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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

NO. 21

JONAIKI MARTINEZ ESTRELLA,

Respondent.

20 Eagle Street
Albany, New York
February 14, 2024

Before:

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

Appearances:

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Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next matter on the calendar
2 is People v. Estrella.

3 MS. PHILLIPS: Good afternoon, Your Honors,
4 counsel. And may it please the court, Reva Grace Phillips
5 for the appellant, the Bronx County District Attorney's
6 Office. Your Honor, may I reserve two minutes for
7 rebuttal?

8 CHIEF JUDGE WILSON: Yes.

9 MS. PHILLIPS: Thank you. In reversing
10 defendant's first-degree murder conviction for the brutal
11 slaying of a fifteen-year-old, the Appellate Division
12 erroneously found that the People had to prove multiple
13 actions within the course of conduct, individually
14 inflicted extreme pain, and the defendant's post-slaying
15 statements not only evinced pleasure, but evinced pleasure,
16 quote, "for its own sake."

17 JUDGE RIVERA: So yeah, help me with the record.
18 How is this different from a gang beatdown? I don't think
19 your position is that every gang beat down is torture. So
20 how is this different?

21 MS. PHILLIPS: Your Honor, this is distinguished
22 in a number of ways. From the outset, this is a planning
23 meeting where defendants present, along with his gang
24 mates, they received this order to go out and target at
25 random a member of a rival gang. So I think from the very

1 genesis, we have a very wanton crime in the sense that
2 there is no definite target. And in fact, the defendants
3 don't even bother making sure that they've caught someone
4 from the rival gang before they brutalized this fifteen-
5 year-old boy. So from the very outset, I think you have a
6 particularly wanton crime that they - - - that they are set
7 out to engage in. The second thing I would say is, again,
8 you have the misidentification. So this isn't - - - you
9 know, a discipline of a gang member. This is a
10 misidentification.

11 JUDGE SINGAS: So is it your position that the
12 ten seconds that we see on that video, is that separate and
13 distinct acts or is that one entire act? How do you see
14 that?

15 MS. PHILLIPS: Yes, Your Honor, so I would say
16 that that is a collection of separate and distinct acts.
17 However, if the core question there is where does the
18 course begin, we would - - - we would argue that the course
19 begins at that planning meeting.

20 JUDGE SINGAS: So if there's separate and
21 distinct acts, how many of those separate and distinct acts
22 have to cause extreme physical pain? Is one enough?

23 MS. PHILLIPS: Yes, Your Honor, one is enough.
24 Under the plain text of the statute, one is enough.

25 JUDGE SINGAS: Okay. So if one is enough,

1 couldn't you charge that for every murder where that
2 involves a chase or some kind of - - - you know, beat down
3 - - - to use Judge Rivera's words. If it's only one act to
4 cause extreme physical pain in a series of acts, would that
5 satisfy?

6 MS. PHILLIPS: If one act in a course of conduct
7 inflicts extreme physical pain that could satisfy it. I
8 think there would be other factors to consider here. For
9 instance, another factor that we have here are defendant's
10 post-slaying statements, which I think stand out for - - -
11 not only the People's access to that evidence, which we got
12 through a cooperator, which is in and of itself a unique
13 way to access that evidence. It's rare evidence to have.

14 JUDGE HALLIGAN: To make sure I'm understanding
15 your position. The course of conduct can be exclusively up
16 until one blow completely, no physical contact. It could
17 be we're planning what's going to happen and as long as
18 there is one physical act which inflicts extreme pain,
19 that's enough? The course of conduct isn't the course of
20 inflicting the pain?

21 MS. PHILLIPS: That's correct, Your Honor. And
22 the plain text makes that clear. The course of conduct
23 inflicts or intends to inflict torture, and torture
24 includes the infliction of extreme physical pain. And to
25 clarify that point - - -

1 JUDGE HALLIGAN: Well, so the course of conduct
2 inflicts the pain. Isn't there an argument that the most
3 natural reading of that is that there are course of
4 actions, each of which is inflicting physical pain, as
5 opposed to I'm going to plan for an hour and then take one
6 action?

7 MS. PHILLIPS: Well, you know, again, I think the
8 plain text says the course of conduct inflicts, which - - -
9 which refers to the whole course and whether or not it
10 inflicts extreme physical pain in its totality. So that
11 could be achieved through one blow. And I think that we
12 can look to other statutes to know that so - - -

13 CHIEF JUDGE WILSON: So you could charge a
14 fistfight that results in a fatality? Right?

15 MS. PHILLIPS: Yes, Your Honor.

16 CHIEF JUDGE WILSON: You could?

17 MS. PHILLIPS: If there was a fistfight that
18 ended in a fatality - - -

19 CHIEF JUDGE WILSON: Yeah.

20 MS. PHILLIPS: - - - and there was evidence - - -

21 CHIEF JUDGE WILSON: And you said the course of
22 conduct is the series of blows, each one is a piece of that
23 conduct. There is a course, because there's more than one,
24 and that's then an A-1 felony?

