

ORIGINAL

20050042

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	Supreme Court No. 20050042
)	Ramsey County No. 04K208
Plaintiff,)	
)	
vs.)	
)	
John Leftbear,)	
)	
Defendant.)	

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUN 29 2005

STATE OF NORTH DAKOTA

APPEAL FROM THE JUDGMENT AFTER BENCH TRIAL
ENTERED BY THE DISTRICT COURT FOR RAMSEY COUNTY

BRIEF OF APPELLEE

Lonnie W. Olson (#04526)
 Ramsey County State's Attorney
 524 4th Ave. NE Unit 16
 Devils Lake, ND. 58301
 662-7077

RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE

Table of Authorities	i
Statement of the Case.....	1
Law and Argument.....	5
Conclusion.....	8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES	PAGE
<u>State v. Kunkel</u> , 548 N.W.2d 773 (N.D. 1996).....	6
<u>State v. Schill</u> , 406 N.W.2d 660 (N.D. 1987).....	6
STATUTES	
N.D.C.C., Section 12.1-01-04(4).....	6
N.D.C.C., Section 12.1-01-04(29).....	7
N:D.C.C., Section 12.1-17-02.....	6
N.D.C.C., Section 12.1-17-02(1).....	6
N.D.C.C., Section 12.1-17-02(3).....	6

STATEMENT OF THE FACTS

1
2
3 On February 12, 2004, Pat Stein of Devils Lake was
4 severely beaten in and outside of an apartment in downtown
5 Devils Lake, Ramsey County, North Dakota. See generally,
6 Transcript at page 37 through 53. Pat Stein later died of
7 his injuries. Dr. George Mizell, the State Forensic
8 Examiner for the State of North Dakota performed an autopsy
9 on the body of Pat Stein on February 16, 2004. Transcript
10 at page 120, line 22, hereinafter Tr.120, l.22. Dr. Mizell
11 noted in his external examination of Pat that he had
12 multiple abrasions, contusions, and lacerations on the face
13 and head, around both eyes, bruising around both eyes,
14 abrasions on the left and right side of his face, on his
15 chin, on inter surfaces of both lips, and to the back of his
16 head. See generally, Transcript at page 121-122. He
17 further found two abrasions in the mid and lower back and an
18 abrasion on the lower extremities. Tr.122, l.6-8. Dr.
19 Mizell took particular note that there was one abrasion on
20 the left mid back and an abrasion on the right lower back.
21 Both of these were about three inches in length and involve
22 the skin surfaces. Tr.122, l.12-14.

23 On his internal examination of Pat, Dr. Mizell noted
24 that Pat had head injury with bleeding around the surfaces
25 of the brain, injuries to the brain itself, particularly on
26 the right side and the base of the brain. There was
27 swelling around the brain. Tr.122, l.20-25.

1
2 Dr. Mizell further found injuries to the connective
3 tissue that holds the bowel in place, called the small bowel
4 mesentery. He also found an injury to the liver involving
5 the right side of the liver and a fracture of a rib on the
6 left side. Tr.123, l.18-22. The small bowel mesentery is
7 composed of fibers, tissue, and fatty tissue and is located
8 in the abdomen. Tr.124, l.1-6. Location of this injury was
9 in the mid portion of the abdomen near the base of the
10 mesentery where it attaches to the body wall on the back of
11 the abdominal cavity. Tr.124, l.9-11.

12 The damage to the liver, which is located in the right
13 upper portion of the abdomen partially underneath the edge
14 of the ribs. Tr.124, l.15-18. Dr. Mizell noted damage to
15 the liver in the right upper portion of the abdomen, and
16 noted some tearing injury to the mid portion of the liver.
17 Tr.124, l.20-22.

18 Dr. Mizell noted that he found a broken rib on the left
19 side of Pat. Tr.124, l.23-25. Dr. Mizell noted it was on
20 the left side, centrally located in the lower abdomen. The
21 liver contusion was on the right side. Tr.125, l.1-7. The
22 broken rib was particularly noted to be found on the lateral
23 side of the rib cage of the side of the body, and kind of in
24 the back area. Tr.125, l.13-16.

25 Dr. Mizell, in his examination, noted that the injuries
26 to Pat were blunt force injuries, meaning that they were
27 from impact with some sort of blunt object or blunt
28 implement. These injuries were to both the head and the

1
2 abdomen. Tr.125, 1.21-25. Dr. Mizell also testified that
3 these blunt force injuries could be from fists or kicking
4 type of injuries, or striking with an object. Tr.126, 1.3-
5 4. The rib which was broken was the left sixth rib, and the
6 location of the fracture would have been about the left mid
7 chest on the left side of the body, and this was a fairly
8 resilient bone as they are a solid supporting structure for
9 the chest cavity. Tr.126, 1.18 - Tr.127, 1.2. Dr. Mizell
10 testified that a kick to the ribs would be one mechanism
11 that could cause a fracture to that rib. Tr.127, 1.10-12.

