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COURT OF APPEALS

STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 9

VLADIMIR DUARTE,

Appellant.

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20 Eagle Street  
Albany, New York  
January 6, 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

Appearances:

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Karen Schiffmiller  
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this  
2 afternoon's calendar is appeal number 9, the People of the  
3 State of New York v. Vladimir Duarte.

4 Good afternoon, Counsel.

5 MS. SCHINDLER: Thank you, Your Honor. Good  
6 afternoon, Molly Schindler on behalf of Vladimir Duarte. I  
7 would like to reserve two minutes for rebuttal, please?

8 CHIEF JUDGE DIFIORE: You may.

9 MS. SCHINDLER: Thank you. May it please the  
10 Court. "I would love to go pro se" is an unequivocal pro  
11 se request that required the trial court to begin a  
12 McIntyre inquiry. It had no caveats. It had no  
13 conditions. It had no limitations. It was not made in the  
14 alternative to any other request. It was timely and it was  
15 unambiguous. This - - - the trial court's failure to  
16 conduct any inquiry into that request necessitates reversal  
17 under a long line of this court's precedence, since  
18 McIntyre.

19 The request that he made when he said, "I would  
20 love to go pro se" - - -

21 JUDGE RIVERA: Counsel, can I just - - - excuse  
22 me, Happy New Year. I just wanted to ask you, just for  
23 clarification, your view of the Appellate Court's decision,  
24 on its first basis, not the alternative basis, on the first  
25 basis. Did the Appellate Court find that, yeah, it was



1 clear, but in context, it's not what he meant, versus no,  
2 it is unclear given this context? How do you read the  
3 Appellate Court's determination?

4 MS. SCHINDLER: I read its determination that it  
5 couldn't be unequivocal. It - - - the request couldn't  
6 have been unequivocal because it came in the context of  
7 expressing dissatisfaction with his trial attorney, which  
8 simply is not the law. It has never been this court's  
9 holding. And in fact, this court has repeatedly recognized  
10 that one of the primary reasons a defendant chooses to go  
11 pro se is because of dissatisfaction or distrust with his  
12 assigned attorney, particularly with an indigent defendant,  
13 who does not have choice of counsel, cannot afford to  
14 replace his attorney if he's dissatisfied. So really - - -

15 JUDGE RIVERA: And Counsel, how do you read that  
16 colloquy, before we get to, "I would love to go pro se"?  
17 Do you read that colloquy - - - well, let me just - - - is  
18 it that he's saying, my counsel's ineffective; he doesn't  
19 believe I'm innocent; therefore, I don't want him; give me  
20 substitute counsel, or I just don't want him? How do you  
21 read that part of the colloquy?

22 MS. SCHINDLER: Well, he doesn't ask for a new  
23 counsel. He doesn't ask for a substitute counsel. He  
24 certainly makes clear that he doesn't want this person.  
25 He's dissatisfied with this person. But what he doesn't do



1 is then say, and therefore, give me someone else. So you  
2 can certainly make an inference that that might have been  
3 what he was interested in. You can also make an inference  
4 that what he wanted was what he went on to say explicitly,  
5 that he wanted to represent himself instead.

6 But you can't rely on that inference, even if you  
7 believe that what he was looking for was new counsel at  
8 that point in time. You can't rely on an inference over  
9 what he went on to say explicitly and unambiguously, that  
10 he wanted to proceed pro se.

11 CHIEF JUDGE DIFIORE: So Counsel, what deference  
12 do we give to the trial judge here to interrupt the  
13 defendant's demeanors, facial expressions, and things of  
14 that nature, when it's unfolding right in front of the  
15 trial judge? What - - -

16 MS. SCHINDLER: Well, she didn't give us any  
17 information about her reasoning. She simply ignored the  
18 request and moved on to the suppression hearing and shut it  
19 down in no uncertain terms. So she didn't give us the  
20 ability to see if - - - that she was making any kind of  
21 finding. And without any information from her, we have to  
22 take his words at face value because they are - - - they're  
23 plainly in the record.