25 MS. PHILLIPS: Well, Your Honor, again, you would

1 still have to prove the defendant's depravity and the
2 infliction of extreme physical pain. So we wouldn't
3 contest, for instance, that where a singular blow
4 immediately kills a victim, that that constitutes torture -
5 - -

6 JUDGE HALLIGAN: So let's take - - -

7 MS. PHILLIPS: - - - of a victim - - -

8 JUDGE HALLIGAN: - - - let's take a single
9 gunshot wound and it takes the victim a half an hour to
10 die, and you know there would be no question but that there
11 was extreme pain inflicted. With respect to that, if there
12 is some course of planning that precedes it, is your view
13 that that would suffice? And if so, that seems like it
14 sweeps in a very broad swath of conduct.

15 MS. PHILLIPS: So Your Honor, again, there - - -
16 there would be more factors to look at. Again, depravity,
17 I think, is a real limiting factor beyond the course of
18 conduct question. So it would question - - - it would be
19 depravity, for instance, if a defendant - - -

20 JUDGE HALLIGAN: But the action itself, in other
21 words a single gunshot wound, the victim doesn't die
22 immediately but dies thirty minutes later, that would be
23 sufficient in terms of the course of conduct inflicting
24 extreme physical pain?

25 MS. PHILLIPS: Yes, Your Honor. And to take your

1 own example and run with it, I think you could have a
2 defendant who intentionally wounds someone in a way that
3 they know will be fatal and they know will take a while to
4 cause that fatality. And that's absolutely within the
5 ambit of the statute. Having a defendant, for instance,
6 who shoots someone here for instance - - -

7 JUDGE CANNATARO: Are you saying that's within
8 the ambit of the statute without a - - - without even a
9 course of conduct preceding it?

10 JUDGE TROUTMAN: No, Your Honor. Again, I - - -
11 I would assume the factor of course of conduct and the
12 factor of depravity to get to the core of Judge Halligan's
13 question there.

14 JUDGE CANNATARO: But the course of conduct - - -
15 just - - - just so I'm clear on this theory. The acts that
16 make up the course of conduct can be, I think, as you said,
17 planning, having a meeting, riling up the troops - - - you
18 know, any number of things whose ultimate goal is to
19 inflict that one depraved coup de gras that would make it
20 torture. Is that right?

21 MS. PHILLIPS: Yes, Your Honor. I believe that
22 under the statute, that would be correct. And again, I
23 think we do have other statutes where the legislature makes
24 a numerosity requirement. For instance - - -

25 JUDGE TROUTMAN: In this particular instance, if

1 you took out the planning and you focused on finding this
2 particular victim and the conduct that took place leading
3 up to, would that qualify as a course of conduct?

4 MS. PHILLIPS: Absolutely, Your Honor. And - - -
5 and I would argue that even if this court finds the
6 planning meeting is not the beginning of the course of
7 conduct, that you could look next to the chase. That you
8 have, again, a series of distinct acts for the unified
9 purpose of brutalizing this child.

10 JUDGE TROUTMAN: So it's the unified purpose that
11 one focuses on for - - - and continuity, for a course of
12 conduct?

13 MS. PHILLIPS: Yes, Your Honor. And I believe we
14 cited in our brief to People v. Payton, which this court
15 favorably cited, and I believe People v. Ublink. But there
16 - - - that the series of distinct acts, it's not really a
17 temporal question so much as are there a series of distinct
18 acts for a unified purpose? So we would argue that's what
19 a course is.

20 JUDGE TROUTMAN: Does it matter how much time
21 takes place for a course of conduct to have happened?

22 MS. PHILLIPS: No. And again, Your Honor, we
23 know that the legislature is comfortable making those
24 requirements where they feel they're appropriate. In - - -
25 in the course of sexual assault of a child, for instance,

1 there is both a numerosity requirement and a temporal
2 requirement. The abuse must take place over more than
3 three months, and it must include at least two distinct,
4 acute incidents of abuse. So we know that that's often
5 results of an ongoing series of interstitial abusive
6 grooming tactics. But the legislature felt comfortable
7 saying you have to have two.

8 JUDGE HALLIGAN: So are you relying here on the
9 conduct - - - you know, the other knifings and the machete
10 or simply on the - - - you know, final blow? Tell me
11 exactly what you think counts as part of the course of
12 conduct.

13 MS. PHILLIPS: Absolutely, Your Honor. So we
14 believe the course of conduct begins with the planning and
15 continues - - -

16 JUDGE HALLIGAN: Right.

17 MS. PHILLIPS: - - - all the way through the
18 fatal blow.

19 JUDGE HALLIGAN: I mean, in terms of the physical
20 - - - the physical activities alone, which ones count?

21 MS. PHILLIPS: So you know, all of the blows.
22 Again, the chase is very physical. There are folks getting
23 out of their cars trying to chase this boy as he tries to
24 hide in a hospital, chasing him to the bodega, pulling him
25 out by his body, beating him on the way out.

1 JUDGE HALLIGAN: Is that because those actions in
2 your view, inflict extreme physical pain, or because they
3 culminate in the infliction of extreme physical pain?

