's that, I guess,
19 constitutionally, they are admissible. They don't
20 necessarily - - -

21 JUDGE GARCIA: Right. And what - - - and
22 I'm sorry, I'm having trouble finding it here - - -
23 but what was the specific testimony from the officer,
24 the law enforcement agent, as to his knowledge of
25 this exclusionary rule or the use of these

1 statements? Do you have it?

2 MR. SHOEMAKER: It's - - - yeah, I have it
3 somewhere. But I think just from remembering it,
4 it's I've heard that; I've heard that's the rule. He
5 didn't say - - - he wasn't asked, you know, is that
6 why you continued questioning him. It's that - - -
7 you know, you're aware of the Harris rule, or that
8 you're aware of the rule that if the - - - the
9 defendant keeps talking after Miranda, you're allowed
10 to use that for impeachment? And the officer said
11 yes, I - - - I've her - - - I heard that.

12 He also did say that the instructor at his
13 course - - - he said the name of the instructor at
14 his course for the interrogation course that he took,
15 but he didn't say that he was directed. He didn't
16 say that he was trained specifically to do this. He
17 just said the name of the person who instructed him.

18 And like I said, there was - - - there was
19 no bad faith here. The defendant was never actually
20 asked about the shooting itself. There were - - -
21 the - - - he was only kind of told, in I would say it
22 was an innocent conversation, what he's being charged
23 with, who he's being charged with, and then he kind
24 of gives them a funny look, and they say, well, you
25 know who that guy is.

1 And so I - - - to not even ask him about
2 the shooting itself, I think, shows that this was not
3 in bad faith. If they really wanted to get at the
4 heart of the matter, they would have asked him about
5 this incident so they could keep him off the stand or
6 impeach him on anything they wanted to.

7 So this bright-line rule that's being
8 proposed might support the policy decision behind
9 Miranda, but it would do so at the expense of all
10 other judicial objectives, including maintaining the
11 truth-seeking function of the trial.

12 If there are no other questions, I'll rely
13 on my brief.

14 CHIEF JUDGE DIFIORE: Thank you, sir.

15 MR. SHOEMAKER: Thank you.

16 CHIEF JUDGE DIFIORE: Ms. Reardon, was the
17 record below developed to demonstrate or suggest that
18 an interrogating officer was setting this guy up?

19 MS. REARDON: It was developed to a certain
20 point. And then there - - -

21 CHIEF JUDGE DIFIORE: Does that mean - - -

22 MS. REARDON: - - - was - - - there was con
23 - - - well, there was - - - there was conversation
24 about it. What they - - - what they could be
25 questioned about, what he could be questioned about

1 in terms of what this individual had learned from
2 Lieutenant Joseph. And then the court allowed him to
3 get into it, and for some reason, trial counsel went
4 off on another vein and didn't follow up on it after
5 that.

6 CHIEF JUDGE DIFIORE: So was there any
7 testimony that that was - - - he knew that, and that
8 was his plan?

9 MS. REARDON: I - - - I think Mr. Shoemaker
10 pointed out or reflected what the testimony was,
11 which was basically, defense counsel asked do you
12 know, or are you familiar with this, and he said yes,
13 I'm familiar with it. He - - - and I don't have the
14 exact language. He was rather coy, I think, in his,
15 well, I'm aware of it. And - - - and I think it was
16 pretty clear that he knew exactly what the purpose of
17 this was.

18 CHIEF JUDGE DIFIORE: And are you
19 suggesting that Mr. Wilson's responses were not
20 voluntary?

21 MS. REARDON: Absolutely. And - - - and I
22 think that that's - - - that's our point. Once he
23 invoked his right to remain silent, anything after
24 that, we're submitting, is - - - it's coercive. I
25 mean he - - - he basically is - - - is being told, we

1 don't care what - - - that you're invoking your right
2 to counsel, because - - - or your right - - - your
3 right to remain silent, because we're going to go
4 ahead and question you anyway.