24 CHIEF JUDGE DIFIORE: Can we infer she didn't  
25 think it was serious?



1 MS. SCHINDLER: We can't infer that, Your Honor,  
2 because she didn't give us any reason for that. But it  
3 also wouldn't have been - - - there was no indication on  
4 the record that would allow us to make that conclusion that  
5 it wasn't serious either. For example, in People v.  
6 LaValle, or La Vi - - -

7 CHIEF JUDGE DIFIORE: Did he tell her he loved  
8 her at one point?

9 MS. SCHINDLER: Yes, and it - - - later on in the  
10 transcript, he did say that. He was a very active self-  
11 advocate throughout this process. But she was required - -  
12 - when it comes to a Constitutional invocation, especially  
13 when the standard is unequivocal, and an unequivocal  
14 statement is made, it needs to be taken at face value. And  
15 it needs to, at least, to the point of begun - - -  
16 beginning an inquiry.

17 And I want to emphasize that the court was not  
18 required to grant a pro se request. The court was required  
19 merely to get to step two. Don't just deny it without any  
20 inquiry whatsoever; you have to do the inquiry. And it  
21 could be that during the inquiry, it comes out that what  
22 he's actually looking for is a new lawyer. And at that  
23 point, you know, maybe he says, well, just give me a new  
24 lawyer and I'll be fine. Then the court is happy - - - is  
25 fine to stop the inquiry. That's similar to what happened



1 in Silburn from 2018 - - -

2 JUDGE WILSON: Could the request have been as  
3 simple as, are you serious? Could - - - for the inquiry?

4 MS. SCHINDLER: It certainly could have. And the  
5 inquiry in Silburn was, you want to represent yourself?  
6 And the defendant's response to that revealed that he  
7 actually didn't want to represent himself. He was looking  
8 for dual representation. And this court held that there  
9 was no further search or - - - searching inquiry needed at  
10 that point. That would have been very acceptable here.

11 Or if - - - the court could have done the full  
12 inquiry, if Mr. Duarte maintained that he did, in fact,  
13 want to represent himself, but the court could have then  
14 concluded after the inquiry that it was not - - - that he  
15 was being too disruptive, or obstreperous, or that he was  
16 being disingenuous or manipulative in making that request.  
17 The court was entitled to, within her discretion, conclude  
18 that, but only after doing the inquiry. And McIntyre was  
19 very clear on that point.

20 The failure to do any inquiry whatsoever was  
21 reversible error.

22 CHIEF JUDGE DIFIORE: Thank you, Counsel.

23 MS. SCHINDLER: Thank you.

24 CHIEF JUDGE DIFIORE: Counsel?

25 MS. CAMPBELL-URBAN: Good afternoon, Your Honors.



1 Jeannie Campbell-Urban for the People of the State of New  
2 York.

3 This court has made very clear that a defendant  
4 cannot use a request for self-representation as leverage to  
5 compel the court to grant its un - - - the defendant's  
6 underlying request for reassignment of assigned counsel.  
7 It's clear from both the immediate context of the  
8 defendant's reference to self-representation, as well as  
9 the record as a whole, that that is what was going on in  
10 this case. And - - -

11 JUDGE WILSON: Well, the trial judge didn't have  
12 the record as a whole, right? The trial judge just had  
13 what was in front of her. She wasn't in the trial part.  
14 She just got this defendant.

15 MS. CAMPBELL-URBAN: That's correct. The - - -  
16 this was the first time that this defendant had appeared  
17 before this particular judge. I would say that the  
18 immediate context that the judge had, just with respect to  
19 interacting with the defendant about what I think is very  
20 obviously his request for substitute counsel, I think told  
21 the court a lot about the defendant and gave her some  
22 context with which she could interpret his subsequent  
23 reference to self-representation. I would also - - -

24 JUDGE RIVERA: But why is that? Why is that?  
25 I'm sorry, here. Happy New Year.



1 MS. CAMPBELL-URBAN: Hi, Happy New Year.

2 JUDGE RIVERA: Well, what - - - so he's  
3 explaining - - - the - - - this colloquy, he's saying my  
4 lawyer is ineffect - - - that's his allegation. And the  
5 judge is saying, no, it doesn't look like it. He continues  
6 on that same point, and then the judge makes it expressly  
7 clear because - - - denies it. There is no actual request  
8 for a substitution, so just denies. And then he tries to  
9 proceed, and she says, stop talking or you can't speak.  
10 And then his next point is, I want to - - - I would like to  
11 go pro se. I mean - - - proceed pro se, excuse me.

