

68632-1

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NO. 68632-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JACOB D. TUJI,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRUCE HILYER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The State presented evidence that Tuji hit Charles Bowman several times. As a result of the attack, Charles sustained multiple facial fractures. Could a rational trier of fact have concluded that Tuji committed assault in the second degree?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On September 28, 2011, the State of Washington charged the juvenile respondent, Jacob D. Tuji, with one count of assault in the second degree for his actions on September 22, 2011. CP 2. This case proceeded to bench trial before the Honorable Bruce Hilyer. 1RP. After a factfinding hearing, the court found Tuji guilty as charged of one count of assault in the second degree. 1RP; 2RP; CP 32. The court signed written findings of fact and conclusions of law in support of its verdict on April 27, 2012. CP 38-42.

The trial court imposed a commitment of 15-36 weeks to the Juvenile Rehabilitation Administration. CP 34-36. This appeal timely followed. CP 33.

2. SUBSTANTIVE FACTS

On September 22, 2011, Charles Bowman and his sister, Erika Bowman, lived together in Renton.¹ 1RP 20.² That day they ran errands together in Tacoma. 1RP 21. Erika and Charles left Tacoma at approximately 2:00 P.M. to return to Renton by bus. 1RP 22. The bus was crowded, and Erika and Charles were unable to sit together. 1RP 24. Erika sat near the rear door, and Charles sat two rows in front of her. Id. At Southcenter mall, a group of teenagers boarded the bus. 1RP 26, 27. One of the teens, a black male with "slim" eyes, stood in the aisle just in front of Erika. 1RP 27.

Erika was sitting in an aisle seat and a teen standing next to her asked for her seat. 1RP 31. Erika offered the window seat to

¹ Since Erika and Charles Bowman share a last name, they are referred to in this brief by their first names.

² The Verbatim Reports of Proceedings are comprised of two volumes. The State uses the abbreviations 1RP to refer to the first volume, covering the proceedings of February 7, 2012, and 2RP to refer to the second volume, covering the proceedings of February 7 and April 12, 2012.

him, but the teen refused. Id. After Erika refused to give up her seat, the group of teens began insulting her. 1RP 31-32. At least one of them called Erika a, “fat, white bitch.” 1RP 32. Hearing the insults to his sister, Charles intervened and told the teenagers not to bother Erika. 1RP 33. In response, the teen standing next to Erika threatened to “jump” Charles. Id. The dispute escalated to the point that other passengers called for the bus driver to “kick them off the bus.” 1RP 36. Eventually the bus driver told Erika, “I know you’re offended, lady, but you need to quiet down.” Id. After the bus driver intervened, the teens stopped talking and the incident appeared to be over. 1RP 36-37.

Tenisha Hermans was a passenger on the bus. 2RP 100. Hermans heard a portion of the argument. 2RP 101.

At the Renton Park ‘N Ride, Erika and Charles got off the bus to transfer to another bus that would bring them home. 1RP 39. The group of teens, including the teen with the “slim” eyes, exited the bus. 1RP 40. Hermans also exited the bus. 2RP 106.

As Charles got off the bus, he was confronted by the group of teens. 2RP 163. One of the teens punched Charles in the face. 2RP 164. Charles fell to the ground. 2RP 113, 165. Hermans,

watching from nearby, saw a tall, slim, black male, wearing a white and black striped shirt hit Charles several times. 2RP 108-11, 114-15, 123.

Erika tried to help Charles. 2RP 115. One of the teens swung at Erika. Id.; 1RP 43. Erika described the teen as the individual with "slim" eyes. 1RP 43. Hermans saw the teen swing at Erika. 2RP 115. Hermans described the teen as the individual in the white and black shirt. Id. The group of teens ran off. 1RP 45; 2RP 117. Erika ran after the group and called 911. 1RP 46; 2RP 117. Erika followed the group for three to five minutes. 1RP 48. Erika stayed on the phone with the 911 operator while she was following the group. Id. Erika gave a description of the group and explained what direction they were headed. 1RP 46. Erika eventually lost sight of the group. 1RP 48.

Renton Police Officer James Fowler responded to the call. 1RP 79. Officer Fowler saw three people running near the location of the incident. 1RP 80, 131. Officer Fowler detained two of the people. 1RP 83. One of the individuals was Tuji. Id. Tuji was wearing a black and white striped shirt. 1RP 111.

