STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
William A. McKinnon, Circuit Court Judge

Opinion No. 5930 (S.C. Ct. App. filed August 3, 2022)

Lower Court Case No. 2017-GS-46-05084

THE STATE,

RESPONDENT,

V.

KYLE MAURICE ROBINSON,

PETITIONER

APPELLATE CASE NO. 2019-001256

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 5, 2022. App. 22.

QUESTION PRESENTED

In deciding this issue of first impression, did the Court of Appeals (1) err in holding that the term "injures" as used in subsection 16-3-600(C)(1)(a)(i) of the South Carolina Code does not require a physical injury in addition to nonconsensual touching of another's private parts despite the clear and unambiguous language of the statute, and, (2) as a result of this erroneous statutory interpretation, err in holding Petitioner was not entitled to a directed verdict of acquittal on the charge of assault and battery in the first degree?

STATEMENT OF THE CASE

On December 7, 2017, a York County grand jury indicted Petitioner for criminal solicitation of a minor (2017-GS-46-05084). R. 240-241. On July 18, 2019, a York County grand jury indicted Petitioner for assault and battery in the first degree (2019-GS-46-04368). R. 243-244. The state, represented by Erin Joyner, called the case to trial before the Honorable William McKinnon and a jury on July 22-24, 2019. R. 1. Jonathan Bonds and Melissa Inzerillo represented Applicant. R. 1. Ultimately, the jury found Petitioner guilty as charged. R. 225, l. 20 – R. 226, l. 4. Judge McKinnon sentenced Petitioner to five years imprisonment on each charge and ordered the sentences to be served concurrently. R. 239, ll. 11-15; R. 242; R. 245.

On July 26, 2019, Petitioner served his notice of appeal. Subsequently, Petitioner filed his brief with the Court of Appeals. On appeal, Petitioner challenged the trial judge's erroneous denial of his motion for a directed verdict where the state failed to produce evidence the complaining witness suffered an injury as required by the plain language of the statute. After entertaining oral argument on June 16, 2022, the Court of Appeals affirmed Petitioner's conviction on August 3, 2022. State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81); App. 1-8. Petitioner filed a petition for rehearing on August 9, 2022. App. 9-16. Upon request of the Court, the state filed a return. App. 17-21. On October 5, 2022, the Court denied the petition for rehearing. App. 25. This petition for writ of certiorari follows.

ARGUMENT

In deciding this issue of first impression, the Court of Appeals (1) erred in holding that the term "injures" as used in subsection 16-3-600(C)(1)(a)(i) of the South Carolina Code does not require a physical injury in addition to nonconsensual touching of another's private parts despite the clear and unambiguous language of the statute, and, (2) as a result of this erroneous statutory interpretation, erred in holding Petitioner was not entitled to a directed verdict of acquittal on the charge of assault and battery in the first degree.

Reasons to grant certiorari

This Court should grant certiorari because this case presents a novel question of law. See Rule 242(b)(1), SCACR. As the Court of Appeals recognized, "[t]his case presents an issue of first impression." State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81); App. 1-8. In 2010, the General Assembly enacted the Omnibus Crime Reduction and Sentencing Reform Act (the Act), which abolished common law assault and battery offenses and created statutory offenses of degrees of assault and battery. As this Court explained, the Act "substantially overhauled the state's criminal law." State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014).

This case also involves a substantial constitutional issue as it relates to what evidence the state must present in order to survive a directed verdict motion. See Rule 242(b)(4). Trial courts throughout this state wrestle with directed verdict motions in almost every single criminal trial. When these trials involve a criminal offense under the Act, such as assault and battery in the first degree, the trial courts must determine whether the state has satisfied its burden of producing any evidence to survive a defendant's directed verdict motion. There can be little doubt that some of these trials involve assault and battery in the first degree, and there can be little doubt that in the

circumstances involving guilty pleas, judges and lawyers must decide whether the evidence provides a factual basis for the criminal offense. Thus, it is imperative that this Court decide this novel question of what the term "injures" means in the first-degree assault and battery statute.

