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NO. COA05-1676

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v.

Guilford County
No. 04 CRS 66965

ANTHONY MICHAEL BAYDAL

Appeal by defendant from judgment entered 30 June 2005 by Judge Yvonne Mims Evans in Guilford County Superior Court. Heard in the Court of Appeals 25 September 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General J. Douglas Hill, for the State.

Brannon Strickland, PLLC, by Anthony M. Brannon, for defendant-appellant.

JACKSON, Judge.

Anthony Baydal ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury. The trial court consolidated his offenses and sentenced him to an active prison term of fifty-seven to seventy-eight months. For the reasons stated below, we find no error in defendant's trial.

On 15 January 2004, defendant entered a Nature's Way Herb and Vitamin Store in High Point, North Carolina owned by John McDowell ("McDowell"). Defendant repeatedly struck McDowell in the head and

face with a baseball-sized rock. McDowell described being hit from behind by "an incredible crash in the top of my head." After this initial blow, he "sat down" and attempted to fend off defendant by kicking him. McDowell estimated that defendant struck him as many as twelve times with the rock before taking McDowell's wallet from his pocket, along with a money bag from under the counter, and fleeing the store.

Defendant first argues that his motion to dismiss the charge of assault with a deadly weapon inflicting serious injury was erroneously denied as there was insufficient evidence that McDowell's injuries were serious. We disagree.

In reviewing the denial of a motion to dismiss, this Court must determine if the State adduced substantial evidence of each essential element of the offense. See *State v. Smith*, 307 N.C. 516, 518, 299 S.E.2d 431, 434 (1983). Substantial evidence is that evidence which, when viewed in the light most favorable to the State, would allow a reasonable juror to find the fact in question beyond a reasonable doubt. See *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 255-56, cert. denied, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002).

Our appellate courts have declined to define the "serious injury" element of assault crimes, "other than stating that the injury must be serious but it must fall short of causing death and that further definition seems neither wise nor desirable." *State v. Ramseur*, 338 N.C. 502, 507, 450 S.E.2d 467, 471 (1994) (internal quotation marks and alterations omitted). Although cases have

suggested certain factors which might guide consideration of the issue, *see, e.g., State v. Morgan*, 164 N.C. App. 298, 303, 595 S.E.2d 804, 809 (2004) ("Relevant factors in determining whether serious injury has been inflicted include, but are not limited to: (1) pain and suffering; (2) loss of blood; (3) hospitalization; and (4) time lost from work."), the question of what constitutes "serious injury" has been left to the jury to decide upon the specific facts of each case. Therefore, for purposes of evaluating the sufficiency of the evidence on appeal, the rule has developed "that as long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine whether the injury was serious.'" *State v. Williams*, 150 N.C. App. 497, 502, 563 S.E.2d 616, 619 (2002) (quoting *State v. Alexander*, 337 N.C. 182, 189, 446 S.E.2d 83, 87 (1994)).

In *State v. Rhyne*, 39 N.C. App. 319, 323, 250 S.E.2d 102, 105 (1979), this Court upheld a conviction when the "serious injury" consisted of "multiple cuts of the face, two lacerations on the back of the scalp, two or three small lacerations of the right hand, and an injury to the base of the nose." In *State v. Smith*, 5 N.C. App. 635, 638, 169 S.E.2d 4, 5-6 (1969), the "serious injury" was swollen areas about the back part of the victim's skull from a blow on the head with a tire tool.

In describing his appearance following the assault, McDowell testified, "I looked like I was hurt, . . . I looked really bad." In addition to blood on his face, McDowell bled onto his shirt and

dripped blood onto the floor and all over the phone he used to call 911. When asked to describe his injuries, McDowell testified that he "could tell" he had been hit on the bridge of his nose, on his cheeks, in his eye, and on top of his head.

Jacqueline Weakland of the High Point Police Department's crime lab photographed McDowell at the scene after he had wiped the blood from his face. Photographs of McDowell's injuries were submitted to the jury, showing visible injuries "on the forehead, the nose, on the side of his face, and . . . just up into his hairline."

High Point Police Officer J.R. Parvin, who responded to the store following the incident, described McDowell as "obviously injured about the face and head with lacerations." McDowell had blood on his face and head, and Parvin characterized the injuries as "consistent with being hit with a hard object." Officers found McDowell's blood on the rock used in the assault and droplets of blood on the floor, and Officer Mike Nixon, who visited McDowell at the store four days after the robbery, described him as "still pretty shaken from the assault . . . [,] not terribly upset, but noticeably upset."

In the light most favorable to the State, McDowell suffered cuts and abrasions to his face, suffered blood loss, and was still "shaken" days later. As there was evidence that McDowell sustained a physical injury as a result of being hit by a rock, it was for the jury to decide whether the injury was serious. The trial court

therefore did not err in denying defendant's motion to dismiss the charge of assault with a deadly weapon inflicting serious injury.

Defendant next argues that the trial court erred in instructing the jury on serious injury. Defendant bases his argument on his contention that no evidence of serious injury was presented at trial. As we already have found sufficient evidence for the issue to be put to the jury, it was proper for the trial court to instruct on serious injury.

As to the element of serious injury, the trial court instructed that the State must prove beyond a reasonable doubt "that the defendant inflicted serious injury upon the victim. Serious injury may be defined as, quote, such physical injury as causes great pain and suffering, close quote." The facts that McDowell suffered cuts and abrasions to his face, suffered blood loss, and was still "shaken" days later are circumstantial evidence from which a jury could infer that he suffered great pain and suffering. Therefore it was not error for the trial court to define serious injury as it did.

Because we find the trial court properly denied defendant's motion to dismiss and properly instructed the jury as to serious injury, we find no error in defendant's trial.

No Error.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).