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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 81

CHRISTOPHER OATHOUT,

Appellant.

20 Eagle Street
Albany, New York 12207
March 21, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number [81].

2 Counselor?

3 MS. COLEMAN: Good afternoon, Your Honors.
4 Cheryl Coleman on behalf of appellant, Christopher
5 Oathout. Respectfully, we would ask this Court to
6 follow the precedent - - -

7 CHIEF JUDGE LIPPMAN: Counselor, would you
8 like any rebuttal time?

9 MS. COLEMAN: No, thank you, Your Honor.

10 CHIEF JUDGE LIPPMAN: Okay, go ahead.
11 You're on.

12 MS. COLEMAN: Thank you. We would
13 respectfully ask this Court to follow and expand upon
14 the precedent that we believe it set in Fisher, when
15 this Court held that counsel's, in that case,
16 multiple failures to object in the prosecutor's
17 summation, constituted ineffective assistance. It -
18 - -

19 CHIEF JUDGE LIPPMAN: Tell us about - - -
20 about the significance of beyond a reasonable doubt
21 in this case.

22 MS. COLEMAN: Your Honor, with all res - -
23 -

24 CHIEF JUDGE LIPPMAN: The failure to argue
25 beyond a reasonable doubt.

1 MS. COLEMAN: I think, while it is not the
2 worst failure of counsel, Judge Lippman, that it is -
3 - - it was a significant failure. I would
4 respectfully submit that this was the type of case
5 that was meant for a reasonable doubt situation.

6 JUDGE SMITH: Isn't it - - - can't it be an
7 effective strategy to say, as this lawyer did, look,
8 I know - - - the judge is going to tell you about a
9 reasonable doubt, but I'm not worrying about
10 technicalities; my guy is innocent?

11 MS. COLEMAN: No. With all respect, I
12 would say that the way this counselor did it, Your
13 Honor, was to actually go a step beyond doing that.
14 This counsel actually took on the burden of proof.
15 And I would submit that it was an extremely
16 ineffective strategy.

17 CHIEF JUDGE LIPPMAN: Counselor, is there -
18 - - was there any proof of actual innocence for him
19 to build on?

20 MS. COLEMAN: I don't think there was. I
21 think that the evidence, if you looked at that, at
22 best, showed that Mr. Oathout maybe probably did the
23 crime. Certainly, Your Honor, the proof in this case
24 was as minimal and certainly more minimal than that
25 in the Fisher case.

1 JUDGE READ: You said this wasn't his worst
2 - - - worst error. What would you consider to be the
3 worst error?

4 MS. COLEMAN: Yes. Your Honor, I would
5 respectfully submit that counsel's worst error - - -
6 and there were two - - - but I would say that the
7 worst error was the multiple and repeated failure to
8 object to egregious Molineux violations by the
9 prosecutor. I would respectfully submit that as the
10 Court will recall in this case, while the prosecutor
11 did receive permission under Molineux to go into the
12 fact that this crime allegedly occurred, according to
13 the one witness, during an act of prosecution - - -

14 JUDGE READ: Prostitution?

15 MS. COLEMAN: - - - prostitution. What did
16 I say? Right.

17 JUDGE READ: Prosecution.

18 MS. COLEMAN: Okay. That the - - - that
19 the prosecutor did not attempt to get a ruling on
20 whether or not he could get into the fact that - - -
21 and I think there's a good reason for it, because it
22 wouldn't have been admissible - - - that my client,
23 on numerous other occasions, acted as a gay
24 prostitute for old men.

25 JUDGE SMITH: Well, wasn't - - - I mean,

1 wasn't it - - - can you really imagine trying this
2 case without the jury knowing that the man had - - -
3 is a gay prostitute and crack user? Wasn't that
4 integral to the whole theory of both the prosecution
5 and the defense?

6 MS. COLEMAN: The tip of the iceberg, Your
7 Honor, may have been integral. The tip of the
8 iceberg, that this act allegedly occurred - - - that
9 the murder allegedly occurred during an act of
10 prostitution, was certainly res gestae evidence.

11 JUDGE SMITH: Well, also - - - also that he
12 had all these bench warrants. He - - -

13 MS. COLEMAN: I'm not clear, Your Honor.
14 Yes, there was evidence that he had bench warrants.
15 I don't think - - -

16 JUDGE SMITH: And the defense wanted to
17 bring out the bench warrants, because they're the
18 reason for the flight.

19 MS. COLEMAN: That may have been - - -

20 JUDGE GRAFFEO: As well - - - as well as
21 the bus ticket, right? That was - - -

22 MS. COLEMAN: Yes. Yes.

23 JUDGE GRAFFEO: - - - so that he could come
24 up with a different explanation for why he fled the
25 scene.

1 MS. COLEMAN: That certainly may have been,
2 arguably, trial strategy. However, there is no - - -
3 I submit - - - trial strategy for corroborating in an
4 extremely illegal sense - - - corroborating the
5 testimony of the prosecution's only witness. Without
6 that - - -

7 JUDGE GRAFFEO: Didn't he fairly
8 effectively attack her credibility?

9 MS. COLEMAN: I would - - -

10 JUDGE GRAFFEO: He did bring out the
11 inconsistencies - - -

12 MS. COLEMAN: - - - I would respectfully -
13 - -

14 JUDGE GRAFFEO: - - - in her testimony.

15 MS. COLEMAN: - - - I'm sorry, Judge. I
16 would respectfully submit he did not act effectively
17 with her. He - - - just as it was warned by the
18 prosecutor in his pre-trial motion, where he warned
19 the county court about counsel's pending
20 ineffectiveness, he did so extremely ineffectively,
21 open-endedly. He failed to utilize the time-honored
22 and evidentiarily acceptable way of impeaching the
23 witness by questions and answer with the state - - -
24 with the statements.

25 I thought that his - - - with all respect -

1 - - cross-exam of the - - - of the confidential
2 informant Lugo, was rambling, that it was
3 ineffective, that it was not pointed in a specific
4 direction.

5 And he failed - - - and I cannot, with all
6 respect, emphasize this enough. He - - - the worst
7 part of this uncharged crime evidence was that it
8 served as illegal corroboration of propensity. The
9 jury was led to infer that of course Lugo was telling
10 the truth when she testified that this murder
11 occurred during an act of prostitution, because after
12 all, my client was a gay prostitute all the time with
13 old men, just like the victim.

14 JUDGE SMITH: Is that - - - I mean, you're
15 - - - you're saying implicitly that it's the law that
16 if someone is accused of committing murder during the
17 course of an act of prostitution, it's irrelevant to
18 whether that person is a prostitute or not?

19 MS. COLEMAN: Are you saying that - - - I
20 don't know if I'm prepared to make that leap, Your
21 Honor. I don't think the relevance is the issue. I
22 think the issue is prejudice versus probative value.

23 JUDGE SMITH: Well, whether it's relevant
24 or not, you're saying it's inadmissible. I mean, I -
25 - - it just seems odd to me. I mean, the claim is

1 that a prostitute killed his or her client. How are
2 you supposed to evaluate that claim without knowing
3 whether this is, in fact, a prostitute?

4 MS. COLEMAN: I think that's too bad for
5 the People, Your Honor, I would say, under that
6 circumstance. They can't do it the way that they did
7 it. They can't make propensity inferences. And this
8 was a propensity inference. And it's one, with all
9 respect, that should have been weighed by the trial
10 court prior to a Molineux hearing.

11 And I think it's key, Your Honors, that
12 it's very clear from the record that counsel didn't
13 even know what Molineux was. His response, as the
14 record shows, to the question, when he was asked to
15 make an argument during the very mini-Molineux
16 hearing, his response was that the People never
17 charged it. I mean, that's - - -

18 CHIEF JUDGE LIPPMAN: The client wanted to
19 continue - - -

20 MS. COLEMAN: - - - what Molineux is.

21 CHIEF JUDGE LIPPMAN: - - - though, right?

22 MS. COLEMAN: Your Honor?

23 CHIEF JUDGE LIPPMAN: The client wanted to
24 continue?

25 MS. COLEMAN: Yes.

1 CHIEF JUDGE LIPPMAN: With him as attorney?

2 MS. COLEMAN: At that point in time - - -

3 CHIEF JUDGE LIPPMAN: Right.

4 MS. COLEMAN: - - - I think that he - - -
5 you know, which respectfully, I would submit, under
6 Turner, is clearly irrelevant.

7 JUDGE GRAFFEO: Is - - -

8 MS. COLEMAN: There's certainly no claim
9 that he could waive ineffectiveness.

10 JUDGE GRAFFEO: This wasn't an assigned
11 counsel. He selected - - -

12 MS. COLEMAN: You know, that's - - -

13 JUDGE GRAFFEO: - - - his counsel. So how
14 far can the trial judge intrude on that attorney-
15 client relationship, that right to counsel?

16 MS. COLEMAN: I mean, I - - - you know, the
17 client certainly has the right to choose his own
18 counsel. I would respectfully submit to the Court
19 that that, in itself, though I would respectfully
20 submit that the court should have conducted more
21 inquiry, that the client's choice in and of itself is
22 not relevant to this - - -

23 JUDGE SMITH: If the court - - -

24 MS. COLEMAN: - - - court's decision - - -

25 JUDGE SMITH: - - - the court had

1 disqualified this lawyer, you're be standing here
2 arguing that your client had been deprived of counsel
3 of his choice.

4 MS. COLEMAN: I don't know. Maybe. But
5 maybe it's a Catch-22 for the court. I don't know.
6 But I know that this counsel was grossly ineffective.

7 JUDGE RIVERA: Did you mention the second
8 error? You said there were two specifically - - -

9 MS. COLEMAN: Yes, Your Honor, thank you.

10 JUDGE RIVERA: - - - you wanted to mention.
11 What was the second one, please?

12 MS. COLEMAN: The second egregious failure,
13 I would submit, had to do with failure to object
14 during summation. There were two, what we would
15 submit, instances of prosecutorial misconduct in
16 summation, the first of which was less bad than the
17 second. The first included what we submit was
18 arguable vouching for the credibility of a witness.
19 But the second one - - - and it was here that coupled
20 with the other failures, we think makes a real
21 argument for ineffectiveness, this was the prosecutor
22 arguing, without any evidence in the record, that my
23 client was left-handed, pointed out to the jurors
24 that my client had - - - was left-handed, that he had
25 been taking notes during the trial with his left

1 hand, which was grossly improper, and then invited -
2 - -

3 JUDGE SMITH: If he had pointed out to the
4 jurors that your client was a tall man, that would
5 have been okay, wouldn't it?

6 MS. COLEMAN: I don't think it would have,
7 unless he - - - I think there are certain things
8 where you are able to stand up and, you know,
9 demonstrate, with the court's permission, that. But
10 I think summation was not the proper place to do
11 that.

12 JUDGE GRAFFEO: Could there have been a
13 defense strategy to allow that testimony about the
14 right hand - - - the left hand? Because didn't Lugo
15 say that the crime was committed with the right hand?

16 MS. COLEMAN: I understand that the People
17 made that argument, Your Honor. And I guess my
18 response was, when you look at the other failures of
19 counsel, the fact that he filed the notice of appeal
20 after the preliminary hearing, you know this wasn't
21 strategy. You know that this was just sheer
22 incompetence. And whether or not, you know, the
23 client signed on to it, I would respectfully submit
24 is irrelevant.

25 CHIEF JUDGE LIPPMAN: Okay, counselor,

1 thanks.

2 MS. COLEMAN: Thank you.

3 CHIEF JUDGE LIPPMAN: Counselor?

4 MR. SHARP: May it please the Court, Steven
5 Sharp on behalf of the People.

6 CHIEF JUDGE LIPPMAN: Counselor, the People
7 saw there was a problem here with counsel for the
8 defendant, right?

9 MR. SHARP: I would say that the People
10 thought there might be certain issues and made a
11 motion in regard to that. And I think that those
12 concerns were belied by the test - - - the transcript
13 of the trial.

14 JUDGE SMITH: You're say - - - you're
15 saying he did a better job than you expected him to?

16 MR. SHARP: Yes, yes.

17 CHIEF JUDGE LIPPMAN: How could he have
18 done a credible job without arguing reasonable doubt
19 in a case where there was absolutely no proof of
20 actual innocence?

21 MR. SHARP: I completely disagree that he
22 didn't argue reasonable doubt. He reminded the jury
23 in his opening statement of the burden of reasonable
24 doubt. Just because he's phrasing it in a way of
25 saying - - -

1 CHIEF JUDGE LIPPMAN: Is his - - -

2 MR. SHARP: - - - he didn't commit the
3 crime - - -

4 CHIEF JUDGE LIPPMAN: - - - his strategy
5 was arguing actual innocence, wasn't it?

6 MR. SHARP: I don't think so.

7 CHIEF JUDGE LIPPMAN: You don't think that
8 that's what he was arguing?

9 MR. SHARP: No, he was arguing, he didn't
10 commit this crime. There's no difference - - - just
11 because he didn't say - - -

12 CHIEF JUDGE LIPPMAN: What's the difference
13 between actual innocence and he didn't commit the
14 crime?

15 MR. SHARP: The difference - - - what's the
16 difference between he didn't commit this crime and
17 there's not evidence beyond a reasonable doubt that
18 he committed this crime? There is no difference.

19 JUDGE SMITH: You're saying that actual
20 innocence and reasonable doubt aren't really
21 different things?

22 MR. SHARP: No, they're exactly the same.
23 Certainly, in this case - - -

24 JUDGE PIGOTT: But you're not - - -

25 JUDGE RIVERA: That's a shock.

1 JUDGE PIGOTT: Are you sure about that?

2 JUDGE RIVERA: That's a shock.

3 MR. SHARP: What I'm saying is making the
4 argument that saying that he didn't commit this
5 crime, you know, is no different than saying he - - -
6 you know, there's no evidence beyond a reasonable
7 doubt that he didn't commit this crime.

8 JUDGE GRAFFEO: Isn't that setting a higher
9 bar for the jury than what they should have
10 considered under the reasonable doubt standard?

11 MR. SHARP: He didn't say it's our burden
12 to prove his innocence, so you need to find that he
13 is innocent. He said in his opening statement, he
14 said in his closing, you need to find the defendant
15 not guilty. He mentioned reasonable doubt in both
16 his opening - - -

17 CHIEF JUDGE LIPPMAN: Counsel - - -

18 MR. SHARP: - - - and his summation.

19 CHIEF JUDGE LIPPMAN: - - - counsel, in
20 effect, you know, if you're not going to argue
21 seriously reasonable doubt and you're going to argue
22 that he just did not commit the crime, aren't you, in
23 effect, depriving the defendant of a viable defense?
24 I mean, entirely depriving him of a - - - of a
25 defense which is at all credible?

1 MR. SHARP: I think that there was a viable
2 defense that was put out by defense counsel - - -

3 CHIEF JUDGE LIPPMAN: What was the viable
4 defense - - -

5 MR. SHARP: - - - here.

6 CHIEF JUDGE LIPPMAN: - - - that he was
7 arguing?

8 MR. SHARP: The viable defense that he
9 argued was that Lugo was not credible, that his use
10 of a false name and his subsequent flight was backed
11 up by other reasonable explanations, which was he had
12 warrants out for him; he didn't want to go back to
13 jail. That's why he gave the false name. He already
14 had a bus ticket lined up for New York City, which is
15 why he ended up in New York City.

16 And he attacked Lugo's credibility over and
17 over again. The cross-examination of her was very
18 extensive.

19 JUDGE RIVERA: And are you arguing that's
20 an attempt to create reasonable doubt?

21 MR. SHARP: Yes. And it's clear from out
22 (sic) his summation where he attacked Lugo at length
23 at his - - - during his summation. Not that - - -
24 you know, he didn't put on this he's innocent sort of
25 defense because of X, Y, and Z. He's saying Lugo's

1 not credible, you can't believe a word she says.

2 He argued that the jailhouse informant was
3 not credible because of his past crimes. And he put
4 forth a defense - - -

5 CHIEF JUDGE LIPPMAN: And he emphasized the
6 relationship, what he did, what Lugo did; he
7 emphasized this whole scenario of being, you know, a
8 prostitute - - - a gay prostitute with elder men and
9 all this kind of stuff - - -

10 MR. SHARP: Yeah, he - - -

11 CHIEF JUDGE LIPPMAN: - - - that was a good
12 strategy to be emphasizing that?

13 MR. SHARP: - - - he conceded the lesser
14 crimes. How can you not concede that based on all
15 the evidence that the People presented? Arguing that
16 he wasn't in those sort of circumstance, when you're
17 already putting forth evidence that there were bench
18 warrants for drug use and the repeated evidence that
19 came in to establish that, he conceded that. And he
20 made the argument that none of these crimes are
21 nonviolent - - -

22 CHIEF JUDGE LIPPMAN: So the prosecutor was
23 - - - was alarmed for no good reason at the
24 beginning, and it turned out that this guy did a
25 pretty good job?

1 MR. SHARP: Well, I think it goes without
2 saying that that motion - - - there was no love lost
3 between defense counsel and the initial prosecutor.

4 JUDGE PIGOTT: I thought it was incredible
5 - - - I thought it was kind of a nice thing. You
6 know, the DA always talks about the fact that their
7 job is to, you know, make sure there's a fair trial
8 and do justice, and I, in my mind, was commending him
9 for bringing a motion that he thought needed to be
10 brought.

11 I wanted to ask you, Ms. Coleman talked
12 about the Molineux issue. Do you have a view on - -
13 - on the way Molineux was handled in this case?

14 MR. SHARP: I think it could have been done
15 better. I think that the trial prosecutor - - -
16 prosecutor could have made a more expansive Molineux
17 application. But on the whole the evidence that came
18 in, which was certainly inextricably interwoven with
19 the murder, that he was going there to perform an act
20 of prostitution for money, and that a fight ensued
21 because he - - -

22 CHIEF JUDGE LIPPMAN: Do you think the
23 defense counsel knew what Molineux is?

24 MR. SHARP: Yeah. He didn't just make the
25 argument that it wasn't charged, which - - - you

1 know, I've heard judges make that argument before
2 that it wasn't charged, so we can't get into it on a
3 Molineux issue. He made the argument that it was
4 prejudicial.

5 JUDGE SMITH: Isn't uncharged crimes a
6 synonym for Molineux?

7 MR. SHARP: Yes, yes. But that doesn't
8 stop people from making the argument that they should
9 have charged it, and therefore, you know. But he
10 made that argument. And he also said that it was too
11 prejudicial. And the judge balanced the
12 probativeness and admitted it anyway.

13 I would like to address the - - - the
14 motion that we made and what county court did, in
15 response to Judge Graffeo's earlier question.

16 And People v. Knowles sets out a very
17 specific standard that a court cannot interfere with
18 defendant's chosen counsel, retained counsel, absent
19 good cause. And at that stage, when the motion was
20 filed, there was no good cause to remove this
21 attorney.

22 JUDGE GRAFFEO: Did the trial judge ever
23 rule on the request for stand-by counsel?

24 MR. SHARP: He asked whether - - -

25 JUDGE GRAFFEO: It seems that there was a

1 request or at least an acquiescence to use stand-by
2 counsel. What happened to that?

3 MR. SHARP: Well, on the record, I think
4 it's page 20 of Defendant's Appendix, the judge
5 basically said - - - asked defense attorney if he'd
6 seen the motion, if he had talked about it with his
7 client, and said okay; he didn't - - - he didn't
8 actually go into, you know, denied or anything like
9 that. There's nothing on the record - - -

10 JUDGE GRAFFEO: He didn't really rule - - -
11 he didn't really rule on the request, did he? Or did
12 I miss something - - -

13 MR. SHARP: Not - - -

14 JUDGE GRAFFEO: - - - in the record?

15 MR. SHARP: - - - not to my knowledge. On
16 the record, there's nothing to indicate that he ever
17 ruled on it. And there was some acquiescence by the
18 defense attorney who said, you know, basically,
19 that's fine. If you want to do that, that's fine.
20 But I think county court in this case left it well
21 enough alone, recognizing that interfering with
22 defendant's right to retain counsel would be an
23 error, and certainly Ms. Coleman would be here
24 arguing that, if that was the case.

25 JUDGE PIGOTT: Well, didn't he join in the

1 motion for stand-by counsel?

2 MR. SHARP: Yes. And that's why I refer to
3 the no love lost. It seemed to me that, you know,
4 that was exactly what he was doing. You're calling
5 me ineffective, so sure, here's some attorneys that I
6 like, so have them appointed as stand-by counsel.
7 And so it was joined - - - it was never joined by the
8 defendant. In fact, the defendant reaffirmed his
9 desire to have defense counsel - - - defense counsel
10 as his counsel and representative there.

