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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

DANNY NOVAS,

Appellant.

NO. 12

20 Eagle Street
Albany, New York
January 9, 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

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1 CHIEF JUDGE WILSON: Continuing with the
2 calendar, the next case is People v. Danny Novas.
3 Counsel?

4 MR. STAMBOULIDIS: Good afternoon, Your Honors.
5 And may it please the court. Andrew Stamboulidis of
6 Debevoise & Plimpton in coordination with the Office of
7 Appellate Defender on behalf of appellant Danny Novas.

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

10 CHIEF JUDGE WILSON: Yes.

11 MR. STAMBOULIDIS: Thank you.

12 Your Honors, this case is about the failure to
13 prove knowledge of injury, an essential element for the
14 crime of leaving the scene of an incident without
15 reporting. Specifically, it's about the prosecution's
16 burden to prove beyond a reasonable doubt that Mr. Novas
17 either knew or had cause to know of injury as a result of
18 the incident he was involved in.

19 Here, as Justice Clott correctly ruled when
20 overturning the conviction, the evidence was insufficient
21 to prove beyond a reasonable doubt that Mr. Novas either
22 knew or had cause to know, where at most, it showed that he
23 had an awareness of some incident involving a side-view
24 mirror being pushed in.

25 JUDGE TROUTMAN: So what - - - there - - - you

1 acknowledged, there was evidence - - - there was contact
2 with the car. Wouldn't a reasonable and prudent driver
3 want to check that to make sure, in light of his seeing the
4 person before, that - - - that he wasn't injured or should
5 have known that he was injured at that point?

6 MR. STAMBOULIDIS: Your Honor, the standard is
7 whether or not at the time of the incident, Mr. Novas would
8 have cause to know or did in fact know that injury
9 occurred.

10 JUDGE TROUTMAN: Cause to know a person was in
11 the street, then he didn't see him. He said he thought he
12 slammed - - - he slapped the mirror. But there's contact
13 with your car. If you think there's contact with your car,
14 would you not have reason to know?

15 MR. STAMBOULIDIS: Your Honor, while the best
16 practice in this scenario may be to evaluate what happened,
17 but the standard about whether or not he had cause to know
18 of injury at the time, when there's no evidence that the
19 car was speeding, the only impact - - -

20 JUDGE TROUTMAN: So it doesn't matter there was
21 contact with his car and there was a pedestrian?

22 MR. STAMBOULIDIS: Your Honor, the fact that
23 there was contact with his car involving the side-view
24 mirror potentially being slapped in does not indicate the
25 type of forceful impact that other courts have held

1 sufficient to prove knowledge of injury - - -

2 CHIEF JUDGE WILSON: So he also described what
3 happened as an accident. So I mean, I've driven with - - -
4 and somebody - - - a pedestrian has slapped my side mirror
5 and I saw it happen. I knew it wasn't an accident. And so
6 I wouldn't have ever described that as an accident. But he
7 described what happened as an accident, which seems to me
8 at least a piece of evidence against him.

9 MR. STAMBOULIDIS: Yes, Your Honor. There is
10 testimony from Yorkt Peralta, a friend of Mr. Novas', who
11 was with him and driving separately that night that Mr.
12 Novas called him and said either that he had been in an
13 accident or that someone had hit his car.

14 CHIEF JUDGE WILSON: Well, sorry. He testifies
15 on direct, right, that it was an accident?

16 MR. STAMBOULIDIS: Yes, Your Honor. And he - - -

17 CHIEF JUDGE WILSON: And that's what he was told.
18 And then on cross, he says something a little different.

19 MR. STAMBOULIDIS: He eventually testifies that
20 he - - - it may have been his interpretation of what Mr.
21 Novas said - - -

22 CHIEF JUDGE WILSON: Right. But so - - - but we
23 take the evidence in the light most favorable to the
24 People.

25 MR. STAMBOULIDIS: Yes, Your Honor. So drawing -

1 - - viewing the evidence in the light most favorable to the
2 People, if he told Mr. Peralta that he had been in an
3 accident on the way home, the circumstances of that
4 accident still offer no support for the conclusion or the
5 reasonable inference that he saw, felt, or heard anything
6 that would have apprised him of injury.

