5-29-2013

State v. Eddins Respondent's Brief Dckt. 39933

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 39933
Plaintiff-Respondent,	)	
	)	Nez Perce Co. Case No.
vs.	)	CR-2010-5989
	)	
BRANDON EDDINS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Brandon Tyler Eddins appeals from the judgment of conviction and restitution order entered upon the jury verdict finding him guilty of aggravated assault and of being a persistent violator of the law.

Statement of Facts and Course of Proceedings

While driving to his girlfriend's grandmother's house, Daniel Hight saw Eddins, who had been harassing Daniel and his girlfriend. (Tr., Vol.1, p.18, L.20 – p.21, L.2.[1]) In an attempt to avoid a conflict, Daniel drove past Eddins and around the block, but Eddins chased after him. (Tr., Vol.1, p.20, L.2 – p.21, L.17.) "[S]ick of" being harassed, Daniel stopped the car and got out to confront Eddins. (Tr., Vol.1, p.21, L.18 – p.22, L.14.) Within seconds of Daniel exiting the car, Eddins "got in [Daniel's] face" and "hit [him] in the eye with a bottle of acid." (Tr., Vol.1, p.22, L.12 – p.23, L.2; see also Tr., Vol.1, p.24, Ls.1-2, p.43, Ls.1-5, p.51, L.16 – p.53, L.7, p.59, Ls.15-20, p.60, Ls.16-25.) The acid permeated Daniel's eye, resulting in what Daniel's ophthalmologist characterized as the "worst chemical injury" he had ever seen. (Tr., Vol.1, p.115, Ls.6-9.) Despite the best efforts of physicians, Daniel's eye never recovered and, ultimately, it had to be surgically removed. (Tr., Vol.1, p.26, Ls.6-15, p.27, L.8 –

[1] The appellate record contains several separately bound volumes of transcripts. For uniformity and ease of reference, the state has adopted the numbering and citation system used by Eddins in his Appellant's brief. (See Appellant's brief, p.1 n.1 (designating the separately bound transcripts by volume number).)

p.28, L.5, p.111, L.16 – p.114, L.14, p.116, L.16 – p.121, L.25, p.135, L.11 – p.137, L.25.)

The state charged Eddins with aggravated battery (by means of corrosive acid and/or a caustic chemical), with a persistent violator enhancement. (R., pp.83-85, 172-73.) At trial, Eddins testified and admitted that he was carrying a bottle of acid on the night in question. (Tr., Vol.1, p.174, Ls.4-14, p.176, L.18 – p.177, L.5.) He also admitted to having threatened Daniel during their confrontation, telling him to "back off, man, I have acid." (Tr., Vol.1, p.171, Ls.6-8, p.176, L.22 – p.177, L.1.) He denied having intentionally hit Daniel with the acid, however, maintaining instead that Daniel pushed the bottle of acid out of his hands, causing it to spill acid on both of them. (Tr., Vol.1, p.170, L.19 – p.172, L.8, p.172, L.24 – p.173, L.7, p.173, Ls.17-21, p.177, Ls.6-9.)

At the conclusion of the trial, the jury returned a verdict finding Eddins not guilty of aggravated battery, but guilty of aggravated assault and of being a persistent violator. (R., pp.249-51.) The district court entered judgment on the jury's verdict and imposed a unified sentence of 15 years, with six years fixed. (R., pp.327-30.) Over Eddins' objection, the court also ordered Eddins to pay restitution in the amount of $5,241.79 to the victim's crime fund, to compensate it for the medical expenses it had paid on Daniel's behalf. (Tr., Vol.3, p.28, L.18 – p.29, L.16, p.40, L.13 – p.41, L.1; R., pp.328-29, 339-40; PSI, p.3.) Eddins timely appeals. (R., pp.343-45.)

ISSUES

Eddins states the issues on appeal as:

1. Whether the prosecutor committed misconduct by misrepresenting or mischaracterizing the evidence in her closing argument?

2. Whether the district court improperly awarded restitution for damages not caused by Mr. Eddins's culpable conduct.

(Appellant's brief, p.5 (punctuation original).)

The state rephrases the issues as:

1. Has Eddins failed to show fundamental error with respect to his unpreserved claim of prosecutorial misconduct?

2. Has Eddins failed to show that the district court abused its discretion by requiring Eddins to pay restitution for the victim's economic losses that were proximately caused by Eddins' criminal conduct?

ARGUMENT

I.
Eddins Has Failed To Show Fundamental Error With Respect To His Unpreserved Claim Of Prosecutorial Misconduct

A. Introduction

For the first time on appeal, Eddins argues the prosecutor committed misconduct amounting to fundamental error. Specifically, he contends that, in closing argument, the prosecutor made statements that both mischaracterized the evidence and improperly appealed to the jurors' emotions. (Appellant's brief, pp.6-9.) Eddins' argument fails; a review of the challenged statements shows no misconduct, much less misconduct rising to the level of fundamental error.

B. Standard Of Review

Where, as here, a defendant fails to timely object at trial to allegedly improper closing arguments by the prosecutor, the conviction will be set aside for prosecutorial misconduct only upon a showing by the defendant that the alleged misconduct rises to the level of fundamental error. State v. Perry, 150 Idaho 209, 228, 245 P.3d 961, 980 (2010).

C. Eddins Has Failed To Show Any Misconduct, Much Less Misconduct Rising To The Level Of Fundamental Error

An unpreserved issue may only be considered on appeal if it "constitutes fundamental error." State v. Johnson, 149 Idaho 259, 265, 233 P.3d 190, 196 (Ct. App. 2010). In the absence of an objection "the appellate court's authority to remedy that error is strictly circumscribed to cases where the error results in the defendant being deprived of his or her Fourteenth Amendment due process right

to a fair trial in a fair tribunal." State v. Perry, 150 Idaho 209, 224, 245 P.3d 961, 976 (2010). Review without objection will not lie unless (1) the defendant demonstrates that "one or more of the defendant's unwaived constitutional rights were violated;" (2) the constitutional error is "clear or obvious" on the record, "without the need for any additional information" including information "as to whether the failure to object was a tactical decision;" and (3) the "defendant must demonstrate that the error affected the defendant's substantial rights," generally by showing a reasonable probability that the error "affected the outcome of the trial proceedings." Id. at 226, 245 P.3d at 978.

Eddins was charged with aggravated battery. (R., pp.83-85, 172-73.) In arguing to the jury that it should find Eddins guilty of that charge, the prosecutor twice reminded the jury of the severity of the injury Daniel Hight sustained as a result of having acid thrown on him. Specifically, the prosecutor opened her closing argument by stating:

> Ladies and gentlemen of the jury, when I spoke with you yesterday morning, I told you that at the end of this trial, you would have the information in front of you on how Daniel Hight lost one of his most importance [sic] senses, how he lost his left eye and he lost his sense of sight.

(Tr., Vol.2, p.140, L.24 – p.141, L.4.) Then, after discussing at length the elements of aggravated battery and the evidence that supported each of those elements (Tr., Vol.2, p.141, L.5 – p.148, L.23), the prosecutor concluded her closing argument by stating:

> The acid used on Daniel Hight's eye on July 11th changed his life. He has lost his sight, and he has lost his eye. Based on all of the testimony and the evidence you have in front of you now,

you have enough to find the defendant guilty of aggravated battery. Thank you.

(Tr., Vol.2, p.148, L.24 – p.149, L.4).

Eddins did not object to the prosecutor's arguments below, but he contends on appeal that, by arguing to the jury that Daniel "lost his sense of sight," the prosecutor "misrepresented the evidence and improperly appealed to the jurors' emotions."[2] (Appellant's brief, p.6 (capitalization altered, underlining omitted).) Eddins' argument is without merit; he has failed to show that the complained of statements were improper, much less that they rose to the level of fundamental error.

A prosecutor has considerable latitude in closing argument. State v. Severson, 147 Idaho 694, 720, 215 P.3d 414, 440 (2009); State v. Porter, 130 Idaho 772, 786, 948 P.2d 127, 141 (1997); State v. Priest, 128 Idaho 6, 14, 909 P.2d 624, 632 (Ct. App. 1995). He or she is entitled to argue all reasonable inferences from the evidence in the record. Severson, 147 Idaho at 720, 215 P.3d at 440; Porter, 130 Idaho at 786, 948 P.2d at 141 (citing State v. Garcia, 100 Idaho 108, 110, 594 P.2d 146, 148 (1979)). Appeals to the emotion, passion, or prejudice of the jury through the use of inflammatory tactics are impermissible. State v. Phillips, 144 Idaho 82, 87, 156 P.3d 583, 588 (Ct. App.

[2] Eddins consistently cites "Tr., Vol.2, p.119, L.25; Tr., Vol.2, p.148, L.25" as support for his assertion that the prosecutor argued to the jury that Daniel had "lost his sense of sight." (See Appellant's brief, pp.3, 8.) While the state acknowledges the prosecutor twice stated Daniel had lost "his sense of sight" (see Tr., Vol.2, p.116, Ls.20-23, p.141, Ls.2-4), she did not do so at either portion of the transcript cited by Eddins in his Appellant's brief (see Tr., Vol.2, p.119, L.25 (defense counsel speaking), p.148, L.25 (prosecutor arguing: "July 11th changed his life. He has lost his sight, and")).

2007). Nor may a prosecutor "attempt[] to secure a verdict on any factor other than the law as set forth in the jury instructions and the evidence admitted during trial, including reasonable inferences that may be drawn from that evidence," as doing so, "impacts a defendant's Fourteenth Amendment right to a fair trial." Perry, 150 Idaho at 227, 245 P.3d at 979.

Contrary to Eddins' claims on appeal, the prosecutor's statements in this case – that Daniel Hight "lost his sense of sight" and/or "lost his sight" – were neither false nor an impermissible appeal to the emotions of the jury. Daniel testified that, after Eddins hit him in the eye with the bottle of acid, he was unable to see out of that eye, that he never regained vision in his eye, and that, despite weeks of treatment, doctors were unable to save it. (Tr., Vol.1, p.24, Ls.1-2, p.25, Ls.18-21, p.26, Ls.9-17.) Daniel's ophthalmologist likewise testified that he was unable to save Daniel's eye and, ultimately, it had to be surgically removed. (Tr., Vol.1, p.111, L.16 – p.114, L.14, p.116, L.16 – p.121, L.25.) In light of the fact that the evidence showed Daniel actually lost one of his eyes as a result of the acid attack, the prosecutor's statements that Daniel "lost his sense of sight" and/or "lost his sight" were entirely accurate, at least as to the eye Daniel lost. In fact, each time the prosecutor referred in her closing argument to Daniel having "lost his sense of sight" or "lost his sight," she also stated in the same breath that Daniel had lost only one of his eyes. (See Tr., Vol.2, p.141, Ls.2-4 ("he lost his left eye and he lost his sense of sight), p.148, L.25 – p.149, L.1 ("He has lost his sight, and he has lost his eye.").) That the prosecutor did not also specifically articulate what was already obvious to the jury (both from having observed

Daniel on the witness stand and from having heard him testify) – *i.e.*, that Daniel still had vision in his remaining eye – does not show any misrepresentation or embellishment by the prosecutor in an attempt to bolster the state's case.

Nor does it show any attempt by the prosecutor to secure a guilty verdict by appealing to the jurors' emotions. Eddins was charged with aggravated battery. To prove that charge, the state was required to prove, *inter alia*, that Eddins "unlawfully and intentionally caus[ed] bodily harm to" Daniel. (Compare R., p.264 (Jury Instruction No. 10) with I.C. § 18-903.) Pointing out that Eddins actually lost his eye and, thus, his "sense of sight" or "sight" in that eye goes directly to the element of crime that required the state to prove an injury. Because the prosecutor's statements were based on the evidence and related directly to an element of the crime the state was required to prove, Eddins has failed to show any error at all, much less error of constitutional significance. His claim of prosecutorial misconduct thus fails on first prong of the Perry fundamental error analysis.

Even assuming Eddins could overcome the first prong of the Perry test for fundamental error, his claim of prosecutorial misconduct nevertheless fails on the second prong of the test, which requires Eddins to demonstrate that the error he asserts is "clear or obvious" on the record. Perry, 150 Idaho at 226, 245 P.3d at 978. Eddins argues the error is "plain from the face of the record" because "the prosecutor's statement that Mr. Hight had 'lost his sense sight' [sic] was blatantly wrong, and could only serve to appeal to the passions of the jury." (Appellant's brief, p.8.) As set forth in the preceding paragraphs, however, the

complained-of statements were both supported by the evidence and relevant to an element of the charged crime. Perhaps more importantly as it relates to the "clear and obvious" prong of Perry, it appears from the record that, to the extent defense counsel below believed there was anything improper about the prosecutor's statements, he deliberately chose to forego an objection and opted instead to address the prosecutor's remarks in his own closing argument. Specifically, defense counsel argued:

> Now, ladies and gentlemen, we saw a lot of pictures, a lot of doctor testimony about what happened to Mr. Hight's eye. And the State is trying to appeal through emotions. They want to appeal to your sympathies. We all feel bad for Mr. Hight. This is a tragic accident. Who would not feel bad for him? But that's just what this was, an accident. And tragedy does not equal intentional.
>
> The State is trying to make you feel bad for Mr. Hight by saying he lost one of his five senses; and based on that sympathy alone, they want you to convict Mr. Eddins. But look at the evidence. Look at the facts. Remember and recall what the witnesses said.

(Tr., Vol.2, p.154, Ls.12-24.) Because the record clearly shows defense counsel chose, as a matter of trial strategy, to respond to the prosecutor's statements rather than object to them, Eddins' claim that the error he asserts for the first time on appeal is meets the "clear and obvious" prong of Perry necessarily fails. See Perry, 150 Idaho at 224, 226, 245 P.3d at 976, 978 ("[R]equiring a contemporaneous objection prevents the litigant from sandbagging the court, *i.e.*, remaining silent about his objection and belatedly raising the error only if the case does not conclude in his favor"; to that end, a defendant fails to meet the second prong of Perry if there is even a "reasonable possibility" defense

counsel's failure to object was tactical. (Citations and internal quotation marks omitted)).

Finally, Eddins has failed to show he was actually prejudiced by the prosecutor's statements that, as a result of the acid attack, Daniel "lost his sense of sight" or "lost his sight." For the reasons already stated, the statements were proper and did not appeal to the jury to decide the case on anything other than the evidence presented. Even assuming, however, that the statements could be construed in a vacuum as having embellished the facts or improperly appealed to the jurors' emotions, there is no reason to believe the result of the trial would have been any different. Because Daniel Hight testified at trial, the jury was able to personally observe the extent of his injury and was thus aware that Daniel was still able to see out of his remaining eye. Moreover, the trial court specifically instructed the jury that it was to decide the case solely on the evidence before it, not on the arguments of counsel. (R., p.258 (Jury Instruction No. 4).) Assuming, as this Court must, that the jury followed the court's instruction, State v. Grantham, 146 Idaho 490, 498, 198 P.3d 128, 136 (Ct. App. 2008), there is no reasonable possibility the jury was influenced by the prosecutor's remarks to render a verdict based on sympathy or any other improper factor. Finally, and most importantly, the jury actually *acquitted* Eddins of aggravated battery and found instead that he was guilty only of the lesser included crime of aggravated assault, a crime that does not require proof of *any* injury whatsoever. (Compare R., p.266 (Jury Instruction No. 12) with I.C. § 18-901.) Had the jury actually been swayed by the prosecutor's argument to decide the case based on emotion or

sympathy for the victim, it surely would have made the finding, necessary for an aggravated battery conviction, that Eddins actually used force or violence on and/or injured the victim. (Compare R., p.264 (Jury Instruction No. 10) with I.C. § 18-903.)

Eddins has failed to carry his burden of demonstrating fundamental error with respect to his unpreserved claim of prosecutorial misconduct. This Court should therefore decline to review the claim for the first time on appeal.

II.
Eddins Has Failed To Show The District Court Abused Its Discretion By Ordering Him To Pay Restitution For The Victim's Economic Losses That Were Actually And Proximately Caused By Eddins' Criminal Conduct

A. Introduction

The district court ordered Eddins to pay restitution in the amount of $5,241.79 to cover the medical expenses Daniel Hight incurred as a result of the chemical burn to his eye. (R., pp.328-29, 339-40.) Eddins challenges the restitution award, arguing as he did below that, because the jury only found him guilty of aggravated assault, rather than of aggravated battery, "the only culpable action for which it could have convicted Mr. Eddins was making a threat," and "[s]ince the threat – the words themselves – are incapable of causing physical injury, the restitution award for losses related to Mr. Hight's physical injury is erroneous." (Appellant's brief, pp.9-10.) Eddins' argument is without merit. A review of the record and the applicable law supports the district court's determination that the injury to Daniel's eye was caused by Eddins' criminal conduct and, as such, Eddins is responsible for Daniel's medical expenses.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, ___, 296 P.3d 412, 417 (Ct. App. 2013); State v. Higley, 151 Idaho 76, 78, 253 P.3d 750, 752 (Ct. App. 2010); State v. Card, 146 Idaho 111, 114, 190 P.3d 930, 933 (Ct. App. 2008). The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, ___, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

C. Substantial Evidence Supports The District Court's Finding That The Victim's Injury Was Caused By Eddins' Criminal Conduct

Idaho Code § 19-5304(2) authorizes a court to "order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." For purposes of Idaho's restitution statute, a "victim" includes any "person or entity, who suffers economic loss or injury *as the result of the defendant's criminal conduct.*" I.C. § 19-5304(1)(e)(i) (emphasis added). "Economic loss" includes, among other things, "the value of property taken, destroyed, broken, or otherwise harmed ... and ... medical expenses *resulting from the criminal conduct.*" I.C. § 19-5304(1)(a) (emphasis added). "Therefore, in order for restitution to be appropriate, there must be a causal connection between the conduct for which the defendant is convicted and the injuries suffered by the victim." State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011); accord State v. Hill, 154 Idaho 206, ___, 296 P.3d 412, 418 (Ct. App.

2013); State v. Nienburg, 153 Idaho 491, ___, 283 P.3d 808, 811 (Ct. App. 2012); State v. Cottrell, 152 Idaho 387, 391, 271 P.3d 1243, 1247 (Ct. App. 2012).

As recently reiterated by the Idaho Supreme Court, "causation consists of actual cause and true proximate cause." Corbus, 150 Idaho at 602, 249 P.3d at 401 (citing State v. Lampien, 148 Idaho 367, 374, 223 P.3d 750, 757 (2009)). The Court articulated the distinction between actual and proximate cause as follows:

> "Actual cause is the factual question of whether a particular event produced a particular consequence. [*Lampien*, 148 Idaho at 374, 223 P.3d at 757] (quoting [*Cramer v. Slater*, 146 Idaho 868, 875, 204 P.3d 508, 515 (2009)]). The "but for" test is used in circumstances where there is only one actual cause or where two or more possible causes were not acting concurrently. *Id.* On the other hand, true proximate cause deals with "whether it was reasonably foreseeable that such harm would flow from the negligent conduct." *Id.* (quoting *Cramer*, 146 Idaho at 875, 204 P.3d at 515). In analyzing proximate cause, this Court must determine whether the injury and manner of occurrence are so highly unusual "that a reasonable person, making an inventory of the possibilities of harm which his conduct might produce, would not have reasonably expected the injury to occur." *Id.* (quoting *Cramer*, 146 Idaho at 875, 204 P.3d at 515).

Corbus, 150 Idaho at 602, 249 P.3d at 401. See also Cottrell, 152 Idaho at 392, 271 P.3d at 1248. The determinations of actual cause and proximate cause are both factual questions. Corbus, 150 Idaho at 602, 249 P.3d at 401; Cottrell, 152 Idaho at 392, 271 P.3d at 1248.

