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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46495-2018**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-18-01827**
	)	
GUI MARCUS BRISBO,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE STEVEN J . HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Gui Marcus Brisbo appeals from his judgment of conviction and sentence for aggravated battery.

Statement Of The Facts And Course Of The Proceedings

The state charged Brisbo with aggravated battery, alleging he "did actually, intentionally, and unlawfully touch or strike the person of Paul Segura against his will causing great bodily harm and/or permanent disfigurement, to-wit: causing Paul Segura to lose consciousness, and/or lacerations to his face and/or head, and/or broken nose by striking and/or kicking Paul Segura." (R., pp. 38-39.) The case proceeded to trial. (R., pp. 61-70.)

The evidence at trial showed that Brisbo hit Segura in the face several times, knocked him to the pavement, and repeatedly stomped on the back of his head. (Trial Tr., pp. 134-55.[1] See also State's Exhibits 1-3.) As a result of the beating Segura suffered "a lot of swelling," bruising, and cuts to his face; a loose front tooth; a nasal fracture; and a "closed head injury" (concussion). (Trial Tr., pp. 118-27; State's Exhibits 10-14.) The jury found Brisbo guilty of aggravated battery. (R., p. 105.)

The district court sentenced Brisbo to ten years with two years determinate. (R., pp. 109-12.) Brisbo filed a timely notice of appeal. (R., pp. 115-17, 122-26.)

[1] The trial transcript omits line numbers.

ISSUES

Brisbo states the issues on appeal as:

1. Whether the appellant's conviction for Aggravated Battery should be overturned based on insufficient evidence?

2. Whether the district court abused its discretion by sentencing Mr. Brisbo to an excessive sentence?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

1. Has Brisbo failed to show that evidence that he hit, knocked to the ground, and stomped on the head of the victim, causing bruises, lacerations, swelling, a loose tooth, a concussion and a broken nose is insufficient to support the jury's guilty verdict?

2. Has Brisbo failed to show that the district court abused its discretion when it sentenced him to ten years with two years determinate upon his conviction for aggravated battery?

ARGUMENT

I.
The Evidence Supports Brisbo's Conviction For Aggravated Battery

A. Introduction

Brisbo argues that the evidence does not support his conviction because it is "problematic." (Appellant's brief, pp. 8-12.) His protestations that he is not requesting the Court to reweigh the evidence notwithstanding, he is requesting this Court to reweigh the evidence. (Id.) Application of the correct legal standards shows the evidence supports the verdict.

B. Standard Of Review

"In assessing the sufficiency of evidence, we will uphold a judgment of conviction entered upon a jury verdict so long as there is substantial evidence upon which a rational trier of fact could conclude that the prosecution proved all essential elements of the crime beyond a reasonable doubt." State v. Jones, 154 Idaho 412, 417, 299 P.3d 219, 224 (2013) (internal quotation omitted). The Court "must view the evidence in the light most favorable" to upholding the jury verdict and will not substitute its own judgment on issues of weight, credibility or reasonable inferences. Id. The Court reviews "all of the trial evidence, including the evidence offered by the defendant." State v. Cortez, 135 Idaho 561, 563, 21 P.3d 498, 500 (Ct. App. 2001).

C. The Evidence Supports The Jury's Verdict

Where a criminal defendant challenges the sufficiency of the evidence supporting his conviction on appeal, the "relevant inquiry is not whether this Court would find the defendant guilty beyond a reasonable doubt, but whether after viewing the evidence in the

light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Eliasen, 158 Idaho 542, 546, 348 P.3d 157, 161 (2015) (emphasis original). See also State v. Young, 138 Idaho 370, 372, 64 P.3d 296, 298 (2002) (evidence is sufficient if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"); State v. Daniels, 134 Idaho 896, 898, 11 P.3d 1114, 1116 (2000) (verdict reviewed for substantial evidence upon which "any rational trier of fact" could have found guilt (internal quotations omitted)). If there are multiple possible bases for supporting a general verdict "the inquiry on appeal becomes whether there was sufficient evidence to uphold any one of the bases of conviction." Cortez, 135 Idaho at 564, 21 P.3d at 501. In reviewing the sufficiency of the evidence, "this Court will construe all of the evidence in favor of upholding the verdict." State v. Glass, 139 Idaho 815, 818, 87 P.3d 302, 305 (Ct. App. 2003).

To be guilty of aggravated battery, the state had to prove that Brisbo struck Segura, causing great bodily harm. (I.C. §§ 18-903(b), 18-907(a); R., p. 88.) The evidence at trial showed that Brisbo hit Segura, knocking him to the pavement, where he repeatedly stomped on the back of Segura's head, causing unconsciousness, swelling, bruising, lacerations, a loosened tooth, a concussion, and a broken nose. (Trial Tr., pp. 118-27, 134-55; State's Exhibits 1-3, 10-14.) Because the evidence showed Brisbo hit Segura and stomped on his head, causing injuries including a concussion and a broken nose, the evidence supports the jury's verdict.

Brisbo argues that the evidence is insufficient to show that Segura's broken nose was caused by Brisbo stomping on the back of his head. (Appellant's brief, pp. 8-12 (the broken nose "was not affirmatively connected to Mr. Brisbo's actions").) Specifically, he

cites to testimony that, Brisbo claims, shows Segura's doctor "was unable to determine … whether this injury was a current or preexisting condition." (Appellant's brief, p. 9 (citing Trial Tr., p. 130, Ls. 14-17).) This argument fails for several reasons.

First, it misstates the doctor's testimony. When asked if he was "able to tell if that was a recent injury or if that had been a previous injury," the doctor testified that generally he or the radiologist would make a note in the records if the injury was chronic rather than acute, so it was "implied" from a silent medical record that the injury was acute. (Trial Tr., pp. 130–31.) The doctor's testimony that he or the radiologist would have noted in the records if they believed the nose fracture was a preexisting condition supports the jury's verdict. At best Brisbo's argument is an invitation to re-weigh this evidence.

Second, even if the doctor did state that he could not testify one way or the other, based on the medical records, whether the injury was preexisting, such does not show the jury could not have concluded the nasal fracture was the result of Brisbo stomping on Segura's head when Segura was face-down on the pavement. Brisbo acknowledges that the jury had sufficient evidence to conclude he inflicted all the other injuries (swelling, bruising, lacerations, loose tooth, unconsciousness, and a concussion) despite a lack of evidence that these were not preexisting conditions. Evidence that Segura was not already bruised, cut, concussed, and with a loose tooth and nasal fracture before encountering Brisbo was not requisite for the jury's verdict. Again, to reach the outcome requested by Brisbo this Court would have to independently weigh the evidence.

Finally, even if the evidence did not support a conclusion that Brisbo caused the nasal fracture by stomping on Segura's head (which of course it does) the evidence still supports the verdict. The evidence showed, and Brisbo does not contest, that his battery

caused Segura to lose consciousness, caused extensive swelling, bruising and lacerations to his face, loosened a tooth, and caused a concussion. Even if these were the only injuries Brisbo caused, the jury's verdict would still be supported by the evidence.

Brisbo next argues that the evidence he committed a battery is "problematic." (Appellant's brief, pp. 10-12.) This argument is wrong. The evidence that Brisbo struck Segura and was not justified in doing so is overwhelming. More importantly, the argument is irrelevant. Despite his protestations that he is not asking the Court to weigh the evidence, he is clearly asking the Court to weigh the evidence. Brisbo's argument fails both factually and legally.

The evidence shows that Brisbo struck Segura to the ground, where he stomped on Segura's head, causing multiple serious injuries. This evidence, weighed in favor of the jury's verdict, is more than sufficient to support the conviction.

