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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 209

TAYDEN TOWNSLEY,

Appellant.

20 Eagle Street
Albany, New York 12207
October 18, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 209? Counsel, would
2 you like any rebuttal time?

3 MR. RUDIN: Two minutes, Your Honor.

4 CHIEF JUDGE LIPPMAN: Okay. Go ahead,
5 counselor.

6 MR. RUDIN: May it please the Court, my
7 name is Joel Rudin, and I represent the defendant-
8 appellant Tayden Townsley. Appellate counsel on the
9 direct appeal raised seven issues that lack any
10 merit. The People did not specifically defend any of
11 them, either in the Appellate Division, in the coram
12 nobis proceeding, or before this court. We believe
13 it was unreasonable for counsel to omit the conflict
14 of interest, ineffectiveness, and prosecutorial
15 misconduct.

16 CHIEF JUDGE LIPPMAN: What's the worst
17 ineffective counsel incident here? What's the worst
18 things of what counsel didn't do?

19 MR. RUDIN: Your Honor, it's hard to
20 choose; there were about seven or eight.

21 CHIEF JUDGE LIPPMAN: Tell me what's the
22 two or three worst instances.

23 MR. RUDIN: One was he failed to object to
24 the prosecutor accusing the defense lawyers and Mr.
25 Townsley of manufacturing a false defense with Simeon

1 Nelson.

2 JUDGE SMITH: If he had made - - - if he
3 had made the objection, he would have - - - wouldn't
4 he have gotten an instruction the jury should
5 disregard that, and that would have been the end of
6 it?

7 MR. RUDIN: Your Honor, it's conceivable he
8 might have gotten that instruction. I mean, to
9 disregard it once it - - -

10 JUDGE SMITH: I guess, is the - - - I under
11 - - - granting that the prosecutor's argument was
12 obnoxious and improper, is he really clearly saying
13 the defense lawyers suborned perjury, or is he just
14 being a little snide about the defense lawyer doing
15 his job?

16 MR. RUDIN: Your Honor, he went on for five
17 pages of cross-examination, initially trying to get
18 Mr. Townsley to acknowledge that he met with Simeon
19 Nelson in the jail to manu - - - to get his approval
20 for - - -

21 JUDGE SMITH: Well, he clearly - - - he
22 clearly suggested that Townsley was suborning
23 perjury, but that's different.

24 MR. RUDIN: He - - -

25 JUDGE SMITH: Did he clearly suggest the

1 lawyers were doing it with him?

2 MR. RUDIN: Well, he immediately followed -
3 - - after Mr. Townsley - - - he immediately segued
4 into an extensive cross-examination about whether Mr.
5 Townsley had a get together with Simeon Nelson and
6 his attorneys that lasted for an hour and a half.
7 And every time he denied it, he asked the question
8 again.

9 And then on summation, he made the point
10 crystal clear. He said that Mr. Townsley and his
11 lawyers had their little secret meeting, their little
12 get together, and then he ridiculed the Legal Aid
13 attorney for failing to testify to the argument he
14 made as an unsworn witness.

15 JUDGE SMITH: He said they had a little
16 secret meeting. He said they wanted him to help
17 their boy, but isn't that just a pejorative way of
18 saying they did what any competent defense lawyer
19 does: you meet with a potential witness and you see
20 if he's got helpful testimony?

21 MR. RUDIN: No, Your Honor. They accused
22 Mr. Townsley during cross-examination of having met
23 with Simeon Nelson to manu - - - to get his approval
24 for a false defense, and then said that the - - - his
25 lawyers had set up the meeting, they met for an hour

1 and a half, for the purpose of getting his approval -
2 - -

3 JUDGE SMITH: They asked questions, of
4 which they'd asked "Didn't that happen?"

5 MR. RUDIN: He went - - - he certainly
6 acted like he knew it had happened.

7 JUDGE SMITH: Um-hum.

8 MR. RUDIN: And then in his summation he
9 said they didn't know - - - "what they didn't know is
10 that I went out and found out about their little
11 secret meeting on April 25th." Now, he's - - -

12 JUDGE SMITH: But is that - - - I mean, I
13 think it's an improper argument, but is it really the
14 equivalent of something like what happened in U.S. v.
15 Fulton, where what happened was that the - - - some -
16 - - a witness testified that he'd bought cocaine for
17 the defense lawyer. Doesn't that create a much more
18 awkward situation for the defense lawyer, than this
19 sort of rather snide name calling in the summations?

