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COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

FREDERIC BADJI,

Appellant.

NO. 7

20 Eagle Street
Albany, New York
January 6, 2021

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

HAROLD V. FERGUSON, JR., ESQ.
THE LEGAL AID SOCIETY
Attorney for Appellant
199 Water Street
5th Floor
New York, NY 10038

MICHAEL J. YETTER, ADA
NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
One Hogan Place
New York, NY 10013

Penina Wolicki
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is The People of the State of New York
3 v. Frederic Badji, appeal number 7.

4 (Pause)

5 CHIEF JUDGE DIFIORE: Good afternoon, counsel.
6 This is appeal number 7, The People of the State of New
7 York v. Frederic Badji. Counsel?

8 JUDGE FEINMAN: Mr. Ferguson, you're muted.

9 MR. FERGUSON: Sorry, I had to unmute myself. I
10 thought - - - I thought it was going to be done
11 automatically.

12 Good afternoon, Your Honors. Harold Ferguson for
13 appellant, Frederic Badji. We'd ask for two minutes in
14 rebuttal in this particular case.

15 CHIEF JUDGE DIFIORE: You may, sir.

16 MR. FERGUSON: This case presents this court with
17 the opportunity to remedy the jurisdictional split between
18 the First and Second Department on whether or not for grand
19 larceny of a credit card, one needs to have the physical
20 card, or simply the numbers on the card.

21 We believe that the analysis done by the Second
22 Department in Luis C. is the correct analysis and that when
23 the legislature added 511-a to the General Business Law,
24 they did not cross reference that to the penal law.

25 And in fact, when the sponsor of that particular



1 legislation made, in his memorandum, he stated that Section
2 511-a, as created in the General Business Law, provided
3 that only for the purposes of the General Business Law, the
4 term "credit card" shall also mean any number assigned to a
5 credit card.

6 It does not - - -

7 JUDGE GARCIA: Chief - - - Chief Judge, if I
8 might ask a question?

9 CHIEF JUDGE DIFIORE: Judge Garcia.

10 JUDGE GARCIA: If they, instead of creating this
11 511-a, had put this language in 511 as a separate sub-
12 paragraph, let's say 14 or whatever they're up to there,
13 you would agree, then it would apply?

14 MR. FERGUSON: Absolutely, Your Honor.

15 JUDGE GARCIA: Okay, let's - - -

16 MR. FERGUSON: That - - - what you had - - -

17 JUDGE GARCIA: - - - but let me take that - - -

18 MR. FERGUSON: - - - that it wasn't the - - -

19 JUDGE GARCIA: - - - a step further, then.

20 MR. FERGUSON: Okay.

21 JUDGE GARCIA: So let's say the criminal law, the
22 larceny statute, cross-references five - - - in that case,
23 where they've dropped it in as (14), 511-a(1), would it
24 apply?

25 MR. FERGUSON: If the - - - you mean if the penal



1 law included - - -

2 JUDGE GARCIA: Right.

3 MR. FERGUSON: - - - 511-a(1)? Absolutely.

4 JUDGE GARCIA: It would.

5 MR. FERGUSON: But it doesn't. But it doesn't.

6 JUDGE GARCIA: Even though it specifies 511-a(1)
7 and the new language is in 511-a(14), your view would be,
8 in that case, you would use the expanded definition of
9 credit card?

10 MR. FERGUSON: Yes, because that would be an
11 amendment to 511, not a separate and distinct statute.

12 JUDGE GARCIA: But that - - -

13 MR. FERGUSON: Remember - - -

14 JUDGE GARCIA: - - - separate and distinct
15 statute says it applies to the Article. So I'm having some
16 trouble seeing the difference between dropping that
17 language as a subsection in 511, with a specific reference
18 in the penal law to 511-a(1) and dropping it into a
19 different section number, 511-a. It seems to me it's just
20 defining a sub-term in 511-a(1).

21 MR. FERGUSON: No, because it says in 511-a, for
22 purposes of this Article, credit card - - -

23 JUDGE GARCIA: And what does that mean?

24 MR. FERGUSON: It means Article 29(a), which
25 references the General Business Law. It does not cross-



1 reference it to Title J.