12 Dr. Mizell noted that the cause of Pat's death was a
13 closed head injury due to blunt force trauma injuries to the
14 head. The damage to the mesentery, the liver, and the
15 broken rib, would have required medical treatment, but were
16 not sufficient severity to have caused his death. Tr.127,
17 1.15-25. Dr. Mizell further testified that while those
18 injuries would not have been fatal, they were significant
19 injuries which would have caused bleeding and swelling and
20 would have had pain associated with them. Tr.128, 1.3-6.

21 On cross-examination, Dr. Mizell further explained
22 potential causes for the injuries to Mr. Stein. He
23 specifically testified that the injury to the left rib is
24 located on the left side of the body and impact to the left
25 back, or more on to the back can cause a fracture to the
26 lateral portion of the rib. He further testified that it is
27 not an uncommon mechanism for that type of injury. Tr.130,
28 1.1-5.

1
2 Dr. Mizell further went on in cross-examination to note
3 that the injury to the small bowel mesentery could have been
4 caused either completely or partially by an impact to the
5 back of the body, with would cause an impact to the small
6 bowel connective tissue in that area. He further noted that
7 the injury to the liver as well could have been caused in
8 that way, in that the liver is in the front of the body and
9 on the right side of the body, and an impact to the back of
10 the body could have potentially caused some injury to the
11 liver, particularly around the mid portion of the liver.
12 Tr.130, 1.6-14. Further he noted that the abrasion on the
13 outside of the left mid back area was in the general region
14 where the rib was broken, and that it may have been
15 associated with the fracture of the rib. Tr.131, 1.18-20.

16 One of the individuals who testified at trial was at
17 the beating of Pat Stein, was Arlen Hapa. He noted a number
18 of individuals were involved in the severe beating of Mr.
19 Stein. He particularly noted seeing the defendant, John
20 Leftbear, kick Pat a few times in the back. Tr.45, 1.16-25.
21 He noted that Pat was on the floor at the point that he was
22 being kicked in the back. Tr.46, 1.1-3. He particularly
23 noted Pat as being crouched down when he was being kicked,
24 specifically he was on his knees. Tr.47, 1.1-5. Arlen Hapa
25 then testified that John Leftbear was kicking him in the
26 mid back. Tr.47, 1.9-15. The involvement of this part of
27 the beating of Pat Stein went on for a couple minutes.
28 Tr.48, 1.23. Mr. Hapa specifically testified that Pat was

1
2 in a bunch of pain. Tr.64, 1.1-2.

3 Next, the defendant's own daughter testified in his
4 trial. She noted arriving at a later point after Pat had
5 been beaten by her father and Joseph Gourd. She noted that
6 he had a bloody nose. Tr.75, 1.15. She was asked who had
7 done it, (the beating), to which she responded, my dad said,
8 "We already f--ked him up." Soon thereafter, she asked her
9 father to leave, and there were subsequent beatings upon
10 Pat. Tr.78, 1.22 - Tr.79, 1.11. She said that "My father
11 was bragging that they already beat him up, and I started to
12 get mad." Tr.80, 1.17-19.

13 At trial, the right boot of John Leftbear was examined.
14 The boot had been seized from the defendant in Stearns
15 County, Minnesota. He had been taken into custody for a
16 stolen vehicle several hours after the beating. Several
17 stains were noted on the upper portion of the boot. That
18 area was swabbed and a DNA analysis was performed. The
19 stains from the upper boot was noted to be Pat Stein's
20 blood. Tr.145-146.

21 **LAW AND ARGUMENT**

22 The standard of review is well established for cases in
23 which a criminal defendant challenges the sufficiency of the
24 evidence upon which to support a criminal conviction. In
25 reviewing the sufficiency of the evidence to convict, the
26 Court is to look at the evidence most favorable to the
27 verdict and the reasonable inferences therefrom, in order to

1
2 see if there is substantial evidence to warrant a
3 conviction. State v. Kunkel, 548 N.W.2d 773 (N.D. 1996). A
4 conviction rests upon insufficient evidence only when no
5 rational fact finder could have found the defendant guilty
6 beyond a reasonable doubt after viewing the evidence in a
7 light most favorable to the prosecution, and giving the
8 prosecution the benefit of all inferences. State v. Schill,
9 406 N.W.2d 660 (N.D. 1987).

10 The defendant was charged and convicted of the offense
11 of Aggravated Assault, a Class C Felony, in violation of
12 N.D.C.C., Section 12.1-17-02. That particular statute
13 provides several different factual basis's for a conviction.
14 Specifically, a person can be convicted of aggravated
15 assault if that person willfully causes serious bodily
16 injury to another human being. N.D.C.C., Section 12.1-17-
17 02(1). Further, a defendant may be convicted of aggravated
18 assault if they cause bodily injury or substantial bodily
19 injury to another human being while attempting to inflict
20 serious bodily injury on any human being. N.D.C.C., Section
21 12.1-17-02(3).

22 North Dakota state law provides various definitions.
23 Bodily injury is defined as any impairment of physical
24 condition, including physical pain. N.D.C.C., Section 12.1-
25 01-04(4). It further defines serious bodily injury as
26 bodily injury that creates a substantial risk of death or
27 which causes serious permanent disfigurement,
28 unconsciousness, extreme pain, permanent loss or impairment

1
2 of the function of any bodily member or organ, or a bone
3 fracture. N.D.C.C., Section 12.1-01-04(29). In the case at
4 hand, Arlen Hapa testified that he saw the defendant kick
5 Pat a few times in the back. It is interesting to note that
6 Pat Stein's blood was located on the defendant's right boot.
7 Dr. Mizell noted, on his external examination, a bruise to
8 the left side of his back, and bruise to the right side of
9 his back. The broken rib which was found broken on the left
10 side of the body in the area where the contusion where the
11 bruise to the left side of the back was located. Dr. Mizell
12 also testified that the injury to Pat's mesentery and liver
13 could have been caused by the kick to the back and the
14 injuries on the back. What is interesting to note is that
15 the defendant was seen kicking Pat in the back several
16 times, and the injuries to the ribs and mesentery were in
17 the areas of the impact on the back.

18 State law provides that a bone fracture constitutes
19 serious bodily injury, and the broken rib is, in fact, a
20 bone fracture. The witness, Arlen Hapa, agreed in his
21 testimony that Pat would have been obviously in a bunch of
22 pain.

23 A further reasonable interpretation of the facts was
24 that as Pat was crouched up on his knees, attempting to
25 protect himself, the defendant kicked him several times in
26 the back. These blows clearly indicate to a reasonable fact
27 finder that the defendant was attempting to inflict extreme
28 pain, as required under North Dakota law, is also defined as

1
2 serious bodily injury, upon Pat Stein. There would be no
3 other reason for the defendant to kick a defenseless man on
4 the floor without clearly showing his intent to cause
5 extreme pain. That is also shown by his bragging to his own
6 daughter about the beating of Pat Stein that "We already
7 f--ked him up."

8 The Court names a number of findings beyond a
9 reasonable doubt. Specifically, the Court found that the
10 defendant did kick Pat Stein while he was crouched or lying
11 on the floor. The Court found that the kick to Pat Stein
12 did cause serious bodily injury to Pat Stein and under the
13 circumstances Pat Stein did experience extreme pain from
14 those kicks executed by John Leftbear. The Court also found
15 that the kicks broke Pat Stein's rib and caused permanent
16 impairment to the kidney, liver, and internal connecting
17 tissue of Pat Stein. Tr.167. Further, the Court found that
18 because John Leftbear was acting in concert with another
19 individual, he was also legally culpable for those injuries
20 along with the individual involved in the beating of Pat
21 Stein. Tr.168.

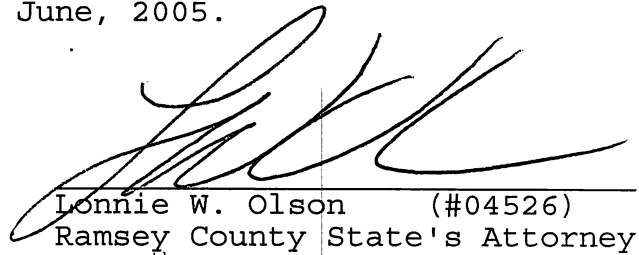
22 **CONCLUSION**

23 The defendant has failed to show that the evidence,
24 when in viewed in the light most favorable to the verdict,
25 was insufficient to establish the crime of Aggravated
26 Assault. The State asks that the Court affirm the District
27 Court finding and conviction of the defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

Dated this 29th day of June, 2005.



Lonnie W. Olson (#04526)
Ramsey County State's Attorney
524 4th Ave. NE Unit 16
Devils Lake, ND 58301

20050042

RECEIVED BY CLERK
SUPREME COURT
JUN 30 2005

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

1
2
3 State of North Dakota,)
4 Appellee,)
5 vs.)
6 John Leftbear,)
7 Appellant.)

AFFIDAVIT OF SERVICE BY MAIL

8
9 Connie Jones, being first duly sworn, deposes and says that on the 29th day of

10 June, 2005, she served the attached copy of Brief of Appellee
11 regarding the above reference matter upon William Hartl

12 by placing a true and correct copy thereof in an envelope addressed as follows:

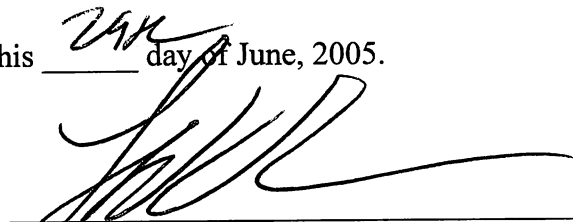
13 William Hartl
14 P.O. Box 319
15 Rugby, North Dakota 58368

16 and depositing the same, with postage prepaid, in the United States mails in Devils Lake,
17 North Dakota.

18 

19
20 Connie Jones

21 Subscribed and sworn to before me this 29th day of June, 2005.

22 

23
24 Lonnie W. Olson, Notary Public
25 Ramsey County, North Dakota

26 (SEAL)
27 My Comm. Exp. 1-28-2008

28
**LONNIE W. OLSON
NOTARY PUBLIC, STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES JAN. 28, 2008**

RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA