11-18-2016

Brief of Appellant, Matthew Bredlow v. State of Maryland, No. 621

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IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2016

No. 621

MATTHEW BREDLOW,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

Appeal from the Circuit Court for Harford County
(The Honorable Yolanda L. Curtin, presiding)

BRIEF OF APPELLANT MATTHEW BREDLOW

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STATEMENT OF THE CASE

Matthew Bredlow was charged in the Circuit Court for Harford County with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, malicious destruction of property over $1,000, and failure of a driver to remain at the scene of an accident resulting in bodily injury or death. (Case No. 12-K-14-1845). Mr. Bredlow was tried by a jury presided over by the Honorable Yolanda L. Curtin. During trial, Judge Curtin granted Mr. Bredlow's motion for judgment of acquittal on the charge of attempted first-degree murder. On February 5, 2016, the jury returned a verdict of guilty on all remaining counts. On May 10, 2016, Judge Curtin sentenced Mr. Bredlow to a thirty-year sentence with all but twelve years suspended. A timely notice of appeal was filed on May 20, 2016. This appeal follows.

QUESTIONS PRESENTED

I. Did the trial court abuse its discretion when it denied Mr. Bredlow's requested jury instruction on self-defense where that instruction was fairly generated by Bredlow's testimony that he struck and injured Mr. Riley as he (Bredlow) attempted to escape Riley's advancing assault with a tire iron?

II. Did the trial court err when it denied Mr. Bredlow's motion for judgment of acquittal as to attempted second-degree murder when there was insufficient evidence for a jury to conclude beyond a reasonable doubt that Mr. Bredlow intended to kill Mr. Riley, as opposed to grievously injury him?

STATEMENT OF FACTS

On November 18, 2014, Matthew Bredlow was driving home from Washington, D.C., when he noticed a man, later discovered to be Mr. Riley, shouting and gesturing aggressively toward him in the adjacent lane to his right. (T^5 at 31-35)[1]. According to Mr. Bredlow, the encounter—which included commands from Mr. Riley to "pull over"—continued for at least one mile until Mr. Riley abruptly pulled into a Wendy's parking lot. (T^5 at 34, 44). Mr. Bredlow, wishing to report Mr. Riley's threatening behavior to the authorities, turned into the Wendy's parking lot in order to take a picture of Mr. Riley and his license plate. (T^5 at 35). As Mr. Bredlow approached Mr. Riley's now-parked car from behind, he observed Mr. Riley run to the trunk of his car and pick up what looked to be a tire iron. (T^5 at 39). Frightened for his well-being, Mr. Bredlow "swerved to the left and hit the accelerator to try to get away." (T^5 at 40). In doing so, he "accidentally sideswiped the rear corner of [Mr. Riley's] vehicle and bumped him." *Id.* After this "horrible miscalculation" and "out of fear for [his] own life," Mr. Bredlow drove out of the parking lot and "went back to [his] parents' house to tell them what had happened." (T^5 at 40-41). Shortly thereafter, Mr. Bredlow was arrested and charged with, *inter alia*, attempted second-degree murder.

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[1] Citations to the trial transcript are as follows:

- T^1 = first competency hearing, Feb. 2, 2015
- T^2 = second competency hearing, Sep. 18, 2015
- T^3 = pretrial motions hearing, Jan. 27, 2016
- T^4 = trial, day one, Feb. 3, 2016
- T^5 = trial, day two, Feb. 4, 2016
- T^6 = trial, day three, Feb. 5, 2016
- T^7 = sentencing, May 10, 2016

At trial, Mr. Riley's account of the incident differed greatly from Mr. Bredlow's. According to Mr. Riley, he was driving home and talking to his ex-wife on the phone when he noticed Mr. Bredlow traveling in the lane to his left. (T^4 at 26-27). According to Mr. Riley, Mr. Bredlow appeared aggressive and was trying to say something, so Mr. Riley rolled down his window. (T^4 at 28). At this point, while traveling 40-45 mph, the two men exchanged some "nasty words" and Mr. Riley "kind of just laughed" at Mr. Bredlow. (T^4 at 28, 50). Mr. Riley told the jury that, in response, Mr. Bredlow spit from his driver's seat, through his passenger-side window, against 40-45 mph headwinds, through Mr. Riley's open window, and onto Mr. Riley's face. (T^4 at 28-29, 50, 52). Mr. Riley testified that he hit his brakes "trying to get away from him" and Mr. Bredlow followed, "constantly trying to keep next to" him. (T^4 at 29). Eventually, Mr. Bredlow "got a few cars ahead of" him and Mr. Riley "thought it was over." (T^4 at 30).

Mr. Riley then decided to pull into the Joppatown Shopping Center to pick up food from Wendy's. (T^4 at 30-31). He parked far from the Wendy's entrance because he is "very particular with [his] vehicles" and "[doesn't] like door dings." (T^4 at 36). Thereafter, Mr. Riley said he popped his trunk and walked to the back of his car to change his shoes. (T^4 at 31). At that moment, Mr. Riley "noticed a vehicle proceeding to come into the parking lot at a high rate of speed." *Id.* Mr. Riley believed it was Mr. Bredlow and that he "wasn't going to stop" so he "moved to the side of [his] car, pretty much near the gas tank" and that was the last thing he remembered. (T^4 at 37). Mr. Riley was unsure whether he was hit by Mr. Bredlow's vehicle or his own after the impact. (T^4

at 53). Mr. Riley was taken to the hospital where he was treated for non-life threatening injuries, including a leg fracture, and released that night. (T^4 at 40-43).

Despite their conflicting testimonies, neither Mr. Riley nor Mr. Bredlow offered any explanation for why the initial argument started. When asked if he had "any idea what may have caused the aggravation," Mr. Riley responded: "No. I didn't cut anybody off. I was just driving in the slow lane, doing the speed limit, and having a conversation with my ex." (T^4 at 48-49). Likewise, Mr. Bredlow testified that he was "traveling with [a] group of vehicles [when Mr. Riley's] white Nissan Maxima began pulling up directly beside" him. (T^5 at 31-32). This continued "for quite some time" until Mr. Bredlow "noticed [Mr. Riley] out of the right corner of [his] eye. He was making a lot of hand gestures and he already had his window rolled down." (T^5 at 32).

The State produced four witnesses, each of whom observed varying parts of the events after Mr. Riley entered the Wendy's parking lot. (T^4 at 3). First, Mr. Wimer testified that he was turning into the Wendy's shopping center when he noticed Mr. Bredlow's car behind him on Joppa Farm Road. (T^4 at 64-65). Once in the parking lot, Mr. Wimer observed Mr. Bredlow pass him on his left hand side and "head[] directly towards [Mr. Riley's] car." (T^4 at 66). Mr. Wimer then observed Mr. Riley take "a step, maybe two steps towards his vehicle" before Mr. Bredlow "hit [Mr. Riley's] car at the left rear corner panel." (T^4 at 67). According to Mr. Wimer, Mr. Riley "leapt into the air" shortly before the impact and landed on the hood of Mr. Bredlow's car. (T^4 at 68). Mr. Riley then "rolled off the hood of the car," "sat up," and "was dazed and he shook his

head." (T[4] at 68-69). Once Mr. Riley was on the ground, Mr. Bredlow turned left and drove out of the parking lot. (T[4] at 69-70).

Next, the jury heard testimony from Mr. Dufour, a contractor who was working on the walk-in freezer at Wendy's that day. (T[4] at 85). Mr. Dufour testified that he was "about to climb inside" his van to get a tool when he "heard tires squealing and . . . a smash." (T[4] at 85-86). When Mr. Dufour looked up, he saw Mr. Riley "going across the hood of [Mr. Bredlow's] car." (T[4] at 100-01). Then, Mr. Dufour observed Mr. Bredlow make "a half a U-turn and [speed] off out of the parking lot." (T[4] at 87).

The jury also heard from Ms. Clark, who testified that she "saw a blue car go around a yellow truck and speed up towards and hit a white Nissan." (T[4] at 105). Afterwards, Mr. Bredlow "just drove right back out onto Route 40" and left the scene. (T[4] at 106). When asked if Mr. Bredlow headed straight for Mr. Riley's car or if he turned towards anything else, Ms. Clark responded: "He was headed straight for the car." (T[4] at 107). Ms. Clark further testified that, before the collision, Mr. Riley "had gotten out of his car and gone to his trunk, then back over by his door." (T[4] at 109-10).

The final eyewitness was Mr. Rockstroh, who was in the Wendy's drive-through when he "heard a large crash," turned his head and "saw [Mr. Riley] on top of a car." (T[4] at 111-12). According to Mr. Rockstroh, Mr. Riley was "on the hood of the car, trying to hold on" while Mr. Bredlow was "swerving back and forth" "trying to shake [him] off the hood." (T[4] at 113). After Mr. Riley fell off the hood, Mr. Bredlow "continue[d] out through the entrance of the shopping center and turn[ed] right on Pulaski Highway." *Id.*

Mr. Rockstroh testified that he did not see "where [Mr. Riley] had been before the collision" or "what led up to the collision." (T[4] at 114-15).

Before closing arguments, Mr. Bredlow's attorney moved for a judgment of acquittal as to the attempted second-degree murder charge. (T[5] at 69). He argued that the State had not provided evidence to show Mr. Bredlow intended to kill Mr. Riley. *Id.* Specifically, counsel argued there was insufficient evidence to determine whether "he intended to strike that person, and that when he did so that his intention was to kill the person." *Id.* Ultimately, the trial court denied the motion. (T[5] at 73).

Thereafter, defense counsel requested that the jury be instructed on the issue of self-defense on the basis that Mr. Bredlow "felt threatened by this person reaching into the trunk of his car who seemed to be getting a weapon, and that he tried to protect himself to get away." (T[5] at 74). The State, however, opposed any self-defense instructions because Mr. Bredlow "testified it was an accident and not an intentional act." *Id.* The trial judge, unsure whether the facts of this case "fit[] within the legal framework" for self-defense, told defense counsel that she would "need to read a little more to wrap [her] head around it." (T[5] at 76-78). The court recessed overnight. *Id.*

On the final day of trial, defense counsel withdrew his accompanying request to instruct the jury on the lesser-included offense of attempted voluntary manslaughter and the requisite imperfect self-defense instructions associated with that request—which he realized was "not appropriate." (T[6] at 4). However, the court did not address counsel's prior request for a self-defense instruction on the attempted second-degree murder charge. *Id.* Accordingly, the jury was not instructed on self-defense. (T[6] at 17-19).

During deliberation, the jury requested clarification on the following portion of the second-degree assault instructions: "That the contact was a result of an intentional or reckless act of the defendant and was not accidental." (T^6 at 57). The court—not wishing to create more confusion—responded with a note reading: "We are unclear of what you are asking. Please explain further." (T^6 at 58). Three hours later, without responding to the court's note, the jury returned a verdict of guilty on all counts. (T^6 at 59-61). Mr. Bredlow was sentenced to thirty years in prison with all but twelve years suspended. (T^7 at 26).

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MATTHEW BREDLOW'S REQUESTED JURY INSTRUCTIONS ON SELF-DEFENSE, WHICH WAS FAIRLY GENERATED BY EVIDENCE THAT MR. BREDLOW STRUCK AND INJURED MR. RILEY AS HE (BREDLOW) WAS ATTEMPTING TO ESCAPE RILEY'S ADVANCING ASSAULT WITH A TIRE IRON

It is a universally accepted principle that a person may use force to protect themselves from harm under appropriate circumstances, even when their behavior would normally constitute a crime. Self-defense is a judicially recognized defense in Maryland, meaning it has been created and refined by courts over time. "It is unquestioned that one is privileged to use force, even deadly force, in self-defense if legitimately and reasonably in fear of suffering death or serious bodily harm." *Jacobs v. State*, 32 Md. App. 509, 511 (1976). This fundamental right is guided by the human instinct of self-preservation—that is, society recognizes the innate desire to stay alive and to avoid bodily harm. Indeed, the Supreme Court pointed out that self-defense law tends to gravitate "in the direction of rules consistent with human nature." *Brown v. United States*, 256 U.S. 335, 343 (1921). Thus, society tolerates reasonable criminal behavior against another when it is necessary and intended to preserve one's own safety.

Generally, to be entitled to a self-defense instruction, an accused has a duty to retreat or avoid danger if such means were within his power and consistent with his safety. *Thornton v. State*, 162 Md. App. 719 (2005). In other words, "the accused must make all reasonable efforts to retreat before resorting to the use of deadly force." *Corbin v. State*, 94 Md. App. 21, 25 (1992).

Assuming this condition has been met, there are four elements required to justify assaultive conduct on the basis of self-defense:

> (1) the accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant; (2) the accused must have in fact believed himself in this danger; (3) the accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and (4) the force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

Roach v. State, 358 Md. 418, 429-30 (2000). As long as there is "some evidence" of these four elements, self-defense instructions must be granted upon request. *See Dykes v. State*, 319 Md. 206, 216-17 (1990). As the Court of Appeals recognized, "[*s*]*ome evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—'some,' as that word is understood in common, everyday usage." *Id* at 217-18. Significantly, "[t]he issue of self-defense can be generated on the uncorroborated statements of the defendant." *Watkins v. State*, 79 Md. App. 136, 139 (1989).

By the same token, the evidence necessary to generate the issue of self-defense may also come from the State. *See Evans v. State*, 28 Md. App. 640, 665 (1975) (holding that the evidence necessary to generate the issue of self-defense "may be, but need not be produced by the defendant. It may be found in the State's own evidence"); *Dykes*, 319 Md. at 217 ("The source of the evidence is immaterial; it may emanate solely from the defendant . . . . If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden"); *Street v. State*, 26 Md. App. 336, 338-41 (1975) (holding that an instruction should only

be given on the subject of self-defense where the evidence, *by whomsoever produced*, is legally sufficient to generate a legitimate jury issue in that regard).

On appeal, a trial court's decision not to grant a jury instruction is reviewed under an abuse of discretion standard. *Johnson v. State*, 223 Md. App. 128, 138 (2015). The appellate court considers "whether the instruction was generated by the evidence, whether it was a correct statement of law, and whether it otherwise was fairly covered by the instructions actually given." *Id.* (quotations and citations omitted). Thus, reviewing courts reverse on the basis of jury instructions failing to fairly cover the law. *Smith v. State*, 403 Md. 659, 663 (2008). Specifically, if "the instructions are ambiguous, misleading or confusing to jurors, those instructions will result in reversal and a remand for a new trial." *Id.*

Requested jury instructions are required to be given "when the following three-part test has been met: (1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197-98 (2008). Again, "the threshold is low, as a defendant needs only to produce 'some evidence' that supports the requested instruction." *Bazzle v. State*, 426 Md. 541, 551 (2012). The Court of Appeals has stated that "an abuse of discretion standard [is applied] to the court's decision not to give a requested instruction, yet we will not hesitate to reverse a conviction if we conclude that 'the defendant's rights were not adequately protected.'" *Carroll v. State*, 428 Md. 679, 689 (2012) (quoting *Cost v. State*, 417 Md. 360, 369 (2010)).

Significantly, the use of deadly force in self-defense cannot automatically be equated with a *conscious* decision to employ deadly force. *Ferrell v. State*, 304 Md. 679, 686 (1985). In other words, it is possible for a defendant to kill another in self-defense, yet to do so without the intention or expectation that their assailant will be killed. *Id.* To illustrate, a defendant fearing for his life may fire a warning shot at the ground that ricochets and kills his assailant; or a defendant may swing a baseball bat in order to frighten his assailant and accidentally strike and kill him. In both cases—assuming the issue is fairly generated by the evidence—a defendant may claim self-defense or, alternatively, that they lacked the specific intent to murder. In this way, "a defendant may raise inconsistent defenses" such as self-defense and accident. *Roach*, 358 Md. at 432; *see also Sims v. State*, 319 Md. 540, 550 (1990) (holding that "a defendant is entitled to have the jury instructed on any theory of defense that is fairly supported by the evidence, even if several theories offered are inconsistent"); *Bartram v. State*, 33 Md. App. 115, 118 (1976) ("To be sure, contradictory defenses are not impermissible in our jurisprudence").

In *Roach*, a defendant charged with first-degree murder "testified at trial that the shooting was accidental" and thus was barred by the trial court from instructing the jury on imperfect self-defense. 358 Md. at 432. The Court of Appeals reversed his conviction stating, "[e]ven if the defense of accident is inconsistent with self-defense … a defendant may raise inconsistent defenses." *Id.*

Similarly, in *Sims*, a defendant charged with second-degree murder denied any involvement in the shooting in addition to arguing that "the shooter, 1) acted in hot-

blooded response to legally adequate provocation or, 2) was entitled to claim imperfect self-defense." 319 Md. at 543. He was thereafter denied instructions on manslaughter. *Id* at 548. The trial judge, finding defendant's testimony to be inconsistent with a theory of mitigation, stated, "once he takes the stand and denies it I'm not going to allow him to walk both sides of the street." *Id.* The Court of Appeals disagreed, finding the defendant could "simultaneously advance inconsistent theories of defense." *Id* at 550.

In the present case, the State opposed defense counsel's requested self-defense instructions because "the defendant said this was an accident, that he never intended to strike Mr. Riley." (T^5 at 74). The State did not believe self-defense was generated because there needed "to be some sort of assaultive behavior or intentional act." *Id.* However, it is clear from the record that evidence was presented satisfying all four elements required to raise the issue of self-defense in Matthew Bredlow's case.

First, Mr. Bredlow's testimony suggested he "had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from" Mr. Riley. *Roach*, 358 Md. at 429. Mr. Bredlow testified that as he approached, "Mr. Riley ran to the trunk of his vehicle and [] picked up what looked to be a tire iron out of the spare tire compartment." (T^5 at 39). According to Mr. Bredlow, Mr. Riley was "going back and forth from his driver's door to his trunk" and "[h]e looked very angry and very, very aggressive." (T^5 at 37-38). Mr. Riley himself acknowledged that he had popped his trunk and that he had "some" tools within. (T^4 at 53). And, two of the state's independent witnesses confirmed that they saw Mr. Riley at the open trunk of his car shortly before the collision. (T^4 at 81-82, 109-10). Tire irons and heavy-duty tools—such

as those used by steamfitters like Mr. Riley—are capable of being deadly weapons. Furthermore, Mr. Bredlow testified that "[Mr. Riley] had threatened [him] several times." (T^5 at 45). Considering the fact that Mr. Riley was previously "screaming and gesturing with his hand" aggressively behind the wheel, it would have been reasonable for Mr. Bredlow to believe that he was in danger of death or bodily harm when he noticed the tire iron. (T^5 at 32-35).

As to the second element of self-defense, Mr. Bredlow did "in fact believe himself [to be] in [] danger." *Roach*, 358 Md. at 429. Mr. Bredlow testified that he "felt very scared" and "thought [Mr. Riley] was going to hit [him] with the tire iron." (T^5 at 40). Mr. Bredlow unambiguously stated, "[a]s soon as I saw him with the spare tire iron, I knew he was going to harm me or possibly damage my vehicle in some way." *Id.* He further testified that he feared for his life and that he "was frightened of [Mr. Riley]." (T^5 at 40, 45). Indeed, when Mr. Bredlow "saw [Mr. Riley] getting the tire iron [he] panicked for [his] own life and realized [Mr. Riley] was trying to fight [him]." (T^5 at 56).

Mr. Bredlow also satisfied the third element required for self-defense because there was evidence suggesting that he was not "the aggressor" and that he did not "provoke[] the conflict." *Roach*, 358 Md. at 429. According to Mr. Bredlow, he wanted to get a picture of Mr. Riley and his license plate in order to notify police about the road rage incident and he "did not want to confront [Mr. Riley] physically or verbally." (T^5 at 46-48). Furthermore, Mr. Bredlow indicated that he "was traveling roughly 10 miles an hour" when he approached Mr. Riley and suddenly noticed the tire iron. (T^5 at 55-56). "By that point," he said, "I was already slowing way down to come to a complete stop."

(T[5] at 56). In fact, Mr. Bredlow stated that "[t]he only time [he] accelerated was when [he] was leaving the scene of the accident." (T[5] at 53). Hence, Mr. Bredlow's testimony that he lawfully entered a parking lot to gather evidence for a police complaint provides "some evidence" that he was not the aggressor.

Mr. Bredlow satisfied the final element of the self-defense test because he did not use "more force than the exigency demanded." *Roach*, 358 Md. at 430. Mr. Bredlow testified that he deliberately drove away from Mr. Riley to avoid being assaulted by him. In doing so, Mr. Bredlow did not intend to employ any force at all. Essentially, Mr. Bredlow testified that he made "a horrible miscalculation and accidently struck [Mr. Riley]." (T[5] at 40). Moreover, Mr. Bredlow repeatedly stated that he "did not intend to hit Mr. Riley's vehicle or him." (T[5] at 53).

Interestingly, because Mr. Bredlow testified he deliberately used force to escape but did not mean to use any force to assault, the State argued the evidence did not sufficiently generate the issue of self-defense. Specifically, the State contended that because Mr. Bredlow claimed the contact with Mr. Riley was accidental (though his escape attempt was quite intentional), he could not assert that he used force in self-defense. (T[5] at 74, 76). In the State's view, a claim of self-defense can only be justified if the accused engages in "some sort of assaultive behavior or intentional act." (T[5] at 74). This line of reasoning is misguided for two reasons. First, it ignores the fact that Matthew Bredlow did engage in an intentional act—he intentionally accelerated his car in an effort to escape. Second, it contradicts the rationale behind the common law right of self-defense.

As a matter of good public policy, a defendant who unintentionally injures his assailant in an intentional attempt to retreat should be entitled to the same self-defense instructions as a defendant who chooses instead to engage in combat and intentionally injures his assailant. To hold otherwise encourages individuals to always use force instead of exercising the well-established duty to retreat when safe to do so. In other words, Mr. Bredlow testified that he was attempting to do exactly what the law required—retreat from an oncoming attack—when he struck and injured Mr. Riley. To now hold that Mr. Bredlow is not able to avail himself of a self-defense claim creates a puzzling paradox—imposing both a duty to retreat and simultaneously no protection from liability if that mandatory retreat injures the attacker.

The facts of this case are decidedly unique. Namely, Mr. Bredlow's vehicle simultaneously served as a weapon and as a means of escape. There are no other circumstances imaginable in which a "weapon" may also be used independently as a mode of retreat. In this case, Mr. Riley manifested an intention to harm Mr. Bredlow with a tire iron, a deadly weapon. Mr. Bredlow was not armed—in the traditional sense, at least—and was confined to his vehicle. In the end, Mr. Riley suffered a fractured bone in his leg, two torn ligaments in his knees, and torn cartilage in his shoulder. If Mr. Riley had successfully used his tire iron, Mr. Bredlow may arguably have suffered much worse. Mr. Bredlow would have been within his rights to directly, and intentionally, employ comparable force. However, Mr. Bredlow instead chose to retreat and, in doing so, struck Mr. Riley's car and person. Under the trial court's interpretation of the law, Mr. Bredlow would have been treated more favorably in terms of jury instruction had he

intended to strike Mr. Riley. This is an absurd result and runs counter to society's justifications for self-defense. A defendant should not be penalized for choosing to employ less force against his assailant than he is entitled to. To the contrary, using the least amount of force possible should be encouraged. Accordingly, because Mr. Bredlow's common law right to self-defense was not adequately protected, this Court should reverse his conviction.

II. THE TRIAL COURT ERRED BY DENYING MR. BREDLOW'S MOTION FOR JUDGMENT OF ACQUITTAL AS TO ATTEMPTED SECOND-DEGREE MURDER BECAUSE THERE WAS INSUFFICIENT EVIDENCE FOR A JURY TO CONCLUDE BEYOND A REASONABLE DOUBT THAT MR. BREDLOW INTENDED TO KILL MR. RILEY

The State's theory of attempted murder rested upon the unsupported inference that "Mr. Bredlow's actions . . . manifest that he had an intent to kill" Mr. Riley. (T[5] at 71). However, the State's argument did not overcome the equally plausible, if not stronger, inferences that Mr. Bredlow acted negligently or merely intended to grievously injure Mr. Riley. Therefore, the jury was forced to rely on mere speculation when it discerned Mr. Bredlow's intent.

The Court of Appeals has held "that where an attempted murder is charged, the State must show a specific intent to kill—an intent to commit grievous bodily harm will not suffice." *State v. Earp*, 319 Md. 156, 164 (1990) (emphasis added). Indeed, while an intent to grievously harm may adequately support a conviction for consummated murder, it will not sustain a conviction for attempted murder. *Abernathy v. State*, 109 Md. App. 364, 374-75 (1996); *see also Austin v. State*, 90 Md. App. 254, 268-69 (1992). As this Court has said, "our legal analysis [recognizes] that the *mens rea* for attempted murder is narrower than the *mens rea* for consummated murder." *Id.*

Because "intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *State v. Smith*, 374 Md. 527, 536 (2003). A proper inference "must be ... based upon a rational connection between the facts established and the fact to be inferred." *Evans v. State*, 28 Md. App. 640, 704 (1975).

On the other hand, an inference is "irrational and arbitrary, and hence unconstitutional, unless it can at least be said with substantial assurance that the [inferred fact] is more likely than not to flow from the proved fact on which it is made to depend." *Id.* (quoting *Leary v. United States*, 395 U.S. 6, 36 (1969)) (internal quotations omitted).

An intent to kill may be inferred when "a man voluntarily and willfully does an act, the natural and probable consequence of which is to cause another's death." *Lindsay v. State*, 8 Md. App. 100, 105 (1969). Thus, in homicide cases, juries may draw the "permitted inference of an intent to kill or of an intent to do grievous bodily harm from the directing of a deadly weapon at a vital part of the human anatomy or from some similar use of deadly force." *Evans v. State*, 28 Md. App. 640, 704 (1975).

As applied, these rules mean that using a knife to stab a victim in the head or chest is usually sufficient to show intent to kill, but stabbing a victim "in the leg does not necessarily mean that [a defendant] possessed the intent to inflict grievous bodily harm such that death would be the likely result." *Thornton v. State*, 397 Md. 704, 737 (2007). In *Selby v. State*, this Court reversed an attempted murder conviction where the accused stabbed his robbery victim in the lower back with a large butcher knife. 76 Md. App. 201 (1988). It was found that "appellant's intent was to do grievous bodily harm," which would not support a conviction for attempted murder where the victim survived. *Id* at 218.

In addition to the traditional weapons framework, Maryland's homicide jurisprudence occasionally deals with cases that do not entail the use of a deadly weapon aimed at a vital body part. In such cases, the courts examine whether there was a "similar

use of deadly force" from which to infer murderous intent. *Evans*, 28 Md. App. at 704. Again, the evidence must suggest that death was "the natural and probable consequence" of the accused's actions, not merely a possibility. *Lindsay*, 8 Md. App. at 105. Otherwise, the evidence is insufficient to establish intent to kill.

For instance, in *Smallwood v. State*, the Court of Appeals held evidence showing that an HIV-positive rapist knowingly and willfully exposed three of his victims to the deadly virus was insufficient to prove an intent to kill. 343 Md. 97 (1996). The court reasoned that the State had not presented evidence "from which it can reasonably be concluded that death by AIDS is a probable result of Smallwood's actions to the same extent that death is the probable result of firing a deadly weapon at a vital part of someone's body." *Id.* at 106. The question of whether a defendant intended to kill begins with consideration of "the magnitude of the risk to which the victim is knowingly exposed." *Id* at 105. Indeed, "[b]efore an intent to kill may be inferred based solely upon the defendant's exposure of a victim to a risk of death, it must be shown that the victim's death would have been a natural and probable result of the defendant's conduct." *Id.* at 105-06 (emphasis added).

In a case with facts closely mirroring our own, the Court of Appeals of Virginia reversed the attempted murder convictions of a defendant who drove his vehicle through two police roadblocks. *Haywood v. Commonwealth*, 20 Va. App. 562 (1995). The court explained:

> [T]he question in this case is not whether [defendant]'s acts might have resulted in the murder of the police officers. Rather, the question is whether [defendant], while driving his truck, formed the specific intent to use his

vehicle as a weapon for the unequivocal purpose of murdering the police officers.

Id at 566. In finding insufficient evidence of intent, the court reasoned that while the record "may support an hypothesis that [defendant] acted with malice and intended to run over or through anyone or anything that got in his way," the prosecution failed to exclude another reasonable inference that would exonerate him. *Id* at 567. Namely, the defendant was in trouble with the law and wanted to avoid apprehension. *Id.* The court emphasized there was no evidence that defendant swerved to "hit the police cars when they pulled out of his path or that he turned his truck around in an attempt to hit the police cars after passing by them." *Id.*

When reviewing a denial of a motion for judgment of acquittal, this Court considers "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." *Briggs v. State*, 348 Md. 470, 475 (1998) (quotations and citations omitted). Crucially, the beyond a reasonable doubt standard "is not confined to those defendants who are morally blameless. Under our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar." *Jackson v. Virginia*, 443 U.S. 307, 323-24 (1979). However, "review of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal." *Whiting v. State*, 160 Md. App. 285, 308 (2004).

In this case, Mr. Bredlow argued that the State had not met its burden of showing that he intended to kill Mr. Riley. (T[5] at 69-70). Specifically, Mr. Bredlow claimed there

was insufficient evidence showing, "even in the light most favorable to the State, that he intended to strike [Mr. Riley], and that when he did so that his intention was to kill [Mr. Riley]." (T[5] at 69).

The testimony at trial, in the light most favorable to the State, indicated that Mr. Bredlow "seemed aggressive" and that he managed to spit through two separate windows against 40-45 mph headwinds onto Mr. Riley's face. (T[4] at 28-29). However, the evidence did not permit a reasonable conclusion that death was a "probable result of [Mr. Bredlow's] actions to the same extent that death is the probable result of firing a weapon at a vital part of someone's body." *Smallwood*, 343 Md. at 106. Significantly, the crash occurred in an enclosed Wendy's parking lot. Although Mr. Wimer testified that—judging "by the sound of [his] engine"—Mr. Bredlow accelerated before the collision, the relative lack of space suggests Mr. Bredlow may not have believed he was reaching a lethal speed. (T[4] at 80). The State's exhibits show that the airbags in Mr. Bredlow's car did not activate, further confirming a low speed on impact.[2] Additionally, Mr. Riley testified that he was unsure whether he was actually hit by Mr. Bredlow's car or by his own car after the initial crash. (T[4] at 53). This is further corroborated by the ambulance report, which states that Mr. Bredlow "rammed [Mr. Riley's] car which in turn struck [Mr. Riley] and sent him tumbling." (App. 6).

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[2] According to the National Highway Traffic Safety Administration (NHTSA), "Frontal air bags are generally designed to deploy in "moderate to severe" frontal or near-frontal crashes, which are defined as crashes that are equivalent to hitting a solid, fixed barrier at 8 to 14 mph or higher. (This would be equivalent to striking a parked car of similar size at about 16 to 28 mph or higher.)." *Air Bag FAQs – Safercar.gov*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www.safercar.gov/Vehicle-Shoppers/Air-Bags/General-FAQ. (last visited Nov. 15, 2016).

According to Ms. Clark, Mr. Bredlow drove in a straight path toward Mr. Riley's car. (T[4] at 107). Mr. Wimer also testified that Mr. Bredlow drove toward Mr. Riley's car and that after the initial impact, Mr. Riley "leapt into the air. I remember him taking that jump." (T[4] at 68). After Mr. Bredlow's car "rolled left off of" the other car, Mr. Riley ended up "on the hood of the car" and eventually the ground. *Id.* Taken together, this evidence, at most, supports an inference that Mr. Bredlow drove into the parking lot intending to hit Mr. Riley's car. However, it cannot "be said with substantial assurance" that Mr. Bredlow intended to kill Mr. Riley. *Evans*, 28 Md. App. at 704. The same set of facts also support an inference that Mr. Bredlow intended to grievously harm Mr. Riley or that Mr. Bredlow was grossly negligent in his attempt to get a picture of Mr. Riley. Indeed, Mr. Bredlow's jury (fruitlessly) sought clarification on the following portion of the assault instructions: "That the contact was a result of an intentional or reckless act of the defendant and was not accidental." (T[6] at 57).

Mr. Wimer indicated that "[t]here weren't many vehicles" in the parking lot that day and that it was "wide open." (T[4] at 66). He also testified that Mr. Riley sat up immediately following the collision. (T[4] at 79). Thus, like the defendant in *Haywood*, Mr. Bredlow could have easily circled back and hit Mr. Riley again while he was on the ground. Instead, Mr. Bredlow "made a half a U-turn and sped off out of the parking lot." (T[4] at 87).

The record indicates that Mr. Riley is an able-bodied, thirty-four year old man who did not suffer life-threatening injuries. (T[4] at 21). In fact, after the crash, Mr. Riley was taken to "the hospital and released that night." (T[4] at 43). Moreover, photographs of

Mr. Riley taken one day after the accident indicate that he was able to stand unassisted. (App. 1-5). Due to the relatively small size of Mr. Bredlow's car, the offensive contact was primarily with Mr. Riley's shins. (T^4 at 47). Mr. Riley's injuries included a "broken left leg, torn PCLs, [and a] torn labrum in [his] shoulder"—hardly the type of injuries one would expect from an attempted murder. (T^4 at 41).

In summation, a rational jury could not reasonably infer from the aforementioned facts that Mr. Bredlow intended to kill Mr. Riley as opposed to merely causing him grievous bodily harm. Because the inchoate charge required a specific intent to kill, the trial court committed reversible error when it denied Mr. Bredlow's motion for judgment of acquittal.

CONCLUSION

For the foregoing reasons, Mr. Bredlow respectfully requests that this Court vacate his conviction on the charge of attempted second-degree murder, or, at a minimum, that his convictions be reversed and his case remanded for new trial.

Respectfully submitted,

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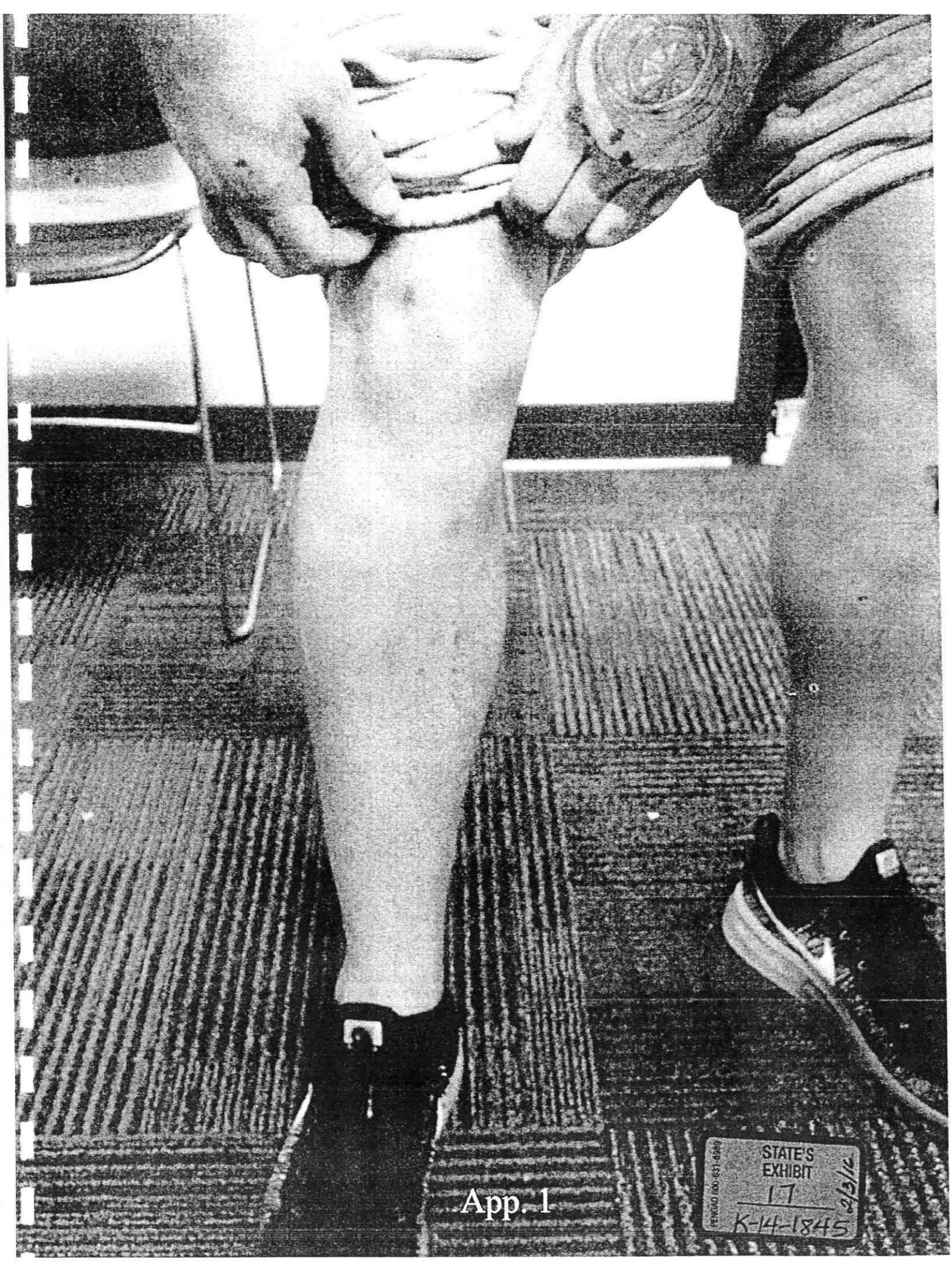
CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 8,208 words, excluding the parts of the brief exempted from the word count by Rule 8-112.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

APPENDIX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K-14-1845
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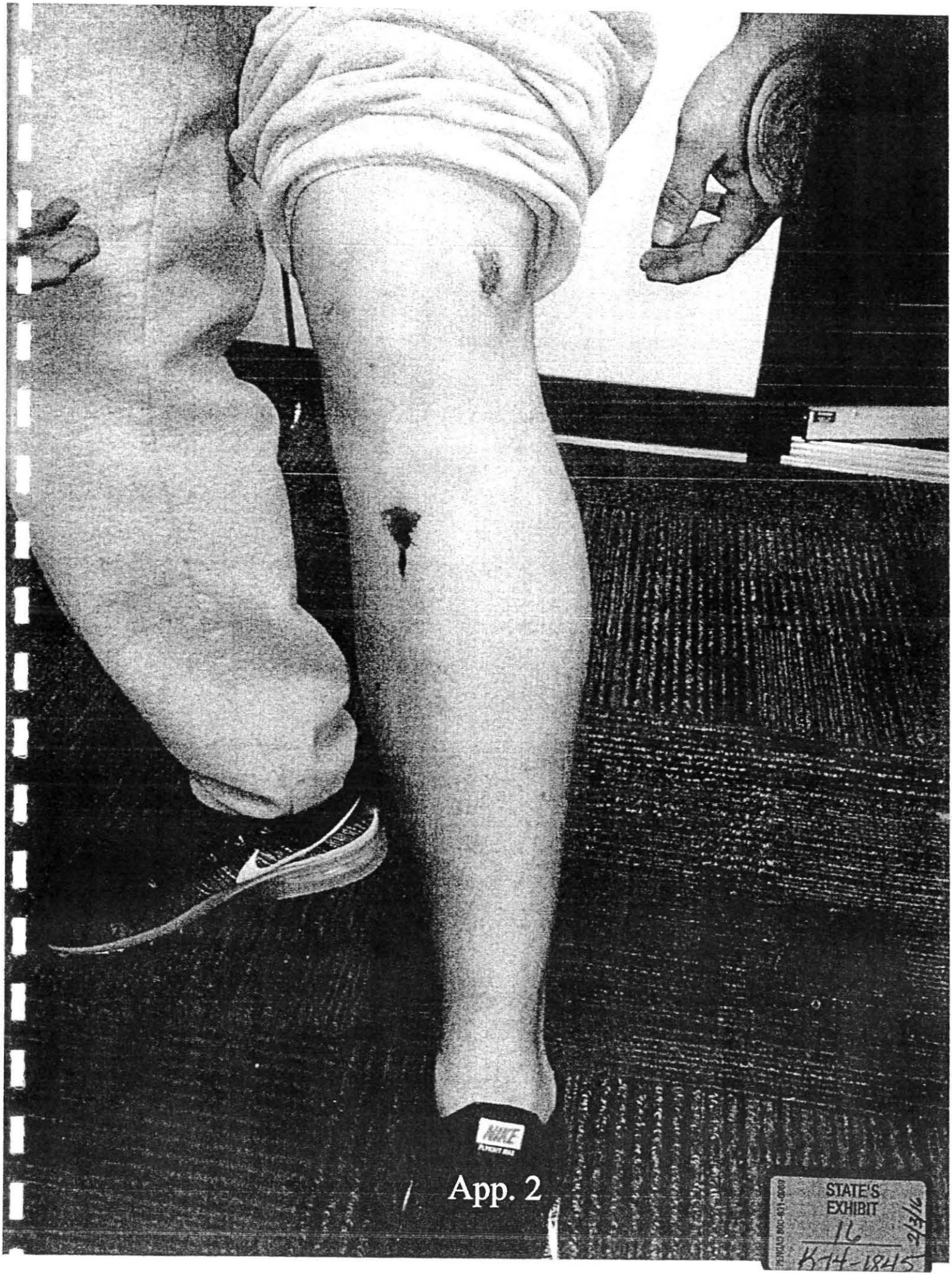

App. 2

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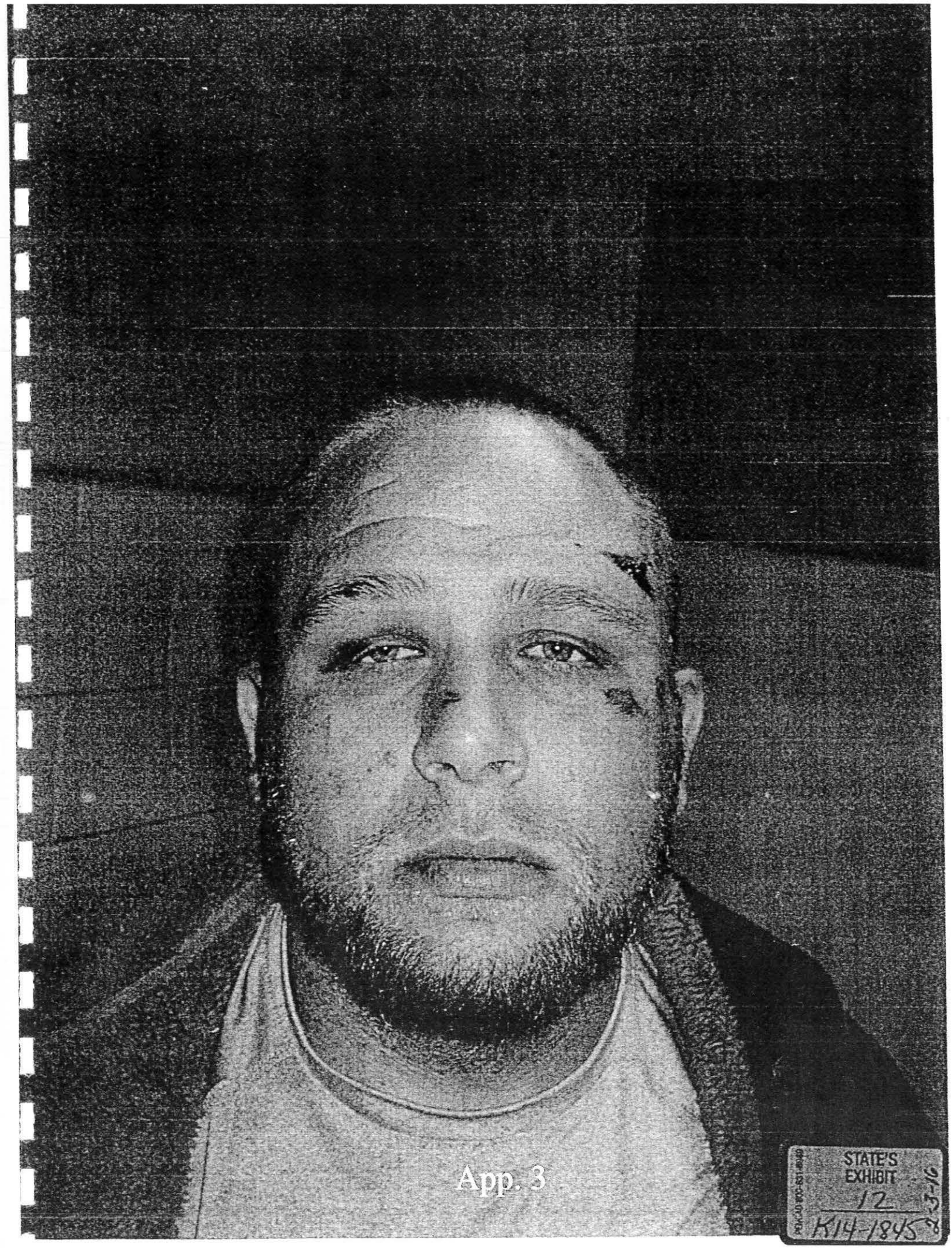
K14-1845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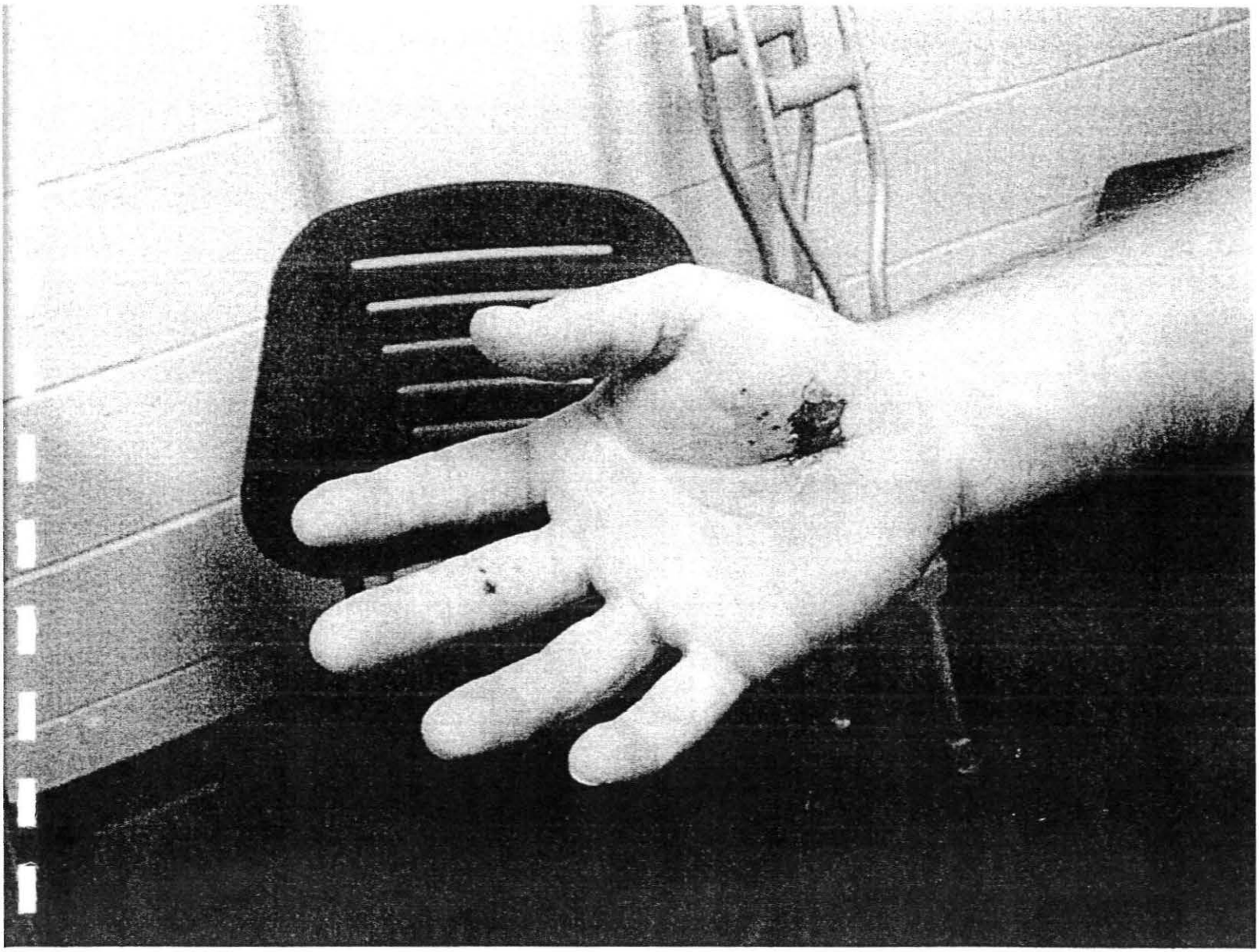

Primary Symptom
Pain - Extremity

Other Associated Symptoms
Bleeding

Patient Vitals

Time	B/P	Pulse	Rhythm	Resp.	Effort	SpO2	SpO2 Qual.	EtCO2	GCS	Pain	Stroke Scl	PTA	B.G.	RTS	Limb	Patient Position
15:58	151/98	102	Regular	16	Normal	99	Rm. Air		15	7	Negative Cincinnati Stroke Scale			12	Right Arm	Supine
16:03	143/99	94	Regular	14	Normal	100	Low O2		15					12	Right Arm	Supine
16:13	132/96	94	Regular	14	Normal	100	Low O2		15	7				12	Right Arm	Supine

Glasgow Coma Score

Date/Time	Glasgow Eye Opening	Glasgow Verbal	Glasgow Motor	Glasgow Coma Score
15:58	4	5	6	15
16:03	4	5	6	15
16:13	4	5	6	15

Past Medical History

MEDICATION ALLERGIES	Generic Name	Description
NKDA (No Known Drug Allergies)	NKDA (No Known Drug Allergies)	

Environmental/Food Allergies	Description
None	

Patient Medications	Generic Name	Dosage
TOPAMAX		

Medical Surgery History
Seizure Disorder

History Primarily Obtained From	Pregnancy	Advanced Directives	Practitioner Name
Patient		None	

Procedures and Treatments

Time	Crew	Name	Location	Size of Equipment	Attempts	Response	Success	Comments
15:52	PW	Spinal Assessment - No Deficits Noted			1	Unchanged	Yes	
15:53	PW	Cervical Spinal Immobilization - Rigid Collar			1	Unchanged	Yes	
15:55	PW	Spinal Immobilization - Long Back Board			1	Unchanged	Yes	
15:58	PW	Cardiac Monitor			1	Unchanged	Yes	
16:00	PW	Venous Access - Saline Lock	Antecubital-Left	16	1	Unchanged	Yes	

Medication Administered

Time	Crew	Medication	Route	Dosage	Response	PTA	Comments
15:59	PW	Oxygen by Nasal Cannula	Nasal Cannula	4 LPM	Unchanged	No	
16:05	PW	Lactated Ringers	Intravenous (IV) Fluids	100 ML	Unchanged	No	

ECG Monitor

Time	ECG Type	ECG Lead	ECG Interpretation	ECG Ectopy	Cause For Change

Narrative

Summary of Events

T WAS A 34 YOM WHO WAS ADVISED HE WAS CHASED BY AN UNK MALE WHO SPAT ON HIS CAR. PT PULLED INTO A PARKING LOT AND GOT OUT OF HIS CAR THINKING OTHER DRIVER WAS GONE WHEN HE SUDDENLY CAME INTO PARKING LOT AT A HIGH RATE OF SPEED AND DELIBERATELY RAMMED PT'S CAR WHICH IN TURN STRUCK HIM AND SENT HIM TUMBLING ABOUT 25 TO 30 FEET TO WERE HE NOW LAY. PT WAS AAOX3 BUT COULD NOT ADVISE ON LOSS OF CONC. PT HAD NO PINAL DEFICIT BUT WAS SHAKING BAD FROM THE EXTREME COLD. WE HAD TO CUT OFF HIS HOODED SWEAT SHIRT TO GET C-COLLER ON AND THEN BOARDED AND LOADED TO GET HIM OUT OF COLD. PT HAD ABRASIONS TO FORE HEAD AND BOTH HANDS AS WELL AS LEFT TIBIA WITH PAIN AT 7 TO TIBIA ONLY AND BLEEDING CONTROLLED. NO FX NOTED AND FIRST VITALS BP 151/98 PULSE 102 REG SHOWING BORDERLINE SINUS TACH RESP 16 CL BI-LAT SAT 99RA. PT EXPOSED AND CONDARY SHOWED HEAD WOUND ABRASION TO FOREHEAD NECK CL CHEST RISE EQ ABDOMEN SOFT PELVIS GOOD NO OTHER INJURY TO LOWER EXTREMITIES D ARMS HAD ABRASION TO BOTH HANDS WITH BLEEDING CONTROLLED. IV TO LAC 16GA WITH 1000 ML BAG LR HUNG TKO AND O2 NC AT 4LPM. PT TRANSPORTE TO J.H. BAYVIEW AS PRI 2 CAT C.

Prior Aid

App. 6

MATTHEW BREDLOW,	*	IN THE
Appellant,	*	COURT OF SPECIAL APPEALS
v.	*	OF MARYLAND
STATE OF MARYLAND,	*	September Term, 2016
Appellee.	*	No. 621

* * * * * * * * * * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of November, 2016, three copies of the Brief of Appellant were mailed, first-class, postage pre-paid, to the Office of the Attorney General, Criminal Appeals Division, 17th Floor, 200 St. Paul Place, Baltimore Maryland, 21202.

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Counsel for Appellant

*Practicing pursuant to Rule 19, Rules Governing Admission to the Maryland Bar.