

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 125

RODNEY WATTS,

Appellant.

20 Eagle Street
Albany, New York
October 17, 2018

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

Appearances:

ARIELLE I. REID, ESQ.
CENTER FOR APPELLATE LITIGATION
Attorney for Appellant
120 Wall Street, 28th Floor
New York, NY 10005

LEE M. POLLACK, ADA
NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
One Hogan Place
New York, NY 10013

Karen Schiffmiller
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 125, The People of
3 the State of New York v. Rodney Watts.

4 MS. REID: Good afternoon, Your Honors. May it
5 please the court, Arielle Reid for defendant-appellant,
6 Rodney Watts. With Your Honor's permission, I'd like to
7 reserve two minutes for rebuttal?

8 CHIEF JUDGE DIFIORE: Two minutes?

9 MS. REID: Yes, Your Honor.

10 CHIEF JUDGE DIFIORE: You may.

11 MS. REID: An event ticket is neither a deed, nor
12 a will, nor a contract - - - contract, nor a commercial
13 instrument, nor a credit card, and it does not evidence,
14 affect, transfer, or terminate a legal right, legal
15 interest, legal obligation, or legal status.

16 JUDGE STEIN: What's the difference between a
17 legal right and legal interest?

18 MS. REID: Your Honor, my understanding is that a
19 legal right is a right that is created by law. It's
20 recognized by law. A legal interest is similar in the
21 sense that it's kind of like a legal title. It's also
22 something that's recognized by law. And I think that's the
23 underlying - - -

24 JUDGE STEIN: Well, here - - - it's my
25 understanding that everybody agrees that this ticket



1 conveys a revocable license.

2 MS. REID: Yes.

3 JUDGE STEIN: Why isn't that - - - I mean, that's
4 not something that one would ordinarily talk about in
5 ordinary parlance. To me, that sounds like, seems like,
6 what I studied in law school, which has to do with legal
7 rights and/or interests. So what - - - what's wrong with
8 that analysis?

9 MS. REID: I think Your Honor is completely
10 correct that the term "license" is not something that
11 people go around saying on the street. It is something - -
12 -

13 JUDGE STEIN: Other than a driver's license.

14 MS. REID: Yes, other than driver's license, yes.
15 The license in the terms that we mean it in is not
16 something that normal people just say in everyday
17 conversation. But to put a license in everyday
18 conversation, a license is purely permission. It's just a
19 fancy way of saying permis - - - permission.

20 JUDGE STEIN: But why isn't that - - - ha - - -
21 having permission, isn't that a legal interest?

22 MS. REID: No, Your Honor.

23 JUDGE STEIN: When - - - when it - - - when it's
24 - - - let's just use the example of it's between strangers.
25 It's not like a mother giving permission to a child - - - a



1 parent giving permission to a child. It's strangers at
2 arm's length; somebody pays for something to get something.
3 And isn't that something that they got, which is
4 represented by this ticket, doesn't that give them a legal
5 interest? It gives them permission to go to this place at
6 this time and maybe sit in a particular seat?

7 MS. REID: I think, Your Honor - - - I - - - I
8 think your distinction that you're drawing is - - - is
9 particularly relevant when you consider the second-degree
10 statute with the third-degree statute, which is what - - -
11 you know, what, our position, event tickets fall under. So
12 the third-degree statute actually reaches these types of
13 relationships that don't arise to legal, you know, rights,
14 legal interests, or lega - - - legal obligations.

15 The third-degree statute does prohibit forgery of
16 "symbols of evidence of value, right, privilege or
17 identification." So the - - - there's a - - - clearly the
18 legislature intended a distinction between something that
19 is a legal right, legal interest, or legal obligation and
20 general kind of privileges that, you know - - - between
21 strangers or between family members.

22 JUDGE RIVERA: But what - - - why - - - why isn't
23 it affecting - - - because the word is "affect" - - -
24 affecting a status? I buy the fraudulent ticket, to my
25 misfortune, but I thought it was a real ticket, which means



1 it would change my status from a trespasser, if I try to
2 walk in, to someone who, I think, even under your rule, you
3 would concede has some interest that might be recognized,
4 because it's a revocable license, to go in and see the
5 concert - - - let's just say a concert. Why isn't that
6 affecting a status?

7 MS. REID: Your Honor, it could be affecting a
8 status. Whether it affects a legal status, I think, is the
9 question here, and - - -

10 JUDGE RIVERA: Well, trespasser versus someone
11 who, at least, on its face, can request entry.

12 MS. REID: Yes, Your Honor, so the - - - the - -
13 - somebody who has a ticket, the ticket itself is not the
14 thing that changes their legal status. Somebody - - - and
15 I think the Marrone v. Washington Jockey Club case - - -

16 JUDGE RIVERA: No, but it's an instrument, right?
17 It's an instrument that affects, because it's representing.

18 MS. REID: Yes, Your Honor, it's an instrument,
19 but the - - - the - - - the facts of that case, I think,
20 are on point here - - - point here, because in that case,
21 the defendant bought a ticket for the ra - - - racetrack.
22 Previously, he had been told that he was not wanted in the
23 racetrack, but he bought a ticket anyway, and he showed up
24 at the gate, and he had his ticket. And he's, like, I
25 bought a ticket; I have - - - you know, I'm not a



1 trespasser; I have the right to be in here. And they
2 excluded him, because they told him, you know, regardless
3 of whether you have a ticket of not, the supreme
4 determination of whether you are allowed to come in here or
5 not is the pro - - -

6 JUDGE FAHEY: So - - - so - - -

7 JUDGE RIVERA: But that's a revocation. They
8 revoked something.

9 JUDGE FAHEY: So he - - - they revoked the right.

10 JUDGE RIVERA: That's all.

11 JUDGE FAHEY: So he may - - - he may have the - -
12 - the ability to seek compensation for that right, because
13 you were denied it, whatever the value of the ticket was.
14 But that's not like saying he had no legal rights at all.
15 He - - - is - - - doesn't your argument really require us
16 to say that the catchall phrase at the end doesn't apply,
17 and that we have to analyze the case purely in the manner
18 of the canons of construction, an ejusdem generis?

19 MS. REID: I think, Your Honor - - - I think that
20 - - - I think ejusdem generis is apt. I think that's - - -

21 JUDGE FAHEY: It seems that that's the only way
22 we really get to what you're saying, which is - - - because
23 otherwise, this - - - a plain reading of the catchall
24 phrase seems to include this kind of item. But it - - - if
25 it - - - it wouldn't if ejusdem generis were strictly



1 complied with.

2 MS. REID: Your Honor, I think - - - going to the
3 ejusdem generis point, I do think that ejusdem generis
4 controls here. I think, you know, the fact that the
5 enumerated instruments in this statute are things like
6 deeds, wills, contracts, things that, from a Lockean
7 perspective, are foundational to our society and our
8 economic system - - -

9 CHIEF JUDGE DIFIORE: So what would another
10 example of an instrument be?

11 MS. REID: Any example what's - - - any example
12 at all? Or - - -

13 CHIEF JUDGE DIFIORE: Yeah.

14 MS. REID: - - - is there something along the
15 lines of tickets, or - - -

16 CHIEF JUDGE DIFIORE: Yeah, but ticket isn't - -
17 - no, no, in your interpretation and your view.

18 MS. REID: An instrument that is not affected a
19 legal right - - -

20 CHIEF JUDGE DIFIORE: Would fit in with - - -

21 MS. REID: Okay. I think, for instance, an
22 acceptance letter to a university. That could be forged
23 and - - -

24 JUDGE FAHEY: Well, there's the one case on - - -
25 the forgery case on - - - of a - - - a job-application



1 letter, right? I can't remember the name of the case right
2 now. Do you remember?