Applying the two-part causation inquiry to the facts before it, the Corbus Court upheld an award of restitution for injuries sustained by the victim when he jumped out of Corbus' vehicle in the course of a police chase. 150 Idaho at 602-

06, 401-05. Regarding actual cause, the Court found that, but for "Corbus' acts of driving recklessly and eluding police officers and then failing to stop in response to their overhead emergency lights," the victim "would not have needed to" jump from the vehicle. Id. at 603, 249 P.3d at 402. The Court also found proximate cause existed because, based on the evidence that showed "Corbus had created an extremely dangerous situation for his passenger by driving at night, at excessive speeds, with no headlights on..., it was reasonably foreseeable that his passenger would decide to jump from the vehicle to avoid a potentially serious car accident." Id. at 605, 249 P.3d at 404.

More recently, in Cottrell, *supra*, the Idaho Court of Appeals upheld an award of restitution to the police officer victim for a knee injury he sustained when he attempted to restrain Cottrell while Cottrell actively resisted and obstructed the officer's attempt to arrest him. 152 Idaho at 390-94, 271 P.3d at 1246-50. The Court concluded that actual cause was "satisfied because the evidence show[ed] it was Cottrell's acts of attempting to pull away from [the officer] during arrest that precipitated the need for [the officer] to gain control of Cottrell and, in so doing, twist his knee." Id. at 393, 271 P.3d at 1249 (footnote omitted). The Court also found proximate cause, reasoning it was reasonably foreseeable, based on Cottrell's repeated failures to obey the officer's requests and submit to arrest, "that Cottrell's conduct would elicit a physical response from [the officer], putting [the officer] in a position to injure his knee." Id.

As in Corbus and Cottrell, a review of the evidence in this case supports the district court's award of restitution and, more specifically, its finding that the

injury to Daniel's eye was caused by Eddins' criminal conduct. The uncontested evidence at trial showed Daniel lost his eye as a result of a chemical burn caused by an extremely caustic acid. (Tr., Vol.1, p.111, 16 – p.122, L.14, p.135, L.11 – p.137, L.25.) Both Daniel and Eddins testified that the acid belonged to Eddins, and he was carrying it with him in a plastic bottle on the night in question. (Tr., Vol.1, p.22, L.23 – p.23, L.2, p.24, Ls.1-7, p.25, Ls.3-17, p.174, Ls.7-14, p.176, Ls.18-24, p.177, Ls.2-5.) Daniel testified that he originally attempted to avoid a confrontation with Eddins by driving around the block, but Eddins chased after him and they ended up in the same alley. (Tr., Vol.1, p.20, L.2 – p.21, L.17.) A confrontation then ensued, during which, Eddins admitted, he was still holding the bottle of acid. (Tr., Vol.1, p.21, L.24 – p.22, L.19, p.175, Ls.18-24, p.177, Ls.4-5.) Eddins also admitted to having threatened Daniel during the confrontation, telling him to "back off, man, I have acid." (Tr., Vol.1, p.171, Ls.6-8, p.176, L.24 – p.1.) Daniel testified that Eddins struck him in the eye with the bottle of acid. (Tr., Vol.1, p.22, L.12 – p.23, L.2, p.24, Ls.1-2, p.43, Ls.1-5.) Eddins denied this and testified Daniel pushed the bottle of acid out of his hands, causing it to spill acid on both of them. (Tr., Vol.1, p.170, L.19 – p.172, L.8, p.172, L.24 – p.173, L.7, p.173, Ls.17-21, p.177, Ls.6-9.) Regardless, the undisputed evidence showed the acid Eddins was carrying ended up in Daniel's eye, irreparably injuring it. (Tr., Vol.1, p.25, L.18 – p.28, L.4, p.111, L.16 – p.114, L.14, p.116, L.16 – p.121, L.24, p.135, L.11 – p.137, L.25, p.177, Ls.6-9.) At a minimum this evidence shows that, were it not for Eddins' acts of pursuing Daniel while carrying the bottle of acid and, ultimately,

threatening Daniel with it, Daniel would never have been in a position to be struck by the acid that injured his eye. Actual cause is thus satisfied in this case.