11 CHIEF JUDGE LIPPMAN: Okay, counselor,
12 bottom line is you don't necessarily think that
13 defense counsel did a good job, but you're just
14 saying it didn't raise (sic) to the level of
15 ineffective assistance?

16 MR. SHARP: Yeah. Defendant's not entitled
17 to perfect representation, he's entitled to
18 meaningful representation.

19 CHIEF JUDGE LIPPMAN: Okay.

20 JUDGE PIGOTT: When he - - - when he - - -
21 Ms. Coleman mentioned, too, that he filed a notice of
22 appeal with respect to the grand jury indictment.

23 MR. SHARP: He filed, allegedly - - - and I
24 don't even think that this is clear from the record
25 before the Court outside of the prosecutor's motion -

1 - - filed a notice of appeal on the ruling of the
2 preliminary hearing.

3 JUDGE PIGOTT: Oh, okay.

4 MR. SHARP: Yeah.

5 JUDGE SMITH: Is it - - - is it fair to say
6 that this - - - that this defense lawyer was not an
7 expert in criminal practice?

8 MR. SHARP: Sure. But I think many - - -

9 JUDGE SMITH: I mean, he - - - I mean, the
10 sense I get is that he - - - there's a lot about
11 criminal law he doesn't know, but he does know how to
12 try a case?

13 MR. SHARP: Yes. If you read the trial
14 transcript, it's very clear that he had a strategy, a
15 viable one, albeit an unsuccessful one.

16 CHIEF JUDGE LIPPMAN: Okay.

17 JUDGE SMITH: Did - - - was there any point
18 at which his ignorance of the criminal law seemed to
19 affect his performance?

20 MR. SHARP: No.

21 CHIEF JUDGE LIPPMAN: You don't think his
22 ignorance as a criminal lawyer affected his
23 performance?

24 MR. SHARP: Affected the - - - the overall
25 performance?

1 CHIEF JUDGE LIPPMAN: Yes.

2 MR. SHARP: No. I think that he - - -

3 CHIEF JUDGE LIPPMAN: You don't - - -

4 MR. SHARP: - - - I think - - -

5 CHIEF JUDGE LIPPMAN: - - - have to know
6 anything about criminal law to defend someone in a
7 serious - - - when their liberty is at stake?

8 MR. SHARP: He did know things about the
9 criminal law. I think that that's clear from the
10 record. I'm not saying that he was completely
11 ignorant of all criminal law principles. What I am
12 saying is, while he could have done a better
13 performance - - - and I think you could say that any
14 time you have a guilty verdict, that a defense
15 attorney could have done a better job - - - on the
16 whole, he provided meaningful assistance, and that
17 any lack of knowledge on criminal legal principles,
18 however much that may have been, did not affect
19 overall, in terms of transferring this to an
20 unmeaningful representation.

21 CHIEF JUDGE LIPPMAN: Okay.

22 JUDGE RIVERA: But isn't this a little bit
23 more than just - - -

24 CHIEF JUDGE LIPPMAN: Judge Rivera.

25 JUDGE RIVERA: - - - meaningful principles?

1 Isn't it about motion practices and about specific
2 types of - - - it strikes me as not about the overall
3 principles - - - or maybe I've misunderstood you - -
4 - but about some very discrete areas of criminal law
5 that were critical to the representation in this
6 case. Did I misunderstand you about what you meant
7 about criminal process?

8 MR. SHARP: I'm saying, on the whole, he
9 provided meaningful representation. There may have
10 been certain areas that he could have done a better
11 job in. But on the whole he provided - - -

12 JUDGE SMITH: What do you think is the
13 worst thing he did?

14 MR. SHARP: The worst thing that he did? I
15 honestly - - - I don't know. I would have to say
16 that most likely it was the failure on his part to
17 object to the exceeding of the Molineux evidence.
18 But I think all that would have resulted in was a
19 further hearing that could have been cured mid-trial.

20 CHIEF JUDGE LIPPMAN: Okay. Thanks,
21 counsel.

22 Counselor, rebuttal?

23 MS. COLEMAN: No, thank you.

24 CHIEF JUDGE LIPPMAN: Oh, you didn't take
25 any. Okay. Thank you both.

(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 People v. Christopher Oathout, No. 81 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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Date: March 29, 2013