

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	DIVISION ONE
)	
Respondent,)	No. 67957-1-I
)	
v.)	
)	
K.K.P.,)	UNPUBLISHED OPINION
D.O.B. 06/11/1995,)	
)	
Appellant.)	FILED: November 13, 2012
_____)	

Dwyer, J. — K.K.P. appeals from his conviction of assault in the second degree arising from an incident in which he pushed his victim into the path of an oncoming bus. Although the victim’s injuries included bleeding around her brain that required an overnight hospital stay, K.K.P. contends that the evidence adduced at his trial was insufficient for a jury to find that his actions caused substantial bodily harm, as is required to support a conviction of assault in the second degree. Because there is no merit to this assertion, we affirm.

I

On May 26, 2011, 16-year-old K.K.P. was involved in a verbal dispute with Betty Damien near a bus stop in downtown Seattle. Damien, who stood with her back to the street, was facing K.K.P. as the pair argued less than three feet from the curb. Several other persons, including two companions of K.K.P., were

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also present in the area.

As a bus approached the stop, K.K.P. used both hands to shove Damien into the street. Damien fell backward and was struck by the oncoming bus. The force of the impact, which cracked the windshield of the bus, launched Damien's body into the air, where it was struck for a second time by the bus. As she fell to the ground, Damien's head hit the curb. Damien thereafter lay face-down and motionless in the street. She made no attempt to get up.

The driver immediately stopped the bus, activated the bus's emergency alarm, and exited the bus. The driver used a camera to attempt to photograph K.K.P. As the driver approached K.K.P., he slapped the camera from her hand and told her, "I didn't do nothing, bitch."

K.K.P. then began to walk away from the scene. He asked his companions, "Did you see that bitch fly?" Several witnesses to the incident followed K.K.P. until he was arrested by the police approximately four blocks away.

Damien was transported to Harborview Medical Center where she was examined by an emergency room physician. Damien reported pain in her right chest, left hip, and head. Damien was at times unable to answer the physician's questions or gave answers that were confused.¹ Given the nature of the incident, the physician ordered a computerized tomography (CT) scan of

¹ Damien's blood alcohol content was .359 at the time of her examination in the emergency room. Accordingly, the physician was unable to determine if Damien's difficulties in communicating were attributable to alcohol impairment or to a head injury.

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Damien's skull. The CT scan revealed an acute subdural hematoma or hemorrhage, a form of bleeding that occurs around the brain beneath a thick protective layer known as the dura mater. This type of bleeding, which is usually related to a severe physical trauma, occurs when a vein that feeds the brain is torn. Such bleeding, which may place pressure on the brain, can cause brain damage if it continues over time.

Damien was thereafter admitted to the hospital for observation. A second CT scan, performed six hours after the first, revealed no growth in the subdural hematoma, and Damien was discharged from the hospital the following day. She did not comply with the instructions of medical personnel to follow up for an additional CT scan. However, approximately one month after the incident, she began to suffer regular headaches. In addition, Damien began to experience numbness in her leg.

K.K.P. was charged with assault in the second degree and assault in the third degree. Following a bench trial, the judge found K.K.P. guilty of assault in the second degree for intentionally assaulting Damien and recklessly inflicting substantial bodily harm. The judge further found K.K.P. guilty of assault in the fourth degree for his actions against the bus driver. A standard range sentence was imposed.

K.K.P. appeals.

II

K.K.P. asserts that there is insufficient evidence in the record to sustain his conviction of assault in the second degree. He contends that, given the evidence adduced at his trial, no reasonable finder of fact could have determined beyond a reasonable doubt that the victim sustained a substantial bodily injury as the result of his actions. We disagree; there was ample evidence presented to support the finding made.

The State must prove each essential element of a charged crime beyond a reasonable doubt. State v. Oster, 147 Wn.2d 141, 146, 52 P.3d 26 (2002). In deciding whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the State in order to determine whether any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A challenge to the sufficiency of the evidence admits the truth of the State's evidence. Salinas, 119 Wn.2d at 201. Moreover, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201. We defer to the finder of fact on "issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Ainslie, 103 Wn. App. 1, 6, 11 P.3d 318 (2000).

