

the morning of December 31, 2009, when the NYPD first arrived at the apartment, which was key to its assertion that the bed was wet that morning, which in turn was the foundation of its theory that Mr. Covlin had attempted to clean Shele's blood from the sheets using seltzer water, having first attacked her in the bedroom. Now, in the Opposition, after downplaying the admissibility issue,² the People maintain that in representing to the jury that the photo was taken in the morning, the prosecutor "did inadvertently misspeak." (Opp. ¶ 161(a) n.2).

This is a truly audacious statement to make. It is also a cynical lie. The People's entire narrative of events hinged on the notion that Mr. Covlin first attacked Shele in her bed and later returned to the bed with seltzer water to clean up the bloodstain. That is, their entire theory of the case rested on what the prosecutor "misspoke." To say that the prosecutor misspoke here is to imply that what the prosecutor meant to do, but inadvertently flubbed, was to present to the jury a photo of what looked like a wet spot on the bed long after the wet spot that the People claimed Mr. Covlin made would have dried. The People would have had no conceivable reason to do this, as it would have revealed that the darkened area of the photo was not a wet spot at all. So for the People to claim now that they made an innocent speaking error is absurd on its face

² The People protest that Mr. Covlin's claim that this photo was not admitted into evidence is "false" because it was in fact nothing more than an enlarged portion of a different photo that had been admitted. (Opp. ¶¶ 153(b), 158). But this is not a distinction that the People saw fit to draw at trial, and in fact they explicitly presented it as a different photograph completely and said nothing to indicate it was merely a blow-up of the previous photo. (See Tr. 4583:15–4584:1 ("Next. You have that photo, blow it up. Don't take my word for it. Look for the wet stain right on the bed.")).