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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

No. 75

JACOB MILTON,

Respondent.

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20 Eagle Street  
Albany, New York 12207  
March 20, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA

Appearances:

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David Rutt  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 75, People v.  
2 Milton.

3 Counselor, would you like any rebuttal  
4 time?

5 MS. ROSS: Yes, Your Honor, three minutes,  
6 please.

7 CHIEF JUDGE LIPPMAN: Three minutes. Sure.  
8 Go ahead.

9 MS. ROSS: Good afternoon, Your Honors.  
10 Laura Ross on behalf of the People of the State of  
11 New York. The superior court information to which  
12 the defendant pled guilty in this case was  
13 jurisdictionally valid, and there was not adequate  
14 record support for the Appellate Division's  
15 determination otherwise.

16 In this case, the two charges on the  
17 superior court information were exactly the same as  
18 two charges that appeared on the criminal court  
19 complaint. That was grand larceny in the first  
20 degree and scheme to defraud in the first degree.

21 CHIEF JUDGE LIPPMAN: What's the  
22 significance when they differ, when the SCI differs  
23 from the complaint? Why does it matter?

24 MS. ROSS: Well, if the - - - if the  
25 charges differ, then it matters because the statute

1 says that it matters. The statute requires that the  
2 superior court information can only charge an offense  
3 for which the defendant was held for action of the  
4 grand jury and any offense or offenses properly  
5 joinable therewith.

6 JUDGE SMITH: But if they charge - - - I  
7 mean, you would - - - you would agree that if they -  
8 - - even if they charge the same - - - an offense of  
9 the same name, that is if - - - if they both charge  
10 grand larceny in the first degree, and the complaint  
11 charge one grand larceny and the other one charged a  
12 completely different one, that wouldn't work.

13 MS. ROSS: That's correct, Your Honor, but  
14 that's not what happened here.

15 CHIEF JUDGE LIPPMAN: How does it prejudice  
16 the - - - the defendant when - - - when they differ?  
17 What would be the test as to what - - - what on the  
18 merits prejudices them?

19 MS. ROSS: Well, the - - - I think - - -

20 CHIEF JUDGE LIPPMAN: If it's a - - - if  
21 it's a different crime, then that's the - - -

22 MS. ROSS: Well - - - well, if it's an  
23 absolutely different crime or different - - -

24 CHIEF JUDGE LIPPMAN: Right.

25 MS. ROSS: - - - criminal transaction - - -

1 CHIEF JUDGE LIPPMAN: Clear, right.

2 MS. ROSS: - - - I think that's clear. If  
3 it's just, as in this case, factual variations that  
4 do not change the crime, you have to look at the  
5 purposes of the accusatory instrument. In this case,  
6 an indictment or superior court information, it's - -  
7 - the purpose is to let the defendant know what he's  
8 charged with so he can create his defenses, and also  
9 to let really the world at large know what he was  
10 convicted or what he was charged with.

11 CHIEF JUDGE LIPPMAN: So if it meets those  
12 purposes but - - - but it's a little bit different in  
13 the - - - in the way it's laid out, that's okay,  
14 right?

15 MS. ROSS: Absolutely. If we're just  
16 talking about, as in this case, minor factual  
17 variations - - -

18 JUDGE SMITH: Who - - - who - - - who were  
19 the victims of the grand larceny first degree,  
20 according to the complaint?

21 MS. ROSS: According to the complaint, it's  
22 not really clear.

23 JUDGE SMITH: Does the complaint not say?

24 MS. ROSS: The complaint doesn't exactly  
25 say because what the complaint says is that the

1 defendant met with various individuals, took personal  
2 information from them under the guise of trying to  
3 secure mortgages for them.

4 JUDGE SMITH: But the - - - but the  
5 complaint has to be inferentially alleging that the  
6 defendant took more than a million bucks from  
7 somebody.

