

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,
Plaintiff/Appellee,

vs.

Brett Allen Goulet,
Defendant/Appellant.

Supreme Court No. 20130148

Grand Forks Co. No. 18-2012-CR-00955

APPEAL FROM THE CRIMINAL JUDGMENT ENTERED NOVEMBER 13, 2012 BY
THE DISTRICT COURT FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE DEBBIE KLEVEN PRESIDING.

BRIEF OF THE APPELLANT

David Ogren
Grand Forks Public Defender Office
405 Bruce Avenue, Suite 101
Grand Forks, ND 58201
(701) 795-3910
ND ID #05336
Attorney for Defendant/Appellant Brett Goulet

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Statement of Issue Presented for Review

- I. Whether the evidence was sufficient as a matter of law to support the Defendant's conviction of aggravated assault?

Nature of the Case and Procedural History

¶1 On April 20, 2012 the State charged Mr. Goulet with aggravated assault (Docket 2; App. 6-7). A jury trial was held February 5-6, 2013. (See Transcript of Proceeding).

¶2 This appeal is taken from a Criminal Judgment entered by the Honorable Debbie Kleven, Judge of the District Court for the Northeast Central Judicial District on April 24, 2013, convicting the Defendant and Appellant Brett Allen Goulet of aggravated assault. (Docket 104; App. at 8-13). Appellant, Brett Allen Goulet, timely filed a Notice of Appeal on May 7, 2013. (Docket 114; App. at 14).

Statement of the Facts

¶3 On January 29, 2012 David Grant was at Gilly's Bar with his friends, Cole Jerome and Ryan Delorme. (Tr. 64). David ran into his friend/acquaintance Austin Lebelles who then introduced David to Brett Goulet. (Tr. 65-66). There were not any problems inside the bar. (Tr. 66).

¶4 At approximately 1:50 a.m. David bought some off-sale beer and walked out the door of Gilly's. (Tr. 66). David saw Austin standing outside trying to fight him and set his beer down by the door. (Tr. 66-67). A security guard came up to David and told him not to worry, that he would get him out of there. (Tr. 67). David picked his beer back up and began walking down the street. (Tr. 67). David walked about ten feet down the street and was hit from behind. (Tr. 67). David did not see who struck him. (Tr. 67). David fell to the ground and a group of people surrounded David. (Tr. 83).

¶5 The following day, David went to the police station to give a statement. (Tr. 69). David told police that he thought Austin had assaulted him. (Tr. 69). David based that partly upon what bystanders told David they saw. (Tr. 69). David also told police that he was both hit and kicked based again, in part, by bystanders. (Tr. 84).

¶6 Surveillance video was captured from Gilly's and part of the incident is captured on video. (Tr. 38). After David is hit, David disappears off of the screen and there is a group of people surrounding David so that the viewer cannot see what is going on. (Tr. 83-85).

¶7 After David gave his statement, police showed David the surveillance video which captured part of the events from that evening. (Tr. 70). After viewing the video and

talking to police, David changed his statement that Brett hit him and that he was never kicked. (Tr. 71).

¶8 At the close of the State's case, the defense made a Rule 29 motion for judgment of acquittal. (Tr. 137-139). At the close of the trial, the jury found Mr. Goulet guilty. (Docket 97). In this manner, Mr. Goulet brings this appeal before this Court.

Jurisdictional Statement

¶9 Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted §§ 29-28-03 and 29-28-06 which provide as follows:

§ 29-28-03. "*Appeals as a matter of right.* An appeal to the supreme court provided for in this chapter may be taken as a matter of right."

§ 29-28-06. "*From what defendant may appeal.* An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party."

State v. Lewis, 291 N.W.2d 735 (N.D. 1980).

¶10 The district court had jurisdiction under N.D. Const. art. VI, § 8, and N.D.C.C. § 27-05-06. Mr. Goulet's appeal was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06(1).

Standard of Review

¶11 The defense made a motion for acquittal under N.D.R.Crim.P. 29 preserving this issue of sufficiency of the evidence for appellate review as outlined in State v. Himmerick, 499 N.W.2d 568, 572 (N.D. 1993).

