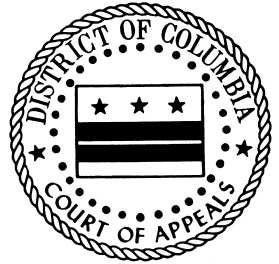


DISTRICT OF COLUMBIA COURT OF APPEALS



No. 24-CF-0799
JOGAAK J. MALUAL
Appellant

2024-CF3-00139

Clerk of the Court
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v.

UNITED STATES
Appellee

**APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

REPLY BRIEF FOR APPELLANT JOGAAK J. MALUAL

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Appellant herein replies to the government's brief (originally filed as a motion for summary affirmance in the instant case).

1. Sufficiency of the Evidence as to Significant Bodily Injury

The government focuses on the complainant, Mr. Banaca receiving 4 or 5 stitches and notes repeatedly in its motion that the complainant was bleeding. Appellant does not dispute that the cut on the complainant's head did, in fact, bleed; photos of blood on the floor and the complainant staunching blood with a towel were in evidence. The complainant's wound bled, and he testified to receiving stitches. Appellant contends that, even if he did receive stitches, such

treatment alone does not amount to “significant bodily injury” as this Court has defined it.¹

The government’s brief does not address the issue that appellant focused on in his brief: the complete lack of evidence that medical attention was required to prevent long-term physical damage and other potentially permanent injuries, or abating pain that is severe.

As to the definition of significant bodily injury, the jury was instructed, in part, that:

[S]ignificant bodily injury means an injury that requires hospitalization or immediate medical treatment in order to preserve health and the wellbeing of the individual. Medical treatment is not merely a diagnosis and must be aimed at preventing long-term physical damage and other potentially permanent injuries or abating serious pain.

(6/6/2024:59).

In *Parker v. United States*, 249 A.3d 388, 395-96 (D.C. 2021) this

Court stated:

The professional medical attention required by the statute must be aimed at one of two ends: "preventing long-term physical damage and other potentially permanent injuries" or "abating pain that is severe" rather than "lesser, short-

¹ As the government notes in footnote 6, the relevant statute has been revised since the instant case. The revision, not in effect at the time of appellant’s trial, adds a new paragraph (3) that separates out specific sorts of injuries, including “A laceration for which the victim required stitches, sutures, staples, or closed-skin adhesives, or a laceration that is at least one inch in length and at least one quarter of an inch in depth” 22 DC Code Sec. 404 (3)(c). Appellant suggests that the amendment addresses the government’s concerns here, and supports appellant’s argument that testimony about stitches alone, without a showing of their being required to address severe pain or long-term physical damage, possible disability or disfigurement, did not amount to sufficient evidence of significant bodily injury in this case.

term hurts." *Id.* (internal quotation marks omitted). Thus, the relevant inquiry is not whether "immediate medical attention or hospitalization" occurred, but rather "*whether medical treatment beyond what one can administer himself is immediately required to prevent long-term physical damage, possible disability, disfigurement, or severe pain.*" *In re D.P.*, 122 A.3d 903, 912 (D.C. 2015) (internal quotations omitted)(emphasis added).

In *Austin v. United States*, 292 A.3d 763,774 (D.C. 2023), this Court explained:

In short, our precedents instruct that to "require ... immediate medical attention" under § 22-404(a)(2), "medical attention must be aimed at one of two ends—preventing long-term physical damage and other potentially permanent injuries or abating pain that is severe instead of lesser, short-term hurts," *Teneyck v. United States*, 112 A.3d 906, 909 (D.C. 2015) (citations omitted).

The *Austin* Court, finding that “the considerable scarring on [complainant’s] back sufficed to show significant bodily injury,” did not go on to consider whether medical attention was necessary to prevent severe pain. *Austin* at 774.

The *Parker* Court found no significant injury in that case where “[t]hough the attack on Mr. Walls was undoubtedly violent and traumatic, *the evidence fails to show that immediate medical attention was required to prevent long-term physical damage or other potentially permanent injuries.*” *Parker* at 396 (emphasis added). Appellant’s reliance on *Parker* is not “misplaced,” as the government contends in its motion (p.14). Rather, the lack of evidence this Court perceived in *Parker* is exactly the lack in the instant case: the jury was never presented with any testimony regarding severe pain, or the possibility of long-term physical damage.

The complainant in *Wilson v. United States*, 140 A.3d 1212 (D.C. 2016) “sustained cuts and bruises to his face, experienced profuse bleeding, pain, and dizziness, and was eventually taken to the hospital.” *Wilson* at 1213. As in the instant case, several witnesses testified to the amount of blood as a result of the injuries suffered. *Wilson* at 1215.

In reversing appellant’s conviction for assault with significant bodily injury, the *Wilson* Court noted that:

the government did not elicit testimony from any paramedics or treating physicians, who could have explained whether Mr. Abubakar's injuries “required [medical treatment] to prevent ‘long term physical damage, possible disability, disfigurement, or severe pain.’” (quoting *In re R.S.*, 6 A.3d 854, 859 (D.C. 2010).

Wilson at 1218.

The *Wilson* Court wrote:

We ask “not whether a person in fact receives immediate medical attention but whether medical treatment beyond what one can administer himself is immediately required to prevent ‘long-term physical damage, possible disability, disfigurement, or severe pain.’” *Id.* (quoting *In re R.S.*, 6 A.3d 854, 859 (D.C.2010)). In other words, the statute does not extend to injuries that, “although seemingly significant enough to invite medical assistance, do not actually ‘require’ it, meaning the victim would not suffer additional harm by failing to receive professional diagnosis and treatment.”

Wilson at 1216.

So too, in the instant case, the government failed to elicit any testimony from any witness who could have explained whether the complainant’s injuries – although seemingly significant enough to invite medical assistance - required such

treatment to prevent long term physical damage, possible disability, disfigurement, or severe pain. Under these standards, no reasonable jury could have found that Mr. Banaca, the complainant in the instant case, suffered significant bodily injury.

As appellant argued in his initial brief, even assuming that Mr. Banaca did receive stitches in the instant case, “the fact that medical treatment occurred does not mean that medical treatment was required.” *Teneyck v. United States*, 112 A.3d 906, 910 (D.C. 2015)(quoting *In re R.S.* at 859).² The relevant inquiry is an objective one; it is not whether a person in fact receives immediate medical attention but whether medical treatment beyond what one can administer himself is immediately required to prevent “long-term physical damage, possible disability, disfigurement, or severe pain.” *Teneyck* at 909 (quoting *In re R.S.* at 859).

The dissent in *Wilson* also references the requirements of the statute in arguing that:

Under the circumstances that they encountered, it would have been irresponsible for emergency medical technicians not to see to it that Mr. Abubakar was taken to the hospital for immediate medical attention in order to abate his severe pain or to prevent long-term physical damage or other potentially permanent injuries.

Wilson at 1222 (Belson, J., dissenting).

The government’s brief in the instant case does not address, much less rebut, appellant’s argument that the evidence of significant bodily injury was insufficient

² *In re R.S.*, 6 A.3d 854 (D.C. 2010)

where jurors could not find beyond a reasonable doubt that medical attention was required to prevent long-term physical damage, possible disability, disfigurement, or severe pain. There was absolutely no testimony or evidence to that effect.

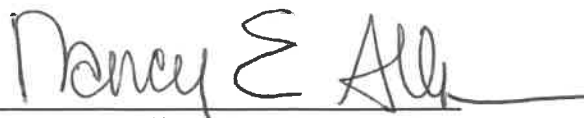
2. Remaining Government Contentions

Finally, the government correctly notes that appellant does not raise an appellate issue as to his conviction for assault with a dangerous weapon.

Additionally, to the extent that appellate counsel is charged with identifying and researching possible post-conviction issues, he brought to this Court's attention in his original brief the crux of a 23-110 motion he intends to file with the trial court.

CONCLUSION

Based on the foregoing, Appellant Malual respectfully requests that this Honorable Court reverse his conviction for assault with significant bodily injury, based upon his original brief and the instant reply.

A handwritten signature in dark ink, appearing to read "Nancy E. Allen", with a horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of APR 2025, a copy of the foregoing reply brief was served on the Court and delivered to the Office of the U.S. Attorney for the District of Columbia, Appellate Division, 601 D Street, NW, Washington, D.C. 20530 via the DCCA E-File System.



Nancy E. Allen