20 MR. RUDIN: Well, Your Honor, this was a
21 murder trial. Mr. Townsley is on trial for,
22 essentially, the rest of his life. And this
23 prosecutor, the elected District Attorney of Sullivan
24 County, spends five pages accusing him of attending a
25 meeting set up by his lawyers that went on for an

1 hour and a half where the purpose of the meeting - -
2 - - -

3 JUDGE SMITH: I mean, I grant you that the
4 prosecutor shouldn't have done it, but is he really
5 putting the lawyer in such an awkward, ethical posi -
6 - - the lawyer says, oh, now I've been accused of
7 suborning perjury; I have to get my own counsel; I
8 can't do my job for my client. Is it really that
9 kind of situation?

10 MR. RUDIN: Well, the implication of what
11 the District Attorney was charging was that he had
12 suborned perjury, because the whole defense was
13 presented through Tayden Townsley. The purpose of -
14 - - the individual who was present at that meeting
15 with the lawyers when the defense was manufactured.

16 JUDGE SMITH: It doesn't quite say, though
17 - - - he doesn't really say the defense lawyer
18 suborned - - - he said the defense lawyer was trying
19 to get testimony that helped their client. But
20 that's what you do all the time, right?

21 MR. RUDIN: No, he said that the defense
22 lawyers essentially set up a meeting that lasted for
23 an hour and a half in the jail for the purpose of
24 getting this individual's approval or consent to put
25 on a false defense that he, rather than Tayden

1 Townasley, was the murderer.

2 And then when defense counsel addressed it
3 as an unsworn witness in summation, which he was put
4 in the position of having to do. Once the District
5 Attorney made the point to the jury that the two
6 defense lawyers were present at this meeting, where
7 this fraudulent activity occurred, he had to comment
8 on it.

9 JUDGE SMITH: All he - - - all he really
10 proved on cross-examination is he proved that the
11 defense lawyers had a meeting with Nelson. That's
12 not against the law.

13 MR. RUDIN: No, but it - - -

14 JUDGE SMITH: That's not suborning perjury.

15 MR. RUDIN: But the obvious - - -

16 JUDGE SMITH: And he's making a legitimate
17 argument. Look - - - and it's in response to a
18 missing witness argument. The defense lawyer is
19 saying, "Where is Nelson? Nelson's a missing
20 witness." And the prosecutor is saying, "You talked
21 to him for an hour and a half. If you had anything
22 good, you'd have him in here."

23 MR. RUDIN: But that's not what happened,
24 Your Honor. That was only part of it. What happened
25 was that he accused Townsley of attending this

1 meeting for an hour and a half for the purpose of
2 getting approval to put on a false defense. Townsley
3 then was the only witness who testified for the
4 defense and put forward that so-called false defense.
5 The defense lawyers then - - - the defense lawyer
6 then in his summation gave - - - as an unsworn
7 witness - - - gave his account of what he was doing.
8 He - - -

9 JUDGE SMITH: "I was trying to find the
10 real killer."

11 MR. RUDIN: That's right. And I was trying
12 to confront this individual. So then the prosecutor
13 got up - - - the District Attorney of Sullivan County
14 - - - and said that you the jury should disregard
15 this, because if he had anything to say to help his
16 client, he would have testified.