12 So it seems to me that there's a been a break  
13 once the court has - - - let's assume you're correct about  
14 the first part, and expressly made a denial on the record  
15 that now we moved on to something else. I just don't see  
16 how it's sort of this one experience. It - - - it's  
17 happening at the same time. I don't deny that. You're  
18 absolutely correct, and it may be moving very fast pace.

19 But you've got a denial, and you've got the judge  
20 saying, you can't speak, and you've got this request. It  
21 strikes me that, at a minimum, the judge should do, at  
22 least what Judge Wilson and counsel are suggesting, and  
23 say, I just want to be clear; are you now saying you want  
24 to go pro se. What - - - isn't - - - I mean, this is a  
25 Constitutional right. Doesn't it make sense that that's





1 the way McIntyre anticipates the court should proceed?

2 MS. CAMPBELL-URBAN: Well, McIntyre requires a  
3 prong 2 inquiry, only if the prong 1 is met, if the - - - a  
4 timely and unequivocal request for self-rep - - -  
5 representation.

6 JUDGE RIVERA: Yes, but I guess I'm asking, if a  
7 judge is not certain or - - - right - - - sort of on its  
8 face, it sounds clear and unambiguous, "I would love to  
9 proceed pro se." But a judge thinks, hm, I'm not so sure  
10 this is really what they mean, isn't that where you should  
11 inquire?

12 MS. CAMPBELL-URBAN: Your Honor - - -

13 JUDGE RIVERA: If on its face - - -

14 MS. CAMPBELL-URBAN: As - - -

15 JUDGE RIVERA: - - - it says that?

16 MS. CAMPBELL-URBAN: If you disagree with me, and  
17 you think that the request is clear and unequivocal, then  
18 yes, there has to be an inquiry. But in as recently as  
19 Silburn, this court has said when the defendant is not  
20 being unambiguous, when he is not being clear, clarifying  
21 questions, in addition to an inquiry, neither of those  
22 things is constitutionally required. And it specifically -  
23 - -

24 JUDGE RIVERA: So what in your view would have  
25 made this record clear? If saying, "I would love to



1 proceed pro se", in your view, is not clear and  
2 unambiguous, what would he have had to say? Let's say that  
3 is really his intent, that is really what he's trying to  
4 request; how would he have expressed that to the court, so  
5 that we all wouldn't be here?

6 MS. CAMPBELL-URBAN: Your Honor, I am willing to  
7 admit that if the defend - - - if this phrase came out of  
8 the mouth of a different defendant who wasn't disruptive,  
9 who hadn't just failed to get substitute counsel, which is  
10 what he really wanted, that it's a much closer question,  
11 with respect to whether the phrase, "I would love to go pro  
12 se", amounts to a clear and unequivocal request that gets  
13 you to prong 2, the inquiry.

14 But in this case, it's - - -

15 JUDGE RIVERA: Yeah, but even in McIntyre - - -  
16 remember McIntyre discusses some of the reasons that might  
17 motivate the defendant to seek to proceed pro se, and one  
18 of them is very obviously dissatisfaction of - - - with  
19 counsel. I mean - - -

20 MS. CAMPBELL-URBAN: Absolutely, but it's not  
21 this case.

22 JUDGE RIVERA: Isn't that usually what happens?  
23 You're un - - - it wouldn't be the rare case - - - I mean,  
24 first of all, you have the rare case where someone wants to  
25 proceed pro se, but okay. The rare case where someone is



1 thrilled with their lawyer's representation, says, but you  
2 know what, I want to do it alone; I don't need legal  
3 training for this.

4 I mean, the reality is, you're unhappy with this  
5 lawyer, and you may have other reasons. And you ask the  
6 court to proceed pro se.