3 MS. REID: I'm thinking of one for a - - - a
4 barrister application. I'm not sure if that's the one that
5 you're thinking of and for - - -

6 JUDGE FAHEY: I may not be sure, but there are ca
7 - - - the number of cases going the - - - that doesn't seem
8 to me to be a legal instrument in - - - in any sense of the
9 word. But there are things like gift cards, credit-card
10 receipts, that have been held to apply under the statute.

11 MS. REID: Yes, Your Honor, credit cards are - -
12 - are actually one of the enumerated instruments in the
13 statute.

14 JUDGE FAHEY: Credit-card receipts now, and a
15 gift card - - -

16 MS. REID: Um-hum. And - - -

17 JUDGE FAHEY: - - - similar to a credit card.

18 MS. REID: The - - - the - - - the understanding
19 of - - - you know, between credit-card receipts as being
20 that type of instrument is the fact that, with credit
21 cards, you know, you're signing and agreeing to pay
22 something. You're - - - you're entering into a contract
23 with the bank. Your signature reflects the fact that, you
24 know, you are responsible for paying that.

25 JUDGE FAHEY: Well, so let me ask you this. If



1 an instrument's capable of conveying a propri - - - a
2 proprietary or - - - or a monetary interest, then would you
3 concede it's covered by the statute?

4 MS. REID: If a - - - if an instrument is capable
5 of contra - - - con - - - of conveying some sort of
6 proprietary - - - legal proprietary interest, then I would
7 concede that. I don't think - - - and this court has
8 recognized that tickets don't convey legal rights to go or
9 remain in - - -

10 JUDGE FAHEY: The thing is, is there are legal
11 instruments that you don't need a specialized legal
12 procedure to transfer contracts, like a bearer bond,
13 something like that. They can just be transferred. Cash.
14 So it's - - - it's not always the case. It's not clear-
15 cut, is what I'm trying - - -

16 MS. REID: Your Honor, yes, cash, you definitely
17 don't, you know, need some kind of special - - -

18 JUDGE FAHEY: Or a bearer bond, you know.

19 MS. REID: Yes, Your Honor. I - - - but I think
20 the idea is that tickets, they're - - - they're not - - -
21 they're - - - they're basically receipts for money,
22 basically. Somebody - - - you - - - it's evidence that you
23 paid an entrance fee at - - - at - - - at some prior time.
24 It's basically a - - - it's merely a convenience.

25 JUDGE RIVERA: Yeah, but if I walked in with the



1 receipt from the purchase of the ticket, that's not going
2 to get me in. I'm going to have to have the ticket. They
3 might send me to the window and see if I can work something
4 out, but I can't walk up to the ticket collector, and say,
5 I - - - I can't find my ticket, but here's a receipt that
6 shows I purchased a ticket. I can't use that.

7 MS. REID: Your Honor - - -

8 JUDGE RIVERA: What about a ticket that has a
9 designated seat? Does that make that different from just a
10 general-admission ticket?

11 MS. REID: I don't think so. I think that
12 general ad - - - even if it has a seat on it, you are not
13 the - - - the proprietor is not obligated to let you sit at
14 that seat. You're not - - - still not obligated to enter.

15 JUDGE RIVERA: We'll come back to that. Let me
16 ask you this. Why isn't it a commercial instrument?

17 MS. REID: Your Honor, a ticket is not a
18 commercial instrument because it's not - - - it's - - -
19 it's just - - - it's basically a convenience. It's not - -
20 - it doesn't have any sort of inherent value or power, or
21 it doesn't convey any sort of monetary interest,
22 proprietary interest, legal interest. It's just a piece of
23 paper that says that somebody at some point paid something
24 to come into this event, assuming even then that it's a - -
25 - a ticket that people pay for, because - - -



1 JUDGE RIVERA: And then the - - - the bearer of
2 the ticket gets to request to enter the event, no?

3 MS. REID: The bearer of the ticket gets to
4 request to enter the event. They can either be let in or
5 not let in, based on the - - - the desires of - - -

6 JUDGE RIVERA: It's revocable. It's a revo - - -

7 MS. REID: It's revocable.

8 JUDGE RIVERA: It's not an irrevocable license.

9 JUDGE STEIN: But there may be consequences to
10 not letting them in, legal consequences. They may - - -
11 they may be liable for contract damages.

12 MS. REID: Your Honor, the - - - the - - - the
13 only - - - the only remedy at law for being denied entrance
14 or the only curb on the right of proprietors to deny
15 someone entrance is within the extent of civil rights law.
16 The law is clear that proprietors re - - - retain the power
17 to always revoke tickets at their leisure, as long as it's
18 not in violation of civil-rights statutes.

19 JUDGE STEIN: But not without some possible
20 remedy.

21 MS. REID: There are potentially remedies, Your
22 Honor. You can - - - at the - - - at - - - at - - - but
23 those are very contact specific. At the best - - - at
24 best, like I said, you could ask for a refund, but not all
25 tickets have prices. I've been to many events where



1 tickets were free, and at that point, if you have a free
2 ticket and you're told you can't come in, what do you - - -
3 what do you get from that? There's nothing to - - - to
4 gain. No - - - there's no remedy at law on the ticket.
5 There could be, you know, a remedy based on a transaction,
6 but that's, you know, just general principles of
7 transactions. It's not something that's inherent and
8 specific to event tickets.

9 CHIEF JUDGE DIFIORE: Thank you, counsel.

10 MS. REID: Thank you.

11 CHIEF JUDGE DIFIORE: Counsel?

12 MR. POLLACK: Chief Judge, and may it please the
13 court, Lee Pollack for the People.

14 We've said the word "might" a lot here, and I - -
15 - I think I need to step back and - - - and resituate
16 ourselves, because we're talking here about an indictment
17 case. Defendant's argument is that there was no ticket
18 that met the description written in these indictments that
19 could possibly have allowed a prosecution to proceed.

20 JUDGE FAHEY: Well, that's why you're here,
21 right? Without that, you wouldn't be here. It'd be
22 jurisdic - - - a jurisdictional argument.

23 MR. POLLACK: Juris - - - I'm - - - I'm sorry,
24 Your Honor. I'm not understanding the question.

25 JUDGE FAHEY: Go ahead; go ahead.



1 MR. POLLACK: It - - - so I just want to step
2 back and - - - and make the point that because we're - - -
3 yes, okay, I - - - I think I see where you're going. If -
4 - -

5 JUDGE FAHEY: It's not a - - - go ahead.

6 MR. POLLACK: Defendant's plea would have waived
7 his claim if it weren't for that - - - be the nature of his
8 argument.

9 JUDGE FAHEY: Right.

10 MR. POLLACK: So when we talk about, well, some
11 tickets aren't refundable, some tickets are to free events,
12 that doesn't get us across the line in this case. It is -
13 - - it is enough that any ticket described as a ticket to a
14 Coldplay concert, a Rihanna concert, a Knicks ticket, the
15 tickets that were actually named here, which, let's be
16 honest, common sense tells us cost a great deal of money,
17 as revealed by how much defendant was able to get for them
18 on the street - - -

19 JUDGE STEIN: So would it be a defense that I
20 didn't pay anything for this ticket?

21 MR. POLLACK: It might be. If defendant can
22 argue that the - - - this - - - this thing that we all call
23 the ticket was actually not something that fit into the
24 plain language of the statute, and that's where we come
25 back to the plain language of this statute covers this



1 document. This document - - - and a - - - a ticket of
2 admission absolutely does, at a minimum, transfer and
3 evidence a legal right, a legal status, and a legal
4 obligation.

5 The legal right is the right to enter, and this
6 court has held so in People v. Licata, in Collister v.
7 Hayman. The legal obligation is the obligation upon the -
8 - - incumbent upon the venue to let the bearer, not
9 necessarily the person who paid - - - and thus the critical
10 distinction between the receipt that you get when you might
11 pay for the ticket and the ticket itself - - - but the
12 bearer attend or provide the bearer a refund. And this
13 court has held that as far as back as People ex. rel.
14 Vernon - - - Burnham v. Flynn, Aaron v. Ward, and status is
15 the status of a licensee, which is, to wit, not a
16 trespasser, not someone who may be thrown out freely.
17 You've first got to - - - and this court said it in - - -

18 JUDGE RIVERA: Well, it - - - it - - - it's
19 revocable so it does not ensure that you will get admitted,
20 but it does give you a different position from someone who
21 has no ticket to go and request entry.

22 MR. POLLACK: Right. Someone who enters without
23 a ticket is already a trespasser. The police may already
24 be called. They have already completed a - - -

25 JUDGE RIVERA: Unless there's consent.



1 MR. POLLACK: - - - a crime.

2 JUDGE RIVERA: Yes, right.

3 MR. POLLACK: Whereas someone who merely - - -
4 who has a ticket, the revocation must take place and that
5 revocation has legal consequence. It - - - it gives a
6 right from - - - a claim of breach of contract. Whatever
7 the terms of the contract were will define what that claim
8 for breach is worth. Maybe it's worth a refund; maybe it's
9 worth more; maybe it's worth less. That's defined by the
10 terms of the contract. And this gets to the ejusdem
11 generis issue.

12 This ticket, even if it's not a contract, and I -
13 - - I have some concerns about this - - - about yes, there
14 is some precedent from this court dating back from 1904
15 that says the ticket is not a contract; it is merely
16 evidence thereof. I don't know whether that still ho - - -
17 holds in light of modern understandings of contract law,
18 and I'm not - - - I don't believe this court needs to
19 revisit that in order to find in our favor, but I - - - I
20 do note that I'm not sure that's true, especially if, say,
21 on the back of the ticket are terms and conditions which
22 meaningfully limit and are only present there, but - - -

23 JUDGE RIVERA: Well, you're - - - you're right.
24 It - - - it's a little bit muddy between contracts and
25 property interests that we know as licenses.



1 MR. POLLACK: Right.

2 JUDGE RIVERA: Granted, yes.

3 MR. POLLACK: But I think the - - - the point is
4 - - - the point that I'm trying to make - - - I may not be
5 succeeding - - - is that the - - - it is - - - if it is not
6 a contract, it is so, so close and so inextricably bound up
7 in the contract that everyone acknowledges did have to form
8 - - -

9 JUDGE RIVERA: Well, I don't know - - -

10 MR. POLLACK: - - - between - - -

11 JUDGE RIVERA: - - - that you have to work that
12 hard. I mean, it's basically licenses, revocable or
13 irrevocable, they are a property interest of sorts.

14 MR. POLLACK: I agree with that as well.

15 JUDGE RIVERA: Thank you.

16 MR. POLLACK: I, at least, can catch a softball.
17 But - - - or I - - - I humor myself.

18 JUDGE RIVERA: Because there's no negotiation in
19 the contract - - -

20 MR. POLLACK: No, but it's a contract of - - -

21 JUDGE RIVERA: - - - right, about the ticket?
22 Although perhaps in this case, because maybe he's asking
23 for particular money, and they hassled over that on the
24 street, who knows. Haggled, excuse me.

25 MR. POLLACK: Absolutely.



1 JUDGE WILSON: So - - - so what about if I forge
2 the expiration date on a jar of yogurt so I can return it
3 to Whole Foods?

4 MR. POLLACK: I'm not sure what legal right - - -

5 JUDGE WILSON: Well, Whole Foods, let's say they
6 have an implied - - - there's an implied understanding the
7 grocery store is - - - you've purchased something where
8 they failed to take it off the shelf after the expiration
9 will take it back. Whole Foods, in fact, will do that.

10 MR. POLLACK: Again, I don't see how the law
11 could ever step in, and so I don't see how that ever
12 becomes a legal - - - a legal right - - -

13 JUDGE WILSON: Right.

14 MR. POLLACK: - - - a legal status.

15 JUDGE WILSON: What if it's - - - what if it's
16 milk, which is regulated, and you can't sell milk after the
17 expiration date on the top? That's by law - - -

18 MR. POLLACK: I still don't know that it's - - -

19 JUDGE WILSON: - - - that's by statute.

20 MR. POLLACK: - - - a legal - - - I mean, it's an
21 interesting hypo. I - - - I'm - - - I am not sure.

22 JUDGE RIVERA: Well, the People have to show it's
23 an instrument. How is a yogurt an instrument?

24 MR. POLLACK: Well, yes, I think we're - - -
25 we're back in - - - in People v. Vu. Your Honor, by the



1 way, People v. Sengupta, I think, is the case you were
2 thinking of. We're back in People v. Vu. A handbag can't
3 be a forged instrument, because it isn't a writing. And
4 maybe the - - - a - - - a bottle - - - a bottle of milk is
5 also not a writing.

6 But I think that - - - I think that if the date
7 on the bottle of the - - - of milk, I - - - I don't think
8 that's a term of any legal relationship between the
9 supermarket and the buyer. Maybe if you were the - - - if
10 you were the seller - - - if you were the dairyman, and you
11 were selling milk that had been marked falsely with its - -
12 - with its date, such that it was a term of your contract
13 with the supermarket that you would only sell the milk that
14 was three days old, and you forged three-month-old milk to
15 make it look like three days old, maybe that - - - maybe
16 the law would step in, maybe that does point to a legal
17 right, but I - - - I - - - even there, I'm not sure. And I
18 don't think we need to - - - I don't think I need to answer
19 this question to get a - - - to - - - to - - - I don't
20 think you need to answer this question to resolve this
21 case.

22 I think, beyond that, everything else is set - -
23 - is set out in our brief, and we would stand on it. If
24 the court has no further questions, we ask you to affirm.

25 CHIEF JUDGE DIFIORE: Thank you, Mr. Pollack.



1 Ms. Reid?

2 MS. REID: Yes.

3 I just want to touch briefly on Judge Wilsonson's
4 point - - - Judge Wilson's point about the - - - the milk
5 or yogurt carton. I think that's the problem here, is that
6 with - - - when any - - - you make any transaction
7 anywhere, whether it's for a ticket or something else,
8 there's always going to be a possibility that if
9 something's wrong, or something happens with what you
10 purchase, you can get a refund.

11 I don't think that that - - - the ability to get
12 a refund is the - - - the kind of "right", you know, that
13 the legislature was meant to - - - trying to reach here.
14 And I - - - a - - - again, a license is a privilege. And
15 according to the New York jurisprudence, it is the lowest
16 order of privilege. And the word "privilege" is in the
17 third-degree statute. So - - -

18 JUDGE STEIN: Well, you're not saying that - - -
19 that - - - that you - - - you couldn't fall within both
20 third degree and second degree, are you?

21 MS. REID: I am, Your - - - Your Honor. I - - -
22 I don't think that - - -

23 JUDGE STEIN: I - - - I thought the whole way the
24 statutory scheme was set up was that each one included
25 everything below it.



1 MS. REID: Sorry, Your Honor. Yeah, I - - - I
2 misunderstood your question. So the third-degree statute
3 is the catchall for everything else not enumerated in the
4 first and second degrees. By definition, anything that
5 falls within the first or second degrees could also be
6 included in a third degree. But the - - - the - - - the
7 alternative is not true. So what the - - - I think the
8 legislative history here is important.

9 The - - - the - - - when the - - - when the
10 legislature adopted the current penal code, they did so
11 particularly with the forgery statute, because the prior
12 code had been comprised of a mishmash and hodge-podge of
13 miscellaneous instruments just listed one after the other,
14 and the point in making the statute this way is so that
15 very discrete instruments would be clu - - - included in
16 the first and second-degree statute, and then the third
17 degree could just encompass everything else. That was the
18 purpose - - -

19 JUDGE GARCIA: Also - - - I'm sorry. Also
20 including - - - I guess I'm not clear on the answer to
21 Judge Stein's question, but the third category would
22 encompass everything in one and two as the catchall?