4 MS. PHILLIPS: So I would respond with two
5 points, Your Honor. One, again, the course is about having
6 a unified pattern over this series of distinct acts. So
7 whether or not they inflict pain, they can be a part of the
8 course. The second thing we would say is under the
9 standard before this court today, the question is, could a
10 reasonable juror have found that the course of conduct - -
11 -

12 JUDGE RIVERA: Before - - - before you get to
13 that. I understand your point there and certainly, I'm
14 sure we all want to hear that. But before you get to that.
15 In this course of conduct, at what point does the defendant
16 have to satisfy the relish - - - the relishing requirement?

17 MS. PHILLIPS: So Your Honor, there's no
18 distinctive point within the course. The course itself has
19 to evince the depravity. And again, I think that we have,
20 from the nature of the crime to the method of the crime,
21 all the way to those post-slaying statements, defendant's
22 depravity is stamped all over this crime. Again, they
23 choose to wantonly target anyone who happens to be walking
24 in the Little Italy neighborhood - - -

25 JUDGE RIVERA: So you mean during the planning

1 meeting they're already relishing the idea of this - - -

2 MS. PHILLIPS: I believe that they're evincing -

3 - -

4 JUDGE RIVERA: - - - action they're going to

5 take?

6 MS. PHILLIPS: - - - depravity from the very

7 beginning. Yes, Your Honor. And I think depravity here

8 can mean, you know, engaging in this wanton behavior. And

9 again, the plain language of the statute is that it is a

10 cruel and wanton course of conduct. Wanton typically is

11 taken to mean - - - you know, sort of an unprovoked,

12 undirected violence. There can be nothing more wanton than

13 saying, we're going to go out and find someone just because

14 they happen to be walking in the neighborhood and look like

15 they might be of a certain race.

16 JUDGE CANNATARO: The statute defines depraved.

17 So can you tell me how that conduct that you're referring

18 to now fits within the definition of depraved within the

19 statute which is "Defendant relished the infliction of

20 extreme physical pain upon the victim, evidencing

21 debasement or perversion"? How is - - - how is that

22 preamble - - - that - - - that preparatory stuff depraved?

23 MS. PHILLIPS: So again, Your Honor, we look to

24 the circumstances to - - - to determine the intent. It's

25 very rare that a defendant speaks their intent - - - you

1 know, sort of out there in the air. So when we look to the
2 fact that this is a grown man who joins with a group of
3 other grown men to go out and target whomever happens to be
4 walking down the wrong neighborhood street at the wrong
5 time, and then proceeds to chase that young kid and
6 brutalize him - - -

7 JUDGE GARCIA: But Counsel, that whole go - - -
8 that goes to me, to a general understanding of depraved.
9 If you ask me is that depraved, this - - - I would say yes.
10 But they defined it in the statute to have this relish and
11 took pleasure. Because you can be depraved, you want to do
12 these things for revenge, to send a message to a rival
13 gang, to do all these things which don't fit within this
14 definition, which is relish and take pleasure in the
15 infliction of pain, which seems to be getting at a specific
16 thing under this umbrella of torture. So what is your best
17 evidence that this person relished or took pleasure in the
18 infliction of this pain?

19 MS. PHILLIPS: Your Honor, I think the best
20 evidence are the post-slaying statements where defendant,
21 just seconds after brutally slaying this fifteen-year-old
22 by savagely cutting his neck wide open, jumps in a car and
23 says, I got him good. He's not going to eat for a while.
24 But to back up, I would say that respectfully, I disagree
25 with Your Honor's assertion that - - - that the forms of

1 depravity you mentioned wouldn't be covered here.
2 Depravity here is just - - - pardon me. Depravity here is
3 defined as debasement or perversion or pleasure. And
4 because that's not an ultimate fact, but an evidentiary
5 fact, the jurors could have disagreed about which one of
6 those they found.

7 JUDGE TROUTMAN: With respect to the statements
8 after the fact, could they also simply be consistent with I
9 accomplished the mission, and - - - and that is what it is
10 as opposed to the infliction of the pain itself?

11 MS. PHILLIPS: So I would respond with two
12 points, Your Honor. The first being that defendant hops in
13 the car seconds after. So this is very close in time. So
14 when we're thinking about his state of mind, he's not yet
15 even coming down off of what he's just done. He's speaking
16 with elation. The second thing I'd point out is that
17 there's no gang leader in the car he jumps in. This isn't
18 the moment where he will go up to his gang leader the
19 minute he gets to his house to let him know he did it, but
20 this isn't that moment. The first statement he makes is
21 just seconds after when he's surrounded by regular other,
22 you know, Trinitarios, not by a gang leader. So he's not
23 there to take credit amongst the people who just witnessed
24 him do this.

25 JUDGE TROUTMAN: So the credit is the - - - is

1 the evidence of pleasure, is what you're saying?

2 MS. PHILLIPS: No, Your Honor. I'm saying that
3 because we know this statement is made where there's no
4 real credit to be given, there's no gang leader in the car
5 to say good job, that it evinces very clearly his pleasure
6 in what he's done, his relishment in what he's done. And
7 we cite to a host of other cases.

8 JUDGE GARCIA: The point is, you don't need that
9 in this definition, that you can have debasement or
10 perversion or take pleasure or relish. But to me it seems
11 like debasement is at least informed by the rest of those
12 things. So in the context of that sentence, how would you
13 define debasement?