Erika returned to the Park 'N Ride to check on Charles. 1RP 49. Erika was told by police that they had detained possible

suspects. 1RP 49. Erika was transported to the location of the suspects Officer Fowler had detained for a one-on-one identification. 1RP 50, 133-34. Erika identified Tuji as the teen with the "slim" eyes. 1RP 66, 135.

Charles was also transported to the location of the suspects for a one-on-one identification. 1RP 137; 2RP 170. Charles identified Tuji and the other suspect as the individuals who had assaulted him. 1RP 138.

Finally, Hermans was transported to the location of the suspects for a one-on-one identification. 1RP 138; 2RP 121. Hermans identified Tuji as the teen wearing the black and white striped shirt, the same individual who had assaulted Charles. 1RP 139; 2RP 123.

Charles was treated by Renton Fire and then transported by ambulance to Valley Medical Center. 1RP 140; 2RP 175. At Valley Medical Center, Charles was diagnosed with facial fractures as a result of the attack. 2RP 71, 85-86, 164, 176.

C. ARGUMENT

Tuji's sole claim on appeal is that the State's evidence was insufficient to support a conviction for assault in the second degree.

Specifically, Tuji claims that the identification evidence presented by the State was equivocal and conflicting. This argument should be rejected. The evidence was more than sufficient to support the conviction.

At trial, 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 if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. (citation omitted). The appellate 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 (2000). Furthermore, 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.

To convict Tuji of assault in the second degree, the State had to prove beyond a reasonable doubt that he intentionally assaulted Charles Bowman and thereby recklessly inflicted substantial bodily harm. RCW 9A.36.021(1)(a); CP 2. "Substantial bodily harm" is defined as "bodily injury . . . which causes a fracture of any bodily part." RCW 9A.04.110(4)(b). Tuji only challenges the State's proof with respect to identity; he does not dispute that Charles was the victim of assault in the second degree on September 22, 2011.

Here, Erika identified Tuji in court as the individual with the "slim" eyes. 1RP 37-38. Erika testified that Tuji was the individual who had swung at her at the Park 'N Ride. 1RP 43.

Hermans also testified that Tuji was the individual wearing the black and white striped shirt. 2RP 123. She stated that Tuji was the individual that had hit Charles several times at the Park 'N Ride. 2RP 108-11, 114-15, 123. Hermans testified that Tuji was the individual who swung at Erika. 2RP 115, 123.

Tuji incorrectly states that Hermans only identified him based on clothing and hair. Hermans identified Tuji as the individual who

had assaulted Charles based, in part, on the black and white striped shirt Tuji was wearing at the time of the one-on-one identification. 2RP 110. However, Hermans also described the attacker as a tall, slim, black male. Id. Hermans testified that when she identified Tuji during the one-on-one, there was nothing different about his appearance, and that “he was the same” person she had seen attack Charles. 2RP 123.

At trial, Charles testified that he had been hit by an individual wearing the black and white striped shirt. 2RP 136. Charles stated that during the one-on-one, he identified the suspect wearing the black and white striped shirt as the same individual who had hit him. 2RP 172. Charles further testified that his written statement indicated that it was an individual in a “grey dark-colored shirt” who had hit him, however, his statement had been written by an officer and was incorrect. 2RP 179-80.

Tuji nevertheless complains that his conviction should be reversed because there was conflicting testimony regarding the identification of Tuji as the assailant. Brief of Appellant at 8-11. Tuji’s complaints should be rejected. Viewed in the light most favorable to the State, including the credibility of the State’s witnesses, the evidence is sufficient to find that Tuji was the teen in

the black and white striped shirt that assaulted Charles. His conviction for assault in the second degree should be affirmed.

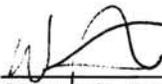
D. CONCLUSION

For all of the foregoing reasons, this Court should affirm Tuji's conviction for assault in the second degree.

DATED this 19th day of December, 2012.

Respectfully submitted,

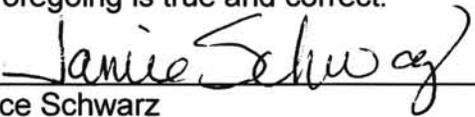
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan F. Wilk, 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. JACOB D. TUJI, Cause No. 68632-1-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.



Janice Schwarz
Done in Kent, Washington



Date