23 MS. REID: As the - - - the third-degree statute,
24 yes, Your Honor, is a catchall.

25 JUDGE GARCIA: So if it made 1, it would also



1 qualify under 3.

2 MS. REID: Yes.

3 JUDGE GARCIA: Okay.

4 MS. REID: If it made 1, it would - - - it would
5 qua - - - qualify under 3, but if it's in 3, that doesn't
6 necessarily mean that it's 1.

7 JUDGE GARCIA: Understood, thank you.

8 MS. REID: Yes, yes. And I also want to point
9 out that people aren't selling - - -

10 JUDGE RIVERA: So if it's in 1 and 3, it's the
11 prosecutor's discretion, right?

12 MS. REID: If it's in 1 and 3, it's the
13 prosecutor's discretion, Your Honor. I do want to point
14 out that people aren't selling, you know, deeds, wills,
15 contracts on Craigslist, because you can't. You can't sell
16 those things. Those aren't the type of instruments that
17 you can put an ad on Craigslist and say, come pay me for
18 this contract. And then it - - -

19 JUDGE FAHEY: So - - - so is it - - - one of
20 things I was interested about was what other states did
21 with nonpecuniary instruments. Did you look at that at
22 all?

23 MS. REID: Yes, Your Honor. There are - - -
24 there were twelve states that had statutes, if not
25 identical, then very similar to New York's. Two of them,



1 or - - - two of them would - - - particularly Kentucky and
2 Alabama - - - do not include event tickets within the
3 second-degree statute. They include it in the - - - it's a
4 third degree. It's a misdemeanor basically.

5 JUDGE FAHEY: I see.

6 MS. REID: Six other states that don't have the
7 same language also consider tickets a misdemeanor and not a
8 felony.

9 JUDGE FAHEY: It seemed like many of the ones I
10 looked at in the research that was done, there seemed to be
11 a divide between pecuniary and nonpecuniary instruments.
12 And - - - and that's the way the statutes seem to be
13 structured.

14 MS. REID: Pecuniary - - - yes, Your Honor. I -
15 - - I think - - - I think the instru - - - the pecuniary
16 instruments are instruments that, since the very beginning,
17 have been considered instruments of such high importance
18 that they've been included in the forgery statutes, like
19 money, and deeds, and wills, and those types of
20 instruments.

21 Event tickets in New York State have never been
22 considered a higher degree of forgery.

23 JUDGE FAHEY: It's a big business - - -

24 MS. REID: They've all - - -

25 JUDGE FAHEY: It's a big business in New York.



1 MS. REID: It is a big business in New York, Your
2 Honor, and I think that's part of the - - -

3 JUDGE FAHEY: It does. Those Beyoncé tickets,
4 they're - - - they're pretty valuable if you get one.

5 MS. REID: They are. They're valuable here and
6 everywhere, honestly; it's Beyoncé. But - - - but that - -
7 - I think that's part of the problem. And if this court
8 fashions a rule that tickets give legal rights to their
9 bearers, that would actually undercut Broadway, sports
10 teams, theaters, any types of events where, you know,
11 tickets are used, because let's say Beyoncé gets sick and
12 she can't perform, then is the person who has the ticket
13 going to say, I had a legal interest in this performance?

14 JUDGE FAHEY: It says right on the back, you're
15 out of luck.

16 MS. REID: Or if the star quarterback gets
17 injured the day before the game, are you going to - - - are
18 people going to have a - - - a claim of right to sue?

19 CHIEF JUDGE DIFIORE: Thank you, Ms. Reid.

20 MS. REID: Thank you.

21 (Court is adjourned)

22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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. Rodney Watts, No. 125 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers
Address of Agency: 352 Seventh Avenue
Suite 604
New York, NY 10001

Date: October 23, 2018

