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NO. 70324-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

CURTIS TANZY

Appellant.

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE DEAN LUM

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**BRIEF OF RESPONDENT**

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A. ISSUE PRESENTED

To commit assault in the second degree, a defendant must intentionally assault a person and thereby recklessly inflict substantial bodily harm. "Substantial bodily harm" includes loss of consciousness or a fractured bone. Multiple witnesses testified that Curtis Tanzy punched Steven Carter in the head causing Carter to fall to the ground, apparently unconscious. Multiple witnesses testified that Tanzy's acquaintance, Justin Rosas, then advanced on Carter and struck Carter with the edge of Rosas' skateboard, fracturing bones in Carter's face. The entire incident was captured on surveillance video. Is there sufficient evidence from which a reasonable fact-finder could conclude that Tanzy inflicted substantial bodily harm on Carter, either as a principal actor or accomplice?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Curtis Tanzy was charged by information with assault in the second degree ("assault"); specifically, the State alleged that on or about June 10, 2012, Tanzy, together with others, intentionally assaulted Steven Carter and thereby recklessly

inflicted substantial bodily harm on Carter. CP 9. On April 3, 2013, a jury found Tanzy guilty as charged. CP 167. On May 8, 2013, the Honorable Judge Dean Lum, who presided over the trial, imposed a standard range sentence of 66 months in prison. CP 176. As appellant, Tanzy now challenges the sufficiency of the evidence to convict him of assault.

## 2. SUBSTANTIVE FACTS.

On June 10, 2012, Steven Carter was enjoying a night out with friends in the Belltown neighborhood of Seattle. 3/28/13 RP 33-34. He began the night at a club called the Empire Lounge, at which his friend Tessa Engler tended bar. Id. Also present at the Empire Lounge that evening was another friend of Carter's, Chris Glosecki.<sup>1</sup> 3/28/13 RP 34-36. Carter and Glosecki drank beer at the Empire Lounge while waiting for Engler to finish her bartending shift. Id.

Once Engler was finished, Carter, Glosecki, and Engler continued their night out. 3/28/13 RP 35. They walked to Belltown Pizza, a few blocks from the Empire Lounge. Id. The three friends

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<sup>1</sup> Transcribed phonetically throughout the record as "Lussek." 3/28/14 RP 33.

sat together at a table in the rear of Belltown Pizza and drank beer. 3/28/13 RP 36-39; 4/1/13 RP 50-53.

The appellant, Curtis Tanzy, and an acquaintance of his, Justin Rosas, were also at Belltown Pizza that night. 3/28/13 RP 154-156. The two had arrived earlier than Carter and his friends, and were observed by multiple witnesses socializing with each other. 3/28/13 RP 125-126, 154-156. Rosas was carrying a skateboard with him. 3/28/13 RP 154-156.

While socializing with Carter and Engler, Glosecki observed a woman toward the back of Belltown Pizza whom he found attractive. 3/28/13 RP 38. The woman was sitting in the general area of another group of people that included Tanzy and Rosas. 3/28/13 RP 125-26; 4/1/13 RP 50, 53. Because Glosecki was too bashful to approach the woman, Carter purchased the woman a drink and had it delivered to her on behalf of Glosecki. Id. 3/28/13 RP 38. The woman accepted the drink and no harsh words were exchanged among anyone. 4/1/13 RP 51.

Belltown Pizza's surveillance video captured the events that followed. Ex. 1.

A few minutes prior to the assault incident, Rosas went outside to smoke a cigarette alone. Ex. 1, Track 6; 3/28/13 RP

159. He stood in front of Belltown Pizza, leaning on a fence near the restaurant, rolling his skateboard back and forth under his foot. Ex. 1, Track 6 at 0:00-0:30.

Just before midnight, Engler went outside to smoke a cigarette with some restaurant patrons. Ex. 1, Track 4 at 0:02-0:22; Ex. 1, Track 63/28/13 RP 31, 91-93. Carter followed Engler outside. Ex. 1, Track 5 at 0:35. Glosecki remained seated in the restaurant. 3/28/13 RP 67. As Carter walked outside, Tanzy arose from his table at the rear of the restaurant and followed silently behind Carter. Ex. 1, Track 1 at 0:16-0:24. Carter was unaware that Tanzy was following him. 3/28/13 RP 39-40.

Carter stepped outside and stood with Engler and the restaurant patrons on the sidewalk in front of the door to Belltown Pizza. Ex. 1, Track 6 at 0:35-0:45; 3/28/13 RP 107. Carter was facing the street, with his back to the restaurant. Id. The group stood in a small circle and began to light their cigarettes. Id.

A street musician, Glen Freeman, stood approximately six feet to Carter's right, "busking" and performing for passersby. 3/28/13 RP 151, 158.

Upon exiting the front door of Belltown Pizza, Tanzy turned left and walked behind Carter toward Rosas, who was standing

apart from Carter's circle. Ex. 1, Track 6 at 0:38. Tanzy leaned on the fence next to Rosas. Ex. 1, Track 6 at 0:38-1:00. Rosas shared his cigarette with Tanzy and the two spoke briefly. Id. While they spoke, Tanzy and Rosas looked toward Carter. Id.

After their conversation, Tanzy and Rosas broke apart. Ex. 1, Track 6 at 1:00-1:10. Tanzy took up a new position directly behind Carter. Ex. 1, Track 6 at 1:08. Rosas picked up his skateboard and changed positions as well. Ex. 1, Track 6 at 1:00-1:10. Rosas moved from the fence where he had been leaning to the curb, on the far side of Carter's circle. Id.

Suddenly and without any warning or provocation, Tanzy punched Carter in the back of the head, just behind Carter's right ear. Ex. 1, Track 6 at 1:12. Carter tensed, fell forward, and did not brace himself in any way. 3/28/13 RP 162. His face struck the pavement first and the rest of his body then crumpled to the ground. Ex. 1, Track 6 at 1:13. He suffered scrapes and cuts to his forehead, the tops of his knuckles, and the tops of his feet from where he made contact with the pavement. 3/28/13 RP 74.

Carter, for his part, testified at trial that he did not remember the punch. 3/28/13 RP 40. Carter did not remember anything from



the time he stepped outside Belltown Pizza to the moment he “woke up” in pain on the sidewalk. Id.

Engler did not see the punch, but saw Carter fall and hit his head on the pavement, and described Carter as being “laid out completely.” 3/28/13 RP 107. She saw that Carter’s “eyes were rolled back in his head and completely out.” 3/28/13 RP 121.

Freeman, the street musician, saw the punch and the manner in which Carter fell. 3/28/13 RP 162. He described the fall as a “dead man’s fall... [Like] when you blink out. It’s not like you are trying to protect yourself in your fall by putting yourself down and brace yourself. A dead man’s fall is you just fall... If you’re there and all of a sudden, your whole body, everything stops, just... you’re out.” Id.

Once Carter fell to the ground, Engler and Freeman scrambled to understand what had happened. 3/28/13 RP 107, 110-112, 164-165. Engler and Freeman’s attention shifted frantically back and forth between Tanzy and Carter. Id. Carter began rolling and moaning on the sidewalk. 3/28/13 RP 111.

After a moment of initial confusion, Freeman intervened. Ex. 1, Track 6 at 1:12-30. Freeman stepped forward, shouted, and raised his hand toward Tanzy, causing Tanzy to back away from

Carter. Id. Engler watched Tanzy begin to flee southbound after the punch. 3/28/13 RP 110. Freeman advanced on Tanzy, yelling and demanding answers. Ex. 1, Track 6 at 1:12-30. Tanzy retreated halfway down the block, backing into a doorway that was still in sight of Rosas and the witnesses. 3/28/13 RP 164-166.

Through the initial confusion, Rosas stood quietly near Carter's head. Ex. 1, Track 6 at 1:15-20. Rosas had seen Tanzy's punch but did not exhibit any signs of surprise. Ex. 1, Track 6 at 1:12. At one point immediately after Tanzy's punch knocked Carter to the ground, Rosas took a half-step toward Carter's head. Id. He stopped himself when Engler and Freeman looked in Carter's direction. Id. 4/2/13 RP 111.

