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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 78

SAVION ROBINSON,

Appellant.

20 Eagle Street
Albany, New York
September 10, 2025

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: And the last case on today's
2 calendar is People v. Robinson.

3 MS. BEENEY: Good afternoon, Your Honors. May it
4 please the court. Carola Beeney for appellant Savion
5 Robinson. I'd like to reserve two minutes for rebuttal,
6 please.

7 CHIEF JUDGE WILSON: Sure.

8 MS. BEENEY: Thank you. Although, two and a half
9 sounded good too. Respondent here agrees that the tests
10 governing custodial interrogation are from Cabrera and from
11 Innis. Yet the lower courts here applied neither.

12 The test for custody under Cabrera is whether a
13 reasonable innocent person would feel free to leave and
14 whether his freedom of action has been constrained to the
15 degree associated with a formal arrest.

16 JUDGE TROUTMAN: So if you accept that the person
17 is in custody, is there any - - - is there such thing as an
18 investigatory exception to Miranda?

19 MS. BEENEY: The test for interrogation, Your
20 Honor, comes from Innis. And it's whether the police
21 should know that their questions are reasonably likely to
22 elicit an incriminating response.

23 JUDGE HALLIGAN: But what do you think the line
24 is between the public safety exception articulated in
25 Quarles and what you and I think the - - - the amicus

1 briefs suggest are investigatory questioning exception
2 cases in the lower courts? What - - - where do we draw
3 that line? Because I assume you're - - - I don't take it
4 to be challenging Huffman itself. And I don't - - -
5 obviously, Quarles is what it is. So where's that line?

6 MS. BEENEY: So to be clear, to back up one step,
7 this court need only address whether the lower courts
8 applied the correct standard, whether there was any record
9 support for their findings, and harmless error - - -

10 JUDGE HALLIGAN: Right.

11 MS. BEENEY: - - - to dispose of this case.

12 JUDGE HALLIGAN: But to the extent that - - -
13 that whatever we might say would shed some light on - - -
14 on, you know, future cases, what are the - - - what's the
15 line between a public safety exception and what you point
16 to in the lower courts? I think note 7 in your brief, I
17 think the amicus brief, points to some cases as well.

18 MS. BEENEY: Right. So to the extent that this
19 court is interested in giving much needed guidance to the
20 lower courts on an issue of fundamental constitutional law,
21 there's two things that I - - - that I would like this
22 court to focus on. One, to Your Honor's point, there is no
23 such thing as an investigatory questions exception.

24 JUDGE HALLIGAN: But you seem to take Huffman as
25 good law. And there, there is some effort to ascertain in

1 the moment what's happening, what's the - - - what are the
2 people in the bushes doing, what's the fellow who's
3 actually at his own home doing. And I take it you're not
4 suggesting that's impermissible. So what's the line
5 between that and an investigatory question? That's what
6 I'm - - -

7 MS. BEENEY: Well, our position - - -

8 JUDGE HALLIGAN: I'm asking what.

9 MS. BEENEY: - - - is that the test that Huffman
10 uses, which it states at 33, statements are suppressible
11 only if there was a process of interrogation designed to
12 elicit statements from the defendant. So to the extent
13 that Huffman stands for that rule or applies that rule,
14 that rule is clearly overruled by Muniz and Innis, which
15 this court should clarify.

16 CHIEF JUDGE WILSON: Wait. So you think Huffman
17 is - - - is no longer viable?

18 MS. BEENEY: The test that Huffman uses is
19 clearly overruled by Muniz and - - - and Innis because it
20 focuses on the purpose of the - - -

21 CHIEF JUDGE WILSON: Well, so then how do you
22 think the facts in Huffman would come out then under - - -
23 under current law?

24 MS. BEENEY: Sure. Under Innis. So the - - -

25 CHIEF JUDGE WILSON: Yeah.

1 MS. BEENEY: - - - the Innis test is whether the
2 question would be reasonably likely to elicit an
3 incriminating response.

4 CHIEF JUDGE WILSON: And so what are you doing
5 back here was the question.

6 MS. BEENEY: Sure. What that question reasonably
7 elicits is I'm running away from the police, or I'm running
8 away from you, not necessarily the incriminating response
9 that was elicited. And Innis does not require the police
10 to expect some sort of nonresponsive, surprising response
11 from the defendant.

12 CHIEF JUDGE WILSON: Oh, what, you mean the
13 surprise is the defendant actually answered truthfully?

14 MS. BEENEY: Yes. Or said we were trying to
15 break into that deli, which was not - - - not really
16 responsive to what are you doing behind that bush.

17 CHIEF JUDGE WILSON: Well, no, it was a response
18 to - - -

19 JUDGE RIVERA: They answered with an - - -

20 JUDGE HALLIGAN: Just so I'm clear, are you
21 saying - - -

22 JUDGE RIVERA: They answered with an inculpatory
23 statement, as opposed to something perhaps more innocuous.

24 MS. BEENEY: Sure. And the question was very
25 limited to the person's location and the reason for it, not

1 what were you doing behind that - - -

2 JUDGE HALLIGAN: But - - - but - - - but so I'm
3 clear - - -

4 MS. BEENEY: - - - what were you doing - - -

5 JUDGE HALLIGAN: - - - do you think that the
6 question asked in Huffman was interrogation under Innis?

7 MS. BEENEY: No. Because the question asked,
8 "what are you doing back there", was not reasonably likely
9 - - -

10 JUDGE HALLIGAN: So Huffman stands on its facts;
11 you're - - - you're agreeing, yes?

12 MS. BEENEY: If you take all the facts in - - -
13 in Huffman and apply the Innis test, yes, it - - - it - - -

14 JUDGE CANNATARO: So it's the test that was
15 articulated in Huffman that no longer survives Innis?

16 MS. BEENEY: Exactly, Your Honors - - - Your
17 Honor. Excuse me.

18 JUDGE RIVERA: Or current application of the
19 interpretation of that test?

20 MS. BEENEY: I'm sorry?

21 JUDGE RIVERA: Current application by the courts
22 of the interpretation of that test, if I'm understanding?

23 MS. BEENEY: Right. I mean, the way that you - -
24 - the - - - the way that the court looked at all of the
25 facts - - -

1 JUDGE RIVERA: Yes.

2 MS. BEENEY: - - - the relevant facts, was guided
3 by the test.

4 JUDGE RIVERA: Uh-huh.

5 MS. BEENEY: Courts given the same facts might
6 look at them slightly different when the test guides
7 examination of facts differently.

8 JUDGE RIVERA: Can I - - -

9 MS. BEENEY: So - - -

10 JUDGE RIVERA: Can I ask you, you said there were
11 two things you wanted us to keep in mind. This was the
12 first. What's the second?

13 MS. BEENEY: So the first is that there's no such
14 thing as an investigatory question - - - questioning
15 exception. And the second is that, as I said, the rule
16 that Huffman advances or it relies on, which it cites as
17 People v. Cerrato, a pre-Huffman case, which is also pre-
18 Innis, of course, which focuses on the purpose of the
19 questions, was overruled by Muniz and Innis. And the
20 reason for that is because the purpose of the officer in
21 asking the questions is not the focus. The - - - the focus
22 is the suspect's perceptions.

23 JUDGE SINGAS: Yeah. I'd like to - - - following
24 on that, can we talk a little bit about custody? Because
25 we agree that custody is a person innocent of any crime

1 would think that they were under arrest, right?

2 Here, under these specific facts, they're in
3 Times Square, a very busy place. This fight breaks out or
4 attempted robbery or whatever it is. Lots of police
5 officers around, just by virtue of the fact that it's Times
6 Square and there's tourists and so on. They're separated.
7 Both people get cuffed. Both people are detained. Both
8 people are being spoken to by the police. So why is it
9 that - - - or why isn't it that a person innocent of a
10 crime might think, you know what, they're holding everybody
11 here until they figure out what's going on? I don't think
12 I'm under arrest.

13 MS. BEENEY: So in this particular case, first of
14 all, they applied handcuffs, which does indicate a level -
15 - -

16 JUDGE SINGAS: To both.

17 MS. BEENEY: Sorry?

18 JUDGE SINGAS: To both.

19 MS. BEENEY: To both. Correct.

20 JUDGE SINGAS: Yeah.

21 MS. BEENEY: In this particular case, the police
22 asked Mr. Robinson, I saw what you did. Why did you go
23 after him like that? They said - - -

24 JUDGE TROUTMAN: So are you saying the police
25 officer actually saw what was perceived to be a crime in

1 progress?

2 MS. BEENEY: Yes, exactly, Your Honor. And then
3 they pressed him even further.

4 JUDGE SINGAS: But I'm talking about the custody
5 part of this.

6 MS. BEENEY: Yeah. Right. But it's all relevant
7 to whether - - - I mean, I suppose - - - I suppose there is
8 no person who the police tell - - - if the police officer
9 says to the person in handcuffs, we just saw you commit a
10 crime, there's no reasonable innocent person in that
11 situation that would feel free to leave because the officer
12 tells that person that they don't think they're innocent,
13 that they're going to remain cuffed.

14 CHIEF JUDGE WILSON: Could I - - -

15 JUDGE GARCIA: But the police did see him commit
16 a crime, apparently, and it's on video. So why isn't it
17 harmless?

18 MS. BEENEY: Yes, Your Honor. So the defense's
19 theory at trial was that this was a larceny plus a
20 retaliatory assault. The prosecution argued that this was
21 a robbery, a forcible taking. So the question at trial was
22 the purpose of the force. Was the force used to retain the
23 bicycle? Or was the force used in retaliation?

24 Anyone committing a retaliatory assault would've
25 quickly said, I punched him because he grabbed me or he

1 jumped on me. The omission of that excuse clearly
2 contributed to a finding that the force was used for the
3 taking and not to retaliate, especially - - -

4 JUDGE GARCIA: I'm sorry. I'm just not following
5 that.

6 MS. BEENEY: Uh-huh.

7 JUDGE GARCIA: So what was the statement that
8 came in?

9 MS. BEENEY: "I punched him".

10 JUDGE GARCIA: Okay. And how does that go to
11 that issue you've just been talking about?

12 MS. BEENEY: Because any fact finder that hears
13 that without an explanation for the punch is - - - is
14 predisposed, or certainly, it contributes to the conviction
15 or to the finding - - -

16 JUDGE CANNATARO: How does that explain the
17 punch? If all he said was, "I punched him" - - -

18 JUDGE GARCIA: The punch is on the video.

19 MS. BEENEY: Yes. But the explanation of why
20 clearly contributed to the finding that the force was for
21 the - - -

22 CHIEF JUDGE WILSON: Wait. I'm sorry. What - -
23 -

24 JUDGE RIVERA: Because you're saying that when
25 someone who is innocent says, I punched them, they would

1 explain the innocent reason for punching them - - -

2 MS. BEENEY: Yes.

3 JUDGE RIVERA: - - - as in I punched him because
4 he hit him, I punched him because he jumped me, I - - -
5 right? Is that - - -

6 MS. BEENEY: Exactly. And furthermore, the way
7 that it came out at trial was very prejudicial, not through
8 one police witness, but through two. The second of whom
9 argued that this - - - or testified that this was a
10 spontaneous utterance. So if the - - - if the defendant
11 just says, "I punched him", that's clearly contributing to
12 a finding that he's the aggressor, that it's not a
13 retaliatory assault, which was the defense's position of
14 trial.

15 In general, confessions are powerful evidence of
16 wrongdoing. They're straight from the horse's mouth,
17 especially in a case - - - Your Honor, yes, there was
18 video, but the video was blurry. It was from a distant
19 vantage point. And slight movements are very difficult to
20 make out from that distance. The - - - the slight
21 movements that are the issue here as to the purpose of the
22 violence were - - - were not visible on video at all. And
23 so the statement was used to clarify the video.

24 So there's more than a reasonable possibility
25 that this contributed to the conviction when there was no

1 explanation of what the force was used for.

2 CHIEF JUDGE WILSON: Thank you.

3 MS. BEENEY: Thank you, Your Honor.

4 MR. RIENZI: Good afternoon, Your Honors. And
5 may it please the court. Peter Rienzi on behalf of the
6 People.

7 This court should affirm. The defendant was not
8 in custody; the brief investigatory seizure was not the
9 equivalent of a formal arrest; and a reasonable innocent
10 person would have believed that he was being detained and
11 handcuffed for a limited time while the officers
12 investigated the circumstances of the - - -

13 JUDGE CANNATARO: What was the total time of the
14 seizure?

15 MR. RIENZI: I'm sorry?

16 JUDGE CANNATARO: What was the duration of the
17 seizure?

18 MR. RIENZI: The seizure - - - so the statement
19 came out around eight minutes after the - - - the two men
20 were handcuffed.

21 JUDGE CANNATARO: Uh-huh.

22 MR. RIENZI: The - - - after that point - - -

23 JUDGE CANNATARO: Which statement are you
24 referring to?

25 MR. RIENZI: Oh, I apologize.

1 JUDGE CANNATARO: I punched him out?

2 MR. RIENZI: I just punched him - - - I punched
3 him right out. Exactly. The officers, as we say in our
4 brief, asked no further questions after that and made a
5 determination. It can be seen from the video that they
6 conferred away from the two men, made a - - -

7 JUDGE CANNATARO: Still in cuffs, though, right?

8 MR. RIENZI: I'm sorry?

9 JUDGE CANNATARO: Still cuffed?

10 MR. RIENZI: Yes. Absolutely. Still cuffed.
11 Right. And then eventually, seven or eight minutes later,
12 they let the other man, Mr. Boyd (ph.).

13 JUDGE RIVERA: But the - - - but - - -

14 JUDGE CANNATARO: So sixteen - - -

15 JUDGE RIVERA: - - - but isn't the - - - isn't
16 cuffing - - - I already have a position on that, but let's
17 go with where the majority has been on that. Cuffing with,
18 as I recall, the officer then explaining, we're trying to
19 figure this out, suggest that the point of figuring this
20 out is there's going to be an arrest since these two are
21 fighting in the middle of Times Square. Somebody's going
22 to jail. I thought it - - -

23 MR. RIENZI: Your Honor, I - - - I don't - - - I
24 don't think it is that clear that somebody's going to jail.
25 There - - - there is not - - - there were not really

1 visible injuries to either person.

2 CHIEF JUDGE WILSON: Well, does there have to be
3 a conclusion that necessarily somebody's going to jail for
4 something to be a custodial interrogation?

5 MR. RIENZI: No, no, Your Honor. I don't mean to
6 misstate it.

7 CHIEF JUDGE WILSON: So - - -

8 MR. RIENZI: But - - - but I'm saying that it's -
9 - - I don't think - - - I don't think that the officers - -
10 - there is reason to believe that - - - the officers did
11 not treat defendant, Mr. Robinson, as the perpetrator for
12 the entirety of this time. They - - -

13 CHIEF JUDGE WILSON: They didn't know.

14 JUDGE RIVERA: No, but they made clear nobody was
15 leaving until they resolved it, right?

16 MR. RIENZI: Yeah. Yes, Your Honor. But that -
17 - - that fulfills the freedom to leave question, not the
18 was the detention the equivalent of a formal arrest. So in
19 other words, a reasonable innocent person would've - - -
20 could've considered, obviously, the fact that they are
21 handcuffed and that they are - - - they are not free to
22 leave at that point. But then all the other factors,
23 including as - - -

24 JUDGE RIVERA: My point. And if you're
25 handcuffed, since I don't - - -



1 MR. RIENZI: Yes.

2 JUDGE RIVERA: - - - believe they argued this was
3 for public safety, although I could certainly understand
4 that argument. You're in Times Square, and these men are
5 fighting quite aggressively. That much, you can see from
6 the video. I can certainly understand that argument. I
7 don't recall it was made. In any event, the - - - the
8 handcuffs are to ensure that there will be an arrest. It's
9 very hard for me to kind of see this otherwise.

10 MR. RIENZI: Your Honor, I - - -

11 JUDGE RIVERA: We're going to figure this out,
12 going to handcuff. We're going to - - -

13 JUDGE CANNATARO: Can I ask you - - -

14 JUDGE RIVERA: - - - we're going to decide.

15 JUDGE CANNATARO: I'm sorry. You can answer the
16 question.

17 JUDGE RIVERA: Yeah. No. Why - - -

18 MR. RIENZI: So figuring it out - - -

19 JUDGE RIVERA: Why isn't that - - -

20 MR. RIENZI: - - - I mean, figuring it out could
21 refer - - - they did not say to either person that they're
22 under arrest. As Judge Singas pointed out, both men were
23 handcuffed. Both men are being asked these fact-gathering
24 questions.

25 JUDGE RIVERA: Could - - - could the defendant

1 hear - - - does the record reveal in any way, could the
2 defendant hear the complainant's allegations that defendant
3 had taken the bike and then they got into this altercation?

4 MR. RIENZI: I - - - I don't think that's clear,
5 Your Honor. I think - - - I think looking at the video, it
6 seems like they might have been fifteen feet away or so.
7 So I'm not - - - I - - - I - - - there's obviously nothing
8 in the record to indicate defendant hearing it.

9 JUDGE CANNATARO: That's what I wanted to ask you
10 about too. When is it in the interaction that Boyd says,
11 "He stole my bike"?

12 MR. RIENZI: He says it a couple of times, Your
13 Honor.

14 JUDGE CANNATARO: He starts - - - it - - - it's
15 not very long into it that he makes that claim, right?

16 MR. RIENZI: I believe, I - - - I - - - I think
17 he makes it the first time. He makes it to a couple of
18 different officers.

19 JUDGE CANNATARO: Uh-huh.

20 MR. RIENZI: Boyd.

21 JUDGE CANNATARO: And I'm wondering if - - -

22 MR. RIENZI: Yes.

23 JUDGE CANNATARO: - - - having said it - - - said
24 it potentially very early in the - - - in the episode and
25 to several different people, whether that changes the

1 nature of the custodies. Does it take it from
2 investigatory in the sense of just trying to figure out
3 what's going on to investigatory in the sense - - - I think
4 you heard somewhere before - - - oh, we're investigating a
5 pretty serious crime here? We might have a robbery on our
6 hands, or something like that.

7 MR. RIENZI: I - - - I - - - it doesn't take it
8 to that level automatically because the investigation is -
9 - - is still going on. They are still - - - right before
10 Ofc. Espinal (ph.) asks defendant the what happened
11 question, which yields the answer, "I punched him right
12 out".

13 Ofc. Espinal, a minute or two before that, is
14 speaking to Mr. Boyd. And Mr. Boyd is trying to explain
15 what - - - what he said about defendant stole his bike and
16 defendant was hitting him and he wasn't doing anything.
17 And Ofc. Espinal wasn't really accepting it.

18 I - - - I think that the officers were trying to
19 get to the bottom of this by giving each person a chance to
20 explain what was going on. I think because there was a
21 fight, they were - - - they wanted to hear from both of
22 them and they wanted to - - - they didn't want to just take
23 Boyd's explanation and then say, okay, our investigation's
24 over, and now we're going to arrest Mr. - - -

25 JUDGE CANNATARO: No, I'm sure they weren't

1 because if they just took his explanation for it, there
2 would have been some sort of immediate arrest, right? They
3 would've - - -

4 MR. RIENZI: Yes. Exactly.

5 JUDGE CANNATARO: - - - taken him away.

6 MR. RIENZI: They - - - they would've - - -

7 JUDGE CANNATARO: But now, they're thinking there
8 might be an arrest. There - - - there's been an allegation
9 of a more serious crime being committed here than just some
10 street scuffle where there were no injuries, as you said.
11 So I'm just wondering if that is an indicator that we're
12 not dealing with simply trying to calm a turbulent
13 situation.

14 MR. RIENZI: I - - - I think that they - - - they
15 still were trying - - - I mean, obviously, the situation,
16 they - - - they acted to secure the situation. They asked
17 these questions. They - - - they - - - they asked them
18 both if they needed medical attention. They tried to see,
19 do you guys know each other? What - - - what is the reason
20 for this fight going on? They're still trying to gather
21 the facts. I mean, it - - - it is - - - it's a very fluid
22 situation. It is in Times Square, in a crowded area. They
23 are - - - then - - -

24 JUDGE HALLIGAN: Did you rely on the public
25 safety exception specifically?

1 MR. RIENZI: No, Your Honor. That was not relied
2 on below. That has never been relied on by - - - by the
3 respondents here.

4 JUDGE HALLIGAN: Okay. Thanks.

5 JUDGE GARCIA: Could you address harmless error?

6 MR. RIENZI: Yes. Absolutely. Here, the - - -
7 it - - - it was harmless error, and the Appellate Division
8 was correct to say so, because the evidence against the
9 defendant was overwhelming in this case. The - - - and I
10 think - - - Judge Garcia, I think you said it. The punch,
11 that - - - aspect of the - - - of the conduct that
12 defendant admitted here, which was he punched him, that - -
13 - because the video came into evidence, the surveillance
14 video, that video showed that defendant punched Boyd five
15 or six times is what it turned out. So - - - and - - - and
16 the trial court asked to view that video multiple times.

17 JUDGE RIVERA: Well, I - - - I think your
18 adversary's point is not so much the fact of admitting a
19 punch. It's the lack of explanation for the punch. Can
20 you address that?

21 MR. RIENZI: Yes. I - - - I believe that it's -
22 - - I mean, first - - - first of all, I mean - - -

23 JUDGE RIVERA: As I said before, I think her
24 argument was any innocent person would - - - if the cops
25 are asking and you're in handcuffs, would not simply say I

1 punched him, but say I punched him because he punched me,
2 but what - - - whatever might be what one would think would
3 explain to an officer your conduct that is not conduct
4 that's criminal, right, but that it's in self-defense or
5 something else?

6 MR. RIENZI: Right. It's - - - I mean, the
7 defense counsel did not, you know, object to the
8 introduction of any of this testimony, did not cross-
9 examine either officer regarding the statement. The - - -
10 obviously, defendant did not testify, as was his right.
11 The - - - so there really was - - - other than the police
12 testimony about it, there were no statements about - - -
13 there were no statements in evidence about anything other
14 than what - - - what this statement was, that he - - - that
15 he punched him.

16 I mean, and my - - - obviously, the point I'm
17 making about harmless error is that that fact, that
18 admission, was completely redundant to - - - to testimony
19 about - - -

20 JUDGE RIVERA: Did the prosecutor in any way
21 argue this very issue about, you know, if he was innocent,
22 he would have said something?

23 MR. RIENZI: No, no.

24 JUDGE RIVERA: No?

25 MR. RIENZI: That - - - that certainly - - - I

1 mean, the statement really played - - - the statement was
2 not mentioned in the People's summation. It - - - it
3 really played a marginal role.

4 JUDGE RIVERA: The complainant says, I'm punched,
5 you've got the video, right?

6 MR. RIENZI: I'm - - - I'm sorry?

7 JUDGE RIVERA: You've got the video. You've got
8 the complainant.

9 MR. RIENZI: Right. And - - - and the
10 complainant testimony - - -

11 JUDGE RIVERA: It's not in dispute that there's a
12 physical altercation between these two men?

13 MR. RIENZI: I - - - I apologize, Your Honor. I
14 missed the beginning.

15 JUDGE RIVERA: I'm sorry. There's no dispute
16 that there's a physical altercation between them.

17 MR. RIENZI: No, there certainly - - - it doesn't
18 seem like it would be a fruitful thing to dispute. There
19 was - - - there was a video of the entire incident. The -
20 - - the - - - you have Boyd's testimony, the victim, and
21 then two officers who saw the tail end of the fight. So -
22 - - so the admission was redundant to that evidence.

23 Further, just - - - just to touch on - - -

24 CHIEF JUDGE WILSON: What does - - - what does -
25 - -

1 MR. RIENZI: Oh, yes?

2 CHIEF JUDGE WILSON: - - - "by force" in robbery
3 require? Does it require a punch?

4 MR. RIENZI: Does the force in robbery 3 require
5 a punch?

6 CHIEF JUDGE WILSON: Yeah. As - - - as a
7 statutory matter, what's "force"?

8 MR. RIENZI: I think "force", the physical force
9 - - - I mean, I think, obviously, a punch would fulfill it.

10 CHIEF JUDGE WILSON: Right.

11 MR. RIENZI: But would it - - - would it be
12 fulfilled - - - is your question, would it be fulfilled
13 with something less than a punch? Is that - - -

14 CHIEF JUDGE WILSON: Like wrestling somebody or -
15 - - or trying to throw them to the ground or scuffling with
16 them where there's no punch thrown or - - -

17 MR. RIENZI: I think - - - I think that it would
18 be fulfilled by that. I - - - I think - - - but obviously,
19 that was not - - - that was - - - I - - - I don't think
20 that was raised below. I think that the - - - I think what
21 was raised below was the - - - the punch and the - - - and
22 the - - - and Boyd testified that defendant, while punching
23 - - - or while the physical struggle was going on, was
24 still trying to grab the bicycle from him.