7 MS. CAMPBELL-URBAN: McIntyre absolutely  
8 acknowledges that some defendants definitively commit to  
9 self-representation out of dissatisfaction with their  
10 lawyer. But this court's much more recent cases have  
11 acknowledged that there is a difference between that  
12 situation and a situation where the defendant raises the  
13 specter of self-representation as a means to a different  
14 end. Particularly, LaValle, Gillian, and Kathleen K. all  
15 look at situations where the defendant raises self-  
16 representation as a way to manipulate the court into  
17 granting what he really wants, a new lawyer. That is what  
18 happened - - -

19 JUDGE RIVERA: Yes, but in both cases, it's very  
20 obvious that they are looking for something else. Either  
21 they've already been dis - - - denied the request, and so  
22 they're now saying, well, then I have no choice; I want to  
23 do this, so they're trying to push the envelope on that - -  
24 -

25 MS. CAMPBELL-URBAN: Your Honor, it - - -



1 JUDGE RIVERA: - - - or they - - - or they  
2 present it in the alternative, that you have, in this case,  
3 a denial of the request, and then you've moved on to a  
4 different request.

5 MS. CAMPBELL-URBAN: Well, the defendant - - - I  
6 think the defendant's constant interruptions, his constant  
7 disruptions - - - and again, this is an experienced  
8 criminal defendant with contempt convictions; in fact, one  
9 very - - -

10 JUDGE RIVERA: Yeah.

11 MS. CAMPBELL-URBAN: - - - recent contempt  
12 conviction. You see - - -

13 JUDGE RIVERA: How many constant disruptions, by  
14 the way?

15 MS. CAMPBELL-URBAN: He - - - if you look at the  
16 proceedings before, I think he made, I think, four  
17 appearances where he was present before he appeared before  
18 the trial court.

19 JUDGE RIVERA: Yeah, but we're worried about  
20 before this judge. We're - - -

21 MS. CAMPBELL-URBAN: Oh, I see. I didn't  
22 understand what you meant, I guess.

23 JUDGE RIVERA: What's the disruption before this  
24 judge?

25 MS. CAMPBELL-URBAN: I'm sorry?



1 JUDGE RIVERA: I'm sorry for not being clear. At  
2 the suppression hearing - - - that's the colloquy because  
3 that's when he - - - when - - - that's when he asked - - -  
4 how many times is he disruptive, according to the cold  
5 record?

6 MS. CAMPBELL-URBAN: I - - - she - - - he says,  
7 my lawyer's ineffective; I don't want him representing  
8 anymore.

9 JUDGE RIVERA: Okay.

10 MS. CAMPBELL-URBAN: She says, denied. He tries  
11 to read something into the record. She tells him - - -

12 JUDGE RIVERA: Right.

13 MS. CAMPBELL-URBAN: - - - not to speak. He  
14 tries - - -

15 JUDGE RIVERA: Right.

16 MS. CAMPBELL-URBAN: - - - to speak again, and  
17 that's where - - -

18 JUDGE RIVERA: Yes, that's the point he asked for  
19 - - - to be pro se. So one is - - -

20 MS. CAMPBELL-URBAN: So I think it's - - - I  
21 think it's at least three - - -

22 JUDGE RIVERA: Maybe for one request into  
23 another.

24 MS. CAMPBELL-URBAN: - - - interjections,  
25 subsequent to her denial of the request for substitute



1 counsel.

2 JUDGE WILSON: Okay.

3 MS. CAMPBELL-URBAN: I think that that tells you  
4 that this defendant is - - - has not moved on. He is not  
5 taking no for an answer, and he is looking for a way to get  
6 the court to reconsider its ruling. He's looking for a way  
7 to manipulate the court into granting what he really wants,  
8 which is a new lawyer.

9 And I bring up the experience of the defendant in  
10 the criminal justice system, specifically his contempt  
11 convictions, because I think that also supports this  
12 interpretation of the record. He was not shy in de - - -  
13 in continuing to demand what he wanted, looking for a way  
14 to get it, even in the face of a denial from the court.

15 JUDGE WILSON: Once a defendant expresses  
16 dissatisfaction with counsel, are - - - is there a  
17 different set of words the defendant needs to use, beyond  
18 "I would love to go pro se", to - - - to trigger the  
19 inquiry?

20 MS. CAMPBELL-URBAN: Your Honor, what's required  
21 is a clear and unequivocal request, but what that looks  
22 like, I think, does depend on the circumstances.

23 JUDGE WILSON: I know, but you seem to be saying,  
24 that if the defendant hadn't expressed any dissatisfaction  
25 with counsel, and it just made the request, "I would love



1 to go pro se", you would say, there should be at least an  
2 inquiry at, are you serious; do you really want to do that,  
3 and go from there.

4 MS. CAMPBELL-URBAN: I would ask for more context  
5 if I could know it. What's the tone of the person's voice  
6 and what else was going on, if it wasn't - - -

7 JUDGE WILSON: Yeah, but those are things that we  
8 can't review - - -

9 MS. CAMPBELL-URBAN: Well - - -

10 JUDGE WILSON: - - - right? So we - - -

11 MS. CAMPBELL-URBAN: - - - that's a great point.

12 JUDGE WILSON: But we have to be able to review  
13 these, right? So we have do it on the record that we have.

14 MS. CAMPBELL-URBAN: I - - - that's true.

15 JUDGE WILSON: So - - -

16 MS. CAMPBELL-URBAN: I think that we also - - -

17 JUDGE WILSON: - - - I guess what I'm asking is,  
18 if we have - - - had a record here, in which the defendant  
19 hadn't - - - I - - - I take your view to be that if a  
20 defendant expresses dissatisfaction with counsel, there's  
21 more that the defendant needs to say to be able to trigger  
22 the initial inquiry than if the defendant hadn't said that.

23 MS. CAMPBELL-URBAN: I think that's fair. I  
24 think that's fair.

25 JUDGE WILSON: Okay. So how much more - - -



1 MS. CAMPBELL-URBAN: I think those circumstances  
2 - - -

3 JUDGE WILSON: What words would have worked?

4 MS. CAMPBELL-URBAN: Well, again, I think that's  
5 a difficult question because - - -

6 JUDGE WILSON: Yeah.

7 MS. CAMPBELL-URBAN: - - - it all depends on the  
8 context. I mean, here, you have a defendant who has shown  
9 himself to be disruptive, who has shown himself to be  
10 someone who doesn't really listen to instructions to stop  
11 speaking. I think that the - - - so he's - - -

12 JUDGE WILSON: Those might be good reasons to  
13 deny him self-representation.

14 MS. CAMPBELL-URBAN: I think that - - - I think  
15 that's true, but I also think that that tells you something  
16 about what the defendant is willing to do to accomplish  
17 what he wants. I think that tells you that this defendant  
18 is willing to manipulate the proceedings.

19 JUDGE SINGAS: Counsel, do you think the words,  
20 "I want to go pro se" versus "I would love to go pro se" -  
21 - - do you see a difference there?

22 MS. CAMPBELL-URBAN: I do see a difference, and I  
23 would point out that when the defendant asked to waive a  
24 jury trial, and proceed to a bench trial, he said, I would  
25 - - - he said - - - sorry. He said, I want to do this





1 trial by judge, not jury, please. I do think that there is  
2 a distinction between I would love and I want.

3 JUDGE SINGAS: And do you think there - - -

4 JUDGE WILSON: So when - - - I'm sorry. Go  
5 ahead; go ahead.

6 JUDGE SINGAS: And do you think we should as - -  
7 - ascribe any relevance to the fact that this defendant  
8 never mentioned it again?

9 MS. CAMPBELL-URBAN: I absolutely do. I mean,  
10 look at how - - - look at how much this defendant talked  
11 after making the single reference to self-representation.  
12 He interjected a lot. At one point, he told the judge that  
13 he loved her. He wasn't shy about speaking up. And he  
14 never said a thing about going pro se ever again.

15 I - - - I also - - -

16 JUDGE WILSON: Okay, I - - -

17 MS. CAMPBELL-URBAN: - - - just related to that -  
18 - -

19 JUDGE WILSON: I wrote down the first words that  
20 Ms. Schindler said, which were, "I would like to reserve  
21 two minutes for rebuttal, please." Did you understand it  
22 to be equivocal, or she was asking for two minutes?

23 MS. CAMPBELL-URBAN: That's funny. I must not  
24 have even heard that. Again, I would say, the context  
25 matters. Like, she's the appellant - - -



1 JUDGE WILSON: She's speaking to a court. And -  
2 - -

3 MS. CAMPBELL-URBAN: - - - we know she's asking  
4 for rebuttal.

5 JUDGE WILSON: - - - that's somewhat dif - - -  
6 deferential to say to a court "I would like" because she's  
7 asking for permission, right.

8 MS. CAMPBELL-URBAN: I think that's one way - - -

9 JUDGE WILSON: Just as - - -

10 MS. CAMPBELL-URBAN: - - - to interpret it.

11 JUDGE WILSON: Just as Mr. Duarte was.

12 MS. CAMPBELL-URBAN: I'm sorry?

13 JUDGE WILSON: Just as Mr. Duarte was.

14 MS. CAMPBELL-URBAN: I think that - - - I think  
15 that you are making assumptions about his tone that we  
16 don't know. I think it's just as possible that he was  
17 being flip and sarcastic. I would point you to the fact  
18 that the trial judge chose not to engage with him, which,  
19 as Your Honor said, is an indication that he wasn't being  
20 serious, and that she could tell that from his tone, in  
21 addition to the fact that he had already proven himself to  
22 be disruptive.

23 I just wanted to follow up on the question Your  
24 Honor asked me about the defendant's failure to raise the  
25 subject of self-representation ever again. Just one last



1 thought I wanted to share about that is that the - - - the  
2 fact that the judge chose not to engage with the defendant  
3 means that she didn't actually even ever tell him no. It -  
4 - - you know, to the extent that he was asking to represent  
5 himself, she just said nothing. Especially under those  
6 circumstances, common sense would dictate that if he truly  
7 was committed to self-representation, he would have said  
8 something at some other point, and he never did that.

9 That is just more support for the conclusion that  
10 the trial court correctly interpreted his comment as a  
11 nonserious, flippant remark, and that it was not an  
12 unequivocal request to exercise his Constitutional rights.

13 CHIEF JUDGE DIFIORE: Thank you, Counsel.

14 Counsel, your rebuttal?

15 MS. SCHINDLER: Your Honor, the respondent isn't  
16 - - - is asking you to engage in the exact same mind  
17 reading exercise that she would like trial courts to engage  
18 in when they're confronted with a unambiguous statement on  
19 its face, "I would love to go pro se." You need to make a  
20 lot of inferences and a lot of assumptions that are not in  
21 the record, in order to interpret his request as anything  
22 but what he said.

23 The words, "I would love to go pro se" are - - -  
24 have the same meaning, when they're not accompanied by any  
25 kind of - - - any if, a but, an unless, an if not. When



1           you say I would love to take you out to dinner, you are - -  
 2           - I - - - you are expressing your desire and intent to take  
 3           that person out to dinner, unless you say, if I weren't  
 4           busy tonight, for example. The statements a - - - the  
 5           statement alone, those words alone, are exactly the same as  
 6           saying, I want to go pro se. That request on its own was  
 7           enough, and that - - - the court needed to stop there, in  
 8           terms of engaging in that inquiry, even if it was just a  
 9           single question.

10                       The court didn't have access to anything that  
 11           happened later, so in terms of giving guidance to the trial  
 12           courts on how they need to act when they're confronted in a  
 13           similar situation, they won't have the luxury of reviewing  
 14           the whole record to see, oh, he is going to bring it up  
 15           again; I'm not sure. What they need to do is interpret the  
 16           words that are in front of them, not try to become a mind  
 17           reader to figure out, do you actually mean the words that  
 18           you said or not. The time to do that is during the inquiry  
 19           in prongs 2 and 3.

20                       Thank you.

21                       CHIEF JUDGE DIFIORE: Thank you, Counsel.

22                       (Court is adjourned)

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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 The People of the State of New York v. Vladimir Duarte, No. 9 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers  
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Date: January 15, 2022

