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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 10

RAYMOND WILLIAMS,

Appellant.

20 Eagle Street
Albany, New York
January 8, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN
ASSOCIATE JUSTICE LARA J. GENOVESI

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Thank you. And the last
2 case on today's calendar is People v. Williams.

3 Counsel?

4 MS. MISRA: Good afternoon. My name is Ayushi
5 Misra from Cleary Gottlieb. And together with the Office
6 of the Appellate Defender, we represent Mr. Raymond
7 Williams.

8 I'd like to reserve three minutes for rebuttal,
9 please.

10 CHIEF JUDGE WILSON: Yes.

11 MS. MISRA: Thank you.

12 Your Honors, this is a legally insufficient case.
13 The most objective piece of evidence here is a surveillance
14 video that shows only innocent conduct by Mr. Williams.
15 And the video - - -

16 JUDGE SINGAS: Counsel, our standard for legal
17 sufficiency isn't the finding - - - that a finding of guilt
18 must be the only reasonable interpretation; is that
19 correct?

20 MS. MISRA: That's right, Your Honor. And - - -

21 JUDGE SINGAS: So the dissent got that wrong when
22 they were in their dissent, the standard - - - outlining
23 the standard?

24 MS. MISRA: So I think the dissent had focused on
25 People v. Way, and the subsequent decision by this court,

1 People v. Reed, did not overrule People v. Way, but we
2 agree with respondent that the correct standard is whether
3 the evidence provides a valid line of reasoning and
4 permissible inferences from which the jury could infer that
5 the prosecution established all elements of a crime.

6 JUDGE SINGAS: And you think here that reasonable
7 interpretation doesn't exist?

8 MS. MISRA: Correct. And our position is that
9 the prosecution at trial failed to establish that for a
10 couple different reasons.

11 So as I was saying, the surveillance video
12 undercuts the prosecution's other evidence presented at
13 trial, which is an interrogation video where Mr. Williams
14 does not confess to the crime at issue in this indictment.
15 Simply put, there is no confession here at all. And the
16 surveillance video clearly shows that Mr. Williams did not
17 have an intent to steal.

18 JUDGE CANNATARO: Doesn't the undercutting create
19 an issue of fact for the jury to resolve?

20 MS. MISRA: It does, Your Honor. But the - - -
21 the jury in making that determination is only allowed to
22 make reasonable inferences. And here, we are saying,
23 because of the evidence presented, the jury made an
24 unreasonable - - - reached an unreasonable conclusion in
25 concluding that Mr. Williams had the intent to steal.

1 So first, the surveillance video that the
2 prosecution itself put into evidence at trial is entirely
3 exculpatory. The video captures the entire time that Mr.
4 Williams spent in the CVS store, all seventy-five seconds
5 of it, from multiple angles. It shows that Mr. Williams
6 entered the CVS, walked purposefully to aisle 10 to grab
7 two cans of Red Bulls, walked to the cash registers with
8 those Red Bulls, and left the store without removing any
9 items. No rational jury can watch that surveillance video
10 and conclude that Mr. Williams had the intent to steal.

11 Second, the interrogation video is not a
12 confession to the crime that Mr. Williams was charged with
13 in this indictment.

14 CHIEF JUDGE WILSON: Let me just back you up for
15 a second on the store video.

16 I'm not sure I would agree that it's exculpatory,
17 but I'm not sure you have to show that, right?

18 MS. MISRA: You're right, Your Honor. We don't
19 have to show that it's exculpatory, but I'd like to
20 highlight a few moments where it shows completely innocent
21 conduct by Mr. Williams.

22 So first, at the beginning, at timestamp 9:43:45,
23 he enters the CVS with a plastic bag in his left hand. He
24 walks immediately right to the store down aisle 9, glances
25 back over his shoulder once, not twice, not several times

1 as respondent contends, and then he continues to aisle 10,
2 where the Red Bull coolers are located. He takes the two
3 cans and then he walks past the exit. At that point,
4 multiple people are entering and leaving the store. So the
5 automatic doors are triggered. If he had an intent to
6 steal, that would have been the perfect opportunity for him
7 to take the two Red Bull cans and flee the store. Also, he
8 made no attempts to conceal the cans of Red Bulls. He was
9 carrying a plastic bag. He was wearing pants. If he
10 wanted to steal, he could have put those two cans of Red
11 Bull - - -

12 JUDGE TROUTMAN: But isn't that equally
13 consistent with him seeing if that was an opportunity
14 where, in fact, he could get away with what he may have
15 intended?

16 MS. MISRA: Your Honor, he - - - at that point,
17 he approached - - - he was walking towards the cash
18 register where store employees were located.

19 So based on this evidence, we would say that if
20 he wanted to get away with it, he wouldn't have approached
21 the store employees and continued walking towards the cash
22 registers.