2 JUDGE GARCIA: But aren't we - - -

3 MR. FERGUSON: Re - - -

4 JUDGE GARCIA: - - - getting into a very strange
5 area, then, because - - -

6 MR. FERGUSON: No, no - - -

7 JUDGE GARCIA: - - - they're referencing in the
8 penal law this definition, and that definition has sub-
9 definitions, in a way. But what you want to do is limit
10 the cross-reference without the sub-definition. And that -
11 - -

12 MR. FERGUSON: Your Honor - - -

13 JUDGE GARCIA: - - - strikes me as leading down a
14 somewhat strange road.

15 MR. FERGUSON: No, it's not a strange road,
16 because remember, all of this is happening in 2002. At the
17 same time that the General Business Law adds this section,
18 at that same time, they - - - these legislature also
19 created a series of penal law provisions directly dealing
20 with the situation presented in Mr. Badji's case.

21 Specifically, Penal Law 190.81 says a person is
22 guilty of unlawful possession of personal identification
23 information in the third degree when he - - - when he or
24 she knowingly possesses and then references the numbers on
25 the credit card.



1 Here, what you had simply - - -

2 JUDGE STEIN: Judge, may I - - -

3 MR. FERGUSON: - - - was - - -

4 JUDGE STEIN: - - - may I inquire?

5 CHIEF JUDGE DIFIORE: Judge Stein.

6 MR. FERGUSON: Yes, Your Honor.

7 JUDGE STEIN: But so 190.81 is clearly a
8 possession statute, right? And we're talking about theft.

9 My - - - my concern - - - my problem is, is that
10 I think we're creating this difference in - - - in various
11 types of crimes throughout the penal law, whether they're
12 possession crimes or theft crimes, and we're just leaving
13 this one out, which just isn't consistent with what I
14 understood and what I think we previously said was the
15 purpose of the amendments, which was to recognize that a
16 lot of these crimes are taking place without actually
17 getting hold of the actual credit card.

18 So I - - - I think it just - - - my concern is
19 that it leaves - - - it leads to a lot of inconsistencies,
20 and it doesn't reflect the fact that possession is
21 different from theft.

22 MR. FERGUSON: Your Honor, but the reality is
23 that when you have the number alone, and use it, that's the
24 theft. We have that. The possession of it, knowing that
25 you're going to use it, that's criminalized in 2002.



1 What you have here is that in reality the
2 legislature poorly drafted 511-a, and when you look at the
3 sponsor's memorandum, it's - - - it can't be more specific
4 than what the sponsor said, that it only refers to the
5 General Business Law. It does not apply to anything else.

6 And since all of these things are being done
7 contemporaneously - - -

8 JUDGE STEIN: But - - - but 511 says that as
9 well, right?

10 MR. FERGUSON: 511 -- - 511 refers to tangible
11 property. This talks about credit card - - -

12 JUDGE STEIN: No, no, no.

13 MR. FERGUSON: - - - as a - - -

14 JUDGE STEIN: 511 says for - - - only for
15 purposes of General Business Law, and 511 is included in
16 Article 22, when 511-a says that it is only for purposes of
17 - - - of the General Business Law. So it - - - the cross -
18 - - the - - - the multiple cross-references there or
19 inclusions there, I think, make your - - - your argument a
20 little difficult.

21 MR. FERGUSON: I - - - I - - - I respectfully
22 disagree, Your Honor, because again, you have to look at
23 what's going on contemporaneously in 2002. And that is
24 that the legislature is comprehensively trying to deal with
25 these problems.



1 And if they had wanted to, they simply could have
2 amended the penal law as it related to theft of a credit
3 card to cross-reference 511-a. They don't do that.

4 Instead they - - -

5 JUDGE RIVERA: Judge, if I could ask a question?

6 MR. FERGUSON: - - - added - - -

7 JUDGE RIVERA: If I may ask a question?

8 CHIEF JUDGE DIFIORE: Yes, Judge Rivera.

9 JUDGE RIVERA: So counsel, I just want to be
10 clear. Under your interpretation of these various sections
11 and the - - - and the statutes - - - these various statutes
12 at play here, what could a person who steals the card and
13 then uses the card be charged with?

14 MR. FERGUSON: The person who steals the card and
15 uses the card is charged with the theft of the card and
16 also the use of the card. It's our position that if a
17 person - - -

18 JUDGE RIVERA: I'm sorry. So just to be clear,
19 before you move on.

20 MR. FERGUSON: Right.

21 JUDGE RIVERA: I'm sorry. But just to be clear -
22 - -

23 MR. FERGUSON: Okay.

24 JUDGE RIVERA: - - - I just want to understand
25 this. So they would be liable under - - - they would be



1 criminally liable or - - - or could be prosecuted under
2 both the larceny statutes as well as the identity theft,
3 the personal identifying information statutes? Is that
4 your position?

5 MR. FERGUSON: Abso - - - absolutely, Your Honor.

6 JUDGE RIVERA: Okay. So they could be liable for
7 different kinds of felonies, as - - - and depending on the
8 facts, maybe only a misdemeanor on the unlawful possession
9 of - - - of the personal identifying information, i.e., the
10 credit card number?

11 MR. FERGUSON: That's correct, Your Honor.

12 JUDGE RIVERA: Okay. I'm sorry; I interrupted
13 you. I don't know if you wanted to add to - - -

14 MR. FERGUSON: And that - - - and again - - - and
15 again, because - - - because they're dealing with this all
16 at the same time, and they certainly could have - - - it -
17 - - it's a problem of drafting.

18 Here, the legislature had the opportunity to
19 cross-reference it to Title J. They did not. They did not
20 cross-reference it to the penal law. The penal law refers
21 to 511. They didn't - - - they did not amend the penal law
22 to say that it covers 511-a.

23 Therefore, it's our position that this situation,
24 possessing simply the numbers, is not, in and of itself, a
25 criminal offense.



1 JUDGE FAHEY: Can - - - can I just follow up on
2 that point, Mr. Ferguson?

3 MR. FERGUSON: Yes, Your Honor.

4 JUDGE FAHEY: Judge is that all right? Thank
5 you.

6 I guess what I'm struggling with is the logic of
7 the position, maybe on both sides.

8 It seems to me that a plastic card without
9 numbers on it is not a credit card. However, I can go on
10 the internet just using my numbers and buy anything I want
11 up to my credit limit.

12 And that the - - - the exercise - - - the
13 essential element, the sine qua non, to quote our Latin
14 teachers, is the number on the credit card. And - - - and
15 the use of that number seems to me, to be the criminal act
16 - - - the - - - the act of theft. And - - - and the
17 possession of that number is also what constitutes
18 possession for purposes of "knowingly possess".

19 I guess the - - -the question has to be is it
20 essential that you have both the plastic card and the
21 number to be charged with the crime, because it is not
22 essential for - - - as we all know, to use that number in a
23 variety of formats, and the card is totally unnecessary.

24 MR. FERGUSON: But when they created the - - -
25 when they amended the statute to create a charge for a



1 felony for possession of a credit card and the theft of a
2 credit card, it was to deal with the valuation issue,
3 because it was - - - it really had no value as - - - just
4 as a plastic piece.

5 JUDGE FAHEY: No, but it did have - - -

6 MR. FERGUSON: And so when - - -

7 JUDGE FAHEY: Let me just stop you - - -

8 MR. FERGUSON: - - - Governor Rockefeller - - -

9 JUDGE FAHEY: - - - there. Mr. Ferguson?

10 MR. FERGUSON: Yes.

11 JUDGE FAHEY: It did have a value as a number.

12 What's happened, though, is that commerce has changed, and
13 the number is all you really need to exercise your
14 commercial rights to someone else's credit.

15 MR. FERGUSON: Again, that's - - - that's
16 absolutely true, Your Honor. But again, what we're getting
17 back to is how this statute is written.

18 And the basic canons of statutory construction
19 are that you go by the plain language of the statute. And
20 the plain language of the statute here indicates that you
21 need the tangible card for it to be this particular crime,
22 not simply the numbers.

23 And we believe that the analysis - - - the
24 detailed analysis taken by the Second Department in Luis C.
25 is the - - -



1 JUDGE RIVERA: Judge, if I may ask another
2 question?

3 CHIEF JUDGE DIFIORE: (Nodding yes.)

4 JUDGE RIVERA: Counsel, what if any meaning do
5 you give to the fact that in 155.00, for both credit card
6 and debit card, but - - - but I know we're dealing with a
7 credit card here - - - it says that that that - - - that
8 credit card means "any instrument or article". What, if
9 anything - - - what, if any, meaning does that carry for
10 this analysis?