¶12 The standard of review regarding a claim of insufficiency of the evidence has been well-settled by this Court. On appeal, when considering the sufficiency of the evidence, this Court will sustain the guilty verdict if “upon reviewing the evidence in a light most favorable to the verdict, we determine that there is substantial evidence to support it.” State v. Ohnstad, 359 N.W.2d 827, 834 (N.D. 1984). This Court views the evidence and all reasonable inferences in the light most favorable to the prosecution and then determines whether a rational factfinder could have found guilt beyond a reasonable doubt. State v. Lambert, 539 N.W.2d 288, 289 (N.D.1995).

¶13 “This Court will reverse a conviction on the ground of insufficient evidence only if, after viewing the evidence and all reasonable inferences in the light most favorable to the verdict, no rational factfinder could have found the defendant guilty beyond a reasonable doubt.” State v. Steen, 2000 ND 152, ¶ 17, 615 N.W.2d 555. (citation omitted).

Law and Argument

I. The evidence was insufficient as a matter of law to support the Defendant's conviction of aggravated assault.

¶14 Even under this high standard, Mr. Goulet's aggravated assault conviction should be overturned. To establish an attempted aggravated assault, the State must prove two elements: (1) that Mr. Goulet caused substantial bodily injury to David Grant, and (2) that Mr. Goulet willfully engaged in the conduct causing the injury. (Tr. 145). The Court instructed the jury that, "substantial bodily injury means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ." (Tr. 145).

¶15 Mr. Goulet admits that he hit Mr. Grant. However, Mr. Grant's injuries were not caused by that hit. Mr. Grant was also kicked in the face, which was not captured on the surveillance video. Mr. Grant told police that he was kicked when he was on the ground. (Tr. 83, 84). He also named his attacker as Austin Lebel and Brent Goulet. (Tr. 83). The group standing around also saw Mr. Grant get kicked in the face. (Tr. 84). Mr. Goulet did not kick Mr. Grant.

¶16 During a police interview with Mr. Grant, Mr. Grant said he was kicked in the face. (Tr. 83). It was not until he talked to police and viewed the surveillance video, which was after he made his statement, that Mr. Grant changed his story. (Tr. 85, 86).

¶17 Mr. Grant's original version of the events of that night could be constant with his injuries. (Tr. 58-61). The evidence supports Mr. Goulet's position that Mr. Grant being kicked in the face and that it was the cause of Mr. Grant's substantial injuries. In

this case and under the circumstances shown above, the State failed to prove Mr. Goulet committed aggravated assault beyond a reasonable doubt.

Conclusion

¶18 Based upon the submission, pleadings, testimony, argument and authority contained herein, Appellant respectfully requests that this Court find that the evidence was insufficient to support Mr. Goulet's conviction of aggravated assault. Mr. Goulet respectfully requests that this Court reverse the District Court's criminal judgment enter a judgment of acquittal for the charge of aggravated assault.

Dated this 22nd day of July, 2013.

David Ogren
Grand Forks Public Defender Office
405 Bruce Avenue, Suite 101
Grand Forks, ND 58201
(701) 795-3910
gfp^ublⁱcdefender@nd.gov
Attorney ID No. 05336
Attorney for Appellant.

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AFFIDAVIT OF SERVICE

Grand Forks Co. No. 18-2012-CR-00955
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The undersigned, being of legal age, being first duly sworn deposes and says that on the 22nd day of July, 2013, she served true copies of the following documents:

Brief of the Appellant
Appendix of Appellant

And that said copies were served upon:

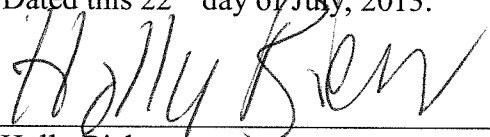
Meredith H. Larson
Grand Forks County
Assistant State's Attorney
Email: meredith.larson@gfcounty.org

by email, and to:

Brett Goulet
c/o NDSP
PO Box 5521
Bismarck ND 58506-5521

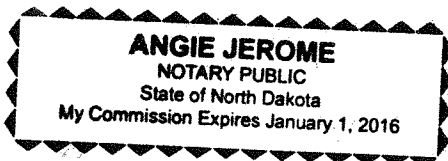
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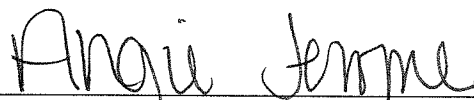
Dated this 22nd day of July, 2013.



Holly Bicker

Subscribe and sworn to before me this 22nd day of July,
2013.





Notary Public
County of Grand Forks
State of North Dakota