There is also substantial evidence in the record to support the trial court's implicit finding that Eddins' criminal conduct was the proximate cause of the injury to Daniel's eye. In opposing the state's restitution request, defense counsel argued below that Eddins should not be held responsible for Daniel's medical expenses because the jury, by finding Eddins guilty of aggravated assault instead of aggravated battery, necessarily found that Eddins only "threat[ened] to commit violence with the caustic acid," not that he actually caused the injury. (Tr., Vol.3, p.28, L.18 – p.29, L.16.) The district court rejected this argument, concluding that the medical expenses Daniel incurred as a result of the injury to his eye "clearly flow[ed] from the criminal conduct that Mr. Eddins was found guilty of." (Tr., Vol.3, p.40, L.16 – p.41, L.1.) The district court was correct. The evidence viewed in the light most favorable to the verdict shows Eddins armed himself with a bottle of acid, sought out a confrontation with Daniel and then, during that confrontation, threatened Daniel with the acid. Given Eddins' extremely reckless conduct in carrying the bottle of acid in the first place, it was reasonably foreseeable that Daniel or Eddins or both would be injured by the acid Eddins himself threatened to use.

On appeal, Eddins merely reiterates the argument he made below, contending he is not responsible for Daniel's injury, or the medical expenses related thereto, because, based on the jury verdict finding him guilty of aggravated assault, "the only culpable act for which [he] could possibly have

been convicted was making a threat with the apparent ability to carry out that threat." (Appellant's brief, p.13.) Eddins' argument is without merit. While the state agrees with Eddins that "the [threatening] words themselves ... did not cause the damage to Mr. Hight's eye" (Appellant's brief, p.13), Eddins' otherwise conclusory claim that it is not "foreseeable that the words spoken will be capable of impacting the physical world" (Id. (footnote omitted)) is simply not borne out by the law, common sense, or the record.

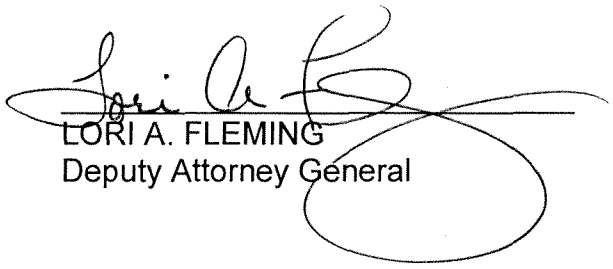
The law dictates that crime victims are entitled to restitution for economic losses, including medical expenses, that are actually and proximately caused by the defendant's criminal conduct. I.C. § 19-5304; Corbus, 150 Idaho at 602, 249 P.3d at 401. Common sense dictates that where a defendant makes a threat with apparent ability to carry it out, it is at least reasonably foreseeable that the threatened harm may come to fruition. A review of the record shows that is precisely what happened in this case. After Eddins threatened Daniel with the acid he was actually carrying on his person, Daniel was injured by the acid. Regardless of whether Eddins intentionally struck Daniel with the bottle of acid or only threatened to do so, it was a reasonably foreseeable result that Daniel or Eddins or both would be injured by the acid.

Substantial evidence supports the district court's finding that the injury to Daniel's eye was caused by Eddins' criminal conduct. Eddins has failed to establish an abuse of discretion in the restitution award.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction and order of restitution.

DATED this 29th day of May 2013.



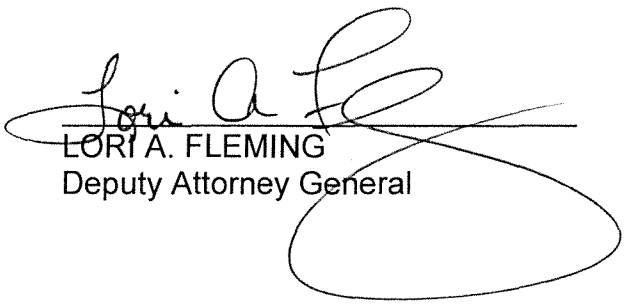
LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of May 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



LORI A. FLEMING
Deputy Attorney General

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