23 After he passes the exit, at that point a store
24 manager stops him and tells him, stop, you don't belong
25 here, and she takes the two cans of - - -

1 JUDGE HALLIGAN: Sorry. When you say passes the
2 exit, that's en route to the cash register; is that right?

3 MS. MISRA: That's correct.

4 JUDGE HALLIGAN: I think in the video we can't
5 see where the cash register is in that frame.

6 MS. MISRA: You're right, Your Honor. It is
7 difficult to see, but the cash registers are located - - -
8 so there's two sets of cash registers from the testimony at
9 trial.

10 One is the regular cash registers with a person
11 behind them, and then the other is self-checkout. So he is
12 closer to the self-checkout, although he's not quite there.
13 So he's approaching the self - - - the self-checkout
14 registers, and the exit is right - - - right before that.
15 But he passes the exit on the way to the self-checkout
16 registers, where there's another Red Bull cooler located.

17 So at that point, he takes the two cans of Red
18 Bulls and he places them down onto the Red Bull cooler, and
19 when the store manager approaches him and asks him to give
20 it back -- it's about a fifteen-second long exchange from
21 the surveillance video itself -- he gives the Red Bulls
22 back to the store manager and then leaves the store.

23 From this surveillance video, there is absolutely
24 no evidence that Mr. Williams had the intent to steal.

25 Now, I'd like to turn - - -

1 JUDGE TROUTMAN: Do you look at the evidence in
2 isolation, or do you look at his conduct before he entered
3 the store, the agreement that he signed? Is the jury
4 allowed to consider it in a collective manner?

5 MS. MISRA: Of course, Your Honor. And so do we.
6 We are looking at the totality of the evidence here.

7 So on the intent to steal point, I also want to
8 point to the prosecution's evidence of intent that came
9 from the testimony of the shift supervisor, Lateasha
10 Menafee. Here, most of what Ms. Menifee testified to is
11 consistent with the surveillance video. However, any
12 incriminating statements made by Ms. Menafee are directly
13 contradicted by the surveillance video itself. And I'd
14 like to point out four key differences.

15 So first she said that Mr. Williams entered the
16 store, quote, "Doubled back and stood in the vestibule
17 while looking inside". That's at Appendix 77. This did
18 not happen in the surveillance video. And as I'm sure
19 you've all watched for yourself, it didn't happen.

20 Once inside the store again, he walked
21 purposefully to aisle 9 - - - aisle 10 to - - - to get the
22 Red Bulls.

23 Next, she said that Mr. Williams entered the CVS
24 empty handed when the video clearly shows he was carrying a
25 plastic bag in one hand.

1 She also said that Mr. Williams slammed the Red
2 Bulls down on the cooler, but at that point he had already
3 placed both cans of Red Bulls on the cooler, when the store
4 manager asked him to leave.

5 And finally, she said that the store manager
6 scanned the Red Bulls for security procedures, and we know
7 that that did not happen based on the surveillance video.

8 So taking all of that evidence into account and
9 looking at the totality, we argued that it - - - it would -
10 - - it is irrational for the jury to conclude that Mr.
11 Williams had the intent to steal when witness testimony is
12 contradicted, any incriminating witness testimony is
13 contradicted by the surveillance video, and the video
14 itself does not - - -

15 JUDGE SINGAS: Isn't that the jury's prerogative
16 to determine what they're going to believe and what they're
17 going to find credible?

18 MS. MISRA: It is, Your Honor. But even here, as
19 I said earlier, the prosecution still needs to prove their
20 case, and - - -

21 CHIEF JUDGE WILSON: Let me ask you this. Take
22 the four facts you just ran through. Why would any of
23 those, even if -- from the testimony -- why would any of
24 those be incriminating? That is, suppose he walked into
25 the store empty handed, why would that bear on - - - I

1 mean, I've walked into the CVS empty handed. I don't think
2 that's an indication that I intended to steal something.

3 MS. MISRA: Your Honor, I think - - - so you're
4 right that is not - - -

5 CHIEF JUDGE WILSON: Why, the fact - - - I mean,
6 I have walked into a CVS and paused because I didn't know
7 which way the stuff I wanted was. So if that were true,
8 why would that indicate an intent to steal something?

9 MS. MISRA: So I think the first part of
10 Menafee's testimony where he - - - he doubled back and went
11 back inside, what the prosecution argued at trial was that
12 it's incriminating - - - it was incriminating because he
13 was trying to see what's happening in the store and
14 deciding whether he could potentially go in there. So our
15 point is that testimony that was presented - - -

16 CHIEF JUDGE WILSON: Yeah, but for evidence to be
17 probative of a material fact or really of any fact, it has
18 to make it more likely than not that the proposition is
19 true. So going into a store and pausing to look around
20 doesn't seem to me to be probative of whether you intend to
21 steal something or whether you're trying to figure out
22 where something you want to buy is.