The moment that Freeman and Engler's attention were again focused away from Carter, Rosas stepped toward Carter and attempted to kick Carter in the head. Ex. 1, Track 6 at 1:25-1:27. Approximately 15 seconds elapsed between the moment Tanzy punched Carter and the moment Rosas attempted to kick Carter's head. Ex. 1, Track 6 at 1:12-1:27. In his zeal, Rosas missed the kick and his momentum flung him to the ground, onto his back. Id. Rosas recovered slightly and then used his skateboard to strike Carter in the face. Ex. 1, Track 6 at 1:33-1:36. Rosas used a

chopping motion to bring the edge of his skateboard down onto the bridge of Carter's nose. Id. The tremendous force of the blow shattered Carter's nose and cheekbones, causing immediate, heavy bleeding. 3/28/13 RP 43; 4/1/13 RP 8. Engler kneeled on the ground with Carter to help him avoid choking on his blood. Ex. 1, Track 6 at 1:47-1:55; 3/28/13 RP 113-114. Carter later received reconstructive surgery to repair the damage to his face. 3/28/13 RP 48-49.

During Rosas' portion of the attack on Carter, Tanzy was still present, standing halfway down the block, within sight of the scene. 3/28/13 RP 164, 166.

Rosas' fresh attack on Carter pulled Freeman's attention away from Tanzy. 3/28/13 RP 165. Freeman turned and saw Rosas slam the skateboard down onto Carter's face. Id. Freeman ran into Belltown Pizza, calling for aid. Id.

Rosas stood up, glanced southbound toward Tanzy, and then fled the scene northbound. Ex. 1, Track 6 at 1:30-2:00. Rosas was arrested later the same night after he doubled back and was discovered by police just south of where Tanzy had been standing. Id. 4/1/13 RP 21-22.

Immediately after calling for help, Freeman enlisted patrons to help him chase Tanzy, who was still within sight of the scene. 3/28/13 RP 165-169. Freeman chased Tanzy through the streets of Belltown and stopped Tanzy from fleeing in a taxi cab; Freeman ultimately lost Tanzy after Tanzy ran into a night club. Id. Tanzy was arrested approximately two weeks later, when Freeman saw him again in Belltown and identified him to police. 3/28/13 RP 170.

C. ARGUMENT

SUFFICIENT EVIDENCE SUPPORTS TANZY'S  
CONVICTION FOR ASSAULT IN THE SECOND DEGREE.

Tanzy asserts that the State did not prove he committed assault in the second degree as a principal actor or that he was an accomplice to Rosas' actions. This argument should be rejected because there was ample evidence from which a rational fact-finder could find that Tanzy personally knocked Carter unconscious and that Tanzy participated in the assault with Rosas as his accomplice.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime

beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Id. Circumstantial and direct evidence carry equal weight when reviewed by an appellate court. Id. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person is guilty of assault in the second degree if he intentionally assaults another and thereby recklessly inflicts substantial bodily harm. RCW 9A.36.021(1)(a). Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part. RCW 9A.04.110(4)(b). A person is guilty of a crime committed by another if the person, with

knowledge it would facilitate the commission of the crime, solicits, encourages, or requests another to commit the crime, or aids in the planning or commission of the crime. RCW 9A.08.020. Having agreed to participate in the crime, a person runs the risk that an accomplice may exceed the scope of the preplanned illegal activity and elevate the crime to a more serious level. State v. Davis, 101 Wn.2d 654, 659, 682 P.2d 883, 886 (1984).

There is substantial evidence in this case to support the findings that Tanzy both knocked Carter unconscious and acted in concert with Rosas to carry out the assault on Carter. Indeed, appellant's claim to the contrary flies in the face of the testimony of witnesses and a video recording of the incident.

With regard to the issue of whether Carter was knocked unconscious, the jury heard the testimony of Carter, Engler, and Freeman, and watched a video recording of the incident. Carter testified that he "woke up" on the sidewalk after the punch, implying that he had previously been unconscious. 3/28/13 RP 40. Though the emergency room physician, Dr. Adedipe, testified that there was no way to medically determine whether Carter had lost consciousness after the punch, Dr. Adedipe also testified that Carter had reported "passing out" and that Carter's facial injuries

appeared consistent with his self-reporting. 4/1/13 RP 86. Engler described Carter's condition after the punch as being "laid out completely," with "eyes... rolled back in his head and completely out." 3/28/13 RP 107, 121. Freeman described Carter's fall as a "dead man's fall... [Like] when you blink out... Your whole body, everything stops, just... you're out." 3/28/13 RP 162. The jury saw the video of the incident where the punch caused Carter to tense, fall forward, and strike his face into the pavement without any attempt to brace himself. Ex. 1, Track 6 at 1:12-1:20. In sum, the jury was presented sufficient evidence from which they could reasonably conclude that Carter momentarily lost consciousness.