14 MS. PHILLIPS: So again, Your Honor, I'm - - -
15 I'm not going to fight the - - - the plain text definition
16 here, which is that - - - that can be shown in a variety of
17 ways, which would include the pleasure, the depravity, and
18 the perversion. Here we've argued primarily pleasure,
19 though I do think, again, a jury could have found and not
20 even had been - - - pardon me. The red lights on. May I
21 finish?

22 CHIEF JUDGE WILSON: Yeah. Of course.

23 MS. PHILLIPS: A jury didn't even have to come to
24 a unanimous decision about which of those three forms of
25 depravity they found here. So - - - you know, I do think

1 that pleasure counts. I think depravity - - - or pardon me
2 - - - debasement counts. And I think that we can see both
3 of those in defendant's conduct the selection of
4 methodology here, the needlessly brutal techniques they
5 employed, and his post-slaying statements.

6 CHIEF JUDGE WILSON: Thank you.

7 MS. PHILLIPS: Thank you, Your Honors.

8 MR. FEINMAN: Good afternoon. May it please the
9 court. My name is Stephen Feinman. I represent the
10 defendant. I'd like to address first the People's argument
11 with regards to course of conduct under the statute.
12 Course of conduct requires, at the very least, two acts.
13 And both those acts - - -

14 JUDGE SINGAS: What is your authority for that?

15 MR. FEINMAN: Excuse me?

16 JUDGE SINGAS: What's your authority for that?

17 MR. FEINMAN: From the plain - - - plain and
18 clear, unambiguous language of the statute. The statute
19 specifically states it has to be intentional. It has to be
20 the infliction - - - the intentional infliction of extreme
21 physical pain. Has to cause extreme physical pain. And
22 that the defendant - - - and in here, the co-defendants all
23 had to receive perverted pleasure - - - relish.

24 JUDGE GARCIA: The jury have found that here,
25 just looking at the course of conduct during the attack,

1 where there are multiple stab wounds that aren't fatal over
2 the course of whatever period of time, and then a fatal
3 one.

4 MR. FEINMAN: No. Absolutely not, with all due
5 respect. No.

6 JUDGE GARCIA: Giving them every fair inference
7 from the physical evidence of this crime, which we have to
8 since you have a jury verdict here.

9 MR. FEINMAN: According to the forensic evidence,
10 Dr. Rodriguez, the medical examiner, she specifically
11 stated all those injuries were superficial. Only the top
12 part of the - - - of the skin was damaged.

13 JUDGE SINGAS: But - - -

14 JUDGE GARCIA: Let's say you have somebody and
15 you're cutting them, and - - - you know, it's superficial
16 and then you're waiting while they suffer through
17 superficial knife wounds, and then you stab them in the
18 throat.

19 MR. FEINMAN: That's not the facts - - -

20 JUDGE GARCIA: Is that going to be a course - - -

21 MR. FEINMAN: - - - that's not the facts of this
22 case.

23 JUDGE GARCIA: They couldn't have found that
24 based on this?

25 MR. FEINMAN: No. There was no evidence to

1 indicate that.

2 JUDGE TROUTMAN: And so you're saying because the
3 wounds were superficial, there is no pain?

4 MR. FEINMAN: There is pain, but not extreme
5 physical pain. The medical examiner was not even asked
6 that by the prosecutor.

7 JUDGE HALLIGAN: Why couldn't the jury have found
8 that just as a matter of common sense?

9 MR. FEINMAN: There was absolutely no evidence to
10 support that. It was just superficial. The doctor said
11 they would need no medical attention, maybe antibacterial
12 cream. In addition, that's not sufficient according to the
13 statute. You have to have the intention to cause extreme
14 physical pain.

15 JUDGE TROUTMAN: But couldn't superficial have
16 been used in a medical term as to the layers or the ability
17 to be close to death? It doesn't necessarily mean that the
18 - - - what the statute requires with respect to the pain
19 that was felt by the person receiving those cuts one after
20 another.

21 MR. FEINMAN: Again, I just have to rely upon the
22 record and the testimony of the medical examiner, which was
23 the only evidence. This is - - - there was no evidence to
24 indicate that those injuries caused anything that's
25 possibly could - - - could be interpreted to be extreme

1 physical pain.

2 JUDGE TROUTMAN: Because of the word superficial?
3 Is - - - is that why you're saying that?

4 MR. FEINMAN: It's only a top layer of the skin.
5 It did not cause any other type of complication. This is
6 nothing like the - - - the two leading cases People against
7 Williams and - - -

8 JUDGE TROUTMAN: How many layers of skin do you
9 have to get through to feel the pain that's required?

10 MR. FEINMAN: I'm not a doctor, but according to
11 the record, there was no evidence of extreme physical pain.

12 JUDGE SINGAS: So is it your position - - - I'm
13 sorry. Is it your position that more than one action has
14 to cause extreme physical pain? Are you saying two - - -

15 MR. FEINMAN: Well - - -

16 JUDGE SINGAS: - - - there have to be two, or - -
17 - I - - - understand you're saying two for a course of
18 conduct, but like, there was extreme physical pain here
19 with that final slice to the throat. So you're saying
20 that's not enough? So does every act in that course of
21 conduct - - - do you read the statute, has to cause extreme
22 physical?

23 MR. FEINMAN: Every act has to be intended to
24 cause extreme physical pain. And then there has to be at
25 least two acts that cause extreme physical pain - - -

1 according to - - -

2 JUDGE GARCIA: Well, that's - - -

3 CHIEF JUDGE WILSON: Hold on.

4 JUDGE CANNATARO: Why did there have to be at
5 least two that caused extreme physical pain?

6 JUDGE TROUTMAN: Right.

7 MR. FEINMAN: Excuse me?

8 JUDGE CANNATARO: I'm sorry. Why did there have
9 to be at least two acts that cause extreme physical pain?
10 I could understand the People's argument that there are
11 acts leading up to the infliction of extreme physical pain,
12 and that there has to be at least one. And we could debate
13 whether or not superficial knife wounds are extreme
14 physical pain or not. But why is it that you're saying
15 there have to be at least two acts inflicting extreme
16 physical pain?

17 MR. FEINMAN: According to the statutory
18 interpretation, the bill jacket specifically states that
19 the course of conduct requires a series of distinct acts.
20 The series of distinct acts has to be at least two. And
21 those two acts has to satisfy the definition of torture
22 under the statute - - -

23 JUDGE HALLIGAN: So - - -

24 CHIEF JUDGE WILSON: I want to ask something - -
25 -



1 JUDGE HALLIGAN: - - - so you're - - -

2 CHIEF JUDGE WILSON: I'm sorry. Go ahead.

3 JUDGE HALLIGAN: No, go ahead.

4 CHIEF JUDGE WILSON: Go ahead.

5 JUDGE HALLIGAN: You're - - - I think that your
6 adversary, as I take it, is arguing that you can have a
7 series of distinct acts which don't involve any physicality
8 at all but are simply about planning whatever the physical
9 action is going to be. And I hear you saying, no, the - -
10 - I think, the statute requires that there be more than one
11 physical act that inflicts extreme physical pain. Do I
12 have your reading right?

13 MR. FEINMAN: That's - - - that's correct.

14 JUDGE HALLIGAN: And why - - - what in the
15 statute or the bill jacket tells us that that's the right
16 reading and your adversary's is not?

17 MR. FEINMAN: Well, the statute eliminates
18 psychological pain and nonextreme physical pain.

19 JUDGE HALLIGAN: But I think your adversary is
20 saying the planning that culminates in a single act is a
21 course of conduct. And I think you have a different view.
22 So I'm trying to understand why.

23 MR. FEINMAN: The course of conduct, according to
24 the bill jacket, is a series of distinct acts intended to
25 cause extreme physical pain and does cause extreme physical

1 pain. So from that definition, it has to be at least two
2 acts. In this case, there's only one act that the People
3 could identify that caused extreme physical pain. That was
4 a knife wound to the neck. However, that would not satisfy
5 the definition of torture, because then we have the
6 pleasure - - - pleasure issue. Did - - -

7 CHIEF JUDGE WILSON: Before we get to the
8 pleasure issue for a minute, you said something that - - -
9 and I may have misheard, but I thought you said that as to
10 the course of conduct, you had to have at least two acts
11 that themselves caused extreme physical pain and were
12 intended to call - - - to cause extreme physical pain, and
13 that every act in the course had to be intended to cause
14 physical pain, whether it did or not. Is that - - - did I
15 mishear you?

16 MR. FEINMAN: No. That's correct. That's the
17 clear - - - that's the plain, unambiguous language of the
18 statute.

19 CHIEF JUDGE WILSON: So that if there were twenty
20 acts, six of which caused and were intended to cause
21 extreme physical pain, but one of the twenty was not
22 intended to cause extreme physical pain, this wouldn't be a
23 course of conduct?

24 MR. FEINMAN: That one act would not be part of
25 the course of conduct. And I would just compare this case

1 - - -

2 CHIEF JUDGE WILSON: I understand now, okay.

3 MR. FEINMAN: I would just compare this case to -

4 - -

5 CHIEF JUDGE WILSON: You would just remove that
6 from the course?

7 MR. FEINMAN: Right. But - - -

8 CHIEF JUDGE WILSON: I understand.

9 MR. FEINMAN: - - - but this is part - - - that
10 will be evidence as to the - - - that - - - it would be
11 just evidence as to possibly, like intent.

12 JUDGE RIVERA: So let me - - - let me ask you
13 this. A defendant who decides that they want to use
14 electric prongs on someone, is going to purchase these
15 prongs wherever they purchase them, part of the course of
16 conduct?

17 MR. FEINMAN: No. The - - - you have to actually
18 have the act of - - - of intending - - - you have to have
19 the intent to use the prongs to cause extreme physical
20 pain. You have to use the axe to cause extreme physical
21 pain, and it has to result in extreme physical pain.

22 JUDGE RIVERA: That's what I'm saying. The
23 individual goes to - - - again, purchase these prongs
24 wherever they're going to purchase them. The intent - - -
25 they've got the individual they want to torture in the



1 basement, tied up. They went to purchase the prongs. They
2 bring the prongs back. They get them ready, and they use
3 it on the individual. Let's say they only use it once and
4 the individual dies of a heart attack. Let me give you an
5 easy one.