II.
Brisbo Has Failed To Show That The District Court Abused Its Discretion When It Sentenced Him To Ten Years With Two Years Determinate Upon His Conviction For Aggravated Battery

A. Introduction

The district court imposed and executed a sentence of ten years with two years determinate. (R., pp. 109-12; Sent. Tr., p. 19, L. 19 – p. 20, L. 4.) Brisbo argues the sentence is excessive. (Appellant's brief, pp. 12-18.) Review of the record in light of the relevant legal standards shows no abuse of discretion by the district court.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d

387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). In determining whether the lower court abused its discretion, this Court applies a three-prong test: "'(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.'" State v. Fisher, 162 Idaho 465, 468, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

C. The District Court Did Not Abuse Its Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and

retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. A sentence is reasonable "'if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.'" Bailey, 161 Idaho at 895–96, 392 P.3d at 1236–37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

In determining the sentence, the district court applied the relevant legal standards to the evidence before it. (Sent. Tr., p. 17, Ls. 6-21.) It based is sentence on several factors. First, it considered Brisbo's "long" criminal record with 56 convictions, which, although it consisted only of misdemeanors, also included crimes of violence. (Sent. Tr., p. 17, L. 21 – p. 18, L. 5; p. 18, Ls. 20-23.) The district court found that Brisbo "throughout this case" "minimized his actions." (Sent. Tr., p. 18, Ls. 6-11.) The district court also found that Brisbo "minimiz[ed] his abuse of alcohol." (Sent. Tr., p. 18, Ls. 12-19.) Brisbo's prior probations were "unsuccessful" and his performance thereon "abysmal," leaving the district court with "no confidence the defendant could succeed on probation." (Sent. Tr., p. 18, L. 23 – p. 19, L. 1.) The short sentences imposed upon Brisbo's numerous misdemeanor convictions "have not deterred him" from the present crime of violence that "resulted in somebody being injured and injured significantly." (Sent. Tr., p. 19, Ls. 2-7.) A short sentence, in light of Brisbo's record and the violence in this case, would not "give due appreciation to the facts of this case," but a "significant sentence will deter the defendant" and give him the opportunity to "get himself the treatment he needs" to "stay sober" and "stop being belligerent and violent." (Sent. Tr., p. 19, Ls. 8-18.) Because the district court applied the relevant legal standards reasonably to the facts, it did not abuse its discretion.

On appeal Brisbo challenges the district court's characterization of his record and the facts of the underlying crime. (Appellant's brief, pp. 16-17.) He does not challenge the district court's conclusions that he minimizes his alcohol abuse, lacks rehabilitation potential, or that a longer sentence would serve a deterrent effect. Brisbo has failed to show clear error, or an abuse of discretion.

First, Brisbo claims that his record does not contain crimes of violence, as found by the district court, but instead reflects only crimes "closely related to homelessness." (Appellant's brief, pp. 16-17.) This argument apparently assumes that Brisbo's nine convictions for assault, four convictions for resisting arrest (as compared to his seven convictions for obstructing), and his conviction for threatening a law enforcement officer or family, do not reflect "violence." (PSI, pp. 4-17.) Brisbo has shown no clear error in the district court's finding that Brisbo's criminal record includes convictions for crimes of violence.

Second, Brisbo claims he did not cause "substantial or permanent injuries." (Appellant's brief, p. 17.) Although he is correct there is no evidence that Segura's unconsciousness, loose tooth, concussion, or broken nose were "permanent," Brisbo has failed to show clear error in the district court's findings he inflicted "significant and serious injuries [on] the victim." (Sent. Tr., p. 18, Ls. 6-11.)

Brisbo also claims he was acting in self-defense, and therefore his actions were not as egregious as found by the district court. (Appellant's brief, p. 17.) This assertion was rejected by the jury, is unsupported by the evidence, and shows no clear error in the district court's finding that he "violently beat this victim." (Sent. Tr., p. 18, Ls. 6-11.) Even if there was some truth the the claim that Brisbo initially acted to protect another, there is no

support for the argument that stomping on the victim's head as he lay on the concrete was part of any reasonable defense of others.

Finally, Brisbo argues he served 270 days prior to sentencing, and more since. (Appellant's brief, p. 17.) Once that total reaches 730, Brisbo will be eligible for parole. Other than that, this argument is irrelevant. The district court's decision to impose a sentence of two years to be served, as deterrence and in response to the seriousness of the crime, was reasonable, and to have a lengthy time after that for parole, to overcome a life-time of alcohol abuse and criminal behavior, was also reasonable. Brisbo has shown no abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 5th day of June, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of June, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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