17 JUDGE SMITH: Well - - -

18 MR. RUDIN: The issue couldn't be clearer.

19 JUDGE GRAFFEO: The trial attorney didn't
20 object, correct?

21 MR. RUDIN: That's correct.

22 JUDGE GRAFFEO: And then the appellate
23 attorney, I think in the 440 motion, indicated that
24 he or she didn't see the conflict when they were - -
25 -

1 MR. RUDIN: No.

2 JUDGE GRAFFEO: - - - working on the
3 appellate brief.

4 MR. RUDIN: I don't believe that was in the
5 affidavit. I think that may be in the People's
6 brief, but - - -

7 JUDGE SMITH: That he didn't perceive the
8 issue?

9 MR. RUDIN: He said that - - - no, not the
10 - - - he didn't advise Mr. Townsley about the issue
11 and neither did the court.

12 CHIEF JUDGE LIPPMAN: Counselor, what are
13 the other egregious errors you want to point out?

14 MR. RUDIN: Call - - -

15 CHIEF JUDGE LIPPMAN: You don't have that
16 much time left.

17 MR. RUDIN: Calling Mr. Townsley on seven
18 or eight occasions a liar. That he had fabricated
19 his defense, which of course, fits into the conflict
20 issue that I've been addressing. Repeatedly
21 ridiculing him as an altar boy, when he had never set
22 himself up as an altar boy. Ridiculing his
23 appearance in court in a suit and claiming that
24 because he was dressed in a suit, he was trying to
25 bamboozle the jury.

1 Ridiculing his relationship with his child
2 and saying that the person who had such a
3 relationship with his child - - - how can you say he
4 didn't have a gun, when look at this kind of person
5 that he is. Exaggerating his drug involvement and
6 saying he's more - - - making more money than the
7 people on the jury. And claiming that he was at the
8 top echelon of the drug conspiracy, when - - -

9 CHIEF JUDGE LIPPMAN: What about talking to
10 the jury about not going through the elements of the
11 crime, if they believe the People's witnesses? How
12 serious is that?

13 MR. RUDIN: That was very serious, Your
14 Honor. He instructed the jury "not to" - - - he
15 explicitly said, you should - - - with all due
16 respect to the court, you do not have to follow the
17 court's legal instructions about the elements of the
18 offense, because all that matters is whether Tayden -
19 - - you believe Tayden Townsley had a gun.

20 CHIEF JUDGE LIPPMAN: So is it your
21 argument that all of this had a cumulative affect
22 that denied your client a fair trial?

23 MR. RUDIN: Yes, Your Honor. Comparing
24 this - - -

25 JUDGE GRAFFEO: The totality of

1 circumstances is the prism through which we review
2 this?

3 MR. RUDIN: Totality of the - - - well,
4 your court can look at a single isolated error that
5 so egregious, or it can look at the totality of the
6 failures of defense counsel and whether that denied
7 Mr. Townsley a meaningful defense.

8 I - - - the lawyer - - - the prosecutor
9 compared Mr. Townsley's lack of the - - - the lack of
10 evidence of motive in this case to the lack of
11 evidence of motive in the Oklahoma City bombing case,
12 that had occurred one week before.

13 As Chief Judge Lippman pointed out, he
14 directed the jury to ignore the court's charge on the
15 elements when there certainly could have been - - -
16 the jury could have found that Mr. Townsley had a
17 gun, but someone else also had a gun.

18 JUDGE SMITH: But what was it that he said
19 in telling the jury to ignore the court's charge?

20 MR. RUDIN: I'm sorry?

21 JUDGE SMITH: What was it exactly that he
22 said when he told the jury to ignore the court's
23 charge?

24 MR. RUDIN: He said, with all due respect
25 to the court, you don't have to pay any attention to

1 the elements in this case - - - and that with the
2 court's charge regarding the elements - - - because
3 all that matters is that Tayden Townsley had a - - -

4 JUDGE SMITH: Well, in context, couldn't
5 that just have meant there's only one thing you could
6 possibly have any doubt about, and all the others are
7 not really in dispute? If he said it that way, it
8 would have been a fair argument, right?