A person commits assault in the second degree when he or she intentionally assaults another and thereby recklessly inflicts substantial bodily

harm. RCW 9A.36.021(1)(a). “Substantial bodily harm” is “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.” RCW 9A.04.110(4)(b). Although the meaning of “substantial” is not limited to a particular dictionary definition, in State v. McKague, our Supreme Court approved of this definition: ““considerable in amount, value, or worth.”” 172 Wn.2d 802, 806, 262 P.3d 1225 (2011) (quoting Webster's Third New International Dictionary 2280 (2002)).

K.K.P. does not dispute that he intentionally assaulted Damien thereby recklessly inflicting her resulting injuries. Instead, he asserts only that the evidence adduced at his trial did not demonstrate that these injuries involved the substantial loss or impairment of the function of any of Damien’s bodily parts or organs.² This contention is meritless.

We first note that a subdural hematoma is not a trivial injury. The radiologist who interpreted the CT scan of Damien’s skull testified regarding the seriousness of such “traumatic brain injur[ies].” He explained that a subdural hematoma is “a substantial injury because of the potential for damage to the underlying brain.” Even where the amount of bleeding is minimal, he testified, “continued bleeding over time can put pressure on the brain, and pressure on

² The State contends that a subdural hematoma also constitutes a “temporary but substantial disfigurement.” RCW 9A.04.110(4)(b). However, because we determine that the evidence was sufficient for a reasonable fact finder to determine that K.K.P.’s actions caused a “temporary but substantial loss or impairment of the function of [a] bodily part or organ,” we need not and do not address this alternative argument.

the brain can cause damage to the brain.” Indeed, in this case, the discovery of the subdural hematoma required that Damien be admitted to the hospital for overnight monitoring.

Moreover, the physical manifestations of Damien’s head injury were significant. Two witnesses testified that Damien lost consciousness immediately after being struck by the bus. A passenger seated directly behind the bus driver told the court that Damien was “out cold, just on the ground” after being struck. A second person at the bus stop testified that Damien’s “head landed on the curb and she was knocked unconscious.” This witness told the court that Damien was “out cold,” and that she was not speaking or moving following the collision.³ Although Damien told responding emergency medical personnel that she had not lost consciousness, in a challenge to the sufficiency of the evidence, we must resolve conflicting evidence in favor of the State. Salinas, 119 Wn.2d at 201. Indeed, the medical personnel who treated Damien at the scene informed the emergency room physician that they suspected that Damien may have been briefly knocked unconscious.

There is, of course, no question that a significant head injury that results in the loss of consciousness constitutes an injury involving the substantial loss or impairment of the function of a bodily part or organ. However, even were we to assume that Damien did not lose consciousness, there was additional

³ Several other witnesses confirmed that Damien lay motionless in the street after being hit by the bus.

evidence of substantial impairment sufficient to support K.K.P.'s conviction. As our Supreme Court explained in McKague, even where a victim does not lose consciousness as the result of a head injury, if the injury causes such dizziness that the victim is unable to stand for a time, this is “sufficient to allow the jury to find that [the victim] suffered a temporary but substantial impairment of a body part or an organ’s function.” 172 Wn.2d at 807.

Here, in addition to the testimony of numerous witnesses indicating that Damien was unable to rise from the street, the emergency room physician who treated Damien at the hospital testified that Damien’s responses to her questions were at times confused and that Damien was unable to relate significant portions of her medical history. Although the physician told the court that this confusion *could* have been the result of alcohol intoxication, we must draw all reasonable inferences from the evidence in favor of the State.⁴ Salinas, 119 Wn.2d at 201. Based upon this testimony, a reasonable finder of fact could have determined that Damien’s confusion—a temporary but substantial impairment of her brain functioning—was the result of the bleeding around her brain.

There was sufficient evidence adduced at trial for a reasonable finder of fact to determine, beyond a reasonable doubt, that Damien had incurred a substantial bodily injury as the result of being struck by the bus. Accordingly, the evidence is sufficient to sustain K.K.P.’s conviction of assault in the second

⁴ Similarly, we must presume, for purposes of this appeal, that the headaches experienced by Damien in the aftermath of the collision were a result of the head injury that she sustained during this incident.

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degree.

Affirmed.

Demp, J.

We concur:

Grosse, J.

Becker, J.