

NO. 66451-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WELI GULED,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA CAHAN, JUDGE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. The crime of robbery in the first degree requires that the defendant, in the course of the robbery or in flight therefrom, inflicted bodily injury. Here, the evidence established that the defendant pushed the victim and head-butted him. The victim suffered a huge headache that lasted a day. Was the evidence sufficient to prove robbery in the first degree?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Weli Guled and Abdi Hilow were charged by information with one count of robbery in the first degree. CP 1. By jury verdict rendered on October 28, 2010, Guled was convicted as charged.¹ CP 101. Guled was sentenced on December 3, 2010 to a term of 120 months in the Department of Corrections. CP 113.

2. SUBSTANTIVE FACTS

On February 22, 2010, in the early afternoon, Dallas Dzeidzic was sitting on a ledge, listening to music on his I-Phone, near Second Avenue and University Street, in downtown Seattle. 7RP 102 - 103. Defendant Guled and another male approached him. Initially, Guled asked for a lighter, which Dzeidzic provided him. Then, Guled asked for Dzeidzic's phone. When Dzeidzic refused, Guled head-butted him and shoved him. 7RP 110, 115.² Guled became aggressive, showing Dzeidzic a gun in Guled's pocket. 7RP 115. Dzeidzic was hit in the head a couple of times. 7RP 117. After an hour, the adrenaline of the incident wore off and Dzeidzic began to feel the effects of the head-butting. 7RP 118-119. He suffered what he described as a "huge headache" that lasted the rest of the day. 7RP 119.

Dallas Dzeidzic found Seattle Police Officers Matthew Chase and Jeremy Pinkerton in the area of Third Avenue and Pike Street. 7RP 19. Dzeidzic was visibly shaken and crying. He stated that someone threatened him, taking his phone. 7RP 19-20. Dzeidzic

¹ A mistrial was declared for defendant Hilow, as the jury was unable to reach a unanimous verdict.

² This brief refers to the proceedings as follows: 1RP - 10/12/10; 2RP - 10/18/10; 3RP - 10/19/10; 4RP - 10/20/10; 5RP - 10/21/10; 6RP - 10/22/10; 7RP - 10/25/10; 8RP - 10/26/10; 9RP - 10/27/10; 10RP - 10/28/10

stated that the suspect punched and head-butted him. 7RP 46. Officers noted redness on the side of his face. 7RP 47. Dzeidzic provided a description of the suspects. 7RP 20-21.

Dzeidzic next went to the AT&T store to purchase a replacement phone. 7RP 122-123. While in the store, he saw the suspects again. 7RP 123. Joshua Woodard, an employee at the store, followed the suspects and directed officers to the correct location. 8RP 5-7. Officers arrested Guled within an hour of their first contacting Dzeidzic. 7RP 52.

Dzeidzic's phone was found in the patrol car used to transport Guled to the precinct. 7RP 34-35. It was located on the floor where Guled had been sitting. 8RP 103.

C. ARGUMENT

1. EVIDENCE THAT THE VICTIM SUFFERED A HEADACHE THAT LASTED A DAY IS SUFFICIENT TO SUPPORT A FINDING OF ROBBERY IN THE FIRST DEGREE.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements proved beyond a reasonable doubt. State v. Hendrickson, 129 Wn.2d 61, 81, 917 P.2d 563 (1996). A challenge to the sufficiency of the evidence

admits the truth of the State's evidence. State v. Finch, 137 Wn.2d 792, 831, 975 P.2d 967 (1999). All reasonable inferences from the evidence are drawn in favor of the State and against the defendant. Finch, 137 Wn.2d at 831. Credibility determinations are for the trier of fact and are not the subject of later review. State v. Camarillo, 115 Wash. 2d 60, 71, 794 P.2d 850 (1990).

A person committed robbery in the first degree if he unlawfully took the property of another, by the use of force, and in the commission of the robbery or flight therefrom, inflicted bodily injury. RCW 9A.56.200(1)(a)(iii), State v. Tanberg, 121 Wash. App. 134, 138, 87 P.3d 788 (2004). Bodily injury is defined as "physical pain or injury, illness, or an impairment of a physical condition." 9A.04.110(4)(a).

Evidence that the victim suffered pain is sufficient to satisfy the element of bodily injury. Given that the definition of bodily injury includes pain, there is no requirement that the injury be visible.

In State v. Saunders, 132 Wash.App. 592, 132 P.3d 743 (2006), this Court upheld a jury's determination that Saunders committed assault in the third degree. In Saunders, a domestic violence victim complained of neck pain lasting three hours caused by her boyfriend punching her and grabbing her by the throat. This

neck pain, accompanied by an abrasion and swelling of the cheek, was sufficient evidence of substantial pain and considerable suffering. Saunders, 132 Wash. App. 592, 600. If neck pain lasting three hours is evidence of substantial pain and considerable suffering, a headache lasting a day is sufficient evidence of physical pain. The State provided a sufficient basis upon which a rational trier of fact could reasonably conclude that Guled inflicted bodily injury upon Dzeidzic.

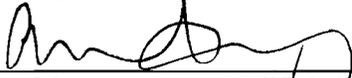
D. CONCLUSION

Evidence sufficiently established that Dzeidzic suffered bodily injury, and that Guled committed robbery in the first degree. The State respectfully requests that this Court affirm the judgment and sentence in this case.

DATED this 19th day of August, 2011.

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 Thomas M. Kummerow, 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, in STATE V. WELI GULED, Cause No. 66451-4-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.

Betty A. Huddleston
Name

8.19.11
Date

Done in Seattle, Washington

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