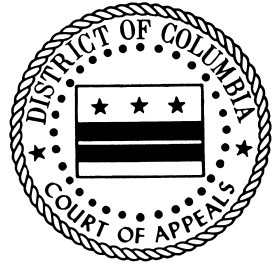


DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-799
(Cr. No. 2024-CF3-1139)



Clerk of the Court
Received 12/13/2024 08:07 AM

JOGAAK MALUAL,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR SUMMARY AFFIRMANCE

Pursuant to D.C. App. R. 27(c), appellee, the United States of America, respectfully moves for summary affirmance of appellant Jogaak Malual's conviction for assault with significant bodily injury. Malual claims that the evidence was insufficient to find significant bodily injury. Malual's claim is without merit. Summary affirmance is appropriate because "the basic facts are both uncomplicated and undisputed . . . and . . . the trial court's ruling rests on a narrow and clear-cut issue of law." *Oliver T. Carr Mgmt. v. National Delicatessen, Inc.*, 397 A.2d 914,

915 (D.C. 1979); *accord Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013).¹

BACKGROUND

Procedural History

On April 24, 2024, Malual was indicted on one count of assault with significant bodily injury (ASBI), in violation of D.C. Code § 22-404(a)(2) (2001 ed.) (Count 1), and one count of assault with a dangerous weapon (ADW), in violation of D.C. Code § 22-402 (Count 2) (Record on Appeal (R.) 47 (Indictment)).² After a jury trial before the Honorable Errol Arthur on June 3, 5, and 6, 2024, the jury returned a verdict of guilty on both counts (6/6/24 Transcript (Tr.) 90-92). On July 31, 2024, Judge Arthur sentenced Malual to concurrent terms of 12 months' incarceration for ASBI and 24 months' incarceration for ADW, to be followed by three years of supervised release (7/31/24 Tr. 10-11). Judge Arthur also ordered Malual to pay a total of \$200 to the Victims of Violent Crime

¹ Pursuant to D.C. App. R. 27(c), if this Court denies summary affirmance, we ask that this motion be treated as our brief on the merits.

² All page references to the record are to the PDF page numbers.

Compensation Fund (*id.*; R. 115 (Judgment)). On August 27, 2024, Malual filed a timely notice of appeal (R. 116-17 (Notice)).

The Trial

The Government's Evidence

On February 5, 2024, the victim, Edvin Everson Lopez Banaca, was working as a cashier at Aladdin's Kitchen, located at 1782 Florida Avenue, NW (6/5/24 Tr. 40-41). Sometime between 11:00-11:30 p.m., Malual entered the restaurant (*id.* at 6, 41). Malual started "yelling" and "speaking nonsense" as he approached the checkout counter where Banaca was working (*id.* at 49, 58, 82). Malual was "very rude" and said "nasty things" to Banaca (*id.* at 41, 51). Banaca asked Malual to leave, but he refused (*id.* at 42, 89). Upset at being asked to leave, Malual picked up "a tablet with an attached heavy base" and held it up above his head, swinging it back and forth (*id.* at 9, 69, 82-83, 87). When Malual saw "he had a clear shot," he threw the card reader at Banaca's head (*id.* at 41, 83). Banaca was able to protect his face with his hands, but the card reader cut Banaca's scalp (*id.* at 41-42, 44). "Blood started spilling out of

[Banaca's] head" and got on the floor (6/5/24 Tr. 8, 86; Government Exhibit (Gov. Ex.) 1).³

After Malual threw the card reader and saw Banaca was bleeding, he fled the scene (6/5/24 Tr. 52, 77). In the "commotion" after the assault, a customer followed Malual out of the store and called the police (*id.* at 83-84). The customer continued to follow Malual as he made a right turn and watched him disappear down an alley (*id.* at 84).

Sergeant Dale Vernick responded to the call at around 11:30 p.m. (6/5/24 Tr. 6). He saw blood on the floor and Banaca with "some kind of towel over his head" (*id.* at 8; Gov. Ex. 1; Gov. Ex. 2 at 23:34:41-23:35:01). Sergeant Vernick called an ambulance for Banaca because he had a "head laceration," and blood was in his hair and on the counter (6/5/24 Tr. 11). Sergeant Vernick also talked to multiple witnesses to get a description of

³ The government is moving to supplement the record with Sergeant Vernick's body-worn camera footage, which was introduced at trial as Gov. Exs. 2, 4, and 6. The government is also moving to supplement the record with a still-shot from Officer Vernick's body-worn camera footage of the bloody floor (Gov. Ex. 1), Officer Morales's body-worn camera footage (Gov. Ex. 3), a still-shot of the defendant from Officer Cynthia Rios's body-worn camera footage (Gov. Ex. 7), and a still-shot of the defendant from body-worn camera footage of an unnamed officer (Gov. Ex. 8). All timestamps to the body-worn camera footage are in the format hh:mm:ss-hh:mm:ss

the suspect to broadcast over the radio (*id.* at 11-12, 16; Gov. Ex. 2, 23:35:08-23:35:13).

When Officer Cynthia Rios responded to the call, she spoke with an official who gave her a description of the suspect (6/6/24 Tr. 5). Officer Rios and other officers canvassed the area and apprehended Malual, who fit the description of the suspect (*id.* at 7). Sergeant Vernick took a witness, Shapour Shirani, to identify the suspect in a “show up identification” (*id.* at 10; 6/5/24 Tr. 20-21; Gov. Ex. 6). While still riding in the police cruiser, Shirani started spontaneously saying, “yeah, he’s the same—that guy is over there—I think [he’s] the same guy” as they approached Malual (6/5/24 Tr. 22-23; Gov. Ex. 6, 00:00:16-00:00:20). Shirani then positively identified Malual as the man who assaulted Banaca, and police arrested him (6/6/24 Tr. 11; 6/5/24 Tr. 25).

Medical services arrived and took Banaca to the hospital where he received four to five stitches to close the gash on his head (6/5/24 Tr. 26, 44, 54). Banaca went home to recover and did not return to work that evening (*id.* at 54).⁴

⁴ The defense declined to present a case in chief (6/6/24 Tr. 33).

ARGUMENT

The Evidence Was Sufficient to Sustain Malual's Conviction for Assault with Significant Bodily Injury.

Malual contends that there was insufficient evidence to find that the victim suffered a significant bodily injury (Brief for Appellant (Br.) 12-20). Malual's claim is meritless.⁵

A. Standard of Review and Applicable Legal Principles

"In challenging the sufficiency of the evidence, appellants face a difficult burden." *Bolden v. United States*, 835 A.2d 532, 534 (D.C. 2003). Although "review of a claim of insufficiency of the evidence is de novo," *Mills v. District of Columbia*, 259 A.3d 750, 756 (D.C. 2021), this Court must "view the evidence in the light most favorable to the prosecution, with due regard for the right of the jury, as the trier of fact, to weigh the evidence, to determine the credibility of witnesses, and to draw

⁵ Malual does not challenge his conviction for ADW on appeal. Additionally, although he appears to complain in passing (at 3-4) about the circumstances under which he rejected the government's plea offer, he does not include any legal argument on the subject and has accordingly waived any such claim. See *Bardoff v. United States*, 628 A.2d 86, 90 n.8 (D.C. 1993).

reasonable inferences.” *Mitchell v. United States*, 64 A.3d 154, 156-57 (D.C. 2013).

“The evidence need not compel a finding of guilt beyond a reasonable doubt, and it need not negate every possible inference of innocence.” *Fitzgerald v. United States*, 228 A.3d 429, 437 (D.C. 2020) (quoting *Napper v. United States*, 22 A.3d 758, 770 (D.C. 2011) (citation and internal quotation marks omitted). This Court makes “no distinction between direct and circumstantial evidence,” and it will affirm a conviction if “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt[.]” *Brooks v. United States*, 130 A.3d 952, 955 (D.C. 2016) (internal citations omitted).

Assault with significant bodily injury, “is an intermediate level of offense greater than the misdemeanor of ‘simple’ assault but less than ‘aggravated assault.’” *In re R.S.*, 6 A.3d 854, 855 n.1 (D.C. 2010) (citation omitted). D.C. Code § 22-404(a)(2) (2007) provides that “[w]hoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than \$3,000 or be imprisoned not more

than 3 years, or both.” “Significantly bodily injury” is defined as “an injury that requires hospitalization or immediate medical attention.”⁶ *Id.*

In explaining the statutory definition of “significant bodily injury,” this Court has stated that significant bodily injury occurs

where there is an injury to the body . . . that necessitates the individual being taken to the hospital or receiving medical treatment shortly after the injury was inflicted. Hospitalization or medical treatment is required where it is necessary to preserve the health and well being of the individual, e.g., to prevent long-term physical damage, possible disability, disfigurement, or severe pain.

In re R.S., 6 A.3d 854, 859 (D.C. 2010) (citation omitted).

Whether a party received medical treatment or went to the hospital is not “determinative” as to whether the treatment was necessary. *Id.* Rather, “the focus . . . must be on the nature of the injury itself and the practical need in the ordinary course of events for prompt medical attention.” *Id.* “[T]he immediate 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

⁶ After the trial in this case, the D.C. Council amended the ASBI statute to define significant bodily injury as expressly including, inter alia, a “laceration for which the victim required stitches, sutures, staples, or closed-skin adhesives[.]”

See D.C. Law 25-275, § 19(a)(2) (effective June 8, 2024).

‘lesser, short-term hurts.’” *Teneyck v. United States*, 112 A.3d 906, 909 (D.C. 2015) (citations omitted). Additionally, the treatment must “requir[e] true ‘medical’ expertise.” *Quintanilla v. United States*, 62 A.3d 1261, 1265 (D.C. 2013). “[E]veryday remedies such as ice packs, bandages, and self-administered over-the-counter medications are not sufficiently ‘medical’ to qualify under the statute[.]” *Id.*

B. Discussion

There was sufficient evidence that Banaca suffered a significant bodily injury after Malual intentionally threw the heavy card reader at Banaca’s head, causing a laceration. Testimony from Banaca, police officers on the scene, and other witnesses – corroborated by body-worn camera footage and photographs introduced at trial – established that Banaca’s head was bleeding enough that he had to use a towel to cover the wound and blood dripped on the floor. The officers called an ambulance for Banaca, he was treated by medical personnel, and was transported to the hospital where he received four to five stitches to close the wound. Banaca testified that he could not return to work that evening and that he had a period of recovery after the assault. That evidence was sufficient for the jury to find that Malual inflicted significant bodily

injury on the victim. *See, e.g., In re R.S.*, 6 A.3d 854, 857-59 (D.C. 2010) (sustaining ASBI conviction where victim suffered laceration to ear requiring stitches); *Rollerson v. United States*, 127 A.3d 1220, 1232 (D.C. 2015) (sufficient evidence to establish ASBI where victim suffered gashes requiring total of nine stitches); *Belt v. United States*, 149 A.3d 1048, 1055-57 (D.C. 2016) (sufficient evidence of significant bodily injury where, inter alia, victim suffered laceration requiring four stitches).

Malual's contentions on appeal – that the government did not present sufficient corroborating evidence that Banaca received stitches, and even if he did receive stitches, it is not clear the treatment was necessary (Br. 12-20) are unavailing. First, Malual argues that the government did not introduce corroborating evidence or testimony about Banaca's medical treatment, such as testimony from medical professionals, medical records, or photographs of the stitches (Br. 12-14). But nothing in the case law requires corroborating testimony from a medical professional or medical records for the jury to credit the victim's testimony about medical treatment. *See generally, Graham v. United States*, 12 A.3d 1159, 1163 (D.C. 2011) (this Court has "repeatedly held that the testimony of one witness is sufficient to sustain a conviction.").

Indeed, in *In re R.S.*, 6 A.3d 854, 857 (D.C. 2010), this Court found the victim’s testimony about her laceration and stitches sufficient to show significant bodily injury, even though the treating physicians did not testify and the government did not introduce medical records. *See* 6 A.3d at 857. Here, the admitted body-worn camera footage admitted at trial showed that Banaca was bleeding from his head (Gov. Ex. 2, 23:34:41-23:35:01), and two witnesses testified that Banaca sought medical attention for his wound or was treated by medical personnel (6/5/24 Tr. 26, 87). To the extent any additional corroboration was needed (which there was not), that witness testimony and body-worn camera footage confirmed that Banaca received a head laceration requiring medical treatment.

