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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 51

LUIS A. RODRIGUEZ,

Respondent.

20 Eagle Street
Albany, New York
April 21, 2022

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: Number 51, The People of
2 the State of New York v. Rodriguez.

3 Good afternoon, Counsel.

4 MR. BRANIGAN: Good afternoon, Your Honors.
5 William Branigan for District Attorney Katz. May it please
6 the court. First, Your Honors could I - - - I reserve two
7 minutes for rebuttal?

8 CHIEF JUDGE DIFIORE: Two minutes.

9 MR. BRANIGAN: Thank you.

10 Your Honor, once the victim identified the text
11 messages and explained that they reflected accurately the
12 exchanges between her and the defendant, the trial court
13 had discretion to admit those screenshots into evidence.
14 That decision was supported by other evidence at trial,
15 including phone records showing that there were 246
16 exchanges between her and the defendant. Also, the
17 messages themselves, which contain a photograph that the
18 victim identified as herself wearing a bra and the - - -
19 Mr. Rodriguez, which appeared on the top as the - - - as
20 the contact name for defendant.

21 JUDGE TROUTMAN: And was there any objection to
22 that testimony prior to the offering of this small number
23 of texts?

24 MR. BRANIGAN: Yes, Your Honor. There was - - -
25 there was the - - - the objections here were raised



1 initially actually before trial. The - - - the defendant
2 filed a memorandum of law and raised both the authenticity
3 issue, which I'm discussing here, and the separate best
4 evidence rule. The - - - the - - - the issues were also
5 revised at the time that the - - - that the --

6 JUDGE TROUTMAN: But as to her testifying, what -
7 - - were there objections to her specific testimony, not
8 simply the offering of the text messages?

9 MR. BRANIGAN: There was no - - - there - - -
10 there was no objection to her testimony about the - - - the
11 text messages, Your Honor.

12 In addition, first of all, the - - - the best
13 evidence rule should not be applied here. Even if the best
14 evidence rule were applied, the - - - the victim adequately
15 explained that she had deleted these text messages at the
16 behest of the defendant as they were being sent. Other
17 testimony supported that, including that she had
18 essentially reset her phone and that the - - - that - - -
19 that nothing was available at that point.

20 JUDGE WILSON: So let me - - - let me stop you
21 there for a second. I'm - - - sorry, over here.

22 MR. BRANIGAN: Yes.

23 JUDGE WILSON: I'm having a lot of trouble trying
24 to apply the best evidence rule to electronic information.
25 I don't know what the original is. Is it whatever was on

1 her phone once she sent it and his phone once she sent it?
2 Are there multiple originals?

3 You know - - - you know, we have a decision I
4 don't think either party cited involving not screenshots,
5 but sort of web pages called People v. Price from a couple
6 of years ago that talks about how you - - - what - - - the
7 steps you need to authenticate information from the
8 internet. This is - - - this is a little bit different,
9 right. It's not information from the internet. But in
10 some ways, it's a little bit easier to authenticate because
11 you know, or you can know, who the originator is and who
12 the recipients are. So I'm - - - I'm wondering whether
13 thinking about this - - - really, what I guess I'm
14 wondering is does - - - should we be applying the best
15 evidence rule to this kind of evidence at all.

16 MR. BRANIGAN: No, Your Honor. The court should
17 not apply it and it should follow the - - - the federal
18 rules on electronically stored information. So before
19 these screenshots were - - - were printed out, they were
20 stored in - - - in the phone itself, in the computer
21 itself. And so the - - - the - - - the - - - under the - -
22 - the federal rules, the printout of that - - - of - - - of
23 that becomes the original if we are talking about a best
24 evidence context.

25 This court, if you look at - - - or I should say



1 New York's technology laws tend to define electronically
2 stored evidence in the same - - - in the same way, meaning
3 as long as the - - - as long as the whatever it is is still
4 in the - - - the phone or the computer, it is not - - - it
5 - - - it doesn't have that analysis. Once it's printed
6 out, it can be admitted essentially as - - - as an
7 original, so that's correct. The - - - the best evidence
8 rule should not apply here. And it should not apply for a
9 separate reason, Your Honor.

10 JUDGE CANNATARO: Before you - - - I'm sorry.
11 Before you go to the other reason, can I just ask you - - -
12 I - - - I understand that the - - - the victim testified
13 that she had deleted messages in the past and then I think
14 she said she completely wiped the phone after Mr. Meuro
15 (ph.) took it from her. But is that something that the
16 detective knew at the time that he accepted the - - - the
17 screenshots as - - - as the proof that he was going to use
18 in this case? In other words, could he not have just taken
19 a look at the phones to see if there was something more to
20 be seen?