9 MR. RUDIN: Yeah, but that's not what he
10 said. He said ignore the court's charge. He said -
11 - - it was a misleading argument, because there were
12 issues in the case besides whether or not Tayden
13 Townsley had a gun. There was the question of
14 whether or not there was another gun present. He
15 could have had a gun too. He could have fired a shot
16 outside the apartment. Someone else could have fired
17 a shot inside the apartment.

18 JUDGE SMITH: It's not an unfair argument
19 to say - - - maybe you could disagree with it - - -
20 but it's surely not an unfair argument to say, ladies
21 and gentlemen, this whole - - - forget everything
22 else - - - this whole case turns out whether this guy
23 had a gun or not.

24 MR. RUDIN: He can make - - -

25 JUDGE SMITH: That's - - - I mean, nothing

1 - - - a prosecutor's allowed to say that.

2 MR. RUDIN: A prosecutor - - - yes, a
3 prosecutor's allowed to do that. A prosecutor's also
4 allowed to argue that the defendant's testimony isn't
5 credible. But it's - - - you're not allowed to argue
6 over and over and over again that he's a liar and a
7 fabricator and you should reject everything out of
8 hand, and rile up the jury in that way. This - - -
9 courts have said that on numerous occasions. And it
10 was ineffective for appellate counsel to not rely on
11 that law and make an argument that would have been
12 far stronger than the ridiculous arguments that he
13 made.

14 CHIEF JUDGE LIPPMAN: Okay, counselor.
15 You'll have your rebuttal.

16 MR. RUDIN: Thank you.

17 CHIEF JUDGE LIPPMAN: Let's hear from your
18 adversary.

19 MS. MITZNER: Good afternoon, Your Honors.
20 May it please the court, my name is Bonnie Mitzner
21 and I represent the People of the State of New York
22 in this - - -

23 CHIEF JUDGE LIPPMAN: Counsel, is there an
24 accumulation of egregious behavior on the part of the
25 prosecutor?

1 MS. MITZNER: No, there isn't, Your Honor,
2 because if you look - - -

3 CHIEF JUDGE LIPPMAN: There are certainly -
4 - - I think you would admit - - - a lot of instances
5 where the prosecutor crossed over the line.

6 MS. MITZNER: There are some, Your Honor,
7 and as I acknowledged in my brief there were some
8 comments that we would have preferred not to have
9 been said, but - - -

10 CHIEF JUDGE LIPPMAN: Why isn't the total
11 effect of those instances - - - the ones that you
12 acknowledge, and certainly there are lots of things
13 that are questionable here - - - why isn't the
14 cumulative effect that defendant can't get a fair
15 shake?

16 MS. MITZNER: Well, because - - -

17 CHIEF JUDGE LIPPMAN: This is all about
18 making sure that everyone has their day in court,
19 right?

20 MS. MITZNER: Because if you look at the
21 total record, you'll see that Mr. Townsley received a
22 fair trial.

23 JUDGE PIGOTT: Well, you had him - - - you
24 know, there was a pretty strong case against him. I
25 guess you got three eyewitnesses. But was there a

1 good-faith basis for the questioning with respect to
2 a lawyer who has a right to meet with his client, and
3 meet with - - - and if the witness happens to be in
4 jail too, without implying that they were trying to
5 concoct a defense, that they were trying to get
6 Simeon to say it was someone else that committed the
7 murder?

8 MS. MITZNER: If you look at the record - -
9 -

10 JUDGE PIGOTT: No, was there a good-faith
11 basis for that?

12 MS. MITZNER: I think there's a good-faith
13 basis, but if you look at the record, that's not what
14 happened. What happened during the cross-
15 examination, and it goes to issues of credibility - -
16 -

17 JUDGE PIGOTT: "But we know that Nelson
18 would come down here and say that the defendant
19 committed the murder. We know that Nelson would say
20 there's no stipulation about that. But what they
21 didn't know is that I went and I found about their
22 little secret meeting." I am amazed that the lawyers
23 are shooting each other this way.

24 "The defendant didn't know I knew. And he
25 tried to backtrack and tried to get - - - and he got

1 flustered and now the defense lawyer told you it's
2 his duty and obligation to try to talk to the real
3 killer. Is there any testimony about anyone in this
4 trial that they spoke to Nelson and confronted him?
5 No. No lawyer for Legal Aid got on the stand and
6 testified.

7 MS. MITZNER: Right, that's in summation.

8 JUDGE PIGOTT: Is there a good-faith basis
9 for any of that? I mean, because you've got to go
10 see - - - you've probably seen enough motions in your
11 own - - - you know, where they say my lawyer never
12 came to see me.

13 MS. MITZNER: Right.

14 JUDGE PIGOTT: Now, is it true that in
15 Sullivan County, if you do that, you do that at your
16 client's peril? That the District Attorney's going
17 to be advised that you're meeting with your client,
18 and that what you're probably trying to do is have
19 this secret little meeting so that, you know, you can
20 concoct a defense?

21 MS. MITZNER: No, Your Honor. But if you
22 look at the testimony on - - - Mr. Townsley's
23 testimony on cross-examination where this all came
24 up, you'll see that the District Attorney was
25 questioning him on issues of credibility, because - -

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JUDGE PIGOTT: But stick with me on this.

I - - -

MS. MITZNER: But you have to see how this

- - -

JUDGE PIGOTT: I'm looking at - - -

MS. MITZNER: Yeah.

JUDGE PIGOTT: I'm looking at what
attorneys do to each other.

MS. MITZNER: Right, but you have to see
how this came up.

JUDGE PIGOTT: Let's assume you're
absolutely right. Let's assume it came up the way
you want to say it came up. Should the District
Attorney - - - let's put it in Erie County - - -

MS. MITZNER: Okay.

JUDGE PIGOTT: - - - say I know that Judge
Pigott talked to my opponent. Now, I don't know what
it was about. Maybe they were talking about a civil
case or something. But on summation, I'm going to
say, by the way, I want you to know that this lawyer
was meeting with an appeals judge. And doesn't that
tell you that he probably expects to get convicted,
and therefore, you know, this case is over?

MS. MITZNER: Not the - - - those comments

1 that the District Attorney made were in direct
2 response to Legal Aid's - - - trial attorneys can't
3 test - - - in summation where he essentially then
4 gave an explanation for why he had this meeting.

5 JUDGE PIGOTT: And isn't that the argument
6 that he had - - - I think Mr. Rudin makes the point -
7 - - he had to make himself an unsworn witness.

8 MS. MITZNER: He didn't have to.

9 JUDGE PIGOTT: Well.

10 MS. MITZNER: He chose to.

11 JUDGE PIGOTT: Let me finish my sentence.
12 He had to make himself an unsworn witness because the
13 District Attorney accuses him and his client of
14 meeting, imagine that, to create a defense, as if
15 somehow - - -

16 MS. MITZNER: But - - -

17 JUDGE PIGOTT: - - - this is a mortal sin,
18 and so now, he - - - the defense - - - the lawyer
19 says I've got to somehow make this look like I'm not
20 some kind of a shyster that's only trying to suborn
21 perjury. So he testifies in - - - I think we talked
22 about this before - - - he testifies in his
23 summation, you know, as to what it was, which sets up
24 the DA to now say, see what a bunch of jerks these
25 people are? They are a bunch of perjurers.

1 MS. MITZNER: But if you go back to look at
2 the - - - where the testimony was, the District
3 Attorney never said that about the lawyers. If you
4 look at the testimony, the cross-examination, it's
5 very clear that Mr. Townsley was not responsive to
6 the questions. The questions were, and he was trying
7 - - - what the District Attorney was trying to do was
8 bring out credibility issues.

9 JUDGE PIGOTT: "Did you have a conference
10 with Simeon Nelson and your lawyers?"

11 MS. MITZNER: Right. Because if you look
12 at the testimony before that, he was not answering
13 the questions. He kept saying "Meeting? I don't
14 understand what you're talking about a meeting?"