6 MR. FEINMAN: That wouldn't be - - - that
7 wouldn't satisfy the statute.

8 JUDGE RIVERA: Why not?

9 MR. FEINMAN: Because none of the elements of the
10 statute would have been satisfied. These elements - - -

11 JUDGE RIVERA: What's missing? What's missing?
12 Because when you purchase, that doesn't inflict - - - in
13 that moment doesn't inflict physical pain?

14 MR. FEINMAN: That's correct. But that type of
15 evidence deals with possibly intent. Let me explain.
16 Like, in People against Williams. The individual had the
17 victim for nineteen hours. Just like in Valdez, basically
18 held them against their will. And in those nineteen hours,
19 he committed heinous, brutal crimes, vicious attacks upon
20 her, cutting her eyes, pouring acid on her face, boiling
21 water. I could go on, but I'm sure we all know the facts.
22 There was also comments that the defendant made during
23 this. The comments like she's too good, she's not good
24 enough to die soon. So I want to prolong - - -

25 JUDGE RIVERA: Well, is your position that the

1 only time the People are going to satisfy the requirements
2 for the torture statute is they have - - - if they have
3 that kind of conduct that rises to that level?

4 MR. FEINMAN: According to the elements of - - -
5 of the crime, yes. According to the - - - this statute has
6 been around for over - - - almost three decades. There's
7 been only maybe three, four reported cases in that time
8 because it's extremely difficult to satisfy the elements.
9 The People have basically rewritten the statute in order to
10 fit their facts. They're claiming that all you have - - -
11 all you need is basically psychological suffering or
12 nonextreme pain.

13 JUDGE RIVERA: If one of the - - - apart from the
14 - - - the final knife cut to the throat. If one of the
15 other knife cuts the medical examiner had not said was
16 superficial, would that have been then enough?

17 MR. FEINMAN: If there was evidence that one
18 other act - - -

19 JUDGE RIVERA: Yes.

20 MR. FEINMAN: - - - by one of the co-defendants -
21 - -

22 JUDGE RIVERA: Yes.

23 MR. FEINMAN: - - - intentionally caused - - -

24 JUDGE RIVERA: Or even by this defendant.

25 MR. FEINMAN: - - - intended to cause extreme

1 physical pain.

2 JUDGE RIVERA: Yes.

3 MR. FEINMAN: And he caused extreme physical
4 pain.

5 JUDGE RIVERA: Yes.

6 MR. FEINMAN: And then the defendant and the
7 codefendant relish the causing of that pain.

8 JUDGE RIVERA: Okay.

9 MR. FEINMAN: Then the elements might have been
10 satisfied.

11 JUDGE CANNATARO: You haven't spoken that much
12 about depravity - - -

13 MR. FEINMAN: Right.

14 JUDGE CANNATARO: - - - because we keep getting
15 stuck on this course of conduct. So here the argument is
16 the depravity can be evidenced from statements that were
17 made after the fact that seemed to suggest that there was a
18 certain level of enjoyment in the act. Why is that not
19 sufficient?

20 MR. FEINMAN: Well, the only comments he made was
21 that I stuck him in - - - with the - - - in - - - with a
22 knife, that he's not going to eat for a while. I stuck him
23 with a knife. And that was made - - - I would disagree
24 with the prosecutor's comments. This was - - - it was made
25 to leaders of the gang. He was on probation. He wanted to

1 get off probation and become a full gang member. So it was
2 not - - - he didn't say that because he was pleased,
3 causing extreme physical pain upon Junior.

4 JUDGE SINGAS: Well, why can't it be both? Why
5 can't it be both? He wanted to get promoted in his gang
6 and he did relish it.

7 MR. FEINMAN: There was - - - he only spent
8 through the whole process, six seconds. He merely left.
9 He didn't even know what the extent of the injury was.
10 They - - - all the defendants left immediately.

11 JUDGE CANNATARO: I'm sorry. How does that
12 relate to depravity? Not knowing what the extent of the
13 injury is.

14 MR. FEINMAN: Well, you have to relish the pain
15 that you just inflicted. The perverted - - - the perverted
16 pleasure.

17 JUDGE CANNATARO: So you're saying he wasn't
18 around long enough to enjoy the - - -

19 MR. FEINMAN: Well - - -

20 JUDGE CANNATARO: - - - fruits of his labor?

21 MR. FEINMAN: Well, yes. According to People
22 against Williams and People against Valdez, the defendants
23 were there for a substantial period of time, and they
24 actually stated that they enjoyed it. In Valdez - - -

25 JUDGE CANNATARO: That's not a legal requirement,

1 is it? I mean - - -

2 MR. FEINMAN: In the statute it is.

3 JUDGE HALLIGAN: I mean, isn't the question
4 really whether his comments allow for an inference that he
5 enjoyed it? Because they can be understood as bragging
6 about it, right?

7 MR. FEINMAN: Bragging is nothing - - - is - - -
8 all due respect, bragging is not relishing.

9 JUDGE HALLIGAN: That's a fair - - - that's a
10 fair point. But isn't the question, you know, do I enjoy
11 this only because it gives me status in the gang, or is it
12 fair to infer - - - or is it possible to infer that I also
13 enjoyed it because I took pleasure in doing it? Why can't
14 - - - why is that second inference not permissible?