With regard to the issue of whether Tanzy and Rosas acted as accomplices, the jury heard the testimony of Engler, Freeman, a waitress named Mullenberg, and police officers who described the location where Rosas was arrested. The jury also watched a video recording of the incident.

Engler testified that Tanzy and Rosas were at Belltown Pizza together. 3/28/13 RP 125-26. Freeman testified that Tanzy and Rosas were there with each other that night. 3/28/13 RP 155. He said that Tanzy and Rosas had come out of the restaurant together 5 to 10 minutes prior to the assault, had interacted briefly, and then

Tanzy had reentered the restaurant while Rosas stayed outside. 3/28/13 RP 156. Waitress Mullenberg testified that, besides Carter's group, there was one other large group in the rear of Belltown Pizza that she was serving. 4/1/13 RP 49-50. A number of men were in the large group, as well as the woman for whom Carter bought a drink. Id. One of the men in the large group had a ponytail and was wearing a white tee shirt and a "hoodie" sweatshirt, consistent with the appearance of Rosas in the surveillance video. 4/1/13 RP 53; Ex. 1, Track 6 at 0:00-1:12. The location of the large group in the rear of Belltown Pizza was consistent with the location from which Tanzy could be seen in the surveillance video beginning to follow Carter outside. 4/1/13 RP 47, 49, 51; Ex. 1, Track 4 at 0:16-0:24. In sum, there was ample evidence from which to conclude that Tanzy and Rosas were socializing with each other.

The jury watched a surveillance video of the incident, which showed Tanzy walking over to Rosas prior to the assault, leaning on the fence next to Rosas, sharing a cigarette with Rosas, and apparently talking with Rosas. Ex. 1, Track 6 at 0:38-1:00. During the discussion, both Tanzy and Rosas looked toward Carter. Id. After the discussion, both Tanzy and Rosas changed positions, and



Rosas picked up his skateboard. Id. In taking up new positions, Rosas continued to look back toward Tanzy. Id. Ex. 1, Track 6 at 1:00-1:12. When Tanzy punched Carter, Rosas showed no sign of surprise. Ex. 1, Track 6 at 1:12-1:15. Rosas made a small movement toward Carter immediately after Carter fell the ground, but stopped when witnesses' attention was focused on Carter. Id. Once witnesses looked away from Carter toward Tanzy, who was now southbound of the scene, Rosas tried to kick Carter in the head. Ex. 1, Track 6 at 1:27. After the skateboard strike, Rosas stood up and glanced toward Tanzy before fleeing the scene. Ex. 1, Track 6 at 1:27-1:45. Rosas was arrested later after he was found in the approximate area where Tanzy appeared to be headed at the time Rosas fled. 3/28/13 RP 166; 4/1/13 RP 21-22.

The overall picture presented by the surveillance video supports the inference that Tanzy and Rosas coordinated with each other prior to assaulting Carter, then carried out their respective strikes against Carter within seconds of each other and while both were still present at the scene. Though Rosas elevated the level of the assault through the use of his skateboard, Tanzy bore such a risk in agreeing with Rosas to assault Carter in the first place.

In short, substantial evidence supports the jury's conclusion that Tanzy committed assault in the second degree, either as a principal actor or as an accomplice.


D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Tanzy's assault conviction.

DATED this 30 day of June, 2014.

Respectfully submitted,

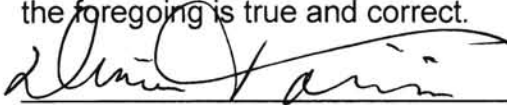
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kathleen A. Shea, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent and Certificate of Service by Mail, in STATE V. CURTIS TANZY, Cause No. 70324-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
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Name Divina Tomasini  
Done in Kent, Washington

  
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