

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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The State of North Dakota,	)	Supreme Court No. 20130148
	)	
	)	
Plaintiff and Appellee,	)	
	)	District Court No. 18- 2012-CR-00955
vs.	)	
	)	
Brett Goulet,	)	
	)	
Defendant and Appellant.	)	

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ON APPEAL FROM CRIMINAL JUDGMENT  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE DEBBIE KLEVEN, PRESIDING.

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**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUES**

- I. Whether there was sufficient evidence to sustain a conviction for Aggravated Assault?**

## STATEMENT OF THE FACTS

[¶1] On April 20, 2012, an Affidavit of Probable Cause and Information was filed in Grand Forks County District Court charging the Defendant, Brett Goulet, with Aggravated Assault. (Appellant's App. at 2.) The charged stemmed from an incident at Gilly's Bar in Grand Forks, North Dakota on the early morning hours of January 29, 2012 where the Defendant struck the victim in the face causing broken bones and a chipped tooth. (Appellant's App. at 6.) On the evening of January 28, 2012, David Grant and a couple friends were at Gilly's Bar in Grand Forks. Jury Trial Tr. p. 64. While inside Gilly's Bar, Mr. Grant, hereinafter the victim, had a verbal altercation with an individual named Austin Lebelle which led to Mr. Lebelle being removed from Gilly's Bar. Jury Trial Tr. p. 65. Prior to that altercation taking place, the victim was introduced by Mr. Lebelle to the Defendant. Jury Trial Tr. p. 66. The Defendant and the victim had no issues inside of Gilly's Bar on January 28, 2012. Jury Trial Tr. p. 66.

[¶2] At approximately 1:50 a.m. on January 29, 2012, the victim purchased off sale and began walking out of Gilly's Bar. Jury Trial Tr. p. 66. As he did that he observed Mr. Lebelle attempting to engage him verbally and physically. Jury Trial Tr. pp. 66-67. The victim put his beer down but ultimately a security guard employed by Gilly's Bar assured the victim he would get out safely. Jury Trial Tr. p. 67. The victim picked up his beer and continued to leave Gilly's Bar. Jury Trial Tr. p. 67. The next thing the victim recalled is being hit from behind. Jury Trial Tr. p. 67. The victim was treated at the hospital. Jury Trial Tr. p. 68. The victim had two fractures in his jaw and a chipped tooth. Jury Trial Tr. p. 68.

[¶3] A jury trial was held on February 5, 2013. (Appellant's App. at 4.) At trial, the State presented testimony from Corporal Lammers with the Grand Forks Police Department, Dr. Troy Peterson, the victim, Mr. Grant, Jacob Vigen, Dr. Schnazenbach, and Detective Moe.

[¶4] Corporal Lammers testified that in the early morning hours of January 29, 2012, she was on duty in the downtown area of Grand Forks. Jury Trial Tr. p. 29. She testified that at approximately 2:00 a.m. she observed two individuals running. Jury Trial Tr. p. 30. Cpl. Lammers observed one gentleman with shirt sleeves rolled up, a baseball cap and tattoos on his arm attempting to run away and a gentleman with a dark blue hoodie on running behind the other man grabbing onto his shirt. Jury Trial Tr. p. 30. Cpl. Lammers rolled down her window and told the two to knock it off when the individual wearing the dark blue hoodie yelled to her that the other man just assaulted someone. Jury Trial Tr. p. 31. The individual in the dark blue hoodie was subsequently identified as Jacob Vigen. Jury Trial Tr. p. 32. The individual running away was identified as the Defendant. Jury Trial Tr. p.32.

[¶5] Cpl. Lammers placed the Defendant in the back of her patrol vehicle. Jury Trial Tr. p. 33. The Defendant denied knowing anything about an assault and claimed he was walking back to his vehicle. Jury Trial Tr. p. 33. Officers were not immediately able to locate a victim and the Defendant was released. Jury Trial Tr. p. 34. Subsequently the officers were able to determine that there was a victim, David Grant, who had been previously assaulted at Gilly's Bar. Jury Trial Tr. p. 35. Officers observed injuries to Mr. Grant and also learned that there was video surveillance in the area where the assault

took place. Jury Trial Tr. p. 36. Cpl. Lammers watched the video and immediately identified Mr. Goulet as the individual who assaulted Mr. Grant. Jury Trial Tr. p. 36.

[¶6] The surveillance video was offered as State's Exhibit 1. Jury Trial Tr. p. 38. Cpl. Lammers was able to provide explanation to the video for the jurors demonstrating where the victim, Mr. Goulet, Mr. Lebelle, and Mr. Vigen were when the assault took place. Trial Tr. pp. 39-40. Cpl. Lammers testified that the victim was able to identify the assailant on the video as Brett Goulet. Jury Trial Tr. p. 42. Cpl. Lammers also testified that victim identified Mr. Lebelle as the individual who he had argued with prior to being assaulted by the Defendant. Jury Trial Tr. p. 42. Cpl. Lammers testified that Mr. Lebelle is not seen on video during the assault. Jury Trial Tr. pp. 47, 49. Further Cpl. Lammers testified that she had received no credible, first-hand information that Mr. Lebelle was involved in the assault on the victim. Jury Trial Tr. p. 49.

[¶7] Detective Moe with the Grand Forks Police Department also testified. Photographs of the victim's injuries were offered through Detective Moe. Further, Detective Moe provided detailed testimony regarding observations on the surveillance video and his investigative work identifying individuals seen on that video. Jury Trial Tr. pp. 123-127. Detective Moe described the video for the jury. Jury Trial Tr. pp. 123-127. Detective Moe testified that the Defendant is seen on the video punching the victim four times. Jury Trial Tr. p. 135. Detective Moe testified that Jacob Vigen witnessed the assault and the aftermath of the assault. Jury Trial Tr. pp. 125-126. Detective Moe testified that the victim was only on the ground for approximately 3-4 seconds after Jacob Vigen left the scene to chase the Defendant. Jury Trial Tr. p. 126. Detective Moe also testified that he attempted to interview the Defendant. Jury Trial Tr. p. 127. Detective

Moe testified that the Defendant stated “didn’t get in no fight” and that he hadn’t been at Gilly’s for approximately six months to a year prior to their telephone conversation. Jury Trial Tr. p. 127. Detective Moe testified that the Defendant was seen on video at Gilly’s Bar on January 29, 2012 which was two months prior to their telephone conversation. Jury Trial Tr. p. 127. Detective Moe testified that he had no credible first-hand information that anyone else was involved in the assault. Jury Trial Tr. p. 136.

[¶8] Jacob Vigen testified. Jacob Vigen was an individual who was outside Gilly’s Bar when the assault took place. Jury Trial Tr. p. 87. Mr. Vigen testified that he did not know the Defendant or the victim. Jury Trial Tr. p. 90. Mr. Vigen testified he observed the Defendant punch the victim from behind and the victim fall to the ground. Jury Trial Tr. pp. 88-89. Mr. Vigen testified that after the victim was struck he observed other individuals on the ground helping the victim. Jury Trial Tr. pp. 89, 91. Mr. Vigen observed the Defendant run away. Jury Trial Tr. p. 89. Mr. Vigen testified that he did not see anyone else involved in the altercation while he was present. Jury Trial Tr. pp. 91, 97. Mr. Vigen testified that he was very compelled to act in this situation and had he seen someone else assault the victim, he would have intervened. Jury Trial Tr. pp. 96-97.

[¶9] Mr. Grant testified. He testified that he was at Gilly’s Bar on the evening of January 28, 2012 and the early morning hours of January 29, 2012. Jury Trial Tr. p. 64. He testified that he had no idea who had hit him outside of Gilly’s Bar and all he remembers is behind hit from behind and falling to his side. Jury Trial Tr. p. 67. The victim testified that he went to the hospital after the incident. Jury Trial Tr. p. 67. Mr. Grant testified that initially he told law enforcement who he thought may have hit him, which was Austin Lebelle. Jury Trial Tr. p. 69. Mr. Grant testified that he provided that



information based on the verbal altercation that had taken place previously and from information his friends gave him. Jury Trial Tr. p. 69. Mr. Grant reiterated that he had no idea who assaulted him at that time he gave that statement. Jury Trial Tr. p. 69. Mr. Grant testified that after watching the video he was one hundred percent (100%) certain that it was Brett Goulet, the Defendant, who hit him. Jury Trial Tr. p. 71. Mr. Grant explained on cross-examination that he initially indicated he was also kicked in the face based on “hearsay of what everybody around was saying”. Jury Trial Tr. p. 84. Mr. Grant indicated he gave that statement prior to observing the video. Jury Trial Tr. p. 84.

[¶10] Two medical doctors testified, Dr. Peterson and Dr. Schnazenbach. Dr. Schnazenbach was the emergency room doctor who treated the victim. Jury Trial Tr. p. 107. He was qualified as an expert in emergency medicine. Jury Trial Tr. p. 107. Dr. Schnazenbach testified that the victim had fractures in two spots in his jaw. Jury Trial Tr. pp. 109-110. Dr. Schnazenbach was shown the surveillance video of the assault while he was on the stand. Jury Trial Tr. p. 111. Dr. Schnazenbach testified that the punches that he observed on the video were consistent with having caused the injuries he treated the victim for. Jury Trial Tr. p. 111. Further, Dr. Schnazenbach testified that it is not surprising at all for an individual to experience a fracture to two different areas of the face, even if punched in one spot due to the shape of the jaw bone. Jury Trial Tr. pp. 111-112.

[¶11] Dr. Peterson also testified. Dr. Peterson was qualified as an expert in oral and facial surgery. Jury Trial Tr. p. 53. Dr. Peterson testified that he treated the victim in this case after a referral by Dr. Schnazenbach. Jury Trial Tr. p. 53. Dr. Peterson testified that the victim’s injuries required a surgical procedure, specifically a closed reduction of

his mandible fracture by wiring the victim's jaw shut. Jury Trial Tr. p. 54. Dr. Peterson was shown the surveillance video of the assault while he was on the stand. Jury Trial Tr. p. 55. Dr. Peterson testified that the punches he observed on the video were consistent with having caused the injuries he treated. Jury Trial Tr. p. 55. Dr. Peterson testified that due to the shape of the jaw impact to the right side of the face can cause a fracture on the left side of the face. Jury Trial Tr. p. 55. Dr. Peterson testified that it is more common to see that. Jury Trial Tr. p. 56.

[¶12] The Defendant presented no testimony or evidence. Jury Trial Tr. p. 140. Subsequently the Defendant was convicted of Aggravated Assault. Jury Trial Tr. p. 182.

## ARGUMENT

### **I. There was sufficient evidence to sustain a conviction for Aggravated Assault.**

[¶13] A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor. State v. Estrada, 2013 ND 79, ¶33, 830 N.W.2d 617. This Court has stated that when reviewing challenges to the sufficiency of the evidence the Court will not reweigh conflicting evidence, nor judge the credibility of witnesses. Id. In State v. Estrada, the defendant claimed that there was insufficient evidence to sustain a conviction for Aggravated Assault and Reckless Endangerment. Id. In support of his claim regarding the Aggravated Assault conviction, the defendant argued that the victim was the initial aggressor. Id. at ¶34. However, this Court indicated that regardless of whether the victim was the initial aggressor, there was sufficient evidence to sustain a conviction for Aggravated Assault. The Court reiterated that it would not weigh conflicting evidence and the evidence must be viewed in light most favorable to the verdict. Id. at ¶¶34-36.

[¶14] In the case at hand, in order to convict an individual of Aggravated Assault, the State must prove, beyond a reasonable doubt, that the Defendant willfully caused serious bodily injury to the victim. N.D.C.C. §12.1-17-02(1). There is voluminous evidence to sustain a conviction for Aggravated Assault. The Defendant was captured on surveillance video repeatedly punching the victim from behind. This video was offered as evidence as State's Exhibit 1. Jury Trial Tr. p. 38. The Defendant, in fact, does not deny assaulting the victim. (Appellant Brief at 6.); Jury Trial Tr. p. 170. Rather, the

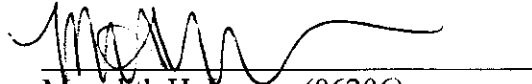
Defendant attempted to persuade the jury that a single statement given by the victim, immediately after the assault, based on hearsay and speculation as to who assaulted him was in fact what “may” have happened. Jury Trial Tr. pp. 163-171. However, the facts and evidence that were presented at trial was that the Defendant struck the victim repeatedly from behind, that no other credible first- hand information was given to law enforcement that any other individual assaulted the victim, that Mr. Vigen observed no further assault prior to chasing the Defendant, and testimony from two medical experts that the Defendant’s assault on the victim was consistent with the injuries that they treated. Jury Trial Tr. pp. 49, 55, 91, 96, 97, 111, 136. There were no facts or evidence presented that there was any one else involved with or responsible for the victim’s injuries. Further, as stated in Estrada, even if there was such testimony or evidence, this Court will not reweigh conflicting evidence nor judge the credibility of the witnesses. In this case, there is not even conflicting evidence to rely on, rather simply the Defendant’s argument that the jury apparently did not find to be compelling.

[¶15] Because there was sufficient evidence to find the Defendant guilty of Aggravated Assault beyond a reasonable doubt, the Defendant’s appeal must be denied.

**CONCLUSION**

[¶16] For the above-stated reasons, the State requests that this Court deny the Defendant's appeal and affirm the criminal judgments.

DATED this 15 day of July, 2013.



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