11 MR. FERGUSON: All of it goes to that it was a
12 tangible - - - something that is tangible. When you say
13 "article", when you say "card", it all is tangible
14 property, something that can be physically held. The
15 number itself is not enough.

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 Counsel?

18 MR. YETTER: Good afternoon, Your Honors.
19 Michael Yetter for the People.

20 In 2002, the legislature realized the 1962
21 definition of credit card was no longer adequate - - -

22 JUDGE GARCIA: Counsel, it's - - - we're having
23 some trouble hearing you.

24 CHIEF JUDGE DIFIORE: Counsel, we're have a
25 little difficulty hearing you. Perhaps if you could raise



1 the volume of your microphone, if that's possible? Or - -
2 - or maybe, perhaps, a little closer?

3 MR. YETTER: I'm sorry. Can you hear me now?

4 CHIEF JUDGE DIFIORE: Well, not well, but if you
5 keep your voice elevated, I think we'll be able to.

6 MR. YETTER: Okay. I'm sorry about that, Your
7 Honors.

8 CHIEF JUDGE DIFIORE: It's okay.

9 MR. YETTER: What I - - - the point I was trying
10 to make is that in 2002, the definition of credit card was
11 changed in the General Business Law Section 511-a. And my
12 opponent's complaints are basically about the way in which
13 the amendment was done, and not about the substance.

14 I think - - -

15 JUDGE RIVERA: How - - -

16 MR. YETTER: - - - for the - - -

17 JUDGE RIVERA: Judge, if I may ask?

18 CHIEF JUDGE DIFIORE: Yes.

19 JUDGE RIVERA: Counsel, it - - - it does appear,
20 unlike - - - unlike Judge Garcia's version of including the
21 language about any number associated or assigned to a
22 credit card within 511 itself - - - it - - - it is a little
23 odd to call an amendment, something where you have a
24 separate free-standing statute. I find that very odd.

25 The legislature just doesn't do that. This is



1 not a mere drafting error. This is absolutely intentional.
2 And it - - - it does strike me as going against every rule
3 of drafting.

4 Can you explain how - - - how - - - your
5 position, how one explains that it cannot merely be an
6 error.

7 MR. YETTER: No, I don't know that it was an
8 error, Your Honor. And unfortunately, I don't think the
9 legislature clearly stated why they went with 511-a instead
10 of a subdivision in 511 itself, like Judge Garcia
11 mentioned.

12 But what they did say is for the purposes of this
13 article, a definition of credit card shall include any
14 number assigned to it.

15 JUDGE RIVERA: But then how - - - how do you
16 explain what are actual enac - - - enactments of that new
17 suite of crimes dealing with personal identifying
18 information, right, which would include a credit card
19 number, of course, and does so in the statutes that I'm
20 talking about in the penal law, and just at that same
21 moment, could have, of course - - - of course, amended
22 155.007 to refer to 511-a?

23 Again, I - - - my difficulty with your analysis
24 is I have to ignore numerous rules of construction. And
25 the court has to add in language to get to your analysis



1 and your conclusion. And that's where I'm having a
2 challenge.

3 So the - - - tell me how we can explain that?

4 MR. YETTER: Well, as I think I was trying to
5 state, Your Honor, we believe it is pretty straightforward,
6 both from a reading of the statute sense and also from the
7 statutory and legislative history.

8 Again, 511-a says "for purposes of this article
9 the defin - - - definition shall include credit card
10 number." Of course the penal law 155.007 cross references
11 511. We believe that 511-a amends the definition that in
12 1962 was placed in the General Business Law.

13 And we think it would be - - -

14 JUDGE RIVERA: Let - - - let me ask you this. If
15 - - - if - - - let's say I agree with you on that, then how
16 does that explain that - - - if we read it that way, that
17 means that credit card holders get greater protection than
18 debit card holders. And that seems to me to run counter to
19 what the legislature had been doing over and over again.

20 I think Luis C., the court there pointed to that
21 too. How do you address that issue?

22 MR. YETTER: Well, Your Honor, the legislature
23 did not amend 511(9) through 511-a. It could have done so,
24 but it didn't. And it might have been concerned, at that
25 time, with the fact that credit cards may have been - - -



1 there may have seen more instances of fraud owing to credit
2 card use than debit card use - - -

3 JUDGE RIVERA: Yes, but that's my point. In that
4 suite of new crimes, debit cards are included. So it does
5 seem - - - and debit cards are added in later after credit
6 cards, throughout the Penal Law and the GBL.