8 MS. ROSS: Right, be - - -

9 JUDGE SMITH: And - - - and who - - - who  
10 is - - - who is the somebody, as you read the  
11 complaint?

12 MS. ROSS: Well, the somebodies have to  
13 really be whoever provided the money for the mortgage  
14 - - -

15 JUDGE SMITH: Has to be - - -

16 MS. ROSS: - - - which is the banks.

17 JUDGE SMITH: Has to be the mortgage  
18 lenders?

19 MS. ROSS: It has to be the banks, yes.

20 JUDGE SMITH: So you're really just saying  
21 that the - - - the complaint, fairly read, says he  
22 stole a million plus from mortgage lenders unnamed  
23 and the SCI put in the names?

24 MS. ROSS: Correct, correct. And another  
25 point that I want to make is that the problem with

1 the Appellate Division's determination in this case  
2 is that it did not have sufficient record basis - - -  
3 a sufficient record basis to make that determination.  
4 The defendant, although he does not have to preserve  
5 this claim for the court's - - - for the Appellate  
6 Division's appeal, he is still required to provide a  
7 sufficient factual basis to establish his claim, and  
8 he didn't do that here. I know he's provided some  
9 records to this court, but those were not provided to  
10 the Appellate Division, so the Appellate Division  
11 really had no basis for making its determination.

12 So in this case, although the criminal  
13 procedure law does not address the perm - - - how  
14 much - - - how - - - how much an SCI can differ  
15 factually from - - - as a criminal court complaint,  
16 it does allow for the amendment of an SCI under a  
17 prejudice standard. And so I'm arguing that that  
18 prejudice standard should apply in this case, as  
19 well.

20 JUDGE PIGOTT: Isn't there a danger here?  
21 I mean, there were so many charges that got reduced  
22 to the two that a year - - - a year later there could  
23 be charges brought naming those banks, and the - - -  
24 and the claim could be made that they don't relate to  
25 all of these charges of identify theft and everything

1 else that was included in this?

2 MS. ROSS: No, Your Honor, because the SCI  
3 to which he pled guilty included the docket number of  
4 that criminal court complaint. So it's very clear  
5 both from that and from the record of plea that the  
6 entire criminal court complaint is included in that  
7 SCI.

8 So actually, in a way, the defendant is  
9 getting a benefit because there's a certain time  
10 period during which these crimes are alleged to have  
11 taken place - - - place. There's two named banks and  
12 others. So really if one were looking at it from a  
13 double jeopardy perspective, it appears that the  
14 amount of crimes contained in this SCI are really  
15 pretty great. So the defendant might have the  
16 benefit of even crimes that we didn't know about  
17 might be seen as being included in that SCI because  
18 it is somewhat broad.

19 JUDGE SMITH: Do you have an alternative  
20 arg - - - I think I understand your argument that  
21 Count I of the SCI corresponds to the felony  
22 complaint. Do you also say Count II corresponds?

23 MS. ROSS: Yes, Your Honor, because the  
24 scheme to defraud in the first degree was included in  
25 the - - -

1 JUDGE SMITH: Which is a scheme - - -

2 MS. ROSS: - - - criminal court - - -

3 JUDGE SMITH: - - - to defraud more than  
4 ten people?

5 MS. ROSS: Yes, but you don't actually have  
6 to name more than ten people; you just have to have  
7 the intent to defraud more than ten people and you -  
8 - -

9 JUDGE SMITH: Yeah. I mean, I was - - - I  
10 was having trouble seeing how I could get an - - - I  
11 understand it says "scheme to defraud". I was having  
12 trouble seeing how I could get ten - - - first of  
13 all, which - - - which of the two complaints is Count  
14 II derived from?

15 MS. ROSS: It's derived from the fir - - -  
16 they're both derived from the first complaint.

17 JUDGE SMITH: And where on the - - - how do  
18 you infer from the first complaint that there was an  
19 intent to defraud more than ten people?

20 MS. ROSS: I don't think you have to infer  
21 from the criminal court complaint that there was an  
22 intent. I think you can because there were a number  
23 of people in the first criminal court complaint. But  
24 what's important here - - -

25 JUDGE SMITH: A number smaller than ten.

1 MS. ROSS: Right. But what's important  
2 here is the - - - I think, the - - - the statutory  
3 language is that with intent to defraud ten or more  
4 persons. So they - - - four people came forward from  
5 this to charge this defendant, but based on his  
6 conduct, you can absolutely infer that they were not  
7 the only four.

8 JUDGE SMITH: Does it say in here some - -  
9 - does it say in the complaint somewhere that - - -  
10 even in the conclusion that he meant to describe more  
11 than - - - oh, yeah, it does, up in the - - - when it  
12 recites the - - - the language.

13 MS. ROSS: Right, right. And I think  
14 what's important here is that the defendant pled  
15 guilty to this. And the reason that a prejudice  
16 standard is appropriate is when you're talking about  
17 a superior court information, you're talking about  
18 charges that the dissent - - - defendant is  
19 consenting to and he is agreeing to plead guilty to.  
20 It's not - - -

21 JUDGE SMITH: Yeah, but the - - - but the  
22 Constitution and the statute do - - - to limit his  
23 right to do that. I mean, yeah - - - I mean,  
24 obviously, in a sense, it's always outrageous when  
25 the defendant pleads to something and says, oh, it -

1 - - oh, it was jurisdictionally invalid, but  
2 sometimes they're right. That's the law.

3 MS. ROSS: Right. But in this case,  
4 jurisdictional invalidity is - - - comes up when the  
5 cri - - - when the charges in the supreme court  
6 information are not the same as the charges in the  
7 criminal court complaint. And in this case, they  
8 clearly were, and the defendant clearly pled guilty  
9 to those charges.

10 CHIEF JUDGE LIPPMAN: Okay, counselor.  
11 Thanks, counselor.

12 MS. ROSS: Thank you.

13 CHIEF JUDGE LIPPMAN: Counselor.

14 MR. LATIMER: Good afternoon, Your Honors.  
15 Excuse me. I'm for the respondent, Jonathan Latimer.

16 CHIEF JUDGE LIPPMAN: Counselor, how did  
17 the difference between the - - - the SCI and the - -  
18 - and the complaint matter to your client? Why - - -  
19 why is it prejudicial in some way?

20 MR. LATIMER: Well, I think I should answer  
21 that question - - - if the court will permit, I need  
22 to - - - to give a little bit more of the history  
23 that is detailed in all of the briefs.

24 CHIEF JUDGE LIPPMAN: Sure. Go ahead.

25 MR. LATIMER: But in this particular

1 situation, we - - - we have a circumstance in where  
2 there was originally a failed allocution to an SCI.  
3 That failed allocution, we most respectfully contend,  
4 was as a result of a real - - - being at cross-  
5 purposes or odds between the defendant and his  
6 counsel at the time. In fact, there's - - - as all  
7 of you are, I believe, aware now, there were several  
8 motions made on the defendant's part to withdraw his  
9 plea - - -

10 CHIEF JUDGE LIPPMAN: Right.

11 MR. LATIMER: - - - which he submitted  
12 affidavits asserting extensively poor treatment by  
13 his counsel at the time and that he was, in fact, in  
14 somewhat of a hostile relationship at the time that  
15 this plea was entered.

16 JUDGE SMITH: And I - - - you could get the  
17 impression from reading the allocution that the  
18 defendant understood the case better than the lawyer  
19 did.

20 MR. LATIMER: Well, Your Honor, to the  
21 extent - - - well, quite frankly, I don't see how you  
22 draw that impression. The defendant, during the  
23 first allocution, responded no to at least six or  
24 seven questions.

25 JUDGE SMITH: Yeah. Well, the first

1 question he was asked was did you steal a million  
2 dollars from a few individuals who probably didn't  
3 have a million dollars to steal from, and he said, of  
4 course not. He was right, wasn't he?

5 MR. LATIMER: Well, he was right, but he  
6 indicated that, with respect to those individuals, he  
7 had not stolen anything but - - -

8 JUDGE SMITH: Right. In fact - - - in  
9 fact, he said there were no under - - - I mean, I  
10 guess what I'm suggesting is the first - - - the  
11 first SCI looks to me like the one that was  
12 completely mixed up, and the second SCI looks better.

13 MR. LATIMER: Well - - -

14 JUDGE SMITH: Doesn't that mean that - - -  
15 doesn't that mean they cured the jurisdictional  
16 problem?

17 MR. LATIMER: Well - - - well, I don't  
18 think so because what - - - I think, in answering the  
19 original question as to the prejudice, what - - -  
20 what happens here in this particular situation, and  
21 the reason I was going into the background, is that  
22 the defendant who was in a hostile environment with  
23 his attorney who contends that he's being threatened  
24 off the record by the attorney and by others, winds  
25 up pleading to an incident for which he did not

1           commit the crime and, in fact, in which a crime may  
2           not have been committed. The banks alleged in the  
3           SCI were not involved in the complaint and were not  
4           involved in the transactions.

5                    JUDGE SMITH: Your - - - your adverse - - -  
6           well, your adverse - - - it's true that they are  
7           mentioned in the complaint. Your adversary says that  
8           when she reads the complaint, the only victims you  
9           can make out for a million dollar theft have to be  
10          the mortgage lenders. There's nobody in - - - nobody  
11          else in there providing a million dollars.

12                   MR. LATIMER: Well, that's not, number one,  
13          the plain reading of the complaint because that's not  
14          - - -

15                   JUDGE SMITH: Well, who do you say the  
16          victims of the grand larceny first degree were in  
17          that complaint?

18                   MR. LATIMER: According to that particular  
19          complaint, it is Marya Macias, Sandoval, all of the  
20          individuals who were named, according to that  
21          particular complaint. And those particular  
22          individuals were not - - - were not involved - - -

23                   JUDGE SMITH: But - - - but what does the  
24          complaint say to suggest that they - - - that they  
25          parted with a million dollars?

1 MR. LATIMER: Well - - -

2 JUDGE SMITH: They wish they did.

3 MR. LATIMER: - - - it says that - - - I  
4 mean, in terms of the factual recitation of the  
5 complaint, it seems to go more toward, I will  
6 concede, to identify theft as opposed to the - - -  
7 the larceny charges. But there is no factual  
8 recitation with respect to specifically the million  
9 dollars other than saying that more than a million  
10 dollars was stolen from these individuals.

11 JUDGE SMITH: Well, and it did mention two  
12 mortgages that added up to - - - or not - - -  
13 actually not mortgages, two properties whose sales  
14 prices added up to more than a - - - more than a  
15 million.

16 MR. LATIMER: And the institutions named in  
17 the SCI were not involved in these transactions. And  
18 for the prosecution in this particular matter to  
19 claim that that information is something that the  
20 defendant pled guilty to as a result of a voluntary  
21 agreement, that is not, in fact, the case based upon  
22 the record of the court below.

23 JUDGE SMITH: So you say the - - - the two  
24 - - - there were two loans adding up to a million and  
25 a quarter or something named in the complaint. You

1 say that the victims named in the SCI were not the  
2 lenders on those two - - - two transactions?

3 MR. LATIMER: The victims - - - the victims  
4 named in the SCI were not the lenders.

5 JUDGE SMITH: Does the record show that?

6 MR. LATIMER: The record doesn't show who  
7 the lenders were.

8 JUDGE SMITH: Yeah, it doesn't show one way  
9 or the other.

10 MR. LATIMER: The record doesn't - - - does  
11 not show one way or the other. And that - - - and  
12 that's why I'm indicating to the court that it is - -  
13 - it would be improper or unfair at this point to  
14 assume that this is a minor deviation or a small  
15 trans - - - or a minor - - - I guess a minor  
16 deviation from the complaint in the sense that this  
17 appears to be a transaction which was never before  
18 the court and for which the defendant was never held  
19 for by the grand jury.

20 JUDGE PIGOTT: How did this happen? I  
21 mean, is it that - - - is the theory that these  
22 people went and applied for a mortgage, then someone  
23 took their names and, I guess, either put them on a  
24 mortgage and got the money and that - - - and they  
25 were victims, but they weren't the victims that ended

1 up that the money came from?

2 MR. LATIMER: I - - -

3 JUDGE PIGOTT: Is it a legal theory that  
4 got tangled up here or what?

5 MR. LATIMER: I think it did get tangled  
6 up. I think that we really don't have the answer to  
7 that, and I think that that's partially due to the  
8 posture of the relationship between the defendant and  
9 defense counsel at that time. As - - - as was  
10 indicated on the lower court level and at the  
11 Appellate Division and now here, the defendant is not  
12 or was not aware of where these names came from in  
13 terms of when he agreed to enter into this plea, and  
14 he only agreed as a result of what he indicated were  
15 threats and coercion that were exerted upon him  
16 during the course of his conversations off the record  
17 with counsel and with the prosecutors.

18 He was in such a position, quite frankly,  
19 that he felt - - - and it's his contention in  
20 affidavits he submitted in support of several motions  
21 to withdraw his plea, that he felt that he was - - -  
22 had no choice at that particular point in time but to  
23 acquiesce to whatever assertions were made by the  
24 prosecution in order to - - - in order to make sure  
25 that neither he nor a family member who was also

1 charged at the time was going to be incarcerated.

2 And I think that that is the real danger  
3 that occurs here in allowing the prosecution, under  
4 these circumstances - - - without at least contesting  
5 the validity of the motion to withdraw the plea in  
6 terms of allowing the prosecution to simply summarily  
7 decide that there were other names that would be  
8 appropriate for this SCI without anything on the  
9 record supporting factually the basis for that  
10 change.

11 CHIEF JUDGE LIPPMAN: Counselor, anything  
12 else?

13 MR. LATIMER: I would just like to stress  
14 to the court, quite frankly, that it is - - - it is -  
15 - - it is and has been, and I was the defendant's  
16 representation, quite frankly, at the lower court  
17 level when the third motion was done, the motion to  
18 renew and with - - - renew the denial of the motion  
19 to - - - to withdraw his plea, and that was denied as  
20 well - - - that it has always been his position in  
21 his - - - that he was coerced into this and that,  
22 quite frankly, there was nothing voluntary about  
23 either his signing of the cooperation agreement, his  
24 entering into the plea or his - - - his - - -

25 JUDGE SMITH: But I mean - - - but is that

1 the issue before us or is it just a jurisdictional  
2 issue?

3 MR. LATIMER: Well, no - - - but I'm saying  
4 that does affect the jurisdictional issue because it  
5 affects the jurisdictional issue - - -

6 JUDGE GRAFFEO: How do we find that without  
7 a 440 with a fact - - - with a record?

8 MR. LATIMER: Well, I - - - I think that  
9 the way that you could have found that was had the  
10 court ordered a hearing with respect to the issue of  
11 his withdrawing of the plea, then there would have  
12 been testimony on the record as to where, in fact,  
13 this information came from, and there was no such  
14 hearing conducted. There was only a hearing  
15 conducted on a specific performance issue.

16 But the defendant in this case has never  
17 said that he wants this matter dismissed. He's never  
18 said that he's - - - he - - - what he has said is  
19 that he's innocent of the charges that he's pled to  
20 and he wants this matter to go to a trial. And that  
21 is simply what he attempted to do from the time that  
22 he indicated to the court that he wanted to withdraw  
23 the plea. And when he got new counsel and he  
24 indicated to the court that he had been coerced into  
25 taking this particular matter - - - I'm sorry - - -

1           agreeing to the cooperation agreement in this  
2           particular matter, he's indicating to the court that,  
3           in fact, it was not his desire to do any of that.

4                       And so when the - - - they rely on his - -  
5           - an answer of yes when he says in the second  
6           allocution as to whether or not he stole property  
7           from the banks who were named in the SCI, that  
8           reliance, I most respectfully contend, is misplaced  
9           in the sense that he was compelled to give that  
10          answer.

11                      JUDGE SMITH:   When we - - - when we discuss  
12          - - - going back to the pure jurisdictional issue, we  
13          discussed a while ago how the - - - how the complaint  
14          matches up or doesn't match up with the SCI and  
15          particularly on who the victims were.   If - - - if  
16          the - - - and you said the victims, in fact, were not  
17          - - - not the lenders on the transactions mentioned  
18          in the complaint, but you also said that's - - - the  
19          record doesn't really show one way or the other.   If  
20          the record is inadequate to show whether the  
21          complaint and the SCI match up or don't match up, who  
22          - - - who bears the bur - - - who loses?   Who - - -  
23          whose problem is it that the record's inadequate?

24                      MR. LATIMER:   If the - - - if the record's  
25          inadequate to show?

1                   JUDGE SMITH:  If the record - - - if the  
2                   record simply - - - if the record simply does not  
3                   permit us to determine whether the crime charged in  
4                   the SCI is one of the crimes mentioned in the  
5                   complaint, who - - - who wins?

6                   MR. LATIMER:  I would most respectfully  
7                   contend - - - well, in this case, it's the respondent  
8                   or the defendant on the trial level, respectfully.

9                   JUDGE SMITH:  Yeah.  Well, but why?  I had  
10                  a feeling you might say that, but why?

11                  MR. LATIMER:  Because then it - - - then it  
12                  has not been established, quite frankly, that the  
13                  same offense is indicated in this - - -

14                  JUDGE SMITH:  You say - - - you say it's  
15                  the People's burden to establish jurisdiction?

16                  MR. LATIMER:  Well, certainly to - - - not  
17                  - - - but to establish certainly that, they have met  
18                  the qualifications of an SCI in that the same offense  
19                  is included from the complaint to the SCI.

20                  JUDGE SMITH:  On the other hand, you - - -  
21                  I mean, you don't have a duty to preserve, but don't  
22                  you - - - even - - - even where there's no  
23                  preservation requirement, isn't it up to - - - if you  
24                  want to later appeal an unpreserved issue, isn't it  
25                  your burden - - - isn't it your risk, if the record's

1 inadequate to determine the issue?

2 MR. LATIMER: If - - - if the record is  
3 inadequate, yes, but I mean, that's why we were  
4 asking, quite frankly, if - - - if the court were not  
5 inclined to grant - - - or to go along with our  
6 position at this point in time that it would be  
7 remanded back for hearings of - - - on that nature in  
8 terms of the proceedings that are necessary to  
9 establish whether or not those facts are, in fact - -  
10 - those facts are from the same offense.

11 CHIEF JUDGE LIPPMAN: Okay, counselor.  
12 Thanks.

13 MR. LATIMER: Thank you.

14 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

15 MS. ROSS: Yes, Your Honor. The fact of  
16 the matter here is that the complainants in the first  
17 SCI were different from the complainants in the  
18 criminal court complaint. There were some exceptions.  
19 So when the defendant said that, no, not these  
20 people, he was correct because those were  
21 complainants from the second complaint that were  
22 charging something completely different.

23 The fact - - - here, the only difference  
24 between the SCI and the criminal court complaint was  
25 the names of the complainants. The names of the

1 banks were given to the People by the defendant.

2 JUDGE SMITH: But you - - - you're saying  
3 that in the - - - in the original complaint, no  
4 complainant was named on the grand larceny first  
5 degree charge, correct?

6 MS. ROSS: Not specifically, right. There  
7 - - - there was one name - - -

8 JUDGE SMITH: You - - - you say the  
9 inference is it was unnamed mortgage lenders.

10 MS. ROSS: Right. And there was one name;  
11 Hector Sandoval was attached to those mortgages.

12 JUDGE SMITH: Yeah. Now, he - - - he says  
13 that if - - - that, in fact, the transactions, the  
14 million - - - the transactions totaling more than a  
15 million referred to in the complaint did not involve  
16 the two victims in the SCI. He also says that that's  
17 not in the record. Is he right - - - I mean, I'm not  
18 asking about the first question, but is he right  
19 about the second, the record just doesn't show one  
20 way or the other?

21 MS. ROSS: The record does not show one way  
22 or the other except that in our response to the  
23 defendant's motion to withdraw his plea, we did make  
24 the argument that the names came from the defendant.  
25 So to the extent the record shows - - -

1                   JUDGE SMITH: But you didn't make the  
2 argument that they were the same ones mentioned in  
3 the complaint.

4                   MS. ROSS: No, because they weren't  
5 mentioned in the complaint. But to the extent the  
6 record shows anything, the record shows that it was  
7 the defendant who wanted - - - who would not plead  
8 guilty to specific complaints.

9                   JUDGE SMITH: Okay. But I - - - but if he  
10 - - - if he could be on his knees begging to plead  
11 guilty to a charge that's not mentioned in the felony  
12 complaint, and it doesn't matter. He can't do it,  
13 right?

14                   MS. ROSS: That's correct. But these - - -  
15 these charges were. And what's important here is the  
16 conduct. It's not who the money belonged to; it's  
17 the actual conduct. And the conduct here, regardless  
18 of who the complainants were or who the money  
19 belonged to, was that he met with individuals.

20                   JUDGE SMITH: Well, steal - - -

21                   MS. ROSS: He - - -

22                   JUDGE SMITH: - - - stealing - - - yeah,  
23 stealing a million dollars from me and stealing a  
24 million dollar from Judge Rivera are different  
25 crimes, aren't they?

1 MS. ROSS: It depends. In this case, it  
2 wasn't - - - the crime was the same because the crime  
3 was meeting with individuals, taking their personal  
4 information, applying for mortgages that they did not  
5 know about, and acquiring those mortgages.

6 JUDGE SMITH: Well, but - - -

7 MS. ROSS: So - - -

8 JUDGE SMITH: But it doesn't - - - but it  
9 doesn't - - - don't the mortgages that you're talking  
10 about in the complaint have to be the same mortgages  
11 you're talking about in the SCI?

12 MS. ROSS: And there's no record basis to  
13 say that there were.

14 JUDGE SMITH: And whose problem is that?

15 MS. ROSS: That's the defendant's.

16 JUDGE SMITH: Because he's - - - why is  
17 that?

18 MS. ROSS: Because as the respondent in the  
19 lower court, it was his burden to provide the  
20 Appellate Division with an adequate record.

21 JUDGE SMITH: You mean as the appellant in  
22 the lower court?

23 MS. ROSS: As the appellant. I'm sorry.

24 JUDGE SMITH: The appellant - - -

25 MS. ROSS: It was his - - - yes.

1                   JUDGE SMITH: - - - the appellant at the  
2 Appellate Division, it was up to him to make an  
3 adequate record?

4                   MS. ROSS: That's correct.

5                   CHIEF JUDGE LIPPMAN: Okay.

6                   MS. ROSS: Thank you.

7                   CHIEF JUDGE LIPPMAN: Thank you both.

8                   MR. LATIMER: Thank you.

9                   CHIEF JUDGE LIPPMAN: Appreciate it.

10                  (Court is adjourned)

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

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Jacob Milton, No. 75 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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