15 CHIEF JUDGE LIPPMAN: "My lawyer came to
16 speak with me" - - - "My lawyer came to speak with
17 me, but I had not spoke to Nelson. They had spoke to
18 him. When I came down, he had left.
19 "Q. Let's go over it again."

20 I mean - - -

21 MS. MITZNER: Right, because he wasn't
22 answering the question.

23 JUDGE PIGOTT: No, but you didn't - - - all
24 right, I'll leave you alone.

25 MS. MITZNER: No, no, no, I - - -

1 JUDGE SMITH: Doesn't all this originate
2 though from a missing witness argument, that is - - -
3 isn't the whole context the defense lawyer saying,
4 why haven't they called Nelson? Nelson was there.

5 MS. MITZNER: Well, they did. He did. He
6 did argue it - - -

7 JUDGE SMITH: He made that argument and
8 that - - -

9 MS. MITZNER: - - - that the People had
10 some obligation.

11 JUDGE SMITH: As I see the chain, it starts
12 from the defense saying, where's Mr. Nelson? Then
13 the prosecution saying - - - maybe they said it the
14 wrong way and a little over aggressively - - - they
15 said "Well, look, the defense lawyer's met with
16 Nelson. If he had anything good to say, we'd be
17 hearing about it."

18 MS. MITZNER: Correct, Your Honor. That's
19 exactly what he was saying.

20 JUDGE SMITH: I mean, that's - - - I mean,
21 it seems to me that if the prosecutor had said just
22 that - - - but he did go quite a bit beyond that,
23 didn't he?

24 MS. MITZNER: He did go beyond that, but
25 not to the point where - - -

1 JUDGE SMITH: I mean, you're not - - -
2 you're not supposed to - - - when, I mean - - - these
3 Legal Aid lawyers, it's obvious to people who know
4 what they're - - - who know this area, they were just
5 doing an honest job. That's true, isn't it?

6 MS. MITZNER: And there's - - - absolutely.
7 And there's no claim that they didn't - - -

8 JUDGE SMITH: And wasn't it really wrong
9 for the prosecutor to suggest there's something wrong
10 with what they were doing?

11 MS. MITZNER: I don't think he suggested
12 there was something wrong with what they were doing.

13 JUDGE SMITH: "I found out about their
14 little secret meeting." That sounds like a polite
15 way of talking about your adversary?

16 MS. MITZNER: Well, as I said, I would have
17 preferred that he not refer to it that way, but
18 again, it all went back to credibility issues where
19 Mr. Townsley took the stand and testified that even
20 though he was in jail for months with the person that
21 he claimed actually committed not only the murder a
22 of sixteen-year-old victim, the execution of the
23 victim, but the sec - - - assaulting and shooting the
24 second victim, with the real killer, and never
25 discussed the case with him. And the District

1 Attorney was - - -

2 JUDGE PIGOTT: What was your point? That
3 he should have discussed the case with him - - -

4 MS. MITZNER: No, it was - - -

5 JUDGE PIGOTT: - - - or that he shouldn't
6 have discussed the case with him?

7 MS. MITZNER: The point was that - - -

8 JUDGE PIGOTT: Or is it irrelevant?

9 MS. MITZNER: It wasn't irrelevant. It
10 goes to credibility, whether it is highly unlikely
11 that someone who's innocent, who's in jail because
12 somebody else committed the murder, and you're in
13 jail with that person, and that you're never going to
14 say anything to him, like, I'm in jail because of
15 you.

16 JUDGE PIGOTT: So, you're saying - - -
17 well, never mind, okay.

18 MS. MITZNER: I mean, that was - - -

19 JUDGE PIGOTT: How big is the Sullivan
20 County jail? I know - - - I'm just - - - I'm amazed
21 at the way you treat each other in Sullivan County,
22 and I'm surprised that the elected District Attorney
23 would say, do you realize that this guy met with his
24 client? Can you believe that? He met with his
25 client. And you know what? I found out about it.