7 CHIEF JUDGE WILSON: Well, that - - -

8 JUDGE TROUTMAN: Can't the jury - - -

9 JUDGE SINGAS: Well, isn't the jury free to rely
10 on an inference that if his friends heard him writhing in
11 pain, that they could have reasonably inferred that the
12 defendant heard it.

13 I mean, a lot of it is what's the defendant's
14 defense versus what a jury can reasonably infer from the
15 evidence that they could - - - he could see clearly because
16 he saw the pedestrian, he could hear because he felt the
17 impact or heard the impact on - - - on the mirror. But
18 that's what he's saying. But a jury is free - - - isn't it
19 - - - to come up with a reasonable inference that says
20 otherwise?

21 MR. STAMBOULIDIS: Your Honor, the jury is free
22 to draw a reasonable inference based on the facts of the
23 accident that a driver would have been apprised of injury
24 or have cause to know of injury. But in this case, as
25 respondent concedes, it was raining that night, it was

1 three in the morning, and the friends did not run over
2 until twelve seconds after the moment of impact at a time -
3 - -

4 JUDGE CANNATARO: Because they heard - - - they
5 heard the victim screaming in pain, and if the friends
6 heard it from a distance, wouldn't it be reasonable for a
7 jury to infer that the defendant heard it, as well?

8 MR. STAMBOULIDIS: Your Honor, the friends heard
9 it from that block and started running over twelve seconds
10 after the accident, at a time when Mr. Novas, in a moving
11 vehicle, was not in close proximity to the scene.

12 Furthermore, the pedestrian himself testified
13 that he first fell down to the ground, realized he could
14 not feel his leg, and then began calling to his friends, so
15 this - - -

16 JUDGE CANNATARO: So it was too late. Mr. Novas
17 had gone - - -

18 MR. STAMBOULIDIS: This was at a time when the
19 driver was no longer in proximity to the scene, not in a
20 position to hear the victim calling out to his friends. No
21 one else - - -

22 JUDGE RIVERA: So - - - so what - - - what - - -
23 what inferences can be drawn from the defendant's conduct
24 and statements to the other passengers afterwards?

25 MR. STAMBOULIDIS: Yes, Your Honor. They - - -

1 JUDGE RIVERA: Apart from the phone call where he
2 says it's an accident. Apart from that.

3 MR. STAMBOULIDIS: Yes, Your Honor. Based on Mr.
4 Novas' statements after the incident telling his passenger
5 to push out the side-view mirror because he believed an
6 annoyed pedestrian may have slapped it in, the reasonable
7 inference at most is that he was aware of some incident
8 involving a pedestrian potentially hitting or slapping his
9 mirror, that he continued driving. And there's - - -

10 CHIEF JUDGE WILSON: So then why ask the other
11 passengers whether they heard anything?

12 MR. STAMBOULIDIS: Your Honor, yes, there is
13 testimony that he asked the passengers in the back seat
14 whether they saw or heard or felt anything, and they
15 replied no. And that's consistent - - -

16 JUDGE RIVERA: And then - - - and then when he -
17 - - when he got where he was going, as they say, he got out
18 and looked around the car. He must have thought there was
19 more than just the mirror.

20 MR. STAMBOULIDIS: Your Honor, there was no
21 evidence on the record that he got out and looked at the
22 car after. That was - - - that was a former statement made
23 by Ms. Villar in the - - - in a - - - in a statement with
24 the prosecution that was not admitted - - -

25 JUDGE RIVERA: I see. I see.

1 MR. STAMBOULIDIS: - - - for its truth at trial.
2 But there was evidence that he asked people in the car
3 whether they heard or felt anything. And that's consistent
4 with - - - based on the accident we know and the facts
5 surrounding it, that he believed someone - - -

6 JUDGE RIVERA: What about the way the victim
7 described what happened?

8 MR. STAMBOULIDIS: Exactly, Your Honor. The
9 victim, in fact, consistently testified, and it's clear on
10 the record, that he was running from in between double
11 parked cars while dressed in all dark clothing when he was
12 clipped by the front, right bumper of the car, pushed to
13 the side further down, and made contact with the side-view
14 mirror. This is not - - -

15 JUDGE SINGAS: But he also - - -

16 JUDGE RIVERA: So if the jury believes him, and
17 it's the front right bumper - - -

18 MR. STAMBOULIDIS: Front bumper on the passenger
19 - - -

20 JUDGE RIVERA: - - - it would be in your line of
21 vision as the driver. Why would that not be a reasonable
22 inference?

23 MR. STAMBOULIDIS: Your Honor, I - - -

24 JUDGE RIVERA: Despite what the defendant may be
25 arguing in defense that actually would have seen that he

1 hit this individual.

2 MR. STAMBOULIDIS: Your Honor, the types of
3 evidence that have been found to be within the driver's
4 vantage point or point of vision involve an accident where
5 - - - and we cite them on page 25 to 27 of our opening
6 brief - - - but they involve a pedestrian slamming into the
7 hood, causing a dent in the hood, a pedestrian crossing at
8 the crosswalk before being hit in the center of the road
9 within the vantage point of the driver.

10 An accident where a pedestrian dressed in all
11 dark clothing running from - - - in between double-parked
12 cars at 3 in the morning on a rainy night and being clipped
13 - - - as he stated himself - - - clipped by the corner
14 bumper of the vehicle before being pushed to - - -

15 JUDGE SINGAS: Then I believe he said he fell on
16 the car. That's at page 146. Pushed himself off it, was
17 thrown to the side at page 145, and fell to the ground. So
18 it's a little different than just clipping and he didn't
19 see anything. If he fell onto the top of the car, as the
20 victim has testified, that's different, isn't it?

21 MR. STAMBOULIDIS: Your Honor, he did not testify
22 that he hit the - - - hit the top of the hood of the car
23 for its truth. The - - - the prosecution act - - - the
24 defense elicited a prior inconsistent statement he made at
25 a civil trial that he had rolled over the car and slammed

1 into the hood and windshield.

2 At trial, he testified consistently that he was
3 clipped by the front right bumper and made contact with the
4 side-view mirror, that his hand touched the bumper, but not
5 the top of the car, not the hood, the - - - the - - - the
6 windshield, the driver's side of the car, any area of the
7 car that other cases have held sufficient to prove that a
8 driver would have cause to have seen.

9 JUDGE RIVERA: Well, it may have been sufficient
10 in those cases, but - - - and - - - and this is not the
11 only thing that the People are pointing to. This is part
12 of the evidence that the jury had available to it to make
13 its determination.

14 MR. STAMBOULIDIS: Yes, Your Honor. And we cite
15 to those cases not for the proposition that any one fact or
16 set of facts is necessary to prove knowledge of injury.
17 But the prosecution in this case does not cite to any
18 facts, not only the same as those facts, but even
19 resembling them such that they would apprise a driver,
20 whether it would be cause to see, hear, or feel something
21 indicative - - -

22 JUDGE RIVERA: What - - - what about the
23 inference of motive. How should we consider that?

24 MR. STAMBOULIDIS: I'm sorry, Your Honor?

25 JUDGE RIVERA: As opposed to as an innocent,



1 you're just going. Of course, if I had known, I would have
2 stopped. The suggestion of the motive that comes from, of
3 course, the - - - the interview with the other police
4 officer, that he's trying to protect his future in the
5 police academy.

6 MR. STAMBOULIDIS: Yes, Your Honor. The
7 prosecution cites to consciousness of guilt evidence that
8 Mr. Novas was not fully forthcoming about his alcohol
9 consumption that night - - -

10 JUDGE RIVERA: Uh-huh.

11 MR. STAMBOULIDIS: - - - and the fact that
12 anything happened on the way home. And there's not a
13 reasonable inference to be drawn from that, that he some -
14 - - that he knew of injury or had cause to know of injury
15 and was concealing that fact.

16 This is a police cadet being interviewed by a
17 detective, aggressively at the time, because the detective
18 thought, at this time, that this was a purposeful attack on
19 a law enforcement officer. And - - - and he's being asked
20 about alcohol consumption before he got behind the wheel of
21 a car.

22 So to draw the inference, at most, you can draw a
23 reasonable inference that he was downplaying his alcohol
24 consumption before driving home that night and that he did
25 not mention that his side-view mirror had been pushed in by

1 a pedestrian. But to take the leap and - - - and assume
2 and create the reasonable inference that he knew of injury
3 as a result of that interview, based on the facts on this
4 record and how the accident occurred, is a logical leap
5 that's unsupported by the record, and it - - - it fails to
6 caution the advice of this court, which is held that a
7 person in a police interview may not be fully forthcoming
8 due to save his job.

9 JUDGE RIVERA: Uh-huh. Right.

10 MR. STAMBOULIDIS: A police cadet, in this time,
11 may - - - may have made those statements for that reason -
12 - -

13 CHIEF JUDGE WILSON: And what about - - - what
14 about the nature - - - sorry. Right here. What about the
15 nature of the damage to the bumper? Is it - - - is it
16 something from which the jury could infer it was
17 significant enough that the driver must have realized he
18 hit a pedestrian?

19 MR. STAMBOULIDIS: No, Your Honor. And the - - -
20 the pictures of the damage to the car, as seen on the
21 appendix on pages 487 to 502, consists of minimal scuff
22 marks in the bumper of the car, consistent with the - - -
23 the accident as described by the pedestrian, that he was
24 clipped by the front right bumper and pushed off to the
25 side further down. There was not the type of damage held

1 in other courts to put a driver on notice of injury,
2 including, as mentioned, a dent in the hood, impact with
3 the windshield, impact with the center of the vehicle, such
4 that a pedestrian was standing and hit by the vehicle in
5 its center in an area within the vantage point of the
6 driver. And - - - and - - -

7 JUDGE CANNATARO: And so - - - I'm sorry - - - is
8 your argument in this regard that based on the nature of
9 this clipping on the side of the bumper, that that was
10 outside the defendant's field of view, or simply that the
11 damage to the bumper itself has some probative element to
12 it that - - - that confirms that he - - - the defendant
13 couldn't have known just from looking at the damage that he
14 hit somebody?

15 MR. STAMBOULIDIS: Your Honor, our point is that,
16 based on how the accident occurred, there's no reasonable
17 inference to be drawn that Mr. Novas would have seen it,
18 based on the testimony of the defendant about how it
19 happened. The damage is a separate question, and it goes
20 to the fact that what - - -

21 JUDGE CANNATARO: Okay. I understand. So but -
22 - - so I just want to confirm then, based on your answer to
23 that, he - - - why is it that you're saying he couldn't
24 have seen him - - - the vehicle striking the - - - the - -
25 - the victim if it was clipped on the bumper? I - - - I

1 don't understand the physics of that argument.

2 MR. STAMBOULIDIS: Your Honor, it was 3 in the
3 morning, raining, when Mr. Gomez, the pedestrian, testified
4 that he ran from in between double-parked cars into the
5 side of the road - - - the side of the vehicle where he was
6 clipped by the right bumper.

7 JUDGE CANNATARO: He darted out quickly.

8 MR. STAMBOULIDIS: Yes.

9 JUDGE CANNATARO: And - - - and that may have - -
10 - you know, that may have obviously been a contributing
11 factor to how this happened. But once he's out there and
12 there's an impact, how do you not see that, or how is it
13 unreasonable for a jury to come to the conclusion that he
14 should have seen that?

15 MR. STAMBOULIDIS: Your Honor, this is not an
16 area of the car that's within the vantage point of the
17 driver. And the fact that he pushed in the side-view
18 mirror on the passenger side - - -

19 JUDGE RIVERA: A bumper? Your bumper?

20 JUDGE CANNATARO: The front bumper of the car?

21 JUDGE RIVERA: Not part - - - when you're
22 driving, you see the bumper left to right.

23 MR. STAMBOULIDIS: Definitely the front center
24 vehicle and the front bumper and maybe even the front right
25 bumper, but the corner on the side of the car, in a point

1 where he's making contact with the mirror, he's clearly on
2 the right side of the car.

3 But the point about how the accident occurred and
4 the victim's testimony in this case is that he's not
5 testifying to - - - I see my time is up, Your Honors. May
6 I briefly conclude?

7 CHIEF JUDGE WILSON: Yes. Please, go ahead.
8 Yeah.

9 MR. STAMBOULIDIS: There is no circumstances
10 there - - - on this record that the accident occurred in a
11 manner that Mr. Novas would have reasonably seen it, heard
12 it, or felt it.

13 If you look at the cases cited in our brief on
14 pages 25 to 27, they all involve facts that are extremely
15 distinguishable from these. Prosecution cites to no facts
16 even resembling them. And it's - - - and there's no
17 evidence to support the conclusion that Mr. Novas would
18 have reason to know of injury in this case.

19 Thank you, Your Honors.

20 CHIEF JUDGE WILSON: Thank you.

21 MS. BOND: Good afternoon. May it please the
22 court. Rachel Bond for the People.

23 The defendant here, while driving pretty briskly
24 down a New York City street, hit the victim hard enough to
25 break the victim's leg, multiple bones, multiple fractures

1 in each bone, and crack the bumper. It was more than scuff
2 marks. There was a crack in the bumper directly below the
3 headlight. And then he admitted that he saw the victim and
4 that he knew he hit someone and then he later lied about
5 it.

6 CHIEF JUDGE WILSON: Well, knew that there was
7 contact.

8 MS. BOND: Yes. He knew that he had made contact
9 with a pedestrian - - -

10 CHIEF JUDGE WILSON: Or the pedestrian made
11 contact with him. It was the right - - - that's not clear
12 that he said I drove a car into the pedestrian.

13 MS. BOND: It's not clear from the record.
14 However, there is a reasonable inference that that's what
15 he said. Not only did Peralta testify that that's - - -
16 originally that that - - - he said he got into an accident,
17 but additionally, Peralta - - - the effect that defendant's
18 words had on Peralta was very clear. He actually did a U-
19 turn to go see - - - to go check on the defendant. There's
20 a reasonable inference that whatever the defendant told
21 him, it was severe enough that he felt the need to turn
22 around and check on the defendant.

23 JUDGE RIVERA: So you're saying even - - - even
24 if that witness disavows that the defendant used the word
25 accident, it was whatever the defendant may have said,

1 that, as you're now, I think, arguing, it had the kind of -
2 - - he interpreted it - - - he said, I interpreted it that
3 way. It had that kind of severity. He viewed it as
4 something severe had occurred.

5 MS. BOND: Correct. He also did not disavow that
6 that's what the defendant said necessarily. He said he
7 couldn't remember what exactly the defendant had said,
8 whether he said the word accident, whether he said that
9 there was an incident.

10 JUDGE RIVERA: Well, did - - - did he say - - -
11 I'm sorry, I don't have the record in front of me. Did he
12 say, that was my interpretation, or that could have been my
13 interpretation? Do you remember?

14 MS. BOND: Off the top of my head, I don't
15 remember. I do believe he said that could be my
16 interpretation, but I'm - - - I'm sorry, I don't remember
17 off the top of my head.

18 JUDGE RIVERA: That's fine.

19 MS. BOND: But just again, viewing the facts in
20 the light most favorable to the People, drawing all the
21 reasonable inferences, the - - - simply the force of which
22 the defendant had to have hit the victim here was enough to
23 apprise him that the victim was injured. Again, there was
24 multiple fractures - - -

25 CHIEF JUDGE WILSON: But see, there, I think

1 maybe you're - - - and I'm thinking about some of the other
2 cases where, for example, there's an accident
3 reconstruction expert or there's other testimony that links
4 it together. I'm not - - - there's nothing there, I think,
5 from which you can say that because somebody has those
6 breaks, they - - - in their leg, that was caused by contact
7 with the car rather than hitting the pavement, for example.

8 MS. BOND: Well, I - - - I would really urge - -
9 -

10 CHIEF JUDGE WILSON: I'm not sure how you make
11 that inference.

12 MS. BOND: - - - I would really urge the court to
13 look at the photos of the injuries. I think it makes it
14 very clear that the accident happened the way that the
15 victim testified that it happened. Otherwise, his injuries
16 are just simply not explained.

17 CHIEF JUDGE WILSON: Right. But that's different
18 from the question of whether those are at - - - Novas could
19 have known, should have known, or did know, right?

20 MS. BOND: So here - - - the jury didn't have to
21 have an expert testimony to explain to them that someone
22 would feel that. You don't have to have expert testimony
23 to explain common sense. The jurors are allowed to bring
24 in their own real-world experiences. And as drivers, a
25 reasonable driver would know that if you see a pedestrian

1 and you feel that kind of force, again, to - - - to crack
2 the bumper of the car from the impact of the leg - - -

3 CHIEF JUDGE WILSON: But that - - - no, I don't
4 know about that. I mean, that - - - that is - - - that
5 real world experience would have to be hitting somebody
6 with your car, right? I mean, I'm not sure how you get
7 that - - - to know what it would be - - - what you would
8 feel from inside of a car if you hit a person in the leg.

9 MS. BOND: I - - -

10 CHIEF JUDGE WILSON: I've never done it. I don't
11 know what that would feel like.

12 MS. BOND: - - - I think the real world
13 experience comes from, as drivers, everyone has had maybe
14 just a very minor accident or run over a large tree branch
15 to know what it feels like when you hit something, and to
16 know that then when you're hitting someone with your car,
17 and it's, again, that kind of significant force, you're
18 definitely going to feel that. And though - - - though - -
19 - that fact alone here gave the defendant cause to know
20 that he injured the victim. He should have stopped.

21 And then additionally, the fact that he then
22 admitted to his friend, I got into an accident, or so - - -
23 you know, I made contact with a pedestrian. When he told
24 his front seat passenger to push out the mirror and then -
25 - - and said, that - - -

1 CHIEF JUDGE WILSON: But that seems to cut
2 against you a little bit because slapping the mirror in
3 wouldn't injure the pedestrian, and it does make a pretty
4 loud noise, so that - - - it - - - the other two pieces, I
5 think, are, you know, pretty strong evidence for you,
6 right, which is Peralta and then asking the passengers, did
7 you hear something, that suggests to me some doubt that it
8 was actually the mirror.

9 MS. BOND: I would disagree that the mirror - - -
10 the testimony about the mirror cuts against us, because I
11 think even - - - at the rate of speed he was going, if you
12 watch the video, he's very clearly just driving down the
13 street pretty quickly for a New York City street. Even if
14 the victim had slapped the mirror, I think that could have
15 caused injury to the victim's hand.

16 JUDGE RIVERA: But I - - - I'm a little confused.
17 Correct me on the record. So the defendant and the victim
18 both talk about contact with the mirror. So the victim is
19 not saying, no, that's not - - - that didn't happen. It's
20 just that the victim is saying more happened.

21 MS. BOND: Yes. Yes.

22 JUDGE RIVERA: So the jury could have relied on
23 the more about the bumper and whatever else he said?

24 MS. BOND: Yes. Again, drawing the - - - the
25 reasonable inferences in favor of the People, and viewing

1 the facts in the light most favorable to the People, the
2 jury - - - this court should find that the jury credited
3 the victim's testimony and that that is the way that the
4 accident occurred. And he testified very consistently
5 about the way the accident occurred and about how he fell
6 to the ground, that he - - - that the bumper hit him in the
7 lower left leg and then he fell. He made contact with the
8 side-view mirror. And the damage to the car corroborates
9 that as well. There's a crack in the bumper right where it
10 would have hit his leg. There are scuff marks and
11 scratches on the bumper. There's one scratch leading up
12 the side of the hood. So it's - - -

13 CHIEF JUDGE WILSON: But it all seems to go to
14 whether the accident happened. And I don't think there's
15 any question the accident happened.

16 MS. BOND: Well, I think it just corroborates the
17 victim's testimony about how the accident happened and how
18 he received his injuries.

19 JUDGE CANNATARO: Did he say what part of his
20 body hit the mirror?

21 MS. BOND: I believe he just said - - -

22 JUDGE CANNATARO: Came into contact.

23 MS. BOND: I beli - - - I believe that he said
24 that as he fell, that his - - - that he also made contact
25 with the mirror. He may have said his hand hit - - - had

1 made contact with the mirror as well. So - - -

2 JUDGE CANNATARO: His hand?

3 MS. BOND: I - - - he may have said his hand, but
4 I believe he was talking about, as he fell, that - - -

5 JUDGE CANNATARO: But he didn't testify that he
6 was slapping the mirror, did he - - -

7 MS. BOND: No. He testified that he - - -

8 JUDGE CANNATARO: - - - out of anger or
9 frustration or something?

10 MS. BOND: No. He testified that he hit the
11 mirror as he was falling. And - - - and again, the damage
12 to the car sort of corroborates that. There is a scratch.
13 And also, if you - - - if you watch the video to see that
14 the defendant doesn't stop his car, it makes sense that if
15 he got hit and then he fell, he didn't do any sort of - - -
16 you know, he wasn't propelled into the air or anything like
17 that. It would make sense that he would hit that mirror
18 based on where the crack in the bumper is at.

19 And just additionally, as to the other evidence
20 that was discussed during opposing counsel's argument, he
21 also tried to distance himself from this accident. There
22 is a reasonable inference that - - -

23 CHIEF JUDGE WILSON: Well, that could be from the
24 drunk driving.

25 MS. BOND: It could be. But again, all



1 reasonable inferences for the People here, there's also the
2 inference that he did it because he knew what had happened.
3 And again, the - - - he didn't just lie about the alcohol
4 consumption. He lied about what time they left. He lied
5 about anything happening. He lied about the alcohol
6 consumption. He did everything he could to distance
7 himself from the accident.

8 And again, this is just extra consciousness of
9 guilt evidence. It's not necessary to prove that the
10 evidence here was legally sufficient. That comes from the
11 impact with which he hit him and his own admissions that he
12 knew he came into contact with a pedestrian. And if - - -

13 JUDGE GARCIA: And what about his friends - - -
14 friends hearing him scream after he was hit. Was there a
15 reasonable inference that the driver could have heard that?

16 MS. BOND: I think that's certainly a reasonable
17 inference. I know that the victim testified that he fell
18 and then felt pain and then started screaming, but I think
19 this all would have occurred in a very quick succession,
20 almost simultaneous. And I think the fact that the
21 victim's friends heard him from a little over a block away,
22 it seems from the video, even considering the rain and, you
23 know, the - - - the train overhead, that it's reasonable
24 that the victim started screaming while the defendant would
25 still have been in earshot. It's a reasonable inference

1 that they could have made. And again, I think that - - -

2 JUDGE RIVERA: Is there any evidence about
3 whether or not the windows were open on the car?

4 MS. BOND: There was no testimony regarding
5 whether the windows were open, no - - -

6 JUDGE RIVERA: Can you tell in the video?

7 MS. BOND: I'm sorry?

8 JUDGE RIVERA: Can you tell in the video?

9 MS. BOND: No, it's - - - it's not very clear
10 from the video. I mean, the windows could have been
11 cracked or fully open. I'm not - - - I'm not sure you can
12 tell.

13 CHIEF JUDGE WILSON: You can tell it was raining,
14 though.

15 MS. BOND: Yes, you can tell that it was raining.
16 However, the video makes it also very clear that, even
17 though it was raining, even though it was dark, the area
18 was pretty well lit. There were a lot of cars that night,
19 and so they all had their headlights on. There were lights
20 from the businesses. The victim is very clearly visible
21 running into the street.

22 CHIEF JUDGE WILSON: You know, I just meant it
23 would be pretty unusual to drive with your windows down
24 when it's raining.

25 MS. BOND: Yes. No, I - - - I - - - and I'm not

1 saying that the windows were necessarily - - - were down.
2 I just - - - there is no testimony one way or the other on
3 that.

4 JUDGE CANNATARO: If this were to go in your way,
5 defendant would have a weight of evidence motion available
6 to him if he went back, wouldn't he?

7 MS. BOND: Yes. Yes. Because this is based on
8 the reversal - - - the setting aside of the verdict from
9 the trial court.

10 JUDGE CANNATARO: Right.

11 MS. BOND: Yes. So yes, he still has a weight of
12 the evidence claim available. And if not - - - there are
13 no further questions, we would just ask that you affirm the
14 Appellate Division's order.

15 CHIEF JUDGE WILSON: Thank you.

16 MS. BOND: Thank you.

17 MR. STAMBOULIDIS: Your Honors, I'd just like to
18 address a few quick points on rebuttal that respondent
19 argued.

20 First, the fact that there was a serious injury
21 here is not in dispute. It's a separate element of the
22 crime. And Mr. Gomez did, in fact, break his leg. He
23 required medical attention at a hospital. That's not being
24 argued today.

25 The reason it's a separate element of the crime

1 is, as Your Honors have noted, the facts of each case are
 2 unique. Not every accident occurs the same way. And the
 3 way that this accident occurred, as consistently testified
 4 to by the pedestrian himself, is that he was clipped by the
 5 corner bumper of a car and pushed in the side-view mirror.
 6 At the time, the driver, Mr. Novas, asked his passenger to
 7 push out the mirror, which he had thought had been slapped
 8 in by an annoyed pedestrian, and he continued to drive
 9 home.

10 The other evidence cited by respondent is that
 11 there was a crack in the bumper. Your Honors, again, I'd
 12 direct you to look at the appendix on pages 487 to 502,
 13 which show a few scuff marks and a crack literally that big
 14 on the lower bumper of the car, consistent with the
 15 testimony that he was clipped below the knee, above the
 16 ankle on the white SUV that Mr. Novas was driving, which is
 17 at a low point, not within the vantage point of the driver,
 18 especially when on the corner of the vehicle. And - - -

19 JUDGE SINGAS: To Judge Cannataro's point, aren't
 20 you really making a weight of the evidence argument and not
 21 a sufficiency?

22 MR. STAMBOULIDIS: No, Your Honor. This is
 23 drawing all reasonable inferences in favor of the People
 24 and looking at the evidence in the most favorable to the
 25 prosecution. There still is not a reasonable inference



1 that Mr. Novas knew or had cause to know of injury on these
2 facts.

3 And looking at the cases that have found a
4 knowledge of injury or cause to know that injury occurred,
5 they do not consist of facts like these. There is no case
6 that respondent cites to remotely close to facts like these
7 because there are none and the acquittals wouldn't have
8 records of those decisions.

9 The fact about him possibly hearing the
10 screaming, I just want to point out, not only was the
11 window most likely or definitely closed on this rainy
12 night, but it is clear on the surveillance videos that his
13 friends did not run over to him until twelve seconds after
14 the moment at which the impact would have occurred. At
15 this point in time, as clear by the surveillance video, Mr.
16 Novas' car, which was continuously driving, was nowhere
17 near in proximity to the scene, which - - -

18 JUDGE SINGAS: I mean, but can't that also mean
19 that they were twelve seconds away? So they heard the
20 scream, and by the time they got back, it took them twelve
21 seconds.

22 MR. STAMBOULIDIS: Your Honor, the surveillance
23 video reflects them slowly walking down the street outside
24 of the bar that they were at. They - - - they were within
25 a block and a half of the accident. Mr. Novas' car, moving

1 for twelve seconds, is nowhere near proximity to the scene.
2 And there's no evidence that he would have heard, not only
3 the moment of impact, but the screams or calls - - - or the
4 - - - the calls of Mr. Gomez when his friends came running
5 twelve seconds later.

6 JUDGE SINGAS: So was his testimony that he heard
7 the rear-view - - - the side-view mirror, or that he felt
8 the impact?

9 MR. STAMBOULIDIS: The testimony of the - - - I
10 see my time is up. If I may briefly respond and conclude.

11 CHIEF JUDGE WILSON: Go ahead.

12 MR. STAMBOULIDIS: The testimony of the passenger
13 of the car was that he told her to push it out - - - to
14 push out the side-view mirror, which he - - - which she
15 understood him to believe that an annoyed pedestrian had
16 slapped in. There wasn't evidence about how he knew or why
17 he thought that, but that's all that was on the record.

18 And for this reason, Your Honors, even viewing
19 the light in the most favorable to the People, there was no
20 proof beyond a reasonable doubt that Mr. Novas knew or had
21 cause to know of injury on this record.

22 JUDGE RIVERA: That just - - - I'm sorry - - -
23 just to be clear, the - - - the personal injury under the
24 statute, for purposes of - - - of what he's convicted of,
25 does it have to be grave or serious?

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MR. STAMBOULIDIS: Yes, Your Honor. Serious - -
- serious physical injury.

JUDGE RIVERA: For what he was convicted of?

MR. STAMBOULIDIS: Yes.

JUDGE RIVERA: Okay.

MR. STAMBOULIDIS: Thank you very much.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Danny Novas, No. 12 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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