7 So it does seem that the - - - the legislature is
8 trying to put the holders on equal footing. And again,
9 your analysis as Luis C. - - - the court in Luis C. points
10 out, would mean that a debit card holder is - - - doesn't
11 get the same kind of protections, and there's not the same
12 kind of criminalization of that bad act that there is for
13 someone who is a credit card holder.

14 MR. YETTER: Right. And - - - and I think that's
15 correct under - - - under the 2002 definition in the
16 amendment. And I think to the extent Luis C. talks about a
17 debit card, it's correct; but to the extent it talks about
18 a credit card, it's not, because for whatever reason, the
19 legislature decided that a credit card number was something
20 that it needed to include in the larceny statutes, and it
21 would be odd that - - - you know, given the - - -

22 JUDGE RIVERA: Well, it would lead - - - it would
23 lead to an absurd result; wouldn't it? Someone steals - -
24 - looks in my wallet, writes down my credit card numbers
25 and writes down my debit card numbers and goes about the



1 business of using both. But under your scenario, they're
2 only liable on the larceny statute side anyway, for the
3 credit card number. It does seem a bit odd, doesn't it?

4 MR. YETTER: It does seem odd today, Your Honor.
5 And it's something that certainly is ripe for review by the
6 legislature. But I don't think in 2002 it was necessarily
7 that odd, given the situation in a certain sense that the
8 event is present.

9 And we do think it would be odd that given the
10 longstanding relationship between Article - - - or I'm
11 sorry, Section 511 of the General Business Law and Section
12 155 of the Penal Law, that in enacting these sort of broad
13 legislations to combat exactly the kinds of crimes that we
14 have here, that the legislature somehow intended to, you
15 know, pass these new laws but circumscribe or cabin the
16 theft of the credit card only to a physical card, a plastic
17 card itself.

18 JUDGE RIVERA: You agree here, though, that the
19 defendant, even though he wasn't charged with it, could
20 have been charged with one of those identity theft
21 provisions?

22 MR. YETTER: I - - - I believe yes, that he - - -
23 he could have been, based on his use of the credit card,
24 both in the Uber and at the Verizon store.

25 JUDGE RIVERA: So in reality, he would have



1 suffered a great deal of criminal - - - he would have been
2 exposed - - - let me put it that way - - - to significant
3 criminal liability if we adopt the reading that defense
4 counsel is arguing for; it's just you've got to do the
5 correct charging?

6 MR. YETTER: Well, I mean, the - - - the criminal
7 liability on - - - on the use, you know, depends on either
8 the dollar valuation or the number of pieces of personal
9 identification information. You could bump it up.

10 I believe here we would get into felony territory
11 based upon the amount used at the - - - at the Verizon
12 store. It was over 500 dollars.

13 But we just think our - - - our reading is
14 consistent both with the text and the history of the
15 statute. And I think - - - you know, my - - - my
16 opponent's - - -

17 JUDGE RIVERA: If I agree with you for the single
18 - - - for the single theft at a very low amount, you get
19 the person to have a felony. I - - - I think that's what
20 you're talking about.

21 MR. YETTER: That's right. That's right. And I
22 think that they work together.

23 JUDGE RIVERA: But - - - but you agree that the
24 legislature could have decided that's not the outcome they
25 were seeking, correct, even though you think it is. But



1 you can agree that the legislature could have made a
2 decision that that's not the outcome they wanted, correct?

3 MR. YETTER: Yes.

4 JUDGE RIVERA: Yeah.

5 MR. YETTER: And - - - and I think if they wanted
6 that, they would have made it very clear, given the
7 longstanding relationship between those two statutes.

8 So unless there are any further questions, we
9 believe that the - - - the Appellate Division properly
10 resolved the issue in this case and ask you to affirm.

11 CHIEF JUDGE DIFIORE: Thank you, counsel.

12 Counsel?

13 MR. FERGUSON: Your Honors, both the First
14 Department and the Second Department in Barden and in Luis
15 C., looked at the legislature - - - legislative history of
16 this particular statute, and both came to the conclusion
17 that the legislative history pointed to the interpretation
18 that we are advancing here.