23 MS. MISRA: And that is the point that we're
24 trying to make here too, Your Honor. There is no evidence.
25 There is no witness testimony here that - - -

1 CHIEF JUDGE WILSON: I mean, I guess - - -

2 MS. MISRA: - - - would - - -

3 CHIEF JUDGE WILSON: - - - the question I'm
4 getting at is, I understand your point is that when you
5 look at the video, none of this actually happened. But
6 even if it happened, I don't understand why it's probative.
7 And maybe that's a better question for me to ask the DA.

8 MS. MISRA: Your Honor, again, I think what we're
9 arguing here is there is absolutely no evidence that's
10 probative of Mr. Williams' guilt, whether it's the witness
11 testimony or the surveillance video, because everything
12 shows that he only engaged in - - - in conduct, as you
13 described, that any normal person would have done, and he
14 did not enter the CVS store at 300 Park Avenue South with
15 the intent to steal.

16 JUDGE TROUTMAN: Did he enter unlawfully?

17 MS. MISRA: I will get to that - - - to that
18 next, Your Honor.

19 So on the interrogation video, he was issued a
20 trespass notice in September of 2016, so about four months
21 earlier than the date of the incident. However, despite
22 respondent's characterization of this video as a
23 confession, this is not a confession at all.

24 So he was issued that trespass notice, but there
25 are various moments in that interrogation video that - - -

1 that indicate that he did not understand the full scope and
2 consequences of that trespass.

3 JUDGE HALLIGAN: Would that have been a defense
4 to unlawful entry?

5 MS. MISRA: Yes, Your Honor, and his at trial
6 counsel did argue that.

7 JUDGE CANNATARO: That - - - that would mitigate
8 or somehow negate the lawfulness of his entry that he
9 didn't understand what he had agreed to six months earlier?

10 MS. MISRA: Oh, sorry. To be clear, it would not
11 negate the trespass itself.

12 JUDGE HALLIGAN: It - - - it would not negate the
13 - - - the fact that the entry was unlawful, right?

14 MS. MISRA: Correct. Yes.

15 However, what - - - the import of the
16 interrogation video and the statements that he made go to
17 his intent to steal.

18 JUDGE TROUTMAN: What about the claim that Red
19 Bull was in -- involved in that incident also? Or - - -
20 I'm sorry. Never mind.

21 MS. MISRA: So back to the interrogation video.
22 I want to flag that every single material fact that he made
23 in his - - - in - - - in that video: where he was, when he
24 was there, what happened inside the store, his own actions
25 inside the store, all of these facts are simply not on the

1 surveillance video. The only rational conclusion to draw
2 from the statements he made is that he's admitted - - -

3 JUDGE TROUTMAN: So is it - - - is it your claim
4 that every movement that he made was included or covered by
5 the video? Every angle? Every movement?

6 MS. MISRA: From the surveillance video? It did
7 - - - it did capture all angles from the store.

8 JUDGE TROUTMAN: So all of his movements were
9 covered; is that what you're saying?

10 MS. MISRA: Based on what I saw in the
11 interrogation video, I think most of them were covered.
12 There are some angles - - -

13 JUDGE TROUTMAN: But not necessarily all?

14 MS. MISRA: All the relevant movements are
15 covered - - - are covered. So you can see where he is in
16 the store, what he's doing.

17 JUDGE GENOVESI: How do you know it's - - - it's
18 not relevant? If it's not on the video, we don't know.

19 MS. MISRA: Well, Your Honor, the point is, when
20 he - - - from the time he walked into the store, from the
21 time he left, we can see where he goes and what he picks
22 up. And I think there is one - - - one area where we can't
23 fully see the interaction. It's a fifteen-second angle.
24 But other than that fifteen seconds - - - again, he's only
25 in the store for seventy-five seconds total - - - other

1 than that angle, we can see every other movement and every
2 other action in the store. So I see - - -

3 JUDGE RIVERA: But what about the interrogation
4 video? Do you - - - is it your argument he's not
5 confessing to the theft of a Red Bull?

6 MS. MISRA: Our argument is that he's not
7 confessing to the theft of two Red Bulls at 300 Park Avenue
8 South on January 19th, 2017.

9 JUDGE HALLIGAN: He may be confessing to the
10 theft of Red Bulls at some other time and location, though,
11 right?

12 MS. MISRA: And - - - and that - - -

13 JUDGE RIVERA: But isn't that for the jury to
14 determine?

15 JUDGE CANNATARO: Isn't that - - - yeah. What
16 Judge Rivera said.

17 JUDGE RIVERA: For the jury to determine whatever
18 may be this level of confusion.

19 MS. MISRA: It is. But here again, because of
20 the other - - - because of the objective surveillance video
21 - - - and again, that's sort of what makes this case unique
22 compared to - - - to other instances. We have the entire
23 incident captured on video.