5 So at what point does that not become - - -

6 JUDGE PIGOTT: Well, you - - - you need a
7 bright-line rule - - -

8 MS. REARDON: - - - involuntary?

9 JUDGE PIGOTT: - - - for that. And - - -
10 right? In other words, if - - -

11 MS. REARDON: I'm sorry?

12 JUDGE PIGOTT: You need the bright-line
13 rule. Because if it's a - - -

14 MS. REARDON: Absolutely.

15 JUDGE PIGOTT: - - - if it's good faith or
16 if it was incidental, it could come in under - - -
17 well, Mr. Shoemaker wants it to come in no matter
18 what, but - - -

19 MS. REARDON: Right.

20 JUDGE PIGOTT: - - - but there would be
21 that. You don't want that. You need a bright line
22 to say no matter what is said it doesn't come in.

23 MS. REARDON: And I think that's how I - -
24 - how I started out calling it bold - - -

25 JUDGE PIGOTT: Right.

1 MS. REARDON: - - - for lack of a better
2 word. But I - - - I think when you get to that
3 point, after they have invoked, if they're continued
4 to be questioned, how can that be considered
5 voluntary?

6 JUDGE RIVERA: Are you saying it's
7 inherently coercive, because you just keep talking to
8 someone?

9 MS. REARDON: I do. I think it is
10 inherently coercive, because there's no other reason
11 - - -

12 CHIEF JUDGE DIFIORE: Is that supported by
13 our jurisprudence on this issue?

14 JUDGE RIVERA: Isn't that exactly rejected
15 by the prior cases?

16 MS. REARDON: It is. And Harris doesn't
17 follow it. I think under - - - however, under the
18 New York Constitution, I think we have a broader - -
19 - the Court has a broader ability to address that
20 issue and - - - and make a rule that would allow for
21 something like this.

22 And - - - and just to point out to the
23 court, there's a - - - there's a statement in the
24 prosecution's brief that said, "It would have been
25 extremely odd for the police to have silently left

1 the room after invocation of Miranda."

2 And I submit, it's exactly what the police
3 should have done in the first place.

4 JUDGE RIVERA: Well, don't - - - don't they
5 do that if you - - - well, maybe they do that. But
6 it's a different story if - - - if he says I don't
7 want to talk to you, from him saying I don't want to
8 talk to you and I want my lawyer. Then we're very
9 clear, right? The conversation ends.

10 MS. REARDON: Well, how is - - - how is "I
11 don't wish to speak to you" or whatever the language
12 he used, but it was - - - it was not - - - it was not
13 ambiguous. He was very clear.

14 JUDGE RIVERA: I don't want to talk to you.

15 MS. REARDON: I'm not sure how that doesn't
16 translate to the police he doesn't want to talk to
17 you.

18 JUDGE RIVERA: Um-hum. Until he does.

19 MS. REARDON: Until he does, because he's -
20 - -

21 JUDGE RIVERA: Until he does, because he'd
22 been notified as to what his rights are, and notified
23 about the possibility that whatever he says could
24 come back to haunt him, could be held against him.
25 Right?

1 MS. REARDON: That - - - that's correct.
2 But he doesn't initiate - - -

3 JUDGE RIVERA: But he may decide that
4 perhaps something he says at that point will be very
5 beneficial to him.

6 MS. REARDON: Well, in this case, there
7 clearly wasn't - - -

8 JUDGE RIVERA: No, I understand that. But
9 we're talking about the voluntariness and whether or
10 not - - - you're - - - you're - - - now you're, as I
11 understood it, on another type of argument, which is
12 under our state Constitution, we should hold that
13 continuing questioning once a defendant invokes their
14 right to remain silent, is inherently coercive and
15 can never be voluntary?

16 MS. REARDON: I - - - well, I think that
17 that's - - - that's initially how I started, and then
18 I responded to Judge - - -

19 JUDGE RIVERA: From there.

20 MS. REARDON: - - - Pigott's question. But
21 - - -

22 JUDGE RIVERA: Yeah.

23 MS. REARDON: - - - he never initiated the
24 conversation after - - - after he invoked. That came
25 from the police, and that's when it should have

1 stopped.

2 CHIEF JUDGE DIFIORE: Thank you.

3 MS. REARDON: Thank you.

4 (Court is adjourned)

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

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Charles K. Wilson, No. 147 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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