19 In addition, there is the principle of lenity.
20 The best we have here is competing interpretations of what
21 the statute means. And under those circumstances, the
22 canons of construction indicate that the interpretation
23 that should be held by the court is the one more favorable
24 to the defendant. So that even under the principles of
25 lenity, that we should prevail.



1 And I'd like to take just a - - - a brief moment
2 or two to address the evidentiary issues that we also
3 raised, one of which is, I think it's very important for
4 this court, because it deals with Russell and Sanchez and
5 going back to a Latin term that was ear - - - used in an
6 earlier case. The question is whether the sine qua non in
7 having an individual identify someone from a videotape is -
8 - - whether or not there is a changed appearance.

9 It's our position that under Russell and Sanchez,
10 there had to be a changed appearance, otherwise the jury
11 itself, which has the opportunity throughout the trial, to
12 look at the defendant, can make a determination as to
13 whether that person is the person depicted in the
14 videotape.

15 JUDGE STEIN: Judge DiFiore, may I inquire?

16 CHIEF JUDGE DIFIORE: Yes, Judge Stein.

17 MR. FERGUSON: What's that?

18 JUDGE STEIN: Yet, can't - - - can't those cases
19 be read as saying that was the reason in the - - - in those
20 particular cases why the testimony - - - why the
21 identification was permitted; but I - - - I'm not sure that
22 they can be read as saying those - - - that is the only
23 circumstance in which - - -

24 MR. FERGUSON: Your Honor, if - - - if the
25 opinions had been written in the disjunctive, I would agree



1 with Your Honor. But they read - - - they - - - they were
2 lit - - - the were written in terms of the conjunctive.

3 It was "and there was a changed appearance". And
4 I think under those circumstances, and what you're hap - -
5 -

6 JUDGE STEIN: Right, but - - - but - - -

7 MR. FERGUSON: - - - what you're - - -

8 JUDGE STEIN: - - - but there's a broader
9 principle involved there, and that is that it - - - it
10 would be help - - - because of some circumstance - - -
11 maybe it's a - - - a changed appearance, maybe it's a poor
12 quality photograph or video, but something makes it useful
13 - - - helpful to the jury to have this person who is
14 familiar with the person being identified to - - - you
15 know, to - - - to testify, to explain. So - - - and
16 certainly a change in appearance would fall within that
17 broader principle.

18 But my other question is, is why - - - why - - -
19 why was that - - - if there was error there, identity
20 wasn't an issue here. So why does it matter in this case?

21 MR. FERGUSON: Let - - - let me go back to - - -
22 the - - - the problem here is how Russell and Sanchez has
23 now been interpreted by the lower courts.

24 As a matter of course now, individual witnesses
25 are allowed to routinely identify people by videotapes and



1 photographs. That can't be the purpose that this court set
2 forth in Russell and Sanchez, that it was - - - that was
3 supposed to be in exceptional circumstances.

4 Instead, what's happened is, this is happening as
5 a matter of course now. And this court has the opportunity
6 to correct that.

7 And as to the issue of harm in this particular
8 case, identity is an issue. If the - - - because there's a
9 series of evidentiary issues here that are contained in our
10 brief, and I'm not going to go into all the details of - -
11 -

12 JUDGE STEIN: I thought the defense was that he
13 was authorized?

14 MR. FERGUSON: There - - - there's - - - but what
15 you have here is they also have to prove his identity. And
16 the reality here is, absent these evidentiary errors that
17 we have in our brief, there is no live witness who
18 testifies that my client has committed any of these crimes,
19 and that once you remove all of these evidentiary items,
20 the overall impact of these series of evidentiary errors
21 tainted the result and tainted the resolution of this case.

22 And we believe that under those circumstances,
23 this was not harmless. If it was a singular error, it was
24 simply the - - - the videotape identification, that would
25 be something different. But it's a series of evidentiary



1 errors.

2 And when they are compounded together, we believe
3 that it becomes harmful error. Thank you, Your Honors.

4 CHIEF JUDGE DIFIORE: Thank you, counsel.

5 Thank you.

6 (Court is adjourned)

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

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Frederic Badji, No. 7 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

Signature: _____

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

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