24 JUDGE TROUTMAN: But couldn't the jury make a
25 determination that there was a point of clarity within that

1 video that they could make that finding?

2 MS. MISRA: It could, but here it was irrational
3 for them to make the conclusion that Mr. Williams intended
4 to steal exactly because of all of the evidence. And if I
5 can just wrap up - - -

6 JUDGE RIVERA: But if he's at the register, he's
7 approached by an employee, why not just offer to pay it?
8 Doesn't that allow the jury to infer that the intent was to
9 never pay?

10 MS. MISRA: Well, Your Honor, the - - - his
11 failure to offer to pay is not - - - does not mean that he
12 intended to steal. It's not - - - it's not equivalent in
13 that way. So you know, once he was stopped at - - - by a
14 store manager telling him to leave, he didn't put up a
15 fight, he didn't argue with her, he gave the Red Bulls
16 back.

17 JUDGE TROUTMAN: Couldn't one argue that that was
18 consistent with his guilt being caught before he could
19 complete it?

20 MS. MISRA: No, Your Honor, because he - - -

21 JUDGE RIVERA: And trying to get out before it
22 goes any further?

23 MS. MISRA: No. No, Your Honor. I think he was
24 simply just following the instructions of the security
25 officer, returning the Red Bulls, and then walking out of

1 the store.

2 JUDGE CANNATARO: And you're saying it wouldn't
3 be reasonable for a jury to conclude that the alternate
4 motivation was he just wanted to get out of there before it
5 escalated to a detention or something like that?

6 MS. MISRA: Yes. That is what we're arguing.
7 And he couldn't - - -

8 JUDGE CANNATARO: Why? Why - - - why would that
9 be impermissible for a jury to make that conclusion?

10 MS. MISRA: So it's impermissible because the
11 evidence - - - because of the surveillance video. If he
12 wanted to leave before it escalated or got out of hand, he
13 had the opportunity to do so about thirty seconds before he
14 was asked to give the Red Bulls back.

15 JUDGE CANNATARO: No, but I'm saying it's the
16 confrontation itself by the manager that says, uh-oh, I
17 better get out of here now before this becomes an arrest or
18 a detention of some sort.

19 MS. MISRA: Well, based on the testimony in the
20 record, the manager never told him that, you know, he is -
21 - - he's going to be arrested or - - - she just said stop,
22 you don't belong here, give me the Red Bulls. So he
23 followed that order. She did not say, hey, you have a
24 trespass notice. Hey, you're going to get arrested for a
25 crime. You're going to be charged for burglary. So - - -

1 so based on the evidence, I don't think it's reasonable for
2 us to infer that he knew that it would escalate. She just
3 asked him to give the Red Bulls back, and he did so and
4 walked out of the store.

5 JUDGE RIVERA: Is it not reasonable to infer that
6 if you don't offer to pay, you didn't have the money to pay
7 to begin with?

8 MS. MISRA: I would say no, Your Honor. I think,
9 again, if you're confronted by someone in a position of
10 authority telling you you don't belong here and give me
11 back the merchandise, you would give it back and leave the
12 store. And maybe he went to another store to try to buy
13 those Red Bulls elsewhere.

14 JUDGE TROUTMAN: And that a lack of protest you
15 would say is consistent with he was doing nothing wrong?

16 MS. MISRA: Yes. Yes, Your Honor.

17 And just to conclude, for all of these reasons
18 that we discussed, we would ask the court to vacate Mr.
19 Williams' conviction. Thank you.

20 CHIEF JUDGE WILSON: Thank you.

21 MS. NOTCHICK: Your Honors, and may it please the
22 court, Anna Notchick for the people.

23 Under the deferential standard applicable to a
24 claim of legal insufficiency on appeal, which requires this
25 court to uphold a verdict if there is, A, a valid line of

1 reasoning and permissible inferences from which the jury
2 could have concluded the defendant was guilty beyond a
3 reasonable doubt - - -

4 JUDGE TROUTMAN: What do you say with respect to
5 the argument that all of his conduct was equally consistent
6 with innocence, just being a shopper?

7 MS. NOTCHICK: Your Honor, we disagree that his
8 conduct was that of an innocent shopper. And also, even if
9 we accepted that, we also have the confession where he
10 admits that that during the second week of January - - -
11 this is January 19th - - - he went into the CVS at 300 Park
12 Avenue South and he took two Red Bulls.

13 CHIEF JUDGE WILSON: Let's pare the two things
14 apart.

15 If all you had was the video, would you have
16 legally sufficient evidence?

17 MS. NOTCHICK: Your Honor, we believe we would,
18 because defendant's conduct in the store is not - - -

19 JUDGE HALLIGAN: But what specifically? What
20 motions that he made in the store would you point us to?

21 MS. NOTCHICK: Well, Your Honor, walking by the
22 store first and then coming back in. The inference that
23 can be drawn from - - -

24 JUDGE HALLIGAN: I'm puzzled by that, because I
25 think I probably do that all the time. I walk by, I think,

1 oh, I should pick something up in CVS and - - - or some
2 other place, and I turn back around and head in the door.
3 Is that really a reasonable inference? I would hope that
4 when I do that folks don't think, oh, she must be intending
5 to come in here and steal something.

