

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 1048

STATE OF LOUISIANA

VERSUS

ALFONDO DEMOND HAMILTON

Judgment Rendered: December 23, 2009.

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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 12-06-0139

The Honorable Donald R. Johnson, Judge Presiding

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

J. Pettigrew, J. Concur

CARTER, C.J.

The defendant, Alfonso Demond Hamilton, was charged by bill of information with one count of second degree battery, a violation of La. R.S. 14:34.1. He entered a plea of not guilty and waived his right to trial by jury. After a bench trial, defendant was found guilty as charged. He received a sentence of five years at hard labor.

The defendant appeals, citing as his sole assignment of error that the evidence was insufficient to support his conviction because the State failed to prove that the victim sustained extreme physical pain as required by La. R.S. 14:34.1.

FACTS

On March 28, 2006, the victim, Engreath Scharnett, was working as a manager at a Popeye's restaurant in Baton Rouge, Louisiana. Scharnett and the defendant had been in a relationship that ended approximately five months earlier. On this date, at approximately 1:00 p.m., the defendant appeared at the restaurant and walked to the counter where Scharnett was working. The defendant created a verbal confrontation by cursing at Scharnett and challenging her to leave the restaurant. Several times Scharnett asked the defendant to leave the restaurant and indicated she would contact the police if he stayed.

The defendant then threw a drink at Scharnett and walked behind the service counter. As Scharnett attempted to dial the phone to contact the police, the defendant began repeatedly striking her. Another employee came to Scharnett's aid, and the defendant left. Scharnett was transported to the emergency room at Our Lady of the Lake Hospital. Scharnett testified that

she sustained a laceration over her left eye requiring at least four stitches and a hematoma the size of a “key lime” behind her left ear as a result of the blows from the defendant. Scharnett testified that these injuries caused her severe and excruciating pain. Photographs taken of Scharnett several days after the incident reflect a scar over her left eye.

The defendant did not testify at trial.

DISCUSSION

In his only assignment of error, the defendant contends that the evidence was insufficient to support his conviction because the State failed to prove the victim sustained the level of extreme physical pain required by La. R.S. 14:34.1.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. La. Code Crim. P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1 Cir. 1984). The **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard of review incorporated in Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. McLean**, 525 So.2d 1251, 1255 (La. App. 1 Cir.), writ denied, 532 So.2d 130 (La. 1988).

At the time the incident occurred, La. R.S. 14:34.1 provided in pertinent part:

Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury.

For purposes of this article, serious bodily injury means bodily injury which 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.

It is undisputed that the defendant intentionally committed a battery.

It is also clear that Scharnett did not consent to the battery. Moreover, there is no evidence to suggest that Scharnett did anything to physically threaten the defendant that would have justified his striking her repeatedly. The defendant maintains the evidence is insufficient because the State failed to prove Scharnett's injuries were serious.

The trier of fact is free to accept, in whole or in part, the testimony of any witness. The testimony of a victim may present sufficient evidence to establish that the victim sustained serious bodily injury, without the testimony of any expert. **State v. Odom**, 2003-1772 (La. App. 1 Cir. 4/2/04), 878 So.2d 582, 588, writ denied, 2004-1105 (La. 10/8/04), 883 So.2d 1026. In this case, the trial court, aware of the elements of the offense, declined to find the defendant guilty of the lesser offense of simple battery.

The record establishes defendant repeatedly struck Scharnett, causing a laceration requiring at least four stitches over her left eye, and a key-lime-sized hematoma behind her left ear. Scharnett testified the pain caused by these injuries was severe and excruciating. After a thorough review of the record, we are convinced that a rational trier of fact could conclude the evidence, viewed in the light most favorable to the State and with the

credibility determinations made by the fact finder, proved beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence all the elements of the crime of second degree battery.¹

This assignment of error has no merit.

CONVICTION AND SENTENCE AFFIRMED.

¹ In brief, the defendant argues the present case is comparable to **State v. Helou**, 2002-2302 (La. 10/23/03), 857 So.2d 1024, wherein the Louisiana Supreme Court reversed a defendant's second degree battery conviction and entered a conviction for simple battery on the basis of insufficient evidence of serious bodily injury or extreme physical pain suffered by the victim. We find that case distinguishable from the present case. The victim in **Helou** sustained only profuse bleeding from his nose, as opposed to the present case in which the victim sustained a laceration requiring stitches and a large hematoma behind her ear. Moreover, the victim herein testified as to the severity of the pain associated with her injuries.