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Aug 23 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From York County
Hon. William A. McKinnon, Circuit Court Judge
Appellate Case No. 2019-001256

The State,

Respondent,

v.

Kyle Maurice Robinson,

Appellant.

RETURN TO PETITION FOR REHEARING

On August 3, 2022, this Court properly affirmed the trial court's decision denying Appellant's motion for a directed verdict finding "injures" as used in section 16-3-600(C)(1)(a)(i) of the South Carolina Code (2015) does not require a separate physical injury from the nonconsensual touching used in the statute to describe the injury required. Accordingly, the Court should deny the petition for rehearing.

As this Court properly noted, the question is one of statutory construction. In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the Legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

South Carolina Code section 16-3-600(C)(1) states, in relevant part, that a person commits the offense of assault and battery first degree if the person:

(a) injures another person, and the act:

- (i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent

S.C. Code § 16-3-600(C)(1)(a)(i). The term “injures” is not separately defined within the statute. The Legislature defined others using terms physical or bodily. It did not utilize such terms in this statute, so it clearly did not intend to limit “injures” only to some type of bodily or physical injury. Instead, by not placing the limitation—a limitation it clearly demonstrated it knew how to place in other portions of the statute—the Legislature intended a broad definition of “injures.” See, e.g., S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) (Acknowledging: “Had the legislature intended for the time period to begin running from the date a party receives notice of the decision, the statute would have been drafted accordingly.” Further, the Court looked to other statutes and explained: “The use of the phrase ‘receipt of the decision’ in [a separate statute] indicates that had the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result.”); Allen v. Cooley, 53 S.C. 414, 31 S.E. 634, 644 (1898) (In analyzing different choices of words in statutes, the Court found: “This shows that the legislature, in passing that act, had in mind the difference between personal service and other modes of service recognized by law, and that, when their intention was to require personal service, they knew how to express such intention.”).

When faced with an undefined statutory term, a Court must interpret the term in accordance with its usual and ordinary meaning. See Landis, 362 S.C. at 102, 606 S.E.2d at 505. The American College Dictionary defines the word “injure” as follows: “1. To do or cause harm of any kind to; damage; hurt; impair...2. To do wrong or injustice to.” The American College Dictionary 626 (1960). This Court properly chose to use the general meaning and not to add words to the statute, as sought by Appellant, that the Legislature chose not to include. Shelley

Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 28, 336 S.E.2d 488, 491 (Ct. App. 1985)

(“We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words [that] the [l]egislature saw fit not to include.”(brackets in original)). Accordingly, this Court properly construed the terms of the statute in light of the legislative intent and the clear and unambiguous words chosen by the Legislature.

Even if this Court applied Appellant’s requested definition, the trial court properly declined the motion for directed verdict. Victim testified that, while Appellant was not choking her, the experience of having Appellant’s hands around her neck was “uncomfortable” and that she struggled to keep her balance to avoid falling down from the force of Appellant pressing her against the wall. (R. 25, lines 24-25- Tr. 91, lines 1-10). Thus, even by Appellant’s suggested rationale, the trial judge correctly concluded that evidence of Victim suffering an injury existed and therefore the case was properly submitted to the jury for them to determine the weight of that evidence.

CONCLUSION

For all of the foregoing reasons and those articulated in the State's Final Brief of Respondent, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

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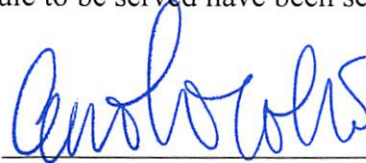
Kyle Maurice Robinson,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Return to Petition for Rehearing by emailing a copy to Appellant's counsel of record, Susan B. Hackett, at her primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 23rd day of August, 2022.



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Caroline Collins

From: Caroline Collins
Sent: Tuesday, August 23, 2022 3:54 PM
To: Hackett, Susan
Cc: Stock, Chris; William Blich
Subject: The State v. Kyle Maurice Robinson (2019-001256)
Attachments: ROBINSON Kyle - Return to Petition for Rehearing - 2019-001256 (03082817xD2C78).PDF

Good Afternoon Ms. Hackett,

Attached please find a copy of the Return to Petition for Rehearing in The State v. Kyle Maurice Robinson (2019-001256). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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