

30737-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

COREY J. MOMON, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
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Andrew J. Metts
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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. Reference Count 2, the State failed to prove each element of the crime of second degree assault beyond a reasonable doubt; specifically, the evidence is not sufficient to support the jury's verdict, which necessarily found that Raymond B. Lee suffered (1) substantial disfigurement, (2) substantial bodily harm, or (3) a fracture of any bodily part as a result of the assault.

II.

ISSUE PRESENTED

- A. HAS THE DEFENDANT SHOWN THAT THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO THE JURY SHOWING SUBSTANTIAL BODILY HARM?

III.

STATEMENT OF THE CASE

For the narrow purpose of deciding the single issue prosecuted in this appeal, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE PRESENTED TO THE JURY SHOWING SUBSTANTIAL BODILY HARM TO THE VICTIM DUE TO THE ASSAULT BY THE DEFENDANT.

The defendant does not contest any aspects of the assault against Raymond B. Lee save the issue of proof of the physical damage to the victim to justify a finding of guilty of Second Degree Assault.

By raising the issue of proof in this case, the law of the State of Washington imposes several factors on the defendant. “There is sufficient proof of an element of a crime to support a jury’s verdict when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that element beyond a reasonable doubt.” *State v. Bright*, 129 Wn.2d 257, 266 n.30, 916 P.2d 922 (1996). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, 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, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995). The defendant

admits to the truth of the State's evidence and the viewing of the State's evidence in a light most favorable to the prosecution.

Since the defendant did not raise any issues aside from the physical damage to the victim of Count 2, the remaining parts of Count 2, such as the identity of the attacker and self-defense are admitted by the defendant. Further, all elements of Counts 1 and 3 are admitted by the defendant.

The jury was instructed that it had to find that the defendant inflicted substantial bodily harm to the victim in Count 2. RP 270. The trial court defined the term "substantial bodily harm" as: "'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.'" RP 270.

The victim (Mr. Lee) was out celebrating on the night in question because he was scheduled to enter the Armed Forces in the next month. He had been in ROTC for some time. The attack caused the victim to suffer short term memory loss and he was disqualified from military service. RP 35.

Mr. Lee was unconscious, with brief lucid periods, for three weeks. RP 52.

Mr. Lee testified that he was unable to attend school. RP 53.

Mr. Lee testified that as a result of this incident, he had a tooth removed. RP 54.

Mr. Lee suffered injuries that essentially ruined his plans for a future in the military. That fact alone should be sufficient to meet the standard of "...substantial loss of the function of any bodily part or organ..." This change was caused by a brain injury inflicted by the defendant. There was ample evidence for the jury to find the elements of the crime of second degree assault.

V.

CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed.

Dated this 14th day of December, 2012.

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