Second, contrary to Malual’s argument on appeal (at 13-19) this Court has repeatedly found that when a victim receives stitches, the wound is a significant bodily injury – without need for any additional evidence of medical “necessity” or other injuries. For example, in *Belt*, this Court explained that

where that medical treatment can only be prescribed or administered by trained medical professionals, *such as with stitches*, the fact finder may be able to infer from the course of the medical treatment itself—treatment that is beyond ‘mere diagnosis’

or simple ‘everyday remedies such as ice packs, bandages, and self-administered over-the-counter medications—that immediate medical attention was ‘required,’ and thus the victim had suffered a ‘significant bodily injury.’

Belt, 149 A.3d at 1055-56 (D.C. 2016) (citations omitted) (emphasis added). Thus, in *Belt*, this Court found the evidence sufficient that the victim suffered a significant bodily injury when the victim was attacked with a meat cleaver and had a head laceration which required four stitches. *Id.* at 1057 (noting that victim “required stitches—medical treatment that is beyond what a layperson could administer”).

The facts in *Belt* and the facts in this case are strikingly similar. Both victims suffered head lacerations and were taken by medical professionals to the hospital following the attack. Like the victim in *Belt*, Banaca was also “bleeding profusely” as evidenced by the blood on the floor and counter and the necessity of covering his head wound with a towel.⁷ And finally, both victims received stitches at the hospital.

⁷ Malual notes (at 17-19) that the mere fact that Banaca was bleeding was not enough to prove significant bodily injury. That is true, but beside the point – the government did not rely exclusively on the bleeding in this case to establish the extent of Banaca’s injury.

Third, Malual's argument (at 18-19) that the government was required to provide additional proof that the stiches Banaca actually received were truly "necessary" should be rejected. This Court has held that

[n]either the felony assault statute nor our case law requires any additional evidence (such as medical or other expert witnesses) to substantiate that the immediate medical attention that the victim received was actually necessary. Rather, the focus as always is on "the nature of the injury itself and the practical need in the ordinary course of events for prompt medical attention[]".

Belt, 149 A.3d at 1056 (quoting *In re R.S.*, *supra*, 6 A.3d at 859).⁸

Finally, Malual's comparison of this case to *Wilson v. United States*, 140 A.3d 1212, 1218 (D.C. 2016), does not advance his claims (Br. 14-16). In *Wilson*, this Court found that there was insufficient evidence that "immediate medical attention" was required when the government did not present evidence of the nature of the injuries *and* the victim did not testify about the treatment received. *See id.* Unlike in *Wilson*, Banaca did

⁸ Malual complains (at 16) that in *In re R.S.*, the government introduced additional evidence of injury beyond the administration of stiches, including the victim's testimony about scarring, headaches, and difficulty hearing. But this Court did not hold that such testimony was necessary, and we are unaware of any case in which it has held that evidence that a victim required stiches was insufficient to sustain a conviction for ASBI.

testify about the specific type of treatment he received at the hospital, and the jury was entitled to credit that testimony (see 6/5/24 Tr. 44-45).

Malual's citation (at 12) of *Parker v. United States*, 249 A.3d 388, 396 (D.C. 2021), is also misplaced. In *Parker*, this Court found that the record did not "suggest that [the victim's] injuries demanded treatment of a higher order, requiring true medical expertise, rather than everyday remedies such as ice packs, bandages, and self-administrated over-the-counter medications." *Id.* The victim also testified that "x-rays may have been taken at the hospital" but could not affirmatively say if or why he received x-rays. *Id.* By contrast, as previously discussed, the stitches Banaca received were beyond what a lay person could administer, and Banaca testified that he received the stitches due to the laceration on his head (6/5/24 Tr. 44-45). The combined evidence accordingly was sufficient to find that Banaca's laceration was a significant bodily injury.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be summarily affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Nancy E. Allen, Esq., on this 13th day of December, 2024.

/s/

MEGAN ABRAMEIT
Assistant United States Attorney