15 MR. FEINMAN: I don't believe there's a
16 reasonable inference that the jury could have relied upon
17 from the evidence, to reach that finding. And it's - - -
18 has to be beyond a reasonable doubt. These comments in
19 Valdez, Cruz, the defendant, is heard in telephone
20 conversations recorded where he basically told the victim,
21 I'm going to torture you. I'm going to pop your eyes out.
22 I'm going to basically - - -

23 JUDGE HALLIGAN: Yeah. But surely that's not a
24 requirement? One could or maybe you have a different view,
25 but couldn't a defendant say something after committing a

1 series of acts, which makes clear that there was pleasure
2 taken in inflicting the pain?

3 MR. FEINMAN: Obviously, yes. But each case has
4 to - - - each - - - its, can I?

5 CHIEF JUDGE WILSON: Please finish. Yes.

6 MR. FEINMAN: Each case has to be - - - rely upon
7 the evidence. And in this case, there's no such evidence
8 for that inference to have been made.

9 JUDGE CANNATARO: Chief, with your permission. I
10 think it would be exceedingly rare - - - I - - - I'm not
11 sure, but I think it would be exceedingly rare for someone
12 who inflicted extreme physical pain upon someone to
13 articulate, either out into the air or even to their gang
14 boss, I really enjoyed the infliction of that pain. I - -
15 - you know, it - - - I don't think you would get that in
16 the real world. And if that's the case, by your reading,
17 it seems to me as if you might never get a conviction under
18 this section. Just - - - and I know you're ready to rebut
19 right there. But what seems more likely to me is that you
20 would go to your boss and - - - and say something like what
21 the - - - one of the co-defendants said here, which is - -
22 - you know, I really got him. I got him good. And it sort
23 of communicates to your boss, not only did I do the job, I
24 enjoyed doing my job. I think those are two fair
25 interpretations of that kind of statement. Why not?

1 MR. FEINMAN: His job performance is not the
2 issue. In its - - - it's normally, I would say - - -
3 again, there's only been a handful of cases in almost three
4 decades. But it's really the circumstantial evidence. Did
5 he - - - did my client and the co-defendants, after they -
6 - - after the - - - Junior was stabbed in the neck, did
7 they stay there and watch? Did they - - - was there any
8 other evidence to indicate that they really, truly
9 satisfied the elements of the statute and relish the very
10 fact that they caused extreme physical pain? I - - - I
11 would believe - - -

12 JUDGE SINGAS: Can I - - - can I join?

13 CHIEF JUDGE WILSON: Of course.

14 JUDGE SINGAS: You keep mentioning the Valdez
15 Cruz case. In that case, the evidence was that the woman's
16 neck was cut open and there was evidence that there was
17 hacking and twisting of the knife while she was still
18 alive. Each one of those arguably would have caused
19 extreme pain. Would that have been enough in that case?
20 Without the eyes, without everything else that happened,
21 without the hours that he held her; would you consider that
22 a series - - - a course of conduct?

23 MR. FEINMAN: Well, in Valdez Cruz he also
24 stabbed her eyes - - -

25 JUDGE SINGAS: No, no. I know - - - I know that.

1 But I'm saying only on the neck, there was evidence - - -

2 MR. FEINMAN: That - - -

3 JUDGE SINGAS: - - - that - - - that there was
4 twisting and hacking of each or many of the blows, in
5 addition to the one that ultimately killed her. So I'm
6 saying each one of those, would you consider that a course
7 of conduct? Because each one of those, I'm sure, caused
8 extreme - - -

9 MR. FEINMAN: Well - - -

10 JUDGE SINGAS: - - - pain.

11 MR. FEINMAN: - - - there was numerous acts and
12 say - - - and - - - yes. And in that case, the medical
13 examiner specifically gave his expert opinion that those
14 injuries caused extreme physical pain.

15 JUDGE SINGAS: So in that case, just what
16 happened in the neck would have been enough to sustain a
17 torture or murder 1?

18 MR. FEINMAN: Well, no, not just the neck. There
19 was the - - - the - - -

20 JUDGE SINGAS: No. I know what it was, but I'm
21 asking you - - -

22 MR. FEINMAN: No.

23 JUDGE SINGAS: - - - would it have enough?

24 MR. FEINMAN: No. Because in that case, there
25 was also - - - I - - - in that case, the defendant also

1 stabbed the victim in each of her eyes, numerous head blows
2 - - -

3 JUDGE SINGAS: No. I know that. I'm - - -
4 again, I'm just focused on the neck.

5 MR. FEINMAN: One - - - one act is not
6 sufficient. You need at least two.

7 JUDGE SINGAS: So that - - - you would consider
8 that one act? Everything that happened in her neck area,
9 you would consider it as one act, not distinct acts?

10 MR. FEINMAN: Well, according to the medical
11 examiner, there was a number of acts and the number of acts
12 did cause extreme physical pain. But - - - did I answer
13 your question?

14 JUDGE SINGAS: No.

15 MR. FEINMAN: I mean, I - - -

16 CHIEF JUDGE WILSON: I don't think you did.

17 JUDGE SINGAS: Yeah. I'm just saying the neck -
18 - - there was medical evidence that the neck injuries,
19 there was twisting. Some of them were twisting motions.
20 Some of them were hacking motions. I'm sure each one of
21 those caused extreme pain. And what I'm asking you is - -
22 - and then there was the final blow where her trachea was
23 cut and she was deceased. Would that neck area, those
24 actions, each hack, each twist, each - - - you know,
25 hacking at her; would you consider that a course of

1 conduct? Or would you consider that one incident that had
2 to do with her neck and you have to add in - - -

3 MR. FEINMAN: I would - - -

4 JUDGE SINGAS: - - - the eyes and everything else
5 to get to a murder 1?

6 MR. FEINMAN: Because each of those stabbings was
7 a separate act. I'll say they were all separate in the
8 neck. But the medical examiner specifically said that she
9 survived for a few minutes afterwards, and he indicated
10 that all those actions caused her extreme physical pain.
11 And then you also have the defendant, who indicated that he
12 was - - - he - - - his intention was to torture her. To -
13 - - he indicated that he - - - in a telephone - - -
14 recorded telephone call, he said if she - - - I didn't want
15 - - - as he was explaining to the victim, I don't want you
16 to die in a car accident; it would be too quick. I want it
17 to last. And his actions clearly showed that - - -

18 JUDGE SINGAS: Okay. Thank you.

19 MR. FEINMAN: I just - - -

20 CHIEF JUDGE WILSON: Your time is up.

21 MR. FEINMAN: - - - one - - - just one comment.

22 CHIEF JUDGE WILSON: Quickly.

23 MR. FEINMAN: If this court decides to reverse
24 the Appellate Division's decision, I would just ask that
25 this case get remanded back to the Appellate Division so

1 they could do a weight - - - a weight review, analysis.

2 Thank you.

3 CHIEF JUDGE WILSON: Thank you.

4 JUDGE GARCIA: Counsel, could you comment on the
5 medical evidence that was just being discussed in terms of
6 the other injuries?

7 MS. PHILLIPS: Yes, Your Honor. So the medical
8 examiner here testified to - - - she felt confident about
9 testifying to nine sharp object injuries littered across
10 Junior's body. The fatal wound to the neck, obviously,
11 which bisected his windpipe and cut his jugular vein, from
12 which he bled out. And she testified that he died of
13 exsanguination, causing his body to go into shock before he
14 died, slumped against the security booth at St. Barnabas.
15 She also articulated that he had defensive wounds, and that
16 he had various other wounds that she didn't feel confident
17 describing as sharp object injury wounds because of the
18 variety of either blunt force wounds and dragging wounds
19 that the boy suffered when he was dragged from the bodega.
20 And to turn to judges Cannataro, Halligan, and Singas'
21 questions, under the standard of review here, the People
22 are entitled to every permissible inference. So if there
23 is a permissible inference that defendant's post-slaying
24 statements evinced pleasure and depravity, the People are
25 entitled to that presumption here under this standard of

1 review. And I think that is clearly the case. I would
2 also push back on defense counsel's statement that there
3 have to be two acts. I think if you look at Penal Law
4 125.26, you see where the legislature has clearly made it
5 at least two acts. Under 125.26, which is an aggravated
6 murder of a child, there has to be a substantial infliction
7 of extreme physical pain other than the fatal wound.

8 CHIEF JUDGE WILSON: But you're sort of - - - but
9 you're reading the words "course of" out of the language,
10 right? It could have just said conduct otherwise. Course
11 implies a course, right? Something more than one.

12 MS. PHILLIPS: Absolutely, Your Honor. And - - -
13 and the fact that it says, "the course must inflict"
14 implies that we look at the collective course's conduct.
15 Again, I think some - - - some of Your Honor's questions
16 about where do we parse that course, reveal that it's kind
17 of a futile gesture to say, is it when you buy the prongs
18 with the intent to use them to inflict torture, or is it
19 when you actually use them? We look to the entire course,
20 and the intent is evinced through the entire course.
21 Through the entire course of defendant's conduct here, we
22 know he intended to brutalize a singular individual en
23 masse with a group of - - -

24 JUDGE TROUTMAN: Would it matter that the
25 testimony was that the wound - - - the other wounds were

1 superficial in nature?

2 MS. PHILLIPS: No, Your Honor. And as the
3 medical examiner clarified when asked by the prosecutor on
4 follow up, superficial is just a medical term - - - may I
5 briefly finish, Your Honor?

6 CHIEF JUDGE WILSON: Of course.

7 MS. PHILLIPS: Related to the depth of the wound.
8 Here, the jury also saw video evidence and heard from
9 multiple eyewitnesses about Junior's screams of stop, help.
10 They saw the boy writhing on the ground. They saw the fear
11 in his face. There were ample other bases for this jury to
12 - - - to believe that he had been suffering extreme
13 physical pain even before the fatal neck wound. And again,
14 where the People under the standard of review are entitled
15 to all permissible inferences, we believe we should be
16 entitled to that inference as well.

17 CHIEF JUDGE WILSON: Thank you.

18 MS. PHILLIPS: Thank you, Your Honors.

19 (Court is adjourned)
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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Jonaiki Martinez Estrella, No. 21 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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