1 And I think if the defense lawyer had said, by the
2 way, do you know the District Attorney met with the
3 police and they talked about all the testimony that's
4 coming in, you'd be off the ceiling.

5 MS. MITZNER: Your Honor, I don't believe
6 that that's the way it came out. And that's why I
7 asked you to look at the transcript - - -

8 JUDGE PIGOTT: All I got is the record, so
9 I don't know.

10 MS. MITZNER: Well, you have the record.
11 And if you look at the record, the way that whole - -
12 - the District Attorney was questioning Mr. Townsley
13 about his being in the same jail with the same person
14 that he was accused - - - he was now testifying
15 actually committed the murder - - -

16 JUDGE PIGOTT: We've got 600 in Attica. I
17 don't know if they talk to each other or not. And I
18 don't think that if you've got two of them that were
19 involved in the same type of a transaction that they
20 did or did not talk to them is in any way relevant -
21 - -

22 MS. MITZNER: But Mr. - - -

23 JUDGE PIGOTT: - - - as to whether or not
24 when he gets - - -

25 MS. MITZNER: But Mr. Townsley did say he

1 saw this person a lot. He saw Simeon Nelson, that
2 when he was now accused, claiming - - -

3 JUDGE PIGOTT: Did you ask him?

4 MS. MITZNER: But he testified that he did
5 see him a lot.

6 JUDGE PIGOTT: You asked him?

7 MS. MITZNER: That he spoke to him a lot,
8 and it is a question of whether it is reasonable that
9 a person - - -

10 JUDGE SMITH: His testimony was that his
11 lawyers had instructed him not to discuss the case,
12 and therefore he didn't.

13 MS. MITZNER: Correct.

14 JUDGE SMITH: And you say you're entitled
15 to raise doubts about the credibility of that.

16 MS. MITZNER: Correct.

17 JUDGE SMITH: But that's one thing. But
18 you did - - - wasn't bringing the lawyers into it,
19 and making them sound like they're part of some sort
20 of wrongdoing - - -

21 MS. MITZNER: I believe that if you look at
22 the transcript, it was trying to pinpoint when this
23 meeting took place, because if you look at the
24 defendant's testimony, he kept trying to disassociate
25 himself, and say, we didn't have a meeting; I don't

1 know what you mean by a meeting.

2 JUDGE SMITH: Well, the prosecutor's
3 question suggested that he thought that the lawyers
4 and Nelson and Townsley had all met together, right?

5 MS. MITZNER: Correct.

6 JUDGE SMITH: Which the defendant denied.

7 MS. MITZNER: The defendant - - -

8 JUDGE SMITH: And there's absolutely no - -
9 - and as far as we know his denial's perfectly
10 accurate about that. There's no reason to doubt it.

11 MS. MITZNER: No, but if you look at the
12 way it was questioned, because Townsley would not
13 acknowledge that there was in fact a meeting, that he
14 in fact met with Nelson, and had a conversation with
15 Nelson - - -

16 JUDGE SMITH: In the lawyer's presence?

17 MS. MITZNER: The District Attorney then
18 was referring to a specific day, and he gave him the
19 date and the time, and he said with your attorneys.
20 "With your attorneys" was to try to frame when this
21 conversation was. There's nothing in the record that
22 shows that the District Attorney was attacking - - -

23 CHIEF JUDGE LIPPMAN: Okay, counselor.

24 MS. MITZNER: - - - defense counsel.

25 CHIEF JUDGE LIPPMAN: Thank you, counselor.

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MS. MITZNER: Thank you.

CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

MR. RUDIN: Your Honor, I have no rebuttal
unless the Court has any questions.

CHIEF JUDGE LIPPMAN: Any questions?

Okay, counsel, thanks.

MR. RUDIN: Thank you.

CHIEF JUDGE LIPPMAN: Appreciate it.

(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 PEOPLE V. TAYDEN TOWNSLEY, No. 209 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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