Relevant facts

State's case-in-chief

On July 27, 2017, sixteen-year old Minor was at home watching her ten-year old sister while her mother and grandparents, who also lived in the home, were at work. R. 11, l. 24 – R. 12, l. 1; R. 12, ll. 6-7; R. 12, ll. 12-19; R. 13, ll. 17-19. During the late afternoon, she and her sister were in her bedroom playing cards when they first noticed a car outside. R. 16, ll. 8-23. Minor went to the front door. R. 16, ll. 22-24. Petitioner then got out of the car and greeted Minor. R. 17, l. 23 – R. 18, l. 1. Minor was well acquainted with Petitioner because he was the father of her cousin, who was also living in the home at the time. R. 11, ll. 8-23; R. 12, ll. 6-9. After some small talk between the two outside of the home, Petitioner asked if his daughter were home. R. 18, ll. 6-7. When Minor told him, his daughter was not there, Petitioner asked to use the bathroom. R. 18, ll. 6-8. Minor readily agreed. R. 21, ll. 1-5.

Minor claimed that when she was showing him to the bathroom, he grabbed her. R. 21, ll. 15-22. Specifically, Minor explained that Petitioner grabbed her "in front of [her] shirt." R. 23, ll. 3-4. Then, according to Minor, Petitioner pulled her into the bathroom by her shirt. R. 23, ll. 11-13. She further claimed that Petitioner's "hands [were] like on [her] neck." R. 23, ll. 16-17. She was clear he was not "choking" her. R. 23, ll. 17-18. Later, Minor would tell the jurors that Petitioner had his left hand on her neck while his other hand was "just grabbing [her]." R. 25, ll. 14-18. In response to a leading question from the solicitor, Minor said his hand on her neck was "uncomfortable", but it was not squeezing or trying to choke her. R. 25, ll. 23-25. The

hand "was just like holding [her] in place." R. 25, l. 25 – R. 26, l. 3. Minor claimed that Petitioner was grabbing her breasts, which she described as "squeezing." R. 27, ll. 5-12. Then, according to Minor, Petitioner started tugging at her shorts and said, "I got $60 if you let me do you." R. 28, ll. 8-13.

Minor claimed she heard footsteps, which she assumed belonged to her sister. R. 31, ll. 13-18. When Minor heard these footsteps, Petitioner stopped and ran from the bathroom. R. 31, ll. 15-18.

The case agent, Jerry Sanders, responded to Minor's home shortly after the encounter allegedly occurred. He looked at Minor's neck, and he saw no signs of any injuries. R. 108, ll. 10-20.

Motion for directed verdict

After the state rested its case, Petitioner moved for a directed verdict on the charge of assault and battery in the first degree. R. 160, ll. 19-24. Petitioner argued the state failed to present evidence of an injury. R. 160, ll. 21-24. According to Petitioner, a plain reading of the statute called for "an actual injury" and "nonconsensual touching of person's private parts. It requires both." R. 161, ll. 10-13. To support his argument, Petitioner pointed to the entire statutory scheme for offenses involving assaults and batteries. R. 161, ll. 17-25. Petitioner noted that assault and battery of a high and aggravated nature required great bodily injury, which the legislature defined to include physical injuries. R. 161, ll. 19-22. Further, the legislature defined moderate bodily injury under assault and battery in the second degree to include only physical injuries. R. 161, ll. 22-24. Although the statutory scheme did not define "injury" alone, the other parts of the statute where injury was defined in the context of either "great" or "moderate," the legislature included only actual physical injuries. R. 161, ll. 17-25. Petitioner noted that the

legislature created criminal sexual conduct in the third degree as a criminal offense to cover situations in which a person was assaulted in a sexual way, but no injury resulted from the assault. R. 163, ll. 8-16. Petitioner argued that injury is defined as "any physical harm or irritation or ailment even slight." R. 164, ll. 22-24.

The state argued that "the word injure within the statute" did not require "specific physical injury." R. 162, ll. 4-6. The state argued that the legislature's inclusion of "modifiers" to describe injury in other portions of the statute supported its position that "for purposes of defining the word 'injure' within the statute, that we are not looking for a specific finding of that bodily injury or physical injury, or the legislature would have said so." R. 162, ll. 4-23.

Ruling by the trial judge

The trial judge concluded that "unlawful touching, a touching without permission is a legal injury." R. 165, ll. 3-5. His "read of the statute is that this provision is basically using the injury standard from A and B third," which meant it was "not bodily injury. It's not great bodily injury. It's just basic injury." R. 165, ll. 5-9. He was compelled to this conclusion because the statute did not use the phrase "bodily injury." R. 165, ll. 9-10. He acknowledged that interpreting the statute gave him "pause" and caused "confusion" because the statute had "two separate requirements." R. 166, ll. 13-23. In his view, a nonconsensual touching on a person's private parts as an injury." R. 166, ll. 15-17. He saw no purpose of adding the additional language in the statute of an injury and nonconsensual touching. R. 166, ll. 17-18. This was made clear when he explained that it was his "understanding [that] nonconsensual touching is an injury. Somebody being groped is an injury." R. 166, l. 24 – R. 167, l. 2. Ultimately, the judge ruled that "[l]acking further guidance from our Court of Appeals or Supreme Court [he was]

going to interpret injury in the tradition[al] legal sense that nonconsensual touching is a legal injury and does require some sort of vital injury to nonconsensual touching." R. 168, ll. 17-24.

Court of Appeals' Decision

The Court of Appeals agreed with Petitioner that "[t]his case presents an issue of first impression." State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81); App. 1-8. Thereafter, the Court of Appeals undertook to "define and give effect to the term injures for purposes of first-degree assault and battery." Id. Rejecting Petitioner's argument that the statute required exactly what it said – an injury *and* an unlawful touching – the Court of Appeals ultimately concluded "the statute requires one injury stemming from a single act and that the Legislature intended the single act that caused the injury to involve nonconsensual touching of the private parts of a person with lewd and lascivious intent." Id. (cleaned up). The Court held requiring the word "injures" as used in the statute to require a physical injury would "torture[] any plain reading of the statute and would severely limit the statute's breadth." Id.

After making these legal conclusions of statutory construction regarding a novel issue, the Court of Appeals held Petitioner's "actions f[e]ll squarely within the definition of assault and battery in the first degree." Id. According to the Court, the state met its burden of proving assault and battery in the first degree where the complaining witness alleged Petitioner "backed her into a corner while holding her in place with his left hand," "groped her breasts with his free hand," "attempted to remove her shorts, and offered her money to have sex with him." Id. Responding directly to Petitioner's argument that the statute required a bodily or physical injury, the Court of Appeals held that despite the complaining witness's testimony that Petitioner did not

hurt her, "a physical, bodily injury [was] not required for an individual to be guilty of assault and battery in the first degree under subsection 16-3-600(C)(1)(a)(i)." Id.

Discussion

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

The state alleged Petitioner committed assault and battery in the first degree. R. 243-244. The relevant statute provides as follows:

> A person commits the offense of assault and battery in the first degree if the person unlawfully:
>
> > (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; or
> > >
> > > (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or
> >
> > (b) offers or attempts to injure another person with the present ability to do so, and the act:
> >
> > > (i) is accomplished by means likely to produce death or great bodily injury; or
> > >
> > > (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C. Code Ann. § 16-3-600(C)(1). Specifically, the state alleged Petitioner committed "the crime of assault and battery in the first degree against the victim, Minor, in that the defendant injured the victim and the act involved nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent." R. 243-244. Thus, state alleged Petitioner violated section 16-3-600(C)(1)(a)(i) of the South Carolina Code.

At trial, there was no dispute that Minor claimed Petitioner touched her private parts and that the touching was not consensual. The question was whether the state provided evidence of an injury. And, even more specifically, the question presented was what constituted an injury under the statute. Petitioner contended, and still does, that "injure" as used in the statute requires a bodily injury. Thus, the question presented in this case is whether the statute requires what it says – evidence of an injury in addition to a nonconsensual touching of private parts.

This case presents a straightforward application of the rules of statutory construction. Pursuant to those rules, "[p]enal statutes are strictly construed against the state and in favor of

the defendant." State v. Morgan, 352 S.C. 359, 365, 574 S.E.2d 203, 206 (2002). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Id. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. "What a legislature says in the text of a statute is consider the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. (internal quotation omitted). Only "if the language gives rise to doubt or uncertainty as to legislative intent" may the construing court "search for that intent beyond the boards of the act itself." Morgan, 352 S.C. at 366, 574 S.E.2d at 206.

"The legislature's intent should be ascertained primarily from the plain language of the statute." Id. at 367, 574 S.E.2d at 207. "Words must be given their plain and ordinary meaning without resorting to subtle or forced constructions which limits or expands the statute's operation." Id. "When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." Id. "The terms must be construed in context and their meaning determined by looking at the other terms used in the statute." Id. "Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." Id. "Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction." Id.

The reviewing court must "seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004). The court "must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67,74, 716 S.E.2d 877, 881 (2011) (internal quotations omitted).

As mentioned, the Act "substantially overhauled the state's criminal law." State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). "Through the passage of the Act, the legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses." Id. In place of these offenses, "the Act codifies attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600." Id. "The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees." Id.

Examining the statute as a whole and applying the rules of statutory construction requires this Court give meaning to the legislature's determination that assault and battery in the first degree involves both an injury and nonconsensual touching. First, the specific statute at issue here includes the conjunctive "and" to show the statute is referring to two different things. This interpretation becomes clearer when the second part of the same subsection is analyzed.

A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person, and the act occurred during the commission of a robbery, burglary, kidnapping, or theft. SC. Code Ann. § 16-3-600 (C)(1)(a)(ii). Under the opinion issued by the Court of Appeals in the instant case, every robbery, burglary, kidnapping, and theft

would likely involve an assault and battery in the first degree as opinion permits psychic injuries to qualify as injuries. This simply cannot be the intent of the legislature. Would a burglar who brushed past a homeowner while leaving the residence have injured the homeowner due to the brushing past? Under formulation put forth by the Court of Appeals on this novel issue, the burglar would be guilty of assault and battery of the homeowner where the homeowner suffered no actual physical injury either because a psychic injury would qualify, or the simple touching would qualify. Again, this cannot be the intent of the legislature. The legislature intended for the offense to include two distinct elements.

Any question as to what the legislature meant when it used the term "injure" is answered in the statute itself. The legislature defined great bodily injury as "bodily injury which causes substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1). Further, the legislature defined moderate bodily injury to mean "physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture of dislocation." S.C. Code Ann. § 16-3-600(A)(2). Importantly, "[m]oderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care." Id.

Thus, for the statutory provisions requiring the perpetrator to injure another, the legislature created tiers of the types of injuries. The most severe injuries were those causing great bodily injuries. The second most severe injuries were those causing moderate bodily

injuries. And, the third category of injuries were those that were neither severe nor moderate. As the legislature explained, this third category included injuries that required one-time treatment or resulted in scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries not ordinarily requiring extensive medical care. The answer to what the Legislature meant by "injure" is contained right there in the statute.

Thereafter, the legislature explained that a person commits an assault of a high and aggravated nature (ABHAN) if the person unlawfully injures another person *and* either great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1). Like assault and battery in the first degree pursuant to subsection (a), ABHAN *requires* an injury based upon simple rules of statutory construction.

The interplay between the two statutory offenses goes even further. If the person is not injured, then the offender may not be charged with ABHAN, but may be charged with assault and battery in the first degree pursuant to subsection (b), which specifically does not require an injury, but does require an offer or attempt to injury accompanied by means likely to produce death or great bodily injury or during the commission of another crime. See S.C. Code Ann. § 16-3-600(C)(1)(b). The relationship between these two statutory provisions is paramount to understanding the legislature's intent as the legislature used the same language – "unlawfully injures another person."

In further support of Petitioner's contention that S.C. Code Ann. § 16-3-600(C)(1)(a) requires an injury beyond the mere touching, the legislature provided for a separate offense for an offer or attempt to injure involving the nonconsensual touching. See S.C. Code Ann. § 16-3-600(A)(1). Specifically, the Act provides that "[a] person commits the offense of assault and

battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and ... (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing." S.C. Code Ann. § 16-3-600(D)(1)(b). In other words, the legislature contemplated a nonconsensual touching that did not involve an injury. This provision makes clear that the injury and the nonconsensual touching must be two different things in the view of the legislature. If the touching and the injury were the