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To be argued by Stuart D. Rubin, Esq.
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

- against -

MANUEL VEGA,

Defendant/Appellant

BRIEF FOR DEFENDANT /APPELLANT MANUEL VEGA

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Bronx County Indictment No. 2638/00

TO: Honorable Robert T. Johnson
District Attorney
County of Bronx
160 First Street
Bronx, NY
718-590-2000

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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT**

**THE PEOPLE OF THE STATE OF NEW YORK,
Respondent**

- **against** -

**STATEMENT PURSUANT TO
CPLR 5531**

**MANUEL VEGA,
Defendant/Appellant**

1. The indictment number in the Court below was 2638/00.
2. The full names of the parties were People of the State of New York against Manuel Vega.
3. This action was commenced in Supreme Court, Bronx County
4. This action was commenced by filing of Indictment 2638/00 on June 2, 2000.
5. This appeal is from a judgment convicting Appellant, after trial, of Murder in the Second Degree.
6. This is an appeal of a judgment of conviction rendered June 12, 2002 (Globerman, J.)
7. The full record on appeal has been reproduced.

Respectfully submitted,

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ISSUES PRESENTED

- I. Whether evidence of uncharged crimes should have been admitted at trial. (U.S. Const., Amend. V, XIV, N.Y. Const., Art I. Sect. 6)
- II. Whether there was legally sufficient evidence to support a conviction and/or whether the verdict was against the weight of the evidence. (U.S. Const., Amend. V, XIV, N.Y. Const., Art I. Sect. 6)
- III. Whether indirect hearsay evidence violated the Confrontation Clause and/or impermissibly bolstered in-court testimony with evidence of prior consistent statements. (U.S. Const., Amend. V, XIV, N.Y. Const., Art I. Sect. 6)
- IV. Whether the Court improperly allowed hearsay evidence that the defendant assaulted his wife on two prior occasions. (U.S. Const., Amend. V, XIV, N.Y. Const., Art I. Sect. 6)
- V. Whether the prosecutor's summation violated defendant's due process rights and diminished the prosecutor's burden of proof. (U.S. Const., Amend. V, XIV, N.Y. Const., Art I. Sect. 6)

PRELIMINARY STATEMENT

Defendant/appellant Manuel Vega appeals his judgment of conviction duly entered on July 12, 2002 in Bronx County for murder in the second degree in violation of P. L. section 125.25 (1) after jury trial before the Honorable Ira Globerman. Defendant was convicted, on purely circumstantial evidence of smothering and strangling his wife. He is currently serving an indeterminate term of incarceration of 25 years to life.

SUMMARY OF FACTS

On August 18, 1999 Joanna Vega was found in her apartment strangled and asphyxiated to death. Her husband, defendant Manuel Vega, did not seem distraught. Mr. Vega was interviewed and released. He was not arrested until nine months later when the police discovered a history of domestic violence in the years prior to the homicide.

STATEMENT OF FACTS

Police Officer, CHRISTINE GOMBERT was on routine motor patrol on August 18, 1999 when she received a radio run of an unconscious and possibly dead person at 231 Echo Place, Bronx County, New York (T:24).¹ When officer Gombert got to the location the first person she encountered was defendant, MANUEL VEGA. Mr. Vega was calm and unemotional (T:27). Defendant told Police Officer Gombert that when he arrived home at approximately 10 a.m. (T:66) he couldn't find his wife or his dog (T:28).

Police Officer Gombert observed that the apartment was neat and clean with the exception of the second bedroom where the body was located. That bedroom was very messy

(T:29, 38). At the request of the crime scene detective who arrived at the scene, Police Officer Gombert vouchered certain evidence including a pillow, a comforter, a piece of carpet, as well as, an earring.

Detective THOMAS HENRY, of the Crime Scene Unit, inspected the scene (T:89). He found the deceased wrapped in two comforters leaning against a wall in the second, and rather messy, bedroom (T:96). He asked that Police Officer Gombert voucher a blood stained carpet, the comforters, as well as, an earring that was located on the floor in the bedroom. A video of a walk through the apartment was shown to the jury (T:126).

POLICE OFFICER, DANIEL GOINGS was the partner of Police Officer Gombert when they arrived at 231 Echo Place. They were flagged down outside the apartment by MARIO VALENCIA. Once inside the apartment Police Officer Goings noted that defendant was calm and that his cell phone kept ringing. He further noted that defendant was rather interested in answering his phone (T:194-197).

DETECTIVE, DANIEL WITHERS, was assigned as the case detective. Detective Withers arrived at the scene, took a look around and asked defendant if he would come back to the precinct. In route to the precinct, defendant was rather monotone and not excited (T:224). Detective Withers interviewed defendant and reported his statement in a three-page memorandum, which was later signed by defendant (T:232-236). Defendant told Detective Withers that on August 17, 1999 he arrived home from work about 1:30 p.m. He took a nap and was woken by his wife at about 5:00 p.m. His cousin George Campana, who was living in the back room, borrowed his van so that he could go to Queens. Mr. Vega's wife received several phone calls including one from her friend Fannie, an upstairs neighbor, with whom she made a

¹ Number in parentheses preceded by the letter "T" refer to the trial transcript.

plan to speak to at 6:40 a.m. the following day. At about 10 p.m. defendant and his wife both fell asleep and he woke up on August 18th at about 1:40 a.m. to go to work. At about 2:10 a.m. he took the dog for a walk, moved his cars around, and noted that his wife was still in bed sleeping. He left for work about 2:20 a.m. He set about doing his work as a fish delivery man, and at about 7:00 a.m. used his cell phone to call his wife to wake her up. No one answered. At about 8 a.m. he called the upstairs neighbor (Fannie) and asked for his wife. Fannie said that she was not there.

At about 10 a.m. he returned home. His bedroom door was locked. He noted that the dog was not there and his wife was not there. He watched a couple of videotapes and then started making some phone calls to locate his wife. At about 12 noon he went back to work and ultimately arrived home again at about 3:20 p.m. Still no one was home. He saw Fannie and asked that she call the hospitals to see if they had any information on his wife. He looked around the apartment and everything appeared normal. Ultimately, he checked a futon in the second bedroom and saw the body of his wife. He asked Fannie to call 911. He waited at the apartment until the police arrived. Although not recorded in the written statement Detective Withers recalled that defendant told him that when he came home the front door was locked. Withers also noticed that defendant's voice tone was flat and that he only cried for about 3 seconds (T:237).

Detective Withers checked out defendant's alibi, namely that he was at work, making fish deliveries. The alibi did seem to check out.

He did not speak to defendant again until November 23, 1999. In this second conversation with defendant, Mr. Vega stated that the night before the death of Joanna Vega, the couple had had sex. Defendant further stated that, "I came in her" (T:242). Defendant was not

arrested until May 27, 2000. Detective Withers noted that defendant did inform him when he was moving from the Echo Place apartment and also that when he left the country for his wife's funeral in Ecuador.

JORGE CAMPANA, defendant's cousin, had been living in the second bedroom and was in the process of moving some of his things out. On the date in question, he borrowed defendant's van and was going to return later hoping that defendant's brother, Kelbert, who also lived in the back bedroom, would help him carry some things downstairs. Mr. Campana was in the apartment with both defendant and the deceased from about 4:30 p.m. until about 6 p.m. He left and went to his mother's house returning at about 9:30 p.m. looking for Kelbert. Defendant and Joanna's bedroom door was closed. Mr. Campana assumed they were sleeping as they usually went to sleep early. He left once again to bring some clothing to his new apartment and came back to return the van at about 11:30 p.m. to 11:45 p.m. The lights were off but the dog, a boxer, was still in the apartment. The second bedroom appeared normal (T:328-329).

FANNIE VALENCIA, lived directly above the deceased. On August 17th she spoke with the deceased and they made a plan to meet at about 7 a.m. on the 18th. During the course of the evening, she never heard any noise from her downstairs neighbor (T:337-338).

Ms. Valencia called for the deceased at about 6:40 a.m. but received no answer. At 8:00 a.m. the defendant called Ms. Valencia and asked for the deceased. He again called at 10:00 a.m. At 12:30 p.m. defendant knocked on the door. He handed Ms. Valencia's daughter a set of keys and stated that if Joanna returned, to give them to her (T:341).

At 5:00 p.m. the defendant called again. He was worried. He stated that the deceased pocketbook and keys were in the apartment and he didn't know where she was. Ms. Valencia

went down to the apartment. As Ms. Valencia was going to the bathroom to conduct a search, defendant went into bedroom #2 and shortly thereafter started screaming (T:346-348).

On cross examination Ms. Valencia noted that right after the deceased body was found, defendant was sitting on a chair in the dining room and he was crying (T:365).

SHEILA ESTASIO, a Forensic Biologist, with the Office of the Chief Medical Examiner, testified with respect to her findings regarding the blood and other biological evidence submitted to her at the Office of the Chief Medical Examiner Forensics Laboratory. Ms. Estasio testified that the blood that was recovered on various items belonged to the deceased. She also testified that on the pillow she found saliva or blood, she couldn't tell which, but that it contained the DNA of both the defendant and the deceased. She did explain that because it was a pillow it could be that either the deceased or the defendant or both drooled while they were sleeping (T:417).

DR. MARGARET PRIAL, an employee of the Office of the Chief Medical Examiner of the city of New York, conducted the autopsy, on August 19, 1999. The cause of death was asphyxiation due to compression of the trunk, neck, mouth and nose (T:477-480). Dr. Prial was imprecise with respect to the time of death. She did however, hypothesize that the time of death may have been approximately 10 p.m. on August 17. This hypothesis was based upon eyewitness accounts that rigormortis was easy to break when the body was found at approximately 9:30 p.m. on August 18, 2002. The medical examiner did equivocate stating that her estimate could be off several hours either way (T:490). Dr. Prial testified that death could have come at 6 a.m., 3 a.m., at 1 a.m., and at 11 p.m. (T:638). The only evidence Dr. Prial had to go on was the fact that rigormortis seemed easy to break at 9:30 on August 18th. Given the heat