6 MS. NOTCHICK: Well, it - - - it's that inference
7 that goes into his arguably furtive behavior also inside
8 the store.

9 JUDGE HALLIGAN: And what is that specifically?

10 MS. NOTCHICK: It's that he goes down aisle 9,
11 which is not where the Red Bulls are located, he looks over
12 his shoulder twice. He looks over once, and then at the
13 end of the aisle, he looks over and he appears to watch the
14 area of the cash registers. That - - - the inference that
15 can be drawn from that is defendant was trying to ensure
16 that he was not - - -

17 JUDGE HALLIGAN: Well, it has to be a reasonable
18 inference, right?

19 MS. NOTCHICK: Yes.

20 JUDGE HALLIGAN: So how is that a reasonable
21 inference? I mean, I would think that the reasonable
22 inference - - - and maybe your view would be it's not the
23 only reasonable inference, but would be I'm looking for the
24 register. I'm trying to figure out whether I know how to
25 work the self-checkout well enough that I should do that

1 instead of going to look for the human being. I'm trying
2 to understand why those particular actions are consistent
3 with an inference of intent to steal.

4 MS. NOTCHICK: Because, Your Honor, they all have
5 to be taken together. And after he appears to look towards
6 the register, he goes - - - he takes the Red Bulls. And
7 then when he's approached by a store employee, he doesn't
8 offer to pay. He doesn't explain, oh, I maybe have cash in
9 my hand. He doesn't - - -

10 CHIEF JUDGE WILSON: Well, except that he's
11 confronted by the store officer - - - security officer
12 doesn't tell him you have to pay for these. She says you
13 don't belong here. In fact, he doesn't belong there
14 because there's a trespass order, right?

15 MS. NOTCHICK: True. And she also says, give me
16 back the items, and he doesn't try to explain - - -

17 CHIEF JUDGE WILSON: Well, if he - - - right.
18 But if he doesn't belong there, he can't - - - he's - - -
19 you know, he needs to get out of there so he's not arrested
20 for trespass.

21 JUDGE HALLIGAN: And the only other option, I
22 guess, would have been for him to say I do too belong here
23 and I want to pay for them. It seems, because of the
24 content of the statement, as the Chief Judge says, leaving
25 is actually what one would expect him to do, and saying I

1 intend to pay for them would be more confrontational.

2 MS. NOTCHICK: Well, he also apparently does get
3 upset because he gets upset and he slams the Red Bulls
4 down. That was the testimony at trial. The fact that he
5 gets angry also shows that - - -

6 JUDGE TROUTMAN: What do you say about the claim
7 that the video shows the contrary with respect to slamming
8 down?

9 MS. NOTCHICK: Your Honor, the - - - the
10 testimony at trial was very clear that he got upset and
11 slammed them down. This portion of the video is shown very
12 small across from the - - - it's from - - - all the way
13 across the store. I can't personally tell when he puts the
14 Red Bulls down, but the evidence at trial, the testimony at
15 trial was very clear.

16 JUDGE TROUTMAN: Don't the videos cover every
17 second of every movement he made in the store?

18 MS. NOTCHICK: Your Honor, not every second of
19 every movement. It does cover a majority of while he is in
20 the store, but it is from all different angles, and they do
21 all have - - -

22 JUDGE CANNATARO: There's no video of him
23 drinking a Red Bull, right?

24 MS. NOTCHICK: There is not, and - - -

25 JUDGE CANNATARO: That's your last statement; the

1 slamming down. I'm trying to figure out what that - - -
2 what could reasonably infer from slamming down a couple of
3 cans of Red Bull regarding intent. I - - - I'm not making
4 that connection, which is troublesome to me.

5 MS. NOTCHICK: Well, Your Honor, it's that he
6 slams them down and also doesn't offer to pay for them.
7 And also, we have be told he - - -

8 JUDGE HALLIGAN: Because he's been told - - -

9 JUDGE TROUTMAN: It's wholly consistent with - -
10 -

11 JUDGE HALLIGAN: - - - he doesn't - - -

12 JUDGE TROUTMAN: - - - I'm indignant that you are
13 approaching me. I'm just a customer.

14 MS. NOTCHICK: Your Honor, even if it's equally
15 consistent, this is intent we are talking about. And when
16 there are conflicting inferences regarding intent, that is
17 a jury question.

18 CHIEF JUDGE WILSON: No, I think that's a
19 different issue. If the piece of evidence is equally
20 susceptible of an innocent and not innocent explanation for
21 something, it's not probative, right? To be probative, it
22 has to make a proposition more likely than not. If I have
23 a trespass order, I might think to myself, I'm really
24 thirsty. I'm going to go into Red Bull and buy it - - - go
25 to the CVS and buy a couple of Red Bulls. And I could be

1 really upset that the security officer recognizes me and
2 says, oh, no, you're the guy who has a trespass order,
3 which is exactly what actually happened. And I might get
4 very mad that my plan didn't work, slam down and go.

5 MS. NOTCHICK: Well - - -

6 CHIEF JUDGE WILSON: But that isn't - - - that
7 has to be probative of my intent to have stolen them.

8 MS. NOTCHICK: Your Honor, we believe it is. And
9 the jury also believed that it was. The jury thought that
10 all of this - - -

11 CHIEF JUDGE WILSON: We don't know what the jury
12 relied on.

13 MS. NOTCHICK: Well, what we do know is that the
14 jury deliberated on this issue and found that defendant
15 intended to commit a crime at the time.

16 JUDGE CANNATARO: But on appellate review, where
17 we're talking about whether or not permissible inferences
18 have been drawn from the evidence, I think it's incumbent
19 on you to tell us when we're discussing a particular piece
20 of evidence like slamming down two cans, what a permissible
21 inference would be from that other than guilt, you know.
22 What did the jury get from that?

23 MS. NOTCHICK: The permissible inference is that
24 he knew he had been caught trying to take the Red Bulls.
25 And we also have to take this with his confession when he

1 admits that he tried to take two Red Bulls and that the
2 store manager took them back.

3 JUDGE HALLIGAN: Well, at some point, but not - -
4 - it appears - - - there are significant inconsistencies,
5 are there not, between his statements in the interrogation
6 video and the video in the store?

7 MS. NOTCHICK: There are inconsistencies, but
8 there are enough consistencies for the jury to have
9 determined - - -

10 JUDGE RIVERA: Well, but isn't on this point
11 what's relevant, at least with respect to what appellate
12 counsel is arguing now, is that he didn't know he couldn't
13 be there. I thought that was their position. He didn't
14 know he couldn't be there. So one would assume he would be
15 upset and offer to pay because he thought he could be
16 there.

17 MS. NOTCHICK: Well, Your Honor, I think the
18 evidence - - - the reasonable inferences that can be drawn
19 from the evidence that this trespass notice was explained
20 to him, that he said he understood the trespass - - -

21 JUDGE RIVERA: I understand. I'm talking about
22 the way counsel has argued this case to us. They've argued
23 it that the inference that one would draw from that
24 interrogation with respect to this issue is that he did not
25 understand that this notice applied to this CVS. And if



1 that's the case, someone - - - if that's the argument,
2 someone coming up to you and saying you don't belong here,
3 one would say, of course I belong here. Why don't - - -
4 why wouldn't I belong here or offer to pay - - -

5 MS. NOTCHICK: Well - - -

6 JUDGE RIVERA: - - - as opposed to, oh, I've been
7 caught, I've got to go because I violated the trespass
8 notice. He may believe that, oops, I've got to go because
9 I've been caught, because I was going to steal the Red
10 Bull, that's true. That's a different argument. But with
11 respect to an awareness of the trespass, seems to me it's
12 foreclosed by the argument that counsel is making to this
13 court.

14 MS. NOTCHICK: Well, Your Honor, an innocent
15 shopper would have said something in response to that
16 confrontation. Especially, you don't belong here; give me
17 back the items. She's saying both. You don't belong here,
18 and an inference can be drawn that she's talking that he's
19 stealing the items, and he doesn't protest that at all.

20 And I would also point to his - - -

21 JUDGE HALLIGAN: But why can you draw the
22 inference from her saying you don't belong here that he's
23 stealing the items? Did I understand you correctly?

24 MS. NOTCHICK: Because she says you don't belong
25 here and give me back the items. And he doesn't protest

1 either, oh, I wanted to buy these items or what do you
2 mean; I do belong here. And I also want to point - - -

3 JUDGE HALLIGAN: But wait. Why is that not
4 something which suggests that he knows he doesn't belong
5 there, and how does it suggest instead that he's intending
6 to steal the Red Bulls?

7 MS. NOTCHICK: Your Honor, it can suggest both
8 that he knows he's not supposed to - - -

9 JUDGE HALLIGAN: But why specifically can it
10 suggest that he's intending to steal the Red Bulls?

11 MS. NOTCHICK: Because he doesn't offer to pay
12 for them.

13 JUDGE HALLIGAN: But in the face of a statement
14 that he - - - if, you know, it were not for the statement
15 you don't belong here, perhaps that argument would have
16 some more merit, but he's just been told he doesn't belong
17 there. So how is his response consistent with an intent to
18 steal?

19 MS. NOTCHICK: Because when she says give me back
20 the items, he could have said, I just wanted to purchase
21 these.

22 JUDGE HALLIGAN: But she just you don't belong
23 here. So if we look not just at the specific act of
24 leaving the store without offering to pay, and couple it
25 with what's prompted that response which is her statement

1 you don't belong here, how is there an inference of intent
2 to steal?

3 MS. NOTCHICK: Your Honor, because of also his -
4 - - the rest of his conduct.

5 JUDGE HALLIGAN: Okay. But if we look
6 specifically at this action that you're asking us to rely
7 on, which is not offering to pay, given her statement, how
8 can we infer - - - why would it be more likely than not
9 that that's because he was intending to steal the Red
10 Bulls?

11 MS. NOTCHICK: Your Honor, opposing counsel
12 mentions that he maybe had cash in his hand. If he had
13 cash in his hand, a reasonable, innocent shopper - - -

14 JUDGE HALLIGAN: I'm not - - - I'm not asking
15 about cash in the hand. I'm just saying, if we look at his
16 action in relation to what prompted it, which I think we
17 should and probably must, which is her statement, how is
18 that response something that could yield an inference that
19 he intends to steal?

20 MS. NOTCHICK: Your Honor, again, it's just that
21 he doesn't offer to pay in any way.

22 And I would also point this court to Exhibit 7,
23 which is the wanted poster. And defendant actually
24 initials that wanted poster during his confession and
25 acknowledges that on January 19th, 2017 he went into the



1 CVS at 300 Park Avenue South and he took two Red Bulls.
2 During - - - he never said that he wanted to pay for them.
3 And also, throughout the confession, even if there's
4 inconsistencies, he never said, oh, I was intending to buy
5 those, and that is just inconsistent with innocence.

6 And also, this court can weigh the fact that
7 defendant, only a few months earlier, had signed this
8 trespass notice and that he knew he was banned from the CVS
9 store.

10 Just turning quickly to the knowingly unlaw - - -
11 knowingly unlawful entry, defendant has - - -

12 JUDGE TROUTMAN: Does it matter why he was, in
13 fact, banned to use that evidence in conjunction with - - -
14 or connection with the alleged theft at issue?

15 MS. NOTCHICK: Your Honor, the jury couldn't
16 weigh that - - - this - - - weigh the prior shoplift for
17 propensity purposes. But it is relevant that defendant had
18 previously been given - - -

19 JUDGE TROUTMAN: It's giving context.

20 MS. NOTCHICK: It is context, and it's relevant
21 that defendant had been given this trespass notice, had
22 said that if he - - - I'm - - - that Nunez had told him if
23 he entered again, he would be arrested for the crime of
24 shoplifting and said - - - he actually said that instead of
25 trespass. But the trespass notice says - - - says that he

1 would be arrested for the crime of trespass.

2 I can touch briefly on the preservation argument,
3 if Your Honors would like, but if there are no further
4 questions, we ask that you affirm. Thank you.

5 CHIEF JUDGE WILSON: Thank you.

6 MS. MISRA: Your Honor, I would just like to
7 address a few points raised by respondent.

8 So first, as to the point about - - -

9 JUDGE TROUTMAN: Does the prior trespass notice
10 come into play here?

11 MS. MISRA: The trespass notice itself? Yes. So
12 that is what - - -

13 JUDGE TROUTMAN: What is the jury allowed to do
14 with that information, if anything?

15 MS. MISRA: I think the jury is allowed to
16 determine whether he was unlawfully there. But for
17 burglary in the third degree, one of the elements, as you
18 know, is whether Mr. Williams knew that the entry was
19 unlawful. So it's two separate points.

20 And on the confession, there are a few moments in
21 the video that kind of indicate to us that Mr. Williams did
22 not understand the full scope and consequences of the
23 trespass notice. So at the begin - - -

24 JUDGE TROUTMAN: Is there not an argument that
25 there were points in the video where he isn't quite - - -

1 he is lucid enough to confess as the prosecution allege?

2 MS. MISRA: Your Honor, he's lucid enough to
3 confess to some other time where he was inside a CVS store
4 and he drank a Red Bull. But that's not - - -

5 JUDGE SINGAS: Didn't the jury determine that,
6 no, he was talking about this instance. He said, "I took
7 two Red Bulls", and then he talks about another time, I
8 think, where he took four Red Bulls from another place; is
9 that right?

10 MS. MISRA: Your Honor - - -

11 JUDGE SINGAS: So couldn't the jury have
12 reasonably decided you know what, we think that this is an
13 admission to his intent to steal these two Red Bulls at
14 this incident, and that's what we decide based on just this
15 statement. Forget the video.

16 MS. MISRA: So - - - so he - - -

17 JUDGE RIVERA: And he explains what - - - what
18 the serial Red Bull interest, stealing, whatever you want
19 to call it is, right, if he's saying it's related to his
20 health and these other issues. So certainly providing a
21 motive for why he might - - - might take this act. But I
22 don't know if I was being clear with my point before.

23 As I understood your argument, your argument was
24 that the interrogation video, the inference to be drawn
25 from what he says there is that he did not understand that

1 the notice covered this CVS.

2 MS. MISRA: That's right.

3 JUDGE RIVERA: And if that's so, my point to
4 opposing counsel was, doesn't that then make us wonder, and
5 would allow the jury to infer that the failure to offer to
6 pay, the failure to be incensed or upset when you're told
7 to leave and you don't belong here is explained, right?
8 It - - - you have that contradiction between the position
9 you're taking now and how one would view the video.

10 MS. MISRA: I understand the question, Your
11 Honor.

12 So we're saying that the interrogation video
13 showed that he did not understand the trespass notice, but
14 that doesn't mean that he had to then necessarily offer to
15 pay when he heard that he did not belong here. There are
16 moments in the interrogation video where he doesn't
17 understand that the notice applies to all - - - every
18 single CVS, but that does not mean that he has to - - - at
19 the incident of the crime itself - - - the purported crime,
20 that he had to understand at that point that he was there,
21 justifiably.

22 So - - -

23 JUDGE RIVERA: I'm not not sure I'm understanding
24 your argument.

25 MS. MISRA: So I think the - - -

1 JUDGE RIVERA: Either he thinks he can be there
2 lawfully or he can't. I took your argument to be that he
3 did not understand that he could not enter this CVS.

4 MS. MISRA: Correct.

5 JUDGE RIVERA: That entering the CVS would be
6 unlawful, would be a trespass. I thought that was your - -
7 -

8 MS. MISRA: Yes.

9 JUDGE RIVERA: - - - position that that would be
10 the only inference one would draw from the interrogation.
11 And if that's the case, again, we're back to what's the
12 inference, then, that a jury could draw when he is
13 approached by - - - I think it was the manager - - -
14 anyway, an employee saying, you don't belong here; give me
15 the Red Bulls, right?

16 MS. MISRA: I think the inference there is that
17 he - - - I don't think that there's an inference of guilt
18 to be drawn there, though.

19 JUDGE RIVERA: Okay. Fair enough.

20 JUDGE SINGAS: Can you answer my question,
21 because I think we got cut off?

22 So why can't the jury determine, based on the
23 videotape that they saw, that that was a confession to him
24 stealing, and all the other evidence corroborates that, and
25 that's - - - that's a jury prerogative?

1 MS. MISRA: So to your earlier point about the
2 four Red Bulls, that was not presented in front of the
3 jury. So that's a - - - that's not at issue here. But the
4 interrogation video itself, where he actually starts making
5 these so-called admissions and saying he was there, he did
6 it. All of the material facts that he's admitting to are
7 not on the video.

8 So our point is simply that because the - - - the
9 so-called admissions that he makes are directly
10 contradicted by the most objective evidence in the record -
11 - - that's the surveillance video - - - it was irrational
12 for the jury to conclude otherwise. And I can point to a
13 couple of details that indicate that.

14 So at the beginning of the interrogation, Mr.
15 Williams - - - the detective asked Mr. Williams where he
16 was, and he keeps asking her which CVS she's talking about.
17 He says a couple of different times, this CVS. Which CVS
18 is this? Is it the same CVS? That starts at timestamp
19 14:53.

20 Later on, he admits that - - - that - - -
21 actually the detective had asked that someone had
22 approached him and he had already placed a Red Bull inside
23 the plastic bag, and the store manager took it out of the
24 plastic bag, and he just admits it in the interrogation
25 video. But the surveillance video shows that did not

1 happen.

2 He also said that he drank a Red Bull inside the
3 CVS as you all alluded to earlier.

4 JUDGE TROUTMAN: Isn't that equally consistent
5 for a jury to determine that he's just trying to figure his
6 way out of things, and he's saying different things, and
7 it's up to them to assess the issue of credibility, period.

8 MS. MISRA: It is up to the jury, Your Honor.
9 But again, given - - -

10 JUDGE TROUTMAN: Or what weight to give to any
11 piece of evidence.

12 MS. MISRA: It is - - - it is in the jury's
13 province to decide that. But again, viewing all of this
14 evidence in totality, the surveillance video, all of the
15 material contradictions in the interrogation video that are
16 contradicted by the surveillance video itself, it was
17 irrational in this case for the jury to conclude that he
18 was - - - that he was guilty.

19 So again, for all of these reasons, if the court
20 has no more questions, we'll rest on our briefs, and we
21 would ask the court to vacate Mr. Williams' conviction.
22 Thank you.

23 CHIEF JUDGE WILSON: Thank you.

24 (Court is adjourned)

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

I, Ellen S. Kolman, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Raymond Williams, No. 10 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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