25 So if I can just make one final point. Cabrera



1 recently did say that whether a defendant was subjected to
2 custodial interrogation is a mixed question of law and
3 fact. And there is record support here for the lower
4 court's determinations that he was not subjected to that.
5 And therefore, this court should affirm on that basis as
6 well.

7 If there are no further questions, we ask that
8 you affirm. Thank you.

9 CHIEF JUDGE WILSON: Thank you.

10 MS. BEENEY: Just to put a finer point on the
11 issue of harmless error. The question at trial, being that
12 the defense conceded a larceny, asked for the charge on
13 petty larceny, and conceded that there was an assault, the
14 only question was mens rea. And that was what the court
15 charged itself with, was whether the force was used to take
16 the bike or to retain the bike, or whether the force was
17 separate. So the only issue here for the fact finder is
18 the purpose of the force. And that's exactly what the
19 statement spoke to.

20 JUDGE TROUTMAN: What do you say about the fact
21 that he says there - - - the video shows a number of blows
22 thereafter?

23 MS. BEENEY: A number of blows thereafter?

24 JUDGE TROUTMAN: That he admits to one, but
25 there's a video showing many more.

1 MS. BEENEY: Right. But I think the point on
2 harmless error is that what the video does not show clearly
3 is any effort to try to retain the bike during the punches.
4 So whether there be one punch or multiple punches - - - of
5 course, there were mult - - - multiple here - - - the
6 question for the fact finder given what the parties had
7 conceded - - -

8 JUDGE CANNATARO: If - - -

9 MS. BEENEY: - - - was the purpose of it.

10 JUDGE CANNATARO: If we saw in that video
11 something that, you know, looked like a person taking a
12 bike and moving out of frame with it and then another
13 person jumping into action and going after them and you see
14 a tussle, would - - - would it be your argument that it's
15 not fair to assume that that was a struggle for retention
16 of the bike?

17 MS. BEENEY: If there was a tussle and - - - I'm
18 sorry. As to harmless error?

19 JUDGE CANNATARO: Yeah. Whether - - - whether
20 that's sufficient evidence to overcome, you know, the - - -
21 the problem with the - - - with the statement. If we
22 exclude the statement, would that be enough?

23 MS. BEENEY: I'm sorry, Your Honor. Do you mind
24 repeating? I'm sorry.

25 JUDGE CANNATARO: So I'm just wondering if - - -



1 if you see a struggle - - - you said that you can't really
2 see a punch. But if you see them - - -

3 MS. BEENEY: Oh.

4 JUDGE CANNATARO: - - - struggling over a bike -
5 - -

6 MS. BEENEY: Oh, no, to clarify, you can
7 certainly see the punch. You can see multiple punches.
8 The punches were numerous and - - - and - - - and violent.
9 What you cannot see is the issue that was being disputed,
10 which was the reason for the punch. Whether the punch, to
11 be sufficient for a robbery conviction, was used to retain
12 the bicycle, to complete the taking - - -

13 JUDGE CANNATARO: I guess that's the question.

14 MS. BEENEY: - - - to be a forcible taking - - -

15 JUDGE CANNATARO: Can - - - can you make that
16 inference from what you're seeing in the video? Or is that
17 just - - -

18 MS. BEENEY: No. Because it's from a very
19 distant vantage point, numerous feet up in the air, very
20 far away, and it's also blurry, which the prosecutor
21 admitted at trial.

22 JUDGE CANNATARO: Okay. But we know who those
23 people are in - - - in the picture, right?

24 MS. BEENEY: Yes. We know who they are. But you
25 - - - you - - - I mean, they don't have facial features,

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for example. It's very, very, very far up. So the only question that the video doesn't answer is what the force was used for.

And where the defense is arguing, yes, we punched him. The defense punched the complainant, but it was not to retain the bike. It was because the complainant had jumped on the defendant to get his bike back. And the defendant was so shocked by this that he started pummeling him, or whether - - - hence a retaliatory assault, rather than an assault for the purposes of a taking.

CHIEF JUDGE WILSON: Thank you.

MS. BEENEY: Thank you, Your Honors.

MR. RIENZI: Thank you.

(Court is adjourned)

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

I, Joey Oliveros, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Robinson, No. 78 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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