

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2004-KA-1821**
VERSUS * **COURT OF APPEAL**
JEROME FRENCH * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 440-494, SECTION "H"
Honorable Camille Buras, Judge
* * * * *
Judge David S. Gorbaty
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(Court composed of Judge James F. McKay III, Judge Max N. Tobias Jr.,
Judge David S. Gorbaty)

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AFFIRMED

Jerome French appeals his conviction for second-degree battery. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF THE CASE:

Defendant Jerome French was charged with one count of violating La.R.S. 14:34 relative to aggravated battery. Following a jury trial, a responsive verdict of guilty of second degree battery was returned. French was sentenced to five years at hard labor. French timely appealed.

STATEMENT OF THE FACTS:

On January 22, 2003 Nelkita Jones was given a ride by her friend Shelita Grandpre to a male friend's home. Shelita indicated that she was going to pick up her boyfriend, French, and would return to pick up Ms. Jones. When Shelita came back, French and another man (later learned to be Carl Portis) were in the car with her. Ms. Jones' male friend spoke with her about getting in the car with the two men, suggesting that Ms. Jones was

going to go out with someone else. After Ms. Jones reassured her male friend that Portis was simply a friend of French, she got in Shelita's car. However, because of the overheard conversation between Ms. Jones and her male friend, French apparently felt that Ms. Jones' friend had been talking about him. He began to verbally harass Ms. Jones. According to Ms. Jones French was drunk and she knew that he had a tendency to get in fights when he was intoxicated. After Shelita dropped off Portis, French, who was not driving, suddenly forced the car to stop by moving the transmission into park and grabbing the keys out of the ignition. French then got out of the front passenger seat, opened the back door of the car, and tried to pull Ms. Jones out by grabbing her hair. Ms. Jones resisted by holding onto the headrest, and French struck her with a beer bottle that he had in his hand. The blow cut Ms. Jones' face. At that point Ms. Jones tried to exit the rear passenger door but was unable to do so, so she begged her friend Shelita to drive off because French had cut her. French struck Ms. Jones a second time with the bottle, causing cuts on the other side of her face. At first Shelita could not find the keys, but finally did so. French walked from the scene, and Ms. Jones and Shelita drove to the hospital after stopping to pick up Ms. Jones' friend.

At the hospital, the police were called. However, the responding

officer stated he could not take a report because he was not from the district where the incident occurred. Another officer later came to Ms. Jones' house and took a full report. A crime laboratory photographer took pictures. Ms. Jones identified the photographs at trial, specifically noting the stitches on both sides of her face over her eyes and the blood on her clothing.

On cross-examination, Ms. Jones was unable to state whether or not the beer bottle broke when French hit her. She also stated that the wounds to her face had healed, but still hurt sometimes.

The only other State witness at trial was Detective Herman Franklin, assigned to the Fifth District on the date of the incident. He interviewed Ms. Jones at her home on the day after the incident. Ms. Jones provided the name of the defendant, whom she knew, and Detective Franklin compiled a photographic line-up, which he showed to Ms. Jones. She identified the defendant's picture. Detective Franklin then obtained an arrest warrant for French. On cross-examination, Detective Franklin stated that he did not review the medical records from Charity Hospital, nor was he able to locate Shelita's vehicle to look for physical evidence.

The defense called Carl Portis as its sole witness. He testified that he and French had known each other since they were children. On January 22, 2003 they were out together at a barroom. French called his girlfriend

Shelita to come pick them up, and when she arrived they lingered at the bar shooting pool while Shelita's friend (the victim) was visiting her boyfriend's house nearby. Finally, around 9 p.m., Shelita, Portis, and French drove to the house of the victim's boyfriend to pick her up. When Ms. Jones got in the car, she and French began a verbal altercation. However, no physical altercation occurred before Shelita dropped off Portis at his house. Less than ten minutes later, French arrived at Portis' house and told him that he had "just got into it with the little girl." French told Portis that he was going to go home and left. Portis testified he did not see any blood on the defendant.