21 MR. BRANIGAN: Well - - - well, first, Your
22 Honor, I don't think he had either phone. The - - - the -
23 - - when the victim - - - the victim testified that she
24 didn't bring her phone in, the - - - these - - - these
25 messages were taken off I think it was her mother's phone,



1 is the testimony, meaning the --

2 JUDGE CANNATARO: Well, the screenshots --

3 MR. BRANIGAN: The screenshots, correct.

4 JUDGE CANNATARO: - - - were taken off her
5 mother's phone.

6 MR. BRANIGAN: Right. The screenshots reflecting
7 the - - - the messages were taken from the mother's phone.
8 However --

9 JUDGE CANNATARO: But from a best evidence
10 perspective, you would think there would be a question at
11 that point. Something along the lines of, well, can I see
12 the phone, the phone that was used to send the text.

13 MR. BRANIGAN: Right, Your Honor. The - - - the
14 - - - and again, the victim testified that she did not - -
15 - that she did not bring the phone in. So the - - - the -
16 - - the - - - and again, she - - - and - - - and she
17 testified that at the time she told him the messages were
18 deleted. And that was the testimony in - - - in front of
19 the court as far as the - - - as far as the - - - the prong
20 of the best evidence rule involving the destruct - - - the
21 - - - the destruction of the originals, if they were the
22 originals.

23 Again, though, they - - - they should not be
24 considered - - - the - - - the - - - the rule should not be
25 applied here. Also, because the - - - the victim testified



1 to weeks and weeks of - - - of text messages between her
2 and the defendant. The victim also testified that he had
3 sent her a videotape of him masturbating, which was one of
4 the counts that - - - that was charged against him. None
5 of this evidence was - - - was testified to.

6 The - - - the text messages themselves, the - - -
7 the screenshots admitted, only concerned a small fraction
8 of the - - - of the exchanges, which again, she testified
9 to and there was no - - - there was no objection to that
10 evidence. If - - - if the best evidence rule were to
11 apply, both the - - - the screenshots and all of her
12 testimony would then have to be considered, you know, so
13 called secondary evidence which - - - which was admitted.
14 Again, her testimony was admitted without objection.

15 If the - - - the court has no further questions,
16 the - - - the People rely on the brief.

17 CHIEF JUDGE DIFIORE: Thank you, Counsel.

18 Counsel?

19 MR. BARR: Good afternoon, Your Honors. Samuel
20 Barr for respondent Luis Rodriguez. I would like to pick
21 up with Judge Wilson's question, what's the original and
22 does the best evidence rule have any application here. The
23 answer is yes, and the original is the data. And that's
24 supported by several of this court's sister courts; courts
25 like Talley --



1 JUDGE WILSON: Well, the data - - - the data that
2 resides where?

3 MR. BARR: The data, when a text message - - -
4 text message is sent from one phone to another, it's stored
5 both on the sender and the recipient phone, initially. And
6 --

7 JUDGE WILSON: Well, and also some probably
8 intermediary servers.

9 MR. BARR: Actually, not necessarily, Your Honor.
10 And our amicus brief from the Legal Aid Society explains
11 this, and there was also testimony at trial. But if it's
12 an iMessage in particular, as some of them were in this
13 case, between two iPhones, then it's not actually saved on
14 a server unless, as the complainant testified, she's
15 connected to iCloud.

16 But as a first cut, it's on two phones. And
17 forensically --

18 JUDGE WILSON: But why is the recipient phone an
19 original?

20 MR. BARR: Because that's - - - that rep - - -
21 represents perfectly accurately and in a way that any
22 investigator, whether from a DA's office or a defense
23 office, can - - - can download and then reproduce to the
24 other side in litigation and prove in court that represents
25 the contents of the writing in an unmanipulable,



1 unalterable fashion.

2 JUDGE WILSON: Okay. So that's true if it's
3 stored on iCloud as well?

4 MR. BARR: Absolutely.

5 JUDGE WILSON: So that's also an original.

6 MR. BARR: Yes, absolutely. Those - - - those
7 were also originals. And it's the original --

8 JUDGE WILSON: And then if that - - - if that's -
9 - - that's then forwarded to somebody else digitally that's
10 an original as well?

11 MR. BARR: Well, I think you start to get into
12 problems when - - - what are we --

13 JUDGE WILSON: Well, that's why I wonder about
14 this.

15 MR. BARR: Yes. If we're talking about
16 forwarding your screenshots --

17 JUDGE WILSON: No. Nope. I didn't say
18 screenshots.

19 MR. BARR: Well - - - well, I don't know that you
20 can just forward a text message without taking a screenshot
21 of it.

22 JUDGE WILSON: Oh, I do it all the time.

23 MR. BARR: Well, maybe Your Honor is more
24 technologically advanced than I am; I'm not sure. But if -
25 - - if what happened in this case happens, you're - - -



1 you're just taking a screenshot of something and then
2 forwarding it, you're now taking a --

3 JUDGE WILSON: Well, is the screenshot an
4 accurate representation?

5 MR. BARR: That's - - - that's one of the many
6 questions in this case. But what it clearly is not --

7 JUDGE WILSON: Can you testify that it is?

8 MR. BARR: You can testify to it, but yet - - -
9 but it's - - - what it clearly is not is the original
10 document itself. And - - - and what Mr. Branigan was just
11 saying --

12 JUDGE CANNATARO: But you - - -

13 JUDGE WILSON: No.

14 JUDGE CANNATARO: But you just said that you --

15 JUDGE WILSON: The original is the version stored
16 on iCloud, right?

17 JUDGE CANNATARO: Sorry.

18 JUDGE WILSON: I mean, the reason you're calling
19 the version stored on iCloud an original is because it's an
20 exact copy. But a screenshot could be an exact copy.

21 MR. BARR: It absolutely could be.

22 JUDGE WILSON: And then that would make it an
23 original as well.

24 MR. BARR: If - - - if there's - - - if there's
25 testimony.



1 JUDGE WILSON: Okay.

2 MR. BARR: If there's testimony to it, it could
3 be an exact copy and this court - - - however, it's - - -
4 it's worth pointing out that this court does not, to my
5 knowledge, yet have a rule analogous to the one that was
6 applied in the Pennsylvania case about admissible
7 duplicates under the best evidence rule. But what is worth
8 --

9 JUDGE WILSON: Does Pennsylvania have a statute,
10 by the way?

11 MR. BARR: It does have a statute, yeah.

12 JUDGE WILSON: Yeah, I thought so.

13 MR. BARR: This court - - - this --

14 JUDGE WILSON: Yeah.

15 MR. BARR: This state does not have a statutory
16 best evidence rule. So you --

17 JUDGE RIVERA: So Counsel --

18 JUDGE SINGAS: Well, why should we - - - why - -
19 -

20 I'm sorry, Judge Rivera; go ahead.

21 JUDGE RIVERA: Yeah, Counsel, I'm on the screen.
22 Hello. Good afternoon.

23 So I - - - I just want to be clear. What - - -
24 what did the people need to do? Your argument is that - -
25 - that there's a gap. There's something that they failed



1 to do, other than looking for the "original". Put that one
2 to the side. Or perhaps that's the only thing that you
3 think they failed to do. What could they and should they
4 have done to be able to get this in, so that there would
5 not be an appellate issue?

6 MR. BARR: Yeah, so they had a couple options.
7 They could have explained the loss or unavailability of
8 what we're calling the original and what all five Appellate
9 Division justices assumed were the originals.

10 JUDGE TROUTMAN: But didn't she testify that she
11 was instructed to delete messages and then prove that she
12 did?

13 MR. BARR: She testified - - - yes, she did
14 testify to that. And I - - - I want to just highlight that
15 because it actually highlights the difference between a
16 screenshot and the original. Because obviously, what she's
17 saying there is she produced blank screenshots. And I'm
18 sure the People don't believe that those blank screenshots
19 reflected the original text messages. In fact, their
20 theory of the case was that those blank screenshots
21 inaccurately reflected the original text messages.

22 JUDGE RIVERA: Okay. But you said there were
23 several. So - - - so I - - - I get this point that one is
24 - - - that they could have shown that they made some effort
25 to get something else. Is there any other thing that they



1 could have done? Any other action or any other evidence
2 that they could have put forward to support the - - - the
3 authenticity foundation for the screenshots?

4 MR. BARR: There - - - there are - - - under the
5 best evidence rule, which Mr. Branigan just said is
6 separate from authenticity, there are two things that you
7 can do. You can produce the original, which the prosecutor
8 in her summation at supplemental appendix 50 to 51 said
9 would have been better to do. She acknowledged that the
10 officer should - - - the detective should have done that
11 and didn't, so that was one option. Or she could have - -
12 - the prosecutor could have explained that - - - their
13 failure to do that adequately.

14 JUDGE GARCIA: What if they called the boyfriend,
15 took the screenshot?

16 MR. BARR: They did call the boyfriend. They
17 didn't - - - they didn't admit - - - it's true they didn't
18 admit the screenshots through the boyfriend, but he did
19 testify.

20 JUDGE GARCIA: Did he testify they were accurate
21 screenshots?

22 MR. BARR: I don't - - - I --

23 JUDGE WILSON: There's - - - there's, I think,
24 one of the screen - - - six screenshots is one that he saw
25 while he had her phone?



1 MR. BARR: Right.

2 JUDGE WILSON: So it seems to me he possibly
3 could authenticate that?

4 JUDGE GARCIA: Isn't that just like a photograph?
5 He took a photograph, he could authenticate the photograph.

6 MR. BARR: Well, it's a little different from a
7 photograph because - - - and I think it's worth
8 emphasizing. We were - - - we were just - - - I was trying
9 to understand the first case that Your Honors were hearing,
10 but when you're dealing with something that's really the
11 actus reus of a crime, an allegeate - - - an alleged crime,
12 like a text message that's improper to a fifteen-year-old,
13 you - - - to prove that, you have to produce the accurate
14 and original document. And that's - - - and this
15 distinction between what's mere evidence of a - - - of - -
16 - of - - - of an act and what's sort of the operative or
17 dispositive writing, that's made in - - - in Talley.

18 CHIEF JUDGE DIFIORE: But why --

19 JUDGE SINGAS: Counsel --

20 MR. BARR: Yeah.

21 JUDGE SINGAS: What about a photograph that shows
22 injuries, right? Why a different standard of
23 authentication for a screenshot versus a photo? Both could
24 be altered. Everyone could be cross-examined. As long as
25 the people are there who are authenticating that it is what



1 it purports to be, why are we introducing different
2 standards?

3 MR. BARR: It's - - - it's not a different
4 standard, Your Honor. It's the same. We're asking for the
5 same best evidence rule that the courts of this state have
6 applied for years, since - - - since Schozer to all sorts
7 of documents. The kind --

8 JUDGE WILSON: Well, but - - - but to Judge
9 Singas' point and sort of in line with my earlier
10 questions, what if I'm using a digital camera? Is it then
11 the image that's on the card the original and not the
12 photograph I print? And do I have to bring the card in?

13 MR. BARR: No. No, Your Honor. When - - - when
14 someone takes a picture of something - - - if I take a
15 picture of this courtroom and then I come in and say - - -
16 and testify. And I want to admit that photo and I - - - I
17 testify, yeah, that accurately - - - fairly and accurately
18 reflects the courtroom on that day that's obviously fine.
19 That's not what happened here.

20 JUDGE GARCIA: But what if you took a picture of
21 the screen with a camera? What rule would you apply? Your
22 - - - your screenshot rule or your photo rule?

23 MR. BARR: I'm sorry; what's the hypo --

24 JUDGE GARCIA: I have a camera. I have the
25 person's phone. I take a picture of the screen with my



1 camera. Does that come in under a photo rule or do I have
2 to have the text rule?

3 MR. BARR: Well, that's - - - that's more like -
4 - - that is more like my case, and it highlights the
5 difference because what you're doing there is you're taking
6 - - - you're taking secondary evidence of a writing. And
7 if what you're do - - - if what the writing is being
8 introduced for is for its contents, as in this case - - -
9 not every case is like this one. Not every case involves a
10 writing being produced in court as the actus reus of a
11 crime.

12 JUDGE CANNATARO: Counsel, it --

13 MR. BARR: Most cases are not like that.

14 JUDGE CANNATARO: It - - - it sounds to me --

15 JUDGE RIVERA: Yeah, but in this case, Counsel,
16 in this case, the individual who is in this back and forth
17 with the text, right, she's the one who's - - - perhaps
18 I've misunderstood the record. Isn't she the one who says
19 that is accurate, these screenshots of what was written
20 back and forth, or the photo, is accurate; isn't that what
21 happened here? Or again, did I misunderstand the record?

22 MR. BARR: No. She does testify to that. But -
23 - - but again, it's Meuro as a third party is taking
24 photographs of her phone and --

25 JUDGE RIVERA: Okay. But let - - - let's try it



1 a different way, and I think it's closer to what Judge
2 Garcia was asking you about. If I misunderstood him and he
3 thinks it's necessary, he'll correct me, but let's say you
4 have a photo, just a photo. You have a tactile. You could
5 see the photo. It's on a table. I take another camera and
6 I take a picture of that. And then the picture of that
7 photo is the one that the prosecutor would be trying to
8 admit. And the person who - - - who took it says yes, that
9 is both the photo that I took and maybe they also say and I
10 absolutely remember the photo that I took a picture of and
11 the picture that I took is an accurate representation of
12 the photo to begin with. All you have here is two
13 different bits of testimony. One that says those are the
14 screenshots, I took them, and the other one who says yes,
15 now that you've shown them to me, that's an accurate
16 representation of the content that the screenshots
17 represent.

18 MR. BARR: Yes, I - - - I think that the prob - -
19 - the problem with the pho - - - the photo hypothetical
20 that you're posing is --

21 JUDGE RIVERA: Yeah.

22 MR. BARR: - - - it's going to be a rare
23 situation where the contents of the "original" photo are
24 really in - - - at issue in the case, in dispute, and
25 sought to be proven; that's not --



1 JUDGE CANNATARO: But - - - but that goes to
2 authentication, doesn't it? You - - - you - - - you're
3 saying the best evidence is data. And whether it's a text
4 message on a - - - on a cell phone or a digital photograph
5 in a camera, it's all data. And - - - and I think we've
6 heard a lot of examples today about how data can be almost
7 infinitely reproduced. So maybe everything's the best
8 evidence and the real question is authenticity.

9 MR. BARR: No, Your Honor. And I think - - -
10 again, I think if you look at your sister courts in Talley
11 and in LeGassey from Maine, you'll see that your - - - your
12 sister courts understand that the best evidence of a text
13 message or other electronic evidence is the electron - - -
14 the original electronic data. Secondary evidence is the
15 stuff like testimony, photographs of that electronic data,
16 like a - - - like a screenshot. And then the question
17 becomes have the People or the proponent made a record
18 sufficient to justify the loss or unavailability of the
19 original.

20 JUDGE SINGAS: Well, Mr. Barr, in this case,
21 there was testimony that the fifteen-year-old got rid of
22 the pictures, cleared her phone because her forty-year-old
23 abuser told her to. So in this situation, why does the
24 destruction of that evidence inure to his benefit?

25 MR. BARR: Well, what she actually said was she



1 reset her phone after the assault by Meuro; that was really
2 the moment when the People claim that everything sort of
3 became unavailable, but what --

4 JUDGE SINGAS: No. At - - - at some point --

5 MR. BARR: But --

6 JUDGE SINGAS: - - - the defendant asked her to
7 send back blank screens so he could make sure, correct?

8 MR. BARR: Right.

9 JUDGE SINGAS: Am I wrong about that?

10 MR. BARR: No. Yes, there - - - there was also
11 testimony to that, yes. But the People are claiming, look,
12 we had noth - - - there was nothing more we could do, she
13 reset her phone. But crucially, there was also the iCloud
14 and as the Appellate Division emphasized, there was also
15 Mr. Rodriguez's phone, which if the People had really
16 wanted to prove - - - prove their case --

17 JUDGE TROUTMAN: But also, the - - - crucially,
18 she testified, as Judge Singas said, I deleted it because
19 he told me to. And he insisted on proof. So why isn't - -
20 - even if best evidence applies, why isn't it appropriately
21 admitted as secondary evidence?

22 MR. BARR: Because - - - because it's not - - -
23 because it's not gone. I mean, the - - - the original data
24 - - - that's - - - and that's was so val - - - that's why
25 it's so important to keep applying the best evidence rule



1 in this universe of - - - of digital data. It's because
2 it's not actually gone.

3 JUDGE CANNATARO: Well, didn't she testify that
4 it could possibly have either been delete - - - it wasn't
5 on her iPad. I think she might have said that. But I know
6 she said that it wasn't - - - she didn't know if it was in
7 the cloud.

8 MR. BARR: She test - - - that's right. She
9 testified that she didn't know, but she said that she could
10 sign - - - she had to sign in to iCloud. She said that it
11 was synced. And it's just a fact that iCloud syncs to - -
12 - in order to sync those two devices, the iPad and the
13 iPhone, iCloud is saving a content up in the cloud between
14 these two devices. It's saving a little message so - - -
15 so that it --

16 JUDGE CANNATARO: But when it syncs, if you
17 delete it and it syncs again, it's possible - - - I don't
18 know because there's no testimony about it in this case,
19 but it - - - it might get deleted.

20 MR. BARR: It's - - - it's possible. It's - - -
21 that - - - that's not the case, but it's - - - I agree
22 there's no testimony.

23 JUDGE CANNATARO: No testifying, now.

24 MR. BARR: I agree there's no testimony about it
25 and I know I'm way past my time. I'm sorry. But I - - -



1 there's no record about it in this case, it's true, but
2 they're the proponent. They have to prove the
3 unavailability of the evidence.

4 CHIEF JUDGE DIFIORE: Thank you, Coun --

5 MR. BARR: And they didn't.

6 CHIEF JUDGE DIFIORE: Thank you, Counsel.

7 MR. BARR: Thank you.

8 CHIEF JUDGE DIFIORE: Counsel, your rebuttal?

9 MR. BRANIGAN: Yes, Your Honor, just briefly.

10 First of all, again, I think the easiest way to -
11 - - to look at what the original is when it's all
12 electronically stored information is - - - is the initial
13 printout of the electronically stored information should be
14 considered the original. I think Judge Rivera had a
15 question about the --

16 JUDGE WILSON: But that doesn't - - - that
17 doesn't really work either because why - - - sorry, over
18 here - - - why is any subsequent printout from the same
19 electronic media not also an original by that theory?

20 MR. BRANIGAN: Well, yes, I think that - - - I
21 think the - - - the - - - the printout of the - - - the
22 data would - - - would be considered an original, yes. I -
23 - - I just wanted to answer the - - - as - - - as far as
24 the - - - typically, when we're talking about authenticity
25 of photographs, if the argument is that well - - - well



1 Meuro took the photographs, the - - - the normal rule is
2 that the photographer himself is not required to - - - to
3 authenticate the photographs.

4 And finally, again, the - - - the - - - the
5 witness testified repeatedly that - - - that the - - - the
6 messages were deleted. It was clearly her understanding
7 when she testified that they were - - - that they were gone
8 and the court properly credited her - - - her testimony
9 when she admitted the - - - the messages into evidence.

10 JUDGE RIVERA: Well, Cou - - - Counsel, can I
11 just ask - - - I'm on the screen. I - - - I just need to
12 clarify something, if you would for me. In terms of the
13 defense, I thought the defense was there were text messages
14 between defendant and - - - and the child's mother, as
15 opposed to that's not what I wrote or what I didn't write.
16 Am I - - - did I misunderstand something? Putting aside
17 the picture of - - - of himself, put that aside for one
18 moment.

19 MR. BRANIGAN: Your Honor, I - - - I think - - -
20 I - - - I - - - I think he made both arguments in his
21 summation because I recall that the - - - he - - - he said
22 something to the effect, you know, he was the only one
23 trying to help her, so there - - - there might be some
24 inference that that was part of it. He certainly was
25 trying to say that he was having an affair with her mother



1 and that's why there were all these - - - these text
2 messages. And I - - - I don't think he was able to elicit
3 any particular testimony, but he certainly cross-examined
4 the - - - the mother on that issue.

5 JUDGE RIVERA: Yeah, but I thought that the defen
6 - - - with respect to any sexual back and forth, any
7 language that was sexual in nature, right, the sexting part
8 of it, I thought - - - to the extent he was arguing that
9 anyone believes the child, the - - - the minor when she
10 gets up on the stand and says this is what went on, I
11 thought his counterargument was, well, anything that's
12 there that you believe is between me and the mother, not
13 between me and her.

14 MR. BRANIGAN: I - - - that's possible, but I - -
15 - I think that - - - I think the argument was that there
16 was 246 messages between him and, you know, his - - - his
17 fifteen-year-old student athlete, despite that being
18 prohibited under school rules. The - - - the reason was
19 because he was having some kind of relationship with - - -
20 with the mother.

21 CHIEF JUDGE DIFIORE: Thank you, Counsel.

22 MR. BRANIGAN: All right. Thank you, Your
23 Honors.

24 (Court is adjourned)

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

I, Colin Richilano, certify that the foregoing transcript of proceedings in the Court of Appeals of People of the State of New York v. Luis A. Rodriguez, No. 51 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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