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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 100

ROSS CAMPBELL,

Appellant.

20 Eagle Street
Albany, New York
September 12, 2017

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

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1 CHIEF JUDGE DIFIORE: The next matter on the
2 calendar is number 100, the People of the State of New York
3 v. Ross Campbell.

4 MS. EVERETT: May it please the court, my name is
5 Abigail Everett. I'd like to reserve two minutes for
6 rebuttal, please.

7 CHIEF JUDGE DIFIORE: You may, Ms. Everett.

8 MS. EVERETT: On this record, defense counsel's
9 errors are manifest, as is the prejudice to Mr. Campbell.

10 JUDGE GARCIA: On that point, counsel, why isn't
11 this a 440?

12 MS. EVERETT: Because the record is clear that -
13 - - that we've met the Strickland standards.

14 JUDGE GARCIA: Let's - - - let's go to the juror
15 issue; all right? We're not at jury selection. We're not
16 defense counsel. They're watching this juror. It's a cold
17 record we're reading. But there clearly seems to be an
18 issue with this juror's desire to serve.

19 And wouldn't it be perfectly plausible for a
20 defense lawyer to conclude that whatever excuse that she is
21 giving - - - and some of them are quite serious, but the
22 story seems to change - - - whatever that is, I want a
23 person like that on my jury? I want someone who doesn't
24 want to be here. I want somebody who wants out. Because
25 maybe they're going to turn this thing a little bit upside



1 down, and maybe they'll be annoyed with the prosecutor for
2 putting on a long case. Why don't we have a record of what
3 exactly the defense lawyer was thinking when they didn't
4 strike this juror?

5 And we're reading a cold record, which again, on
6 its face, could be read arguably to say I'm a defense
7 lawyer, I want a juror who may be a problem on this jury.

8 MS. EVERETT: Because this record makes it clear
9 that the defense lawyer, as was the judge and the DA, were
10 confused. This is a case where the record that you have
11 explicitly contradicts the notion that there was strategy
12 at play. This was not strategy, it was confusion.

13 JUDGE FEINMAN: Well, you know, the defense
14 lawyer successfully turns the judge and the prosecutor
15 around on two for-cause challenges in that very group of -
16 - - I think it's eighteen or nineteen jurors at that point
17 that are left in the venire. And while he does highlight
18 to the judge the - - - the financial hardship aspect of the
19 juror's complaints, overlooks the - - - her past sexual
20 assault.

21 Why can't he just be keeping that, as Judge
22 Garcia says, in his back pocket? So I mean, this is not a
23 - - - a defense lawyer who is incapable of - - - of saying
24 Judge, you're wrong. He clearly does it. It's right there
25 in the record.



1 MS. EVERETT: Right. But the problem is, unlike
2 this court's decision in Barboni where the court noticed
3 that there was some confusion but said it was fleeting, the
4 confusion here is manifest. And there are other instances
5 in the record where you can see that the parties are
6 confused.

7 I cited in the brief another juror, where the
8 defense lawyer said I thought this person wanted to come in
9 and speak, and then he was corrected, and it turns out he
10 said something about well, my notes must be confused. So
11 this is not an isolated incident in this voir dire that
12 this person was confused.

13 JUDGE GARCIA: But if the record's confused,
14 isn't that even more of a reason to have a 440 where this
15 counsel can come in and say here's what the record was in
16 my opinion, and here's why I did this? And that may be a
17 valid reason or it may not be a valid reason.

18 MS. EVERETT: But Your Honor, the record isn't
19 confused. It was the lawyer who was confused. The record
20 is clear when the judge says to him isn't this the person
21 who said she had a financial interest - - - that she was
22 worried about losing her job; the defense lawyer said
23 that's the one. Nobody focused on the fact that this woman
24 - - - let's - - - let's be - - - think about this from the
25 juror's point of view for a second. This is a woman who



1 said she'd been twice the victim of sexual assaults. She
2 said she did not want to serve on this sex crime jury, and
3 she said she wanted to speak in private to the judge. The
4 record couldn't be clearer that the judge did not bring her
5 in.

6 JUDGE RIVERA: But she also - - - she also said
7 her husband's being prosecuted, and so she might have - - -
8 the defense counsel could have - - - this is not a measure
9 of whether or not that was the right call or the wrong call
10 - - - could have looked at this and thought she'll put the
11 blame on this prosecutor before she puts the blame on my
12 client.

13 MS. EVERETT: In isolation, I see that point, but
14 the record just doesn't suggest that, because we have such
15 a clear indication that the People are confused, and - - -
16 and the other thing about this - - -

17 JUDGE GARCIA: Maybe they didn't want the juror
18 off, so it's better to be confused, because if you raise
19 that challenge, maybe the judge will say, yeah, you know
20 what? You're right. I'm going to get rid of this juror.
21 And for other reasons, they didn't want to get rid of the
22 juror.

23 MS. EVERETT: But the - - - the - - - not only
24 did the defense lawyer not seem to understand what was
25 going on, but he failed to educate - - - to enlighten the



1 poor judge who was - - - has to exercise his discretion
2 about this woman who's asking to be let off. She's saying
3 that it will be very difficult for her to serve because of
4 her experience as a victim. And the - - - the judge is
5 asking, is this the person with the financial concerns. So
6 that - - - you know, it's hard to believe that somebody for
7 strategic reasons would mislead the judge that way.

8 JUDGE FEINMAN: I don't know if she actually
9 comes out and says I can't serve because of my prior
10 similar incident. And - - - and while it may have been
11 better to explore that in the - - - you know, in camera
12 with her, I don't know how you - - - I think you make the
13 statement in your brief that there was a substantial risk
14 that her prior sexual assault was going to affect her
15 thinking. And I don't know where you - - -

16 MS. EVERETT: I - - -

17 JUDGE FEINMAN: - - - get a basis for that.

18 MS. EVERETT: - - - I think that under 270, if
19 you're looking for what - - - a cause challenge, let's - -
20 - a woman who comes in and says I've twice been a victim of
21 rape, this is a rape trial, I don't want to sit on this
22 case, it would be difficult for me - - -

23 JUDGE FEINMAN: Well, she - - -

24 MS. EVERETT: - - - I think it's - - -

25 JUDGE FEINMAN: - - - she never said - - - she



1 never uses those words.

2 MS. EVERETT: She - - -

3 JUDGE FEINMAN: I don't want sit on the - - - on
4 this case.

5 MS. EVERETT: She said she didn't want to serve.
6 And he asked her - - - the defense lawyer asked her if - -
7 -

8 JUDGE RIVERA: Related to the question of the
9 prior sexual assault, or related to the fact that - - -

10 MS. EVERETT: No, just in general - - -

11 JUDGE RIVERA: - - - silence.

12 MS. EVERETT: - - - she said she didn't want to
13 serve. But initially she said - - -

14 JUDGE RIVERA: She raises this question of the
15 sexual assaults later, right?

16 MS. EVERETT: Later in the proceeding when the -
17 - -

18 JUDGE RIVERA: When she's saying, oh, the
19 memory's coming back.

20 MS. EVERETT: - - - defense lawyer is questioning
21 and the - - -

22 JUDGE RIVERA: All right.

23 MS. EVERETT: - - - defense lawyer says to her,
24 well, would it be difficult for you to serve on this in
25 relation to the sexual assault history? And she said yes,



1 it would be difficult.

2 JUDGE STEIN: Haven't we drawn a line, maybe not
3 an absolute line, but you know, as I see it, cases where
4 there - - - there absolutely can never be a - - - a
5 reasonable strategy. And those are cases like doesn't
6 argue a statute of limitations.

7 Here we are, seven judges and yourself, and - - -
8 and we haven't talked to your adversary yet, and we're all
9 postulating what the strategy might have been.

10 And while you may not agree that they - - - that
11 there was a good strategy or that even there was any
12 strategy, we don't know. And isn't that what the purpose
13 of a 440 motion is?

14 MS. EVERETT: Is it relevant that she shouldn't
15 have been forced to serve on this jury given her history
16 and the statement that she said that it was difficult?

17 JUDGE FAHEY: No, but that - - - that - - -
18 that's - - - I don't think that's the point. I think the
19 point is you have two prongs in ineffective assistance of
20 counsel. One is the multiple error prong. And - - - and
21 this case may have a number of multiple errors. And then
22 there's the Turner dispositive error. You know, one's
23 Baldi, one's Turner dispositive error.

24 And - - - and the way I understood what - - -
25 what Judge Stein was saying is we can't point to the



1 dispositive error here, the error that would have changed
2 the case. So what we have to do is evaluate each multiple
3 error; and then it's hard to do that without the 440.

4 MS. EVERETT: As long as we're talking about
5 isolated multiple errors, I do want to get to the fact that
6 we also have the lawyer's failure to object to testimony
7 from an absent victim. The police officer who testified
8 that the woman who didn't come in to testify said at the
9 grand jury that she identified Mr. Campbell, and also that
10 he said specifically that she said about the co-defendant,
11 that's the guy who told the fat kid to rape me.

12 Now, the - - - below in the Appellate Division,
13 the - - - the court agreed - - - they said it was
14 unpreserved, but they agreed that this testimony shouldn't
15 have come in, but they talked about it being harmless
16 error. Now, I think that - - - I see my time is up and
17 maybe I'll - - -

18 CHIEF JUDGE DIFIORE: Complete your thought.
19 I'll let you complete - - -

20 MS. EVERETT: I think we've got a case where they
21 - - - you know, the defendant testified, he's got a job,
22 he's never been arrested, he's been in the army. He said I
23 was in the apartment, but I didn't participate. The issue
24 is not identification in the sense of did he participate,
25 but was she correct in saying that he committed criminal



1 acts in the apartment. Thank you.

2 CHIEF JUDGE DIFIORE: Thank you.

3 Counsel?

4 MR. SINGH: May it please the court, Ramandeep
5 Singh for the People of Bronx County.

6 Your Honors, I think this case presents a great
7 opportunity for this court to reaffirm the principle that
8 claims based on matters off the record must be developed by
9 way of a 440 motion.

10 JUDGE RIVERA: So what - - - what could be the
11 strategy in the sexual assault case when one of the
12 prospective jurors says I've been a victim twice of rape,
13 and in - - - in that colloquy with the prosecutor, although
14 she - - - she says that my husband is being prosecuted by
15 your office, she says that - - - that's not going to make a
16 difference. I feel he's being fairly treated. She has no
17 problem with that. What - - - what could be the strategy
18 to leave on this juror?

19 MR. SINGH: Sure, Your Honor. I think there can
20 be a number of things. But first of all, without a 440,
21 we're forced to speculate. But as far as what could be a
22 reason? One could be the - - - that her husband was being
23 prosecuted. Although she makes a statement that that would
24 not affect her decision, I mean, the defense attorney
25 doesn't have to believe that.



1 Next, it could be anything from as simple as the
2 defendant wanted her on the panel. It could be that
3 defense attorney felt she would be sympathetic to their
4 case.

5 The problem is, there could be - - - there could
6 be a whole number of reasons why defense attorney chose to
7 have - - -

8 JUDGE RIVERA: I guess I'm saying what - - -
9 where was that, that she would be sympathetic to her case
10 when she's saying these memories are coming back; I feel
11 uncomfortable about this; I was a victim twice.

12 MR. SINGH: Well - - -

13 JUDGE RIVERA: What - - - what could be the
14 speculation on this juror's going to be favorable, if you
15 will, to the defendant?

16 MR. SINGH: Well, she - - - defense attorney
17 might have thought she could be sympathetic for a number of
18 reasons. Again, she seemed like she was not eager to serve
19 on this jury. That could be one reason. The fact that she
20 did mention that the - - - it was only on the third time
21 when she spoke to the court she mentioned that she was the
22 victim of sexual assault. She mentioned that her husband
23 raped her. But that - - - that was on the third - - -
24 third time that she spoke to the parties here.

25 Again, Your Honor, the problem here is, without a



1 440 - - -

2 JUDGE FEINMAN: Could - - - could it also be a
3 strategy that I don't necessarily need her to vote to
4 acquit, I just need her to cause chaos in the jury room and
5 get me a mistrial?

6 MR. SINGH: Absolutely.

7 JUDGE FEINMAN: Could that be a strategy?

8 MR. SINGH: Absolutely, Your Honor. And again -
9 - -

10 JUDGE FAHEY: But let - - - let me ask this.
11 When you have to search for - - - for reasons to justify
12 errors, because that's - - - when the People are put in
13 that position - - - not you - - - but the People are put in
14 that position where there's - - - there - - - what appears
15 to be an error. They have to search to justify it to
16 create those errors. So if they - - - if it's the case
17 that you have to search, are, are you in essence arguing to
18 us that it can never be - - - whenever there's multiple
19 errors, there always has to be a 440 on ineffective
20 assistance of counsel? You can never have this court find
21 that there was ineffective assistance of counsel unless
22 it's a Turner/dispositive error; are you arguing that?

23 MR. SINGH: What I'm arguing, Your Honor, is
24 there needs to be something much more than what we have
25 here. I - - - I don't - - -



1 JUDGE FAHEY: So it's a quan - - - it's a quantum
2 argument, and you're the quality argument, is what you're
3 saying?

4 MR. SINGH: Yes, in a sense.

5 JUDGE FAHEY: All right.

6 MR. SINGH: I - - -

7 JUDGE FAHEY: All right. So what about the
8 question of why the Court conducted no further inquiry?
9 Isn't that a dispositive question? There clearly seems to
10 be something wrong. The court conducted no inquiry at all.

11 MR. SINGH: Well, the - - - the court - - - the
12 defense attorney raised - - -

13 JUDGE FAHEY: Did the court have an obligation to
14 do that?

15 MR. SINGH: I - - - I don't believe in - - - I
16 don't think anything on anything that the juror said on its
17 face would - - - would lend the court to worry that she
18 could not be impartial.

19 Now, defense attorney brought up the fact that
20 she mentioned her financial issues, her job issue. And in
21 that regard, the court said that that's not something that
22 needs to be discussed in private.

23 JUDGE FAHEY: No, I was thinking more the rapes.
24 But okay, go ahead.

25 MR. SINGH: Well, I - - - I know my adversary



1 mentioned the fact that the parties - - - she said they
2 seem to have ignored the fact that this juror mentioned
3 that she was the victim of a sex crime. I - - - I don't
4 think that's fair to conclude from this record. I don't
5 think the - - - the two attorneys and the court heard this
6 and then simply forgot about it. I think - - - I think the
7 only - - - the only - - - the only conclusion - - - the
8 reasonable conclusion to draw from this was that defense
9 attorney was making a calculated decision that he wanted
10 this juror on the panel.

11 The - - - the problem here, Your Honor, is that
12 without a 440, not only does this - - -

13 JUDGE FAHEY: Well, the problem with the 440 is
14 it doesn't get to the judge's error, it only gets to the
15 turn - - - attorney's strategy. You see what I'm saying?

16 MR. SINGH: I understand.

17 JUDGE FAHEY: Okay.

18 MR. SINGH: I understand. But I don't think - -
19 - sorry.

20 JUDGE FEINMAN: Please finish your answer to
21 Judge Fahey, and then I have a different question for you.

22 JUDGE FAHEY: Go ahead.

23 MR. SINGH: I was going to say that there's - - -
24 there's nothing on the face of what the juror said here
25 that would lend - - - that would - - - that would make it



1 so that the judge here felt that she could not be
2 impartial.

3 JUDGE FAHEY: I see.

4 MR. SINGH: She - - - her - - - the only
5 statement she made where she said she couldn't serve was
6 because of her financial situation. She never said - - -

7 JUDGE RIVERA: But that kind of begs the
8 question, because she does say to defense counsel, yes, I'd
9 rather talk to the judge in private, and that conversation
10 never happens.

11 MR. SINGH: Your Honor, when - - - when the
12 defense attorney mentioned that, the - - - the court - - -
13 the court responded by saying that I don't believe the
14 financial issue warrants a private discussion. At that
15 point it was - - - it was - - - if anything further, it
16 should have been defense attorney that - - - that brought
17 up a further issue. But it - - - it seems likely that
18 defense attorney there had already made up his mind that he
19 wanted her on the panel.

20 And the - - - and the issue is that not only is
21 it unfair to the defense attorney without a 440, it's also
22 - - - it makes it difficult for this court, because we have
23 only a partial record here.

24 JUDGE FEINMAN: So - - - so my question goes to
25 the People's reply brief - - - not the People - - - the



1 defense reply brief focuses on King and sort of is a juror-
2 centric approach as opposed to, you know, what the impact
3 on the defendant is. And I'm curious what your reply to
4 the reply brief is.

5 MR. SINGH: I'm sorry, as - - - can you - - - I'm
6 sorry, can you repeat that?

7 JUDGE FEINMAN: They talk about the King case - -
8 -

9 MR. SINGH: Yes.

10 JUDGE FEINMAN: - - - in their reply brief. And
11 what do you have to say as - - - as to that?

12 MR. SINGH: I don't - - - I don't think there - -
13 -

14 JUDGE FEINMAN: It focuses on the impact on the
15 juror.

16 MR. SINGH: Sure. I don't - - - I think - - - I
17 think that sort of - - - that's misplacing the issue here.
18 The issue here is whether the court has enough on this
19 partial record to overturn a jury verdict without hearing
20 from the defense attorney. And I think that's patently
21 unfair to the defense attorney. It's unfair to everyone
22 involved in the first trial. It's unfair to the People.
23 And - - -

24 JUDGE GARCIA: Counsel, just - - - I'm sorry to
25 interrupt you, but if - - - going back to something Judge



1 Fahey was getting at. Let's say this was a 440 and the
2 defense counsel comes in and says, look, I like - - - I
3 liked this juror. I thought this was a great juror for me.
4 I thought - - - because of what Judge Feinman said, I
5 thought maybe they'll cause havoc in there, and that's a
6 strategy. But the judge maybe had an independent duty to
7 inquire of this juror.

8 Would it be ineffective assistance of counsel for
9 the defense counsel not to say wait, Judge, you have an
10 independent duty to inquire and maybe toss this juror who I
11 really like? I don't understand how the judge's conduct
12 would come into play in this type of ineffective assistance
13 claim. Again, talking about the juror.

14 MR. SINGH: I - - - I don't think it comes in - -
15 - comes into play. I think it would - - - if anything, it
16 would have been defense attorney who leads the discussion
17 here if - - - if he, in fact, was worried about this juror.
18 And the fact - - -

19 JUDGE FAHEY: Well, didn't the juror here ask to
20 speak to the judge?

21 MR. SINGH: It - - - defense attorney asked the
22 juror after she mentioned the rape, he said would you like
23 to speak to the judge in private.

24 JUDGE FAHEY: I see.

25 MR. SINGH: But he doesn't specify about what.



1 JUDGE FAHEY: Okay.

2 MR. SINGH: And - - - and - - -

3 JUDGE FAHEY: No, that's fine. That's fine.

4 MR. SINGH: And - - - and Your Honor, defense
5 here has not - - -

6 JUDGE RIVERA: On a 440, is he going to get an
7 automatic hearing, given the policy of trial counsel?

8 MR. SINGH: I believe - - - I believe there's a -
9 - - there's a good chance here that there - - - there would
10 be a hearing. I think - - - I think it's beneficial to all
11 sides - - -

12 JUDGE FEINMAN: The People could consent to have
13 the hearing.

14 MR. SINGH: I - - - I can't consent to a future
15 440.

16 JUDGE FEINMAN: I'm not asking you to consent
17 right now. So - - - so if - - - if - - - if you were to
18 succeed on this appeal, though, a 440 would still be
19 available?

20 MR. SINGH: Yes, absolutely. I think a 440 - - -
21 a future 440 motion is not barred by, you know, this
22 court's affirming - - -

23 JUDGE FEINMAN: Um-hum. Okay.

24 MR. SINGH: - - - the Appellate Division here.
25 And I think a 440 - - -



1 JUDGE RIVERA: Well, if we said the record is
2 clear in your favor, can you still make the 440 argument?
3 We said we agree with her that the record is clear, but not
4 in her favor.

5 MR. SINGH: I - - - I think they could - - - they
6 could potentially still make a 440 claim that the - - - the
7 attorney was ineffective in this matter.

8 Just briefly, Your Honor, for the confrontation
9 clause argument, I think that suffers from the same flaw
10 that is present here. We simply don't know what strategy
11 defense attorney was employing when he chose not to object
12 to the statement by Betsy. And the confrontation clause
13 argument only applies to Betsy, because Angela was present
14 at the trial and she testified.

15 JUDGE FEINMAN: Subject to recall and all of
16 that.

17 MR. SINGH: Yes, absolutely.

18 JUDGE FEINMAN: But - - - but what - - - what
19 possible explanation could he have for not seeking to at
20 least having the letter redacted, as to some of the more
21 damaging aspects of it?

22 MR. SINGH: Well, I think - - - I think - - -
23 this was a very strong case, Your Honor, with multiple
24 witnesses. ID was not an issue at all.

25 JUDGE FEINMAN: It's not a whodunit, it's - - -



1 MR. SINGH: The letter - - -

2 JUDGE FEINMAN: - - - a what's happened. You
3 know, I understand that. So to the extent that you have
4 things in this letter as to what happened that are harmful
5 to the defendant, why isn't the defense lawyer either
6 seeking to have that redacted or - - - you know, think
7 twice about opening the door the way that he did?

8 MR. SINGH: Well - - - well, I'm sure the People
9 would have objected to a redacted letter being entered into
10 evidence here. But clear - - - I believe that the trial
11 strategy here for defense attorney - - - again, he was in a
12 difficult situation. But the trial strategy was to try to
13 impeach Devon and Angela through use of the letter. He
14 spoke about that on summation.

15 And the fact that this case resulted in a
16 conviction does not make the representation ineffective.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 Ms. Everett?

19 MS. EVERETT: Just briefly on the 440 issue. If
20 the court were to say that the record was clear against us,
21 then CPL 440 says you can't bring a 440 if you could have
22 raised the issue on direct appeal.

23 But the People said to the court that there was
24 nothing to worry that she could not be impartial. Well, I
25 think that the record shows clearly that there was great



1 concern whether or not she could be impartial. She herself
2 identified the fact that she had been the victim twice of
3 the rape, and she said I want to - - - in response to the
4 defense lawyer's question, I want to speak to the judge in
5 private.

6 JUDGE FEINMAN: But - - - but if we accept that
7 there's a possible strategy, then the question becomes - -
8 - and this is the point, I think, of your reply brief - - -
9 that never mind what the defense strategy was, the judge
10 owed a duty to this juror. You know, it's a more juror-
11 centric analysis. And - - - and have we gone that far?

12 MS. EVERETT: Well, the - - - you do have an
13 obligation to make sure the defendant got a "fair trial".
14 And if the defense lawyer doesn't bring to the judge's
15 attention when it's obvious the judge has forgotten that
16 she said she wanted to speak to the judge privately, and
17 she used the phrase - - - or answered the judge - - - the
18 defense lawyer's question: "in this matter". So at that
19 point of the colloquy, it's clear that what she wants to
20 talk about is her experience as a victim of sexual
21 violence, not about the financial concerns that the court
22 remembered.

23 So when - - - when she's made this clear, how
24 could you have a fair trial if the defense lawyer doesn't
25 bring this to the judge's attention that she specifically

1 asked to speak to him on this?

2 And I cited some commentators in the reply brief
3 talking in general about the dangers when privacy interests
4 of jurors aren't dealt with sensitively. They're not going
5 to come forward and talk about things that make them
6 biased. And you see this in this case that she says, you
7 know, I want to speak to the judge in private, and there's
8 no further inquiry.

9 And this is not a case where it's speculation
10 that she - - - there's a risk that she wouldn't be partial,
11 because she's - - - herself has identified her experience.
12 There are cases that I cite in my main brief that say that
13 when the concern arises from the juror herself or himself
14 that this is a - - - they see that it's a problem.

15 That's even more of a need for the judge to make
16 inquiry in those situations. So for all the reasons, I
17 think that this record is clear - - - yes?

18 JUDGE FEINMAN: Are those issue about - - -
19 because you're trying to do that by saying it's
20 ineffective. But is the issue about the judge's failure to
21 carry out his responsibility or her responsibility to make
22 sure there's a fair jury seated and to give voice to the
23 jurors' concerns, is that preserved? I mean, is that - - -
24 that - - - I don't think that argument was made until you
25 got to your reply brief.



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MS. EVERETT: Well, I think that - - - to the extent that I'm arguing that the defense lawyer has an obligation to protect Mr. Campbell's right to a fair trial, and when he fails to alert the judge that this woman said that she - - - it would be difficult for her to serve and she had a history of violence on a rape trial, that that's ineffective for the lawyer not to make sure that that inquiry is made to protect the fair trial rights of the defendant. Thank you.

CHIEF JUDGE DIFIORE: Thank you, counsel.

(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. Ross Campbell, No. 100 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

Signature: _____

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