According to Portis, he and French had been drinking only hard liquor at the bar. He denied that he or French had a beer bottle in the car, and he denied that there was a bottle in the car before they got into it.

French did not testify at trial.

ERRORS PATENT:

A review of the record for errors patent reveals none.

DISCUSSION:

French urges a single assignment of error, that the evidence is not sufficient to sustain the jury's verdict of second-degree battery because the State failed to show that the victim sustained serious bodily injury as required by La.R.S. 14:34.1. The legal standard for sustaining a verdict and

this element of La.R.S. 14:34.1 was discussed recently by this Court in *State v. Landry*, 03-1671 (La.App. 4 Cir. 3/31/04), 871 So.2d 1235:

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Rosiere*, 488 So.2d 965 (La. 1986); *State v. Heck*, 560 So.2d 611 (La.App. 4 Cir. 1990). The reviewing court must consider the record as a whole and not just the evidence most favorable to the prosecution; if rational triers of fact could not disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. *State v. Mussall*, 523 So.2d 1305 (La. 1988); *State v. Green*, 588 So.2d 757 (La. App. 4 Cir. 1991).

In a second-degree battery conviction, the State is required to prove the offender committed a battery without the consent of the victim and that he intentionally inflicted serious bodily injury. La. R.S. 14:34.1. In second-degree battery cases, the offense requires proof of a specific intent to inflict “serious bodily harm.” *State v. Welch*, 615 So.2d 300, 302 (La. 1993), citing *State v. Fuller*, 414 So.2d 306 (La. 1982). Serious bodily injury is defined as injury that involves unconsciousness, extreme physical pain, or protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death. La. R.S. 14:34.1.

Landry, pp. 6-7, 871 So. 2d at 1238-39.

In *Landry*, the defendant and the victim were at a bar where the victim and his family were having a birthday party. At some point the victim and the defendant exchanged words. When the victim later walked outside, the

defendant followed him and punched him in the face. The blow caused the victim to fall on the concrete, rendering him unconscious. The victim also sustained a fractured jaw, scrapes, and bruises. The facial injury required that his teeth be removed and his jaw wired shut; he had to maintain a liquid diet for eight weeks. On appeal this Court held that these injuries constituted “serious bodily injury” as defined in La.R.S. 14:34.1.

In *State v. Odom*, 03-1772 (La. App. 1 Cir. 4/2/04), 878 So.2d 582, writ denied, 04-1105 (La. 10/8/04), 883 So.2d 1026, the defendant was originally charged with aggravated battery, and the jury returned a responsive verdict of guilty of second degree battery, as occurred in the instant case. The offense began as a domestic disturbance and continued over several hours. The defendant struck the victim repeatedly with his fists and went on a destructive spree in their home, destroying furnishings. At some point he armed himself with a pistol, and he struck the victim with the butt of the weapon several times. At trial, the victim and a co-employee testified that the victim had bruises, a black eye, and a gash on her head, all of which were still visible a week after the incident. The victim also testified that her whole body hurt for days after the incident. No expert testimony was presented, and the victim testified that she did not seek medical treatment out of embarrassment. However, she did spend the night

of the incident with her brother who had some first aid training, and he monitored her for a possible concussion. Based on this record, the court found that the evidence supported the conviction for second degree battery, noting that the victim's testimony may present sufficient evidence to establish that she sustained serious bodily injury, without the testimony of an expert. *Odom*, p. 7, 878 So.2d at 588, citing *State v. Gunnells*, 619 So.2d 192, 201 (La.App. 3 Cir. 1993).

In *State v. Hall*, 03-1384 (La.App. 5 Cir. 3/30/04), 871 So.2d 558, the victim testified that she was sprayed with mace and beaten and kicked by the defendants. She recounted that the mace caused her eyes to burn, made breathing difficult, and made it feel like her esophagus was swollen. She required fifteen stitches to close the various lacerations on her nose that apparently were caused by a bottle striking her face. On appeal, the Court held that the victim's testimony describing these injuries was sufficient to sustain the convictions for second degree battery.

In contrast to these cases, in *State v. Helou*, 2002-2302 (La. 10/23/03), 857 So.2d 1024, cited by French, the Supreme Court reversed the appellate court's decision that held that the evidence was sufficient to prove the element of serious bodily injury. The Court noted that the victim was struck repeatedly by the defendant and two other men, but no weapons were

involved. The victim's wife testified that her husband's nose was bleeding profusely. The victim testified he had never seen so much blood in his life and that his clothes were saturated. A bystander, who was a former army medic, testified that there was so much blood on the ground that it was hard to tell from where it came. The State argued that the sheer quantity of blood led to an inference that the victim suffered a serious bodily injury. The Supreme Court disagreed:

This Court finds that the presence of blood alone does not satisfy the "serious bodily injury" element of second degree battery. Our jurisprudence demonstrates many cases where the State proved the "serious bodily injury" element of second degree battery. Some examples are: 1) *State v. Abercumbia*, 412 So.2d 1027 (La.1982), where the defendant hit the victim with boards across his head, neck, and arm, causing a "deep cut over his right eye;" 2) *State v. Robertson*, 98-0883 (La.App. 3d Cir.12/9/98), 723 So.2d 500, *writ denied*, 99-0658 (La.6/25/99), 745 So.2d 1187, where the defendant knocked the victim to the ground and repeatedly kicked and hit her until she "kind of lost her senses for a minute;" the victim had bruises and contusions over the entire extent of her body, which left significant scars and lacerations on her nose; and 3) *State v. Robinson*, 549 So.2d 1282, 1285 (La.App. 3d Cir.1989), where the defendant stabbed the victim twice with a large, folding knife.

There are other cases which indicate that less substantial injuries may also constitute "serious bodily injury." *See State v. Young*, 00-1437, pp. 9-10 (La.11/28/01), 800 So.2d 847, 852-853, . . .; *State v. Diaz*, 612 So.2d 1019, 1022-1023 (La.App. 2d Cir.1993), where the defendant broke the victim's jaw during a group fight; *State v. Mullins*, 537 So.2d 386, 391 (La.App. 4th Cir.1988), where a 6 foot tall defendant punched a 5'5" girlfriend, breaking her nose; . . . *State v. Accardo*, 466 So.2d 549, 552 (La.App. 5th Cir.1985), *writ denied*, 468 So.2d 1204 (La.1985), where a 17-year-old female victim was struck on the

head by the defendant with either his fist or a blackjack, causing the side of her face to swell.

After a careful review of LSA-R.S. 14:34.1 and the related jurisprudence, we find that in the case *sub judice*, the State failed to offer any evidence of "extreme physical pain" by way of testimony from the fact witnesses. Nor do we have testimony from medical witnesses or medical records, which would prove this factor. Rather, the evidence presented, [sic] dealt solely with the amount of blood the victim lost. . . . We cannot infer that the loss of blood is tantamount to "extreme physical pain." We also cannot infer that a punch in the nose, without more evidence, is sufficient to support a conviction of second degree battery.

Helou, pp. 6-8, 857 So.2d at 1028-29.

The instant case is factually closer to *Landry*, *Hall*, and *Odom* than to *Helou*. The victim in this case testified that she was struck twice in the face with a beer bottle. The State introduced photographs of the victim, showing lacerations over the victim's eyes, including the stitches required to close them. The cut over one of the victim's eyes shows that the gash is triangular in shape and extends into the victim's eyelid, above her eyebrow, and down the side of her eye. The laceration over the other eye appears to cover her entire eyebrow; swelling and bruising is noticeable in the picture. Moreover the victim testified at the trial, which was held almost a year after the crime, that the wounds on her face still hurt on occasion.

French contends that he committed only a simple battery. However, the victim's testimony coupled with the photographs of her injury supports

the jury's verdict that the defendant committed a second degree battery.

Accordingly, for the foregoing reasons, we affirm the conviction and sentence.

AFFIRMED