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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant-Respondent,

-against-

No. 100

HAZEL E. GORDON,

Defendant-Respondent-Appellant.

20 Eagle Street
Albany, New York 12207
April 30, 2014

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
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Sharona Shapiro
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: People v. Hazel
2 Gordon, number 100.

3 Counselor?

4 MR. SHARP: May I reserve two minutes for
5 rebuttal?

6 CHIEF JUDGE LIPPMAN: Two minutes? Sure.

7 MR. SHARP: Okay. May it please the court.
8 The decision below imposes an unfair requirement, one
9 that certainly was not intended by the legislature,
10 that in any robbery case prosecuted, where the theory
11 is retention or overcoming resistance or preventing
12 resistance to the taking, the People are required to
13 prove actual possession of the property at the time,
14 and by doing so, she has to be - - -

15 CHIEF JUDGE LIPPMAN: Yeah, but how can you
16 intend to use force to retain property that you don't
17 have?

18 MR. SHARP: Well, that's not what the facts
19 below state. The facts, as understood below, was the
20 testimony was she concealed property on her person
21 and she was confronted.

22 CHIEF JUDGE LIPPMAN: Yeah, but she doesn't
23 have it, so you're using - - - don't you have to use
24 speculation to - - - to say why she does?

25 MR. SHARP: She doesn't ultimately have - -

1 - she doesn't ultimately have - - -

2 CHIEF JUDGE LIPPMAN: Yeah, but you're
3 saying she's using force to retain it when you don't
4 have it. You know what I mean? Doesn't common sense
5 tell you - - -

6 JUDGE SMITH: You're - - -

7 MR. SHARP: That's not what the facts - - -

8 JUDGE SMITH: You're saying she did have it
9 when she used the force.

10 MR. SHARP: Yes, she did.

11 JUDGE SMITH: And you - - - but - - - and
12 you're saying you proved that even though you never
13 recovered the property.

14 MR. SHARP: Correct, yes.

15 JUDGE SMITH: How did you prove it?

16 MR. SHARP: We proved it from the
17 circumstances of the officers - - - the loss
18 prevention officers in Boscov's approached this
19 woman, after seeing her conceal earrings on her
20 person. They approached her and asked her for the
21 property back, and she then threatens and uses force
22 and eventually leaves. One of the officers chases
23 her son, and it was his assumption - - - and he was
24 saying, based on their interaction, that she
25 ultimately gave him the property and - - -

1 CHIEF JUDGE LIPPMAN: Yeah, but isn't that
2 speculation, that she gave it to him, that she left
3 it at the layoff (sic) desk - - - whatever it's
4 called, the layover (sic) desk? Doesn't she have to
5 have it? I mean, don't you have to - - -

6 MR. SHARP: It's - - -

7 CHIEF JUDGE LIPPMAN: - - - know that she
8 has it to - - - to - - - to say that she intended to
9 use force to keep it?

10 MR. SHARP: It's not speculation; it's
11 circumstantial evidence.

12 JUDGE SMITH: Suppose actually - - -
13 suppose she passed it to her son before she pulled
14 out the knives. It's still robbery, isn't it?

15 MR. SHARP: Yes, under - - -

16 JUDGE SMITH: Because he's - - -

17 MR. SHARP: - - - an accomplice - - -

18 JUDGE SMITH: - - - her accomplice.

19 MR. SHARP: Yes, under an accomplice
20 liability theory.

21 CHIEF JUDGE LIPPMAN: What if she put it at
22 the layover (sic) desk?

23 MR. SHARP: But she didn't.

24 JUDGE READ: There was no evidence - - -

25 MR. SHARP: That was established - - -

1 JUDGE READ: There was no evidence that she
2 did?

3 MR. SHARP: Yes, yeah. And - - -

4 JUDGE READ: And there was evidence about
5 backers, wasn't it, about backers being removed?

6 MR. SHARP: Yes, the backers were removed
7 from the earrings and discarded on the floor.

8 JUDGE RIVERA: So your argument sounds to
9 me like you've got testimony and the video that she
10 took the earrings, put them on her possession,
11 perhaps secreted them. You've got testimony of
12 observations of removing the backings. You've got
13 backings, perhaps the same name, perhaps not the same
14 name of the jewelry. And - - - and there's nothing
15 else that shows that she got rid of them.

16 MR. SHARP: Right.

17 JUDGE RIVERA: So that's the inference that
18 you want the jury to draw, that since she took them
19 and took them in a way that's suspicious, and I would
20 think you would also argue, and then based on her
21 actions afterwards, there's enough there for a jury
22 to draw this inference that she must have had them or
23 her accomplice must have had them.

24 MR. SHARP: Absolutely.

25 JUDGE RIVERA: Is that your argument?

1 MR. SHARP: Yes, and particularly in a
2 sufficiency analysis where you're viewing the
3 evidence in a light most favorable to the People.
4 And that was the reversal by the Third Department was
5 even viewing the evidence in the light most favorable
6 to the People, they're imposing - - - it wasn't even
7 just a weight of the - - - they didn't do a
8 weight-of-the-evidence analysis. It was a
9 requirement that we had to prove, either that she was
10 openly possessing them, in other words, had the
11 earrings in her hand and the people could see it at
12 the time she was punching and threatening the
13 officers with pens, or when the police eventually
14 catch her, then it's on her person, and that's just a
15 requirement that's not imposed at all by law.

16 And - - - and certainly this is a bit of a
17 different circ - - -

18 JUDGE GRAFFEO: And you're saying - - -
19 you're saying it's not imposed by law by robbery
20 first degree?

21 MR. SHARP: Yes.

22 JUDGE GRAFFEO: Because there's first and
23 second here, correct?

24 MR. SHARP: It's not - - -

25 JUDGE GRAFFEO: But you're - - -

1 MR. SHARP: It's not - - -

2 JUDGE GRAFFEO: - - - you're addressing
3 first degree?

4 MR. SHARP: I'm addressing all of them.
5 The component of force being used, we had - - - we
6 had to prove that the evidence - - -

7 JUDGE SMITH: If you don't have forcible
8 stealing, you don't have any kind of robbery?

9 MR. SHARP: Yes. Yeah, in a - - - this is
10 all tied up within the element of force, and that's
11 why the Appellate Division reduced it to a petit
12 larceny.

13 JUDGE READ: What did - - - did the Third
14 Department cite any particular case for this
15 proposition that - - - that they had to be on her
16 person?

17 MR. SHARP: They cited a couple of
18 Appellate Division cases from, I believe, the First
19 and Fourth Departments. And - - - and each is
20 distinguishable from this case. One was Kellam, and
21 in Kellam, that - - - that defendant actually
22 divested himself of the property, threw it down on
23 the ground and ran. It's not what we have here.

24 And then in - - - they cite Nixon, which
25 was a 3-2 decision, where it was over a huge bucket

1 of roses, and that was a dispute between both the
2 dissenters and the majority in that case as to
3 whether the proof established, you know, the intent
4 to retain.

5 JUDGE RIVERA: So at what point does, as
6 the Chief Judge was suggesting, speculation cross the
7 line to appropriate circumstantial evidence which
8 provides enough of the inference - - - provides a
9 basis for the inference? What pushes it over the
10 line in your case?

11 MR. SHARP: Well, in this case, what pushes
12 it over the line is the continual observation of this
13 defendant secreting the earrings underneath her
14 clothes, then discarding the cardboard backers.
15 Right - - - right there it's on her person. They
16 don't - - -

17 CHIEF JUDGE LIPPMAN: Yeah, but you know
18 what? I understand. What's throwing me is that I
19 can see how you can make the inference that she
20 appropriated the earrings. It's - - - you know, the
21 petty larceny, but it's the force, that you're using
22 force to retain something you don't have is what - -
23 - is what's difficult for me to understand. The
24 petty larceny, I get it; you can make an inference
25 that by all of the things you're talking about, the

1 backings and whatever, that she appropriated the
2 earrings. But how do you - - - how do you get to the
3 intent to use force when - - -

4 MR. SHARP: Well, I - - -

5 CHIEF JUDGE LIPPMAN: - - - you don't have
6 it?

7 MR. SHARP: I guess I just don't see how
8 you don't take it one step farther, and she's using
9 the force when she has the property.

10 JUDGE GRAFFEO: What's the force you're
11 claiming, waving the pens?

12 MR. SHARP: There's a couple of things.
13 There was - - -

14 JUDGE GRAFFEO: Or is it - - -

15 MR. SHARP: There was - - -

16 JUDGE GRAFFEO: Is it the son waving the
17 knife? I mean, what - - -

18 MR. SHARP: It - - -

19 JUDGE GRAFFEO: - - - what's the force that
20 you're alleging?

21 MR. SHARP: There was both threat - - -
22 threats and actual force. There was threats to kill.
23 There was - - - there was punching. There was
24 pulling out the pens. And then there was the kid
25 with the knife, and ultimately, with her car - - -

1 JUDGE SMITH: But you would admit that it's
2 essential to your case to - - - to show, albeit by
3 some kind of evidence, circumstantial or otherwise,
4 that either she or her accomplice still had the
5 property at the time she was doing that.

6 MR. SHARP: Yes, absolutely, yes. And I
7 think that that's a fair inference that can be made
8 from the proof in this case. And I want to analogize
9 it a little bit to - - -

10 JUDGE RIVERA: But I - - -

11 MR. SHARP: - - - a different - - -

12 JUDGE RIVERA: - - - I guess, in part, this
13 argument depends on what - - - what she - - - what
14 she's observed to have done, which is - - - your
15 argument is quite suspicious. You might take
16 earrings off, carry them around the store, think
17 about it, change your mind, but it's that she's
18 secreting them, she's removing the backings, that
19 that is what makes it different in that she would not
20 do that but for the fact that she's going to steal.

21 MR. SHARP: Yes, and - - -

22 JUDGE RIVERA: And if she's going to go
23 through all of that, why wouldn't she have them when
24 she walked out the door?

25 MR. SHARP: Yes, exactly. And it's - - -

1 is there - - - there's no question that if she had
2 walked out the door and wasn't con - - - confronted
3 by loss prevention and they never found the earrings
4 in the store, who do you think has the earrings?
5 It's her.

6 JUDGE ABDUS-SALAAM: They never found the
7 earrings ever, right?

8 MR. SHARP: No, they never did.

9 JUDGE ABDUS-SALAAM: So - - - but there was
10 - - - it wasn't just her son; there was another
11 person with her as well.

12 MR. SHARP: Yeah, there was a codefendant
13 Ms. Wheatley - - -

14 JUDGE ABDUS-SALAAM: And were any earrings
15 or any property that was allegedly stolen found on
16 that person?

17 MR. SHARP: No, they were never found. And
18 they were never found in the store.

19 JUDGE SMITH: Well, there was testimony
20 that the son threw something away, but there was no
21 proof as to what the something was.

22 MR. SHARP: Yeah, he was - - - he was
23 running, being chased, and he was throwing stuff
24 away, but no one knows what that was.

25 JUDGE SMITH: They looked for it and they

1 didn't find it?

2 MR. SHARP: Yes.

3 JUDGE ABDUS-SALAAM: Did they find a knife
4 on him?

5 MR. SHARP: They - - - no, they didn't find
6 the knife. That was presumed to be thrown away.

7 CHIEF JUDGE LIPPMAN: Okay, counsel,
8 thanks.

9 Counselor?

10 MR. LOURIDAS: May it please the court.
11 Aaron Louridas on behalf of Hazel Gordon.

12 CHIEF JUDGE LIPPMAN: Why can't you make a
13 - - - an inference that she had the earrings?
14 There's a lot of suspicious conduct there, wasn't
15 there, the taking - - -

16 MR. LOURIDAS: Well - - -

17 CHIEF JUDGE LIPPMAN: - - - off the
18 backings and - - -

19 MR. LOURIDAS: I would say yes, there is
20 suspicious activity.

21 CHIEF JUDGE LIPPMAN: So what - - - so - -
22 -

23 MR. LOURIDAS: Everything that - - -

24 CHIEF JUDGE LIPPMAN: - - - why can't you
25 make the inference, with the use of - - - intent to

1 use force to retain them?

2 MR. LOURIDAS: Basically, I think what we
3 have here is - - - and there was a misstatement of
4 facts too; there was no evidence submitted that there
5 was a secreting of these earrings on anyone's person.
6 Mr. James, the head security officer, testified that
7 he saw backers thrown to the ground. So that's all
8 we have.

9 JUDGE SMITH: But didn't James say that he
10 saw on the video that she picked up the earring and
11 put something over it to conceal it?

12 MR. LOURIDAS: He initially said that - - -
13 and you could see it on the video - - - when she
14 takes - - - it's either two or three earrings from
15 the rack, she has a load - - - a pile of clothes in
16 her hands, and he says that she puts the earrings
17 close to her chest with her hand over the earrings,
18 puts the clothes over it, so it's not in her - - -

19 JUDGE SMITH: Could you - - - could the
20 jury draw the inference that at that point she put
21 the - - - she put the earrings in her bra?

22 MR. LOURIDAS: I don't think so, because
23 you could see on the video it's against her clothing.
24 It's - - - it's - - -

25 JUDGE RIVERA: But the video shows her

1 taking another pair of earrings and putting them
2 between the clothes or what appears to be between the
3 pile. Why would you do that?

4 MR. LOURIDAS: Right. But also, if you
5 look at the - - - if you look at the video and you
6 look at the minutes on the video, when she goes to
7 this - - - when the backers are taken off, which is
8 apparently in the maternity section, thirty minutes
9 go by before she ends up leaving the store.

10 JUDGE SMITH: It's kind of unusual to take
11 the backers off the earrings before you pay for them,
12 isn't it?

13 MR. LOURIDAS: I would concede that, but I
14 would con - - -

15 JUDGE RIVERA: Isn't it also unusual to
16 actually find the backers?

17 MR. LOURIDAS: Yes, it - - -

18 JUDGE RIVERA: They found the backers - - -

19 MR. LOURIDAS: They found the backers - - -

20 JUDGE RIVERA: - - - not close to the
21 jewelry department.

22 MR. LOURIDAS: They found the backers, but
23 if you looked at the contemporaneous report filed by
24 Mr. James, the report - - - the brand of earrings
25 that he listed on the report doesn't match the

1 backers that they found in the maternity - - -

2 JUDGE SMITH: So what is - - - what, other
3 than a mistake, could account for that? I mean, he
4 lied and said she stole one kind of earring and she
5 stole the other?

6 MR. LOURIDAS: Well, I mean, it just didn't
7 match up, and a lot of things didn't match up with
8 his testimony. He also - - -

9 JUDGE RIVERA: And the jury could discount
10 that part but believe everything else. So it's an
11 inventory issue.

12 MR. LOURIDAS: It's an - - -

13 JUDGE RIVERA: But say - - - but what's the
14 likelihood of finding backers exactly where he says
15 she took them off?

16 MR. LOURIDAS: Right. Well, you have to
17 look at the next step too. She goes - - - within
18 five minutes, she's over at the layaway department,
19 okay? She puts - - - you can see she's putting the
20 clothes on.

21 JUDGE RIVERA: Um-hum.

22 MR. LOURIDAS: She's actually - - - the
23 camera is facing behind her, so you can't really see
24 anything other than the clothes that she's putting on
25 there. However - - -

1 JUDGE SMITH: If she didn't have the
2 property at that point, why is she threatening the
3 officer and pulling out a weapon? Why - - - why - -
4 - why wouldn't she say, search me all you want
5 officer; I haven't got a thing?

6 MR. LOURIDAS: Well, that would lead me to
7 speculate. But I mean, she could be upset that she's
8 being stopped. Apparently, this Mr. - - -

9 JUDGE SMITH: I can see - - -

10 JUDGE GRAFFEO: Her comments were - - -

11 JUDGE SMITH: I can see losing your temper,
12 but pulling - - -

13 JUDGE GRAFFEO: Her comments were a little
14 more than I'm upset. I mean, she was - - -

15 MR. LOURIDAS: Oh, yeah, she - - - she was
16 swearing at them, but apparently her - - - her exit
17 was blocked by Mr. Lisky, who is a large man, by all
18 testimony, and she stated that - - -

19 JUDGE GRAFFEO: I mean, usually, you
20 wouldn't be utter - - -

21 MR. LOURIDAS: - - - she denied stealing -
22 - -

23 JUDGE GRAFFEO: - - - you wouldn't be
24 uttering death threats because you've been stopped in
25 a store by security people.

1 MR. LOURIDAS: Well, I can't really - - -
2 you know, I don't know what's rational or not for
3 her, because I wasn't in her position. But I would -
4 - - I would sa - - -

5 JUDGE GRAFFEO: No, but it's a matter of
6 what kind of inferences the jury can draw when we
7 look at legal sufficiency.

8 MR. LOURIDAS: I think if you look at the
9 Appellate Division's decision, the - - - in - - - in
10 the case law that - - - that was cited, I think
11 there's two different things we have to look at here.
12 The Appellate Division stated that they were - - -
13 that the case law is basically saying if you don't
14 recover - - - if you don't recover the property from
15 the defendant's pers - - - from the defendant,
16 there's an inference - - - well, if you do recover
17 it, rather - - - excuse me - - - there's an inference
18 that the force was used to retain the property. So
19 you don't have that here; there was no property that
20 was recovered.

21 But the main issue that the case law
22 discusses is that it's the People's burden to produce
23 evidence that defendant remained in possession of the
24 stolen property at the time of the threat - - -
25 threatened force. I think that's what we're getting

1 away from here. Thirty minutes passed before she
2 exited the store. There's absolutely no proof,
3 whatsoever, that these earrings remained on her
4 possess - - - in - - - on her person, her
5 codefendant's person, or her son's person. There's
6 no evidence - - -

7 JUDGE ABDUS-SALAAM: Was there - - -

8 MR. LOURIDAS: - - - whatsoever.

9 JUDGE ABDUS-SALAAM: Was there a layaway
10 receipt ever determined to have been given? I know
11 there was some testimony that someone in layaway - -
12 - in the layaway department was spoken to and said
13 something about towels or something else were put on
14 layaway.

15 MR. LOURIDAS: And that's a great question,
16 Judge. Both security guards admitted that receipts
17 would be generated as a result of these transactions.
18 Okay, this is deficient proof in the People's case.
19 They don't bring - - -

20 JUDGE PIGOTT: What's the - - -

21 MR. LOURIDAS: - - - any - - - any
22 paperwork; they don't produce any witnesses from the
23 layaway department.

24 JUDGE PIGOTT: What's the sufficient
25 evidence for the petty larceny then?

1 MR. LOURIDAS: The - - - I understand with
2 the petty larceny the taking aspect of it. I think -
3 - - I think just by disposing of these backers that's
4 - - -

5 JUDGE PIGOTT: Well, who took it and what
6 and where? I mean, it would seem to me that your
7 argument is that she didn't commit any crime, I mean,
8 because if she - - - if she stole the property, and
9 if, as - - - as Mr. Sharp argues, they're given the
10 benefit of every inference, and she's - - - and she's
11 threatening to kill people over the fact that she's
12 not being allowed to remove the store, and they say,
13 well, there's sufficient evidence that she stole
14 stuff; there's just not sufficient evidence that
15 what?

16 MR. LOURIDAS: Well, I think the rea - - -
17 she's threatening to kill people; I think it's just
18 too much speculation why she's doing that.

19 JUDGE PIGOTT: But - - -

20 MR. LOURIDAS: She may just have a temper
21 problem.

22 JUDGE PIGOTT: But aren't they entitled to
23 those inferences?

24 MR. LOURIDAS: I don't think so. I think
25 the - - - the case law says that the burden is on the

1 People to produce sufficient evidence that at the
2 time she's threatening force that she had - - - that
3 she possessed the property. And there's no evidence
4 pointing in that direction.

5 As far as the petty larceny goes, my
6 argument on that is there's insufficient evidence to
7 show intent to deprive or appropriate. And my main
8 argument on - - - on that basically is that the
9 record fails to show that the defendant or
10 codefendants exercised permanent or virtually
11 permanent control over the earrings. And my
12 reasoning for that is within five minutes of throwing
13 the backers down she's at the layaway department. We
14 don't know what's put on layaway. They could have
15 put this issue to rest by either producing a witness
16 or producing the receipts. That would have ended the
17 story.

18 As to the robbery, I think you need more
19 than that. You need more than the layaway department
20 and a witness or evidence. I think you need somebody
21 saying - - -

22 JUDGE RIVERA: But not so much, right?
23 Let's go back to this thing about the layaway. So
24 she goes to the layaway and she puts other things on
25 layaway. But her intent is to steal these earrings.

1 I'm not - - - I'm not really understanding your point
2 about the layaway.

3 MR. LOURIDAS: I'm saying we don't know
4 where the earrings - - -

5 JUDGE RIVERA: So if they show receipts
6 that she didn't put the earrings on layaway, yes, it
7 strengthens their case, but if they don't - - -

8 MR. LOURIDAS: We don't know where - - -

9 JUDGE RIVERA: I'm just not clear.

10 MR. LOURIDAS: We don't know where the
11 earrings ended up. I mean, that's the - - - it's the
12 People - - -

13 JUDGE SMITH: Well, but if you're admitting
14 there's a sufficient case on - - - well, you're not
15 admitting it, but if there is a sufficient case on
16 petty larceny, then it's a little hard to - - - most
17 people don't usually commit petty larceny and put the
18 thing they just stole on layaway before they leave
19 the store.

20 MR. LOURIDAS: Well, Judge, if you look at
21 the case of Nixon, that was undisputed in that case
22 where the - - - it's a First Department case from
23 1989. The defendant took roses from a complainant's
24 stand, and that's undisputed. So there was a petty
25 larceny. He starts walking away. The complainant

1 becomes aware of this - - -

2 JUDGE SMITH: Wasn't the question there
3 whether he - - - whether he'd lost interest in the
4 roses by the time he started using force?

5 MR. LOURIDAS: Well, what the court said
6 was the roses were not recovered and there was no
7 evidence that the defendant remained in possession of
8 the roses at the time the scuffle ensued. That's the
9 same exact situation here. There's no evidence that
10 she remained in possession of the earrings at the
11 time that she waved her pens around. It wasn't a
12 knife; there were two pens. And you know, there's no
13 evidence that any of these earrings were recovered.
14 They said that there was a knife involved as well.
15 The area was canvassed and the knife wasn't found.

16 JUDGE SMITH: You're not - - - you're not
17 arguing that it would - - - literally, in every case,
18 you have to recover the property to make a case of
19 robbery?

20 MR. LOURIDAS: Absolutely not. I am not
21 arguing that. I am saying that what the People - - -
22 the burden is on the People to produce sufficient
23 proof that at the time the force is threatened or
24 used that - - - that they have the property. There's
25 no evidence to that effect. You're asking to take a

1 jump of she takes the backers off and thirty minutes
2 later she still has this property on her. There's no
3 other evidence linking her or her codefendants or the
4 son to retaining possession of these - - - these - -
5 - these items. Another - - -

6 JUDGE RIVERA: Are you saying the point is
7 that once she removed the backers, she should have
8 started - - - she would have immediately walked out
9 of the store?

10 MR. LOURIDAS: Can you say that again, Your
11 Honor?

12 JUDGE RIVERA: Well, it sounds like you're
13 saying because of the thirty-minute lapse, that must
14 indicate that she's actually not intending to take
15 these things, or she doesn't have them on her when
16 she walks out.

17 MR. LOURIDAS: I think if she - - -

18 JUDGE GRAFFEO: I'm not understand - - - so
19 she's going around; maybe she's looking for other
20 things to steal; maybe she thinks she's being watched
21 so she's taking more time.

22 MR. LOURIDAS: Well, if you look at - - -

23 JUDGE RIVERA: Are those not reasonable
24 inferences that a jury could draw?

25 MR. LOURIDAS: I think it doesn't satisfy

1 something on layaway without the backers with the
2 price?

3 MR. SHARP: I have no idea why anybody
4 would.

5 While he may not be saying in every case, I
6 think an important hypothetical to illustrate this
7 case and why this Third Department's decision is
8 troubling is if a person walks into a store, takes an
9 i - - - iPod, sticks it in their pocket, walks out,
10 confronted by loss prevention, they fight, he runs
11 away. The police don't catch him that day. The next
12 day they end up catching him and he doesn't have the
13 iPod in his possession; it's not in his home. That,
14 according to the Third Department, is not a robbery.
15 And - - - because he wasn't discovered with the
16 property.

17 And when you have testimony, like we do in
18 this case, where that person secreted the earrings
19 on, and we have the cardboard backers there, with all
20 these other circumstances, it is a fair inference,
21 and when viewed in the light most favorable to the
22 People, clearly establishes the element of force in
23 the robberies.

24 CHIEF JUDGE LIPPMAN: Okay.

25 MR. SHARP: Thank you.

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CHIEF JUDGE LIPPMAN: Thanks, counselor.

Thank you both. Appreciate it.

(Court is adjourned)

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

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of People v. Hazel E. Gordon, No. 100, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

Signature: _____

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