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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 26

RYAN BRAHNEY,

Appellant.

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20 Eagle Street  
Albany, New York  
February 9, 2017

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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Sara Winkeljohn  
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The next matter on this  
2 afternoon's calendar is the People of the State of New York  
3 v. Ryan Brahney.

4 Good afternoon, counsel.

5 MS. FRIEDMAN: Good afternoon; may it please the  
6 court, Kathryn Friedman representing appellant Ryan Brahney  
7 on this particular appeal. Your Honors, this appeal comes  
8 to this court from a two-justice dissent at the Appellate  
9 Division Fourth Department. And it really comes down to  
10 the separate and distinct formula pursuant to this court's  
11 decision in People v. Laureano.

12 JUDGE GARCIA: But it's really not the formula,  
13 right? I mean the formula is the accepted one. It's the  
14 facts of this case, it seems to me, it comes down to.

15 MS. FRIEDMAN: Your - - - Your Honor, I - - - I  
16 think that the - - - there is a legal question before this  
17 court.

18 JUDGE GARCIA: Which is?

19 MS. FRIEDMAN: And it is whether the People met  
20 their burden of demonstrating that concurrent sentences are  
21 not applicable in this particular case. That's - - - in my  
22 view, that's the legal issue before this court.

23 JUDGE GARCIA: Right.

24 JUDGE STEIN: Well - - -

25 JUDGE GARCIA: I'm - - - I'm sorry. Go ahead.

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JUDGE STEIN: No. You go ahead.

JUDGE GARCIA: And what I understand their proof on was that it was among the blood evidence upstairs and downstairs hair was also the defendant's statements that I killed her downstairs. So they have this burden to come in and make this showing under our well-accepted rule. They brought this evidence forward. Our role can only be that that - - - what's our standard for reviewing that which this - - - the trial court, sentencing court, found was affirmed by the Appellate Division majority. What do we do with that?

MS. FRIEDMAN: I - - - again, I think that you are in a position to determine that the People did not meet their burden. And - - -

JUDGE GARCIA: That there was more blood upstairs than downstairs or - - -

MS. FRIEDMAN: I - - - I think the point of the Appellate Division justices was that there needed - - - because of the - - - there was the possibility that the - - -

JUDGE GARCIA: But is that the standard that there was a possible view of the evidence that would have been something else - - -

MS. FRIEDMAN: So - - -

JUDGE GARCIA: - - - which actually was less

1 supported, it seems, than the large amount of blood and the  
2 statements of the defendant.

3 MS. FRIEDMAN: So, Your Honor, I - - - I've  
4 actually thought long and hard about - - - about this  
5 issue. And it - - - it seems to me that the standard under  
6 - - - under the statute and under Laureano, again, is  
7 whether the People met their burden of establishing that  
8 concurrent sentences do not apply.

9 JUDGE STEIN: And that means separate and  
10 distinct acts, right?

11 MS. FRIEDMAN: And - - - and that means - - -

12 JUDGE STEIN: That's what we're talking about.

13 MS. FRIEDMAN: And that means separate and  
14 distinct acts. Now - - -

15 JUDGE STEIN: Okay. So - - - so in order - - -

16 CHIEF JUDGE DIFIORE: Excuse me one second. Ms.  
17 Friedman, I'm sorry to interrupt. Did you intend to ask  
18 for rebuttal time?

19 MS. FRIEDMAN: Oh.

20 CHIEF JUDGE DIFIORE: I don't want to cut you  
21 short.

22 MS. FRIEDMAN: Three minutes. Three minutes for  
23 rebuttal?

24 CHIEF JUDGE DIFIORE: Yes, you may.

25 MS. FRIEDMAN: Okay.

1 CHIEF JUDGE DIFIORE: Excuse me, Judge Stein.

2 JUDGE STEIN: Oh, sure. Did - - - wouldn't your  
3 argument require that the victim barely bled in the  
4 location where the fatal blow was sustained and in your  
5 view that could have been upstairs, okay. So one of the  
6 blows that - - - that punctured her - - - her internal  
7 organs would have to be upstairs. But - - - where there  
8 was very little blood. But that she bled profusely when  
9 she got downstairs, including after she died and her heart  
10 stopped. It - - - wouldn't your view of - - - of the - - -  
11 the acts have to result in that conclusion?

12 MS. FRIEDMAN: Well, I - - - I think that  
13 certainly my colleagues argument, Your Honor. I - - - I  
14 actually think, though, that if - - - if we look at the  
15 statute and if look at Laureano and we look at the way that  
16 - - -

17 JUDGE STEIN: No. I'm asking you to look at the  
18 facts of this case because that's what you're asking us to  
19 do is to determine whether the People met their burden.

20 MS. FRIEDMAN: Yes, Your Honor.

21 JUDGE STEIN: So given what the People did prove  
22 and - - - and Judge Garcia summarized that for us - - -

23 MS. FRIEDMAN: Yes. Well, Your Honor, again, the  
24 - - - the justices at the Appellate Division determined  
25 that because there is the possibility that the same act of

1 - - -

2 JUDGE STEIN: Let's try it again, okay. Because  
3 I understand what the Appellate Division said. But I - - -  
4 in responding to my question is that what would have to  
5 have happened in order for your view to win the day?

6 MS. FRIEDMAN: I - - - I think that that is one  
7 scenario that would - - - would be likely. I think that  
8 the - - - again if I - - - I could go back to the - - -

9 JUDGE FAHEY: Let me just - - - let me just take  
10 a sec - - - take a second here. All right. I just looked  
11 at the dissent again. I'm looking at the dissent, at - - -  
12 at what Judges Centra and Lindley said and - - - and it  
13 seems that what they're saying is that if there was one  
14 stab upstairs, that one stab could have been the deathblow  
15 and therefore, it could have been the same.

16 MS. FRIEDMAN: That's correct.

17 JUDGE FAHEY: And the problem that both Judge  
18 Stein and Judge Garcia pointed out is that but the bulk of  
19 the evidence shows that there were - - - so that would have  
20 meant thirty-seven stabs were downstairs but one stab was  
21 upstairs. And therefore, we could say that the sentences  
22 were required to be concurrent because they weren't  
23 separate and distinct acts. That's the core of your  
24 argument?

25 MS. FRIEDMAN: That's correct.

1 JUDGE FAHEY: Okay. You see why - - - you see  
2 why that strains credibility a little bit?

3 MS. FRIEDMAN: I - - - I believe that - - - I  
4 believe that the - - - there certainly is a stretch to the  
5 imagination there.

6 JUDGE FAHEY: Well, it's not just that. You have  
7 the photographs. You have the - - - the statements to his  
8 mother and then, of course, you have the - - - the blood  
9 splatter, the blood evidence itself. So those - - - and  
10 then there's - - - well, those are the three strongest  
11 pieces of evidence, I think, right?

12 MS. FRIEDMAN: That's correct, Your Honor.

13 JUDGE WILSON: What is the People's burden? Is  
14 it preponderance or - - - or - - -

15 MS. FRIEDMAN: You know, that - - - that is a  
16 really, really great question. There - - - I was not able  
17 to find the - - - the standard for the People in terms of  
18 meeting their burden. But it's almost as if the statute  
19 and the case law suggest - - - and I - - - and I hesitate  
20 to use this word because this court has never used these -  
21 - - these words, but it's almost as if there's a  
22 presumption that concurrent sentences apply and that the  
23 People have to rebut that presumption. Now again, that's  
24 sort of an analogy that I'm using to try to get my head  
25 wrapped around the People's burden and exactly what it is.

1 But if there is - - -

2 JUDGE STEIN: So are you saying if there's any -

3 - -

4 MS. FRIEDMAN: - - - if it's that high of a bar -

5 - -

6 JUDGE STEIN: - - - possible view of the  
7 evidence, is that your argument, that the standard is if  
8 there's any possible view of the evidence then the People  
9 have not met their burden?

10 MS. FRIEDMAN: That's correct, Your Honor.

11 JUDGE FAHEY: You know, that would be a higher  
12 standard than beyond a reasonable doubt.

13 MS. FRIEDMAN: That's correct, Your Honor.

14 JUDGE FAHEY: I see.

15 MS. FRIEDMAN: Any further questions?

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 MS. FRIEDMAN: Thank you.

18 CHIEF JUDGE DIFIORE: Counsel.

19 MR. VALDINA: Good afternoon, Your Honors; may it  
20 please the port - - - court, Chris Valdina for the People.  
21 With all due respect to the dissenting Appellate Division  
22 justices and to this court, I think that this is a case  
23 that probably should have stopped in Rochester. Because as  
24 - - - as the court pointed out, it's all a factual  
25 question.

1                   JUDGE GARCIA: Counsel, what - - - going back to  
2 Judge Wilson's question, what is the standard the People  
3 have to meet?

4                   MR. VALDINA: This court's cases have stated we  
5 have to identify facts in the record supporting the - - -  
6 the basis for consecutive sentences, that there were  
7 separate and distinct facts.

8                   JUDGE WILSON: Just some facts, not  
9 preponderance?

10                  MR. VALDINA: Court has never said. The court  
11 has never said that a standard of proof in terms of  
12 preponderance, clear and convincing evidence. Or at least  
13 I haven't seen it in my review of the cases. Usually, we  
14 just have - - - or what the court has said we just have to  
15 identify facts. I - - - I suppose if it could go either  
16 way then the presumption would be in favor of the  
17 defendant. So if - - - I suppose in those terms it would  
18 be a preponderance standard. It's not an element of the  
19 offense - - - well, if it is an element of the offense we  
20 have to prove it beyond a reasonable doubt, obviously. But  
21 you can have it be an ele - - - element and have it be not  
22 a separate and distinct act or be a separate and distinct  
23 act. So as long as it's not equivocal would be my point of  
24 view. We have to identify facts that are not equivocal,  
25 which I guess that would come down to a preponderance.

1 JUDGE RIVERA: But is your position that the  
2 evidence goes against the deathblow, what Judge Fahey  
3 called that deathblow - - -

4 MR. VALDINA: There - - -

5 JUDGE RIVERA: - - - theory?

6 MR. VALDINA: There is no - - -

7 JUDGE RIVERA: We don't have to concerns  
8 ourselves necessarily in this case about what the standard  
9 is because there's no evidence that supports that - - -

10 MR. VALDINA: Correct, Your Honor. In this case,  
11 there's just - - - it would be physically impossible and  
12 against the law of - - - of anatomy and medicine for that  
13 to have occurred. I mean you have so many factors in favor  
14 of - - - of separate and distinct acts. You have the - - -  
15 the comparative quantities of blood, you have the  
16 defendant's admission, you have the defensive wounds on the  
17 victim's hands which were - - - established both elements  
18 that she - - - or both burglary counts that she's being  
19 threatened with a knife, he's using the knife against  
20 there, and he inflicts physical - - -

21 JUDGE ABDUS-SALAAM: Would this be a closer case,  
22 counsel, if there no upstairs and downstairs?

23 MR. VALDINA: It would be. I - - - I mean I  
24 think the fact that you have more blood in one location  
25 than another location, whether it's upstairs versus

1           downstairs, is - - - is, of course, doesn't really matter.  
2           I - - - I think even if you didn't have all that, the  
3           defensive wounds alone because they're physical injuries,  
4           they're antemortem, they're showing that the defendant is  
5           wielding the knife, using or threatening to use the knife,  
6           against her. That alone would establish that the  
7           burglaries had been - - - been completed prior to the  
8           homicide.

9                        Because the doctor never said that any of the  
10           thirty-eight wounds could have been fatal. He just  
11           specified the angle of the wounds to the neck, chest, or  
12           back where vital organs and - - - and major blood vessels  
13           were injured, could have been fatal. So there are - - -  
14           there are numerous injuries that were antemortem nonfatal  
15           injuries, and at that point, both counts of burglary had  
16           been completed through separate and distinct acts.

17                       CHIEF JUDGE DIFIORE: Would we be in a different  
18           place if you had pled the burglaries in a different way,  
19           not specifically with the aggravated fact - - - factors,  
20           the physical injury and the dangerous instrument?

21                       MR. VALDINA: Well, if you had had a burglary  
22           second degree, that would - - - that would have been like  
23           Frazier (ph.). It would have been complete upon entry. So  
24           then it wouldn't even be an issue at all. If you had a  
25           case where there was only a single act where all he did was

1 stab her once and that was the fatal wound, then I don't  
2 think we would be able to argue separate and distinct acts.  
3 But here, the very elements of those statutes coupled with  
4 the facts of the case resolve any issue. So unless the  
5 court has any other questions, I stand - - -

6 CHIEF JUDGE DIFIORE: Thank you, counsel.

7 MR. VALDINA: Thank you.

8 CHIEF JUDGE DIFIORE: Counsel. Any rebuttal?

9 MS. FRIEDMAN: Unless the court has any questions  
10 for me.

11 CHIEF JUDGE DIFIORE: Thank you.

12 (Court is adjourned)

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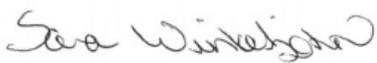
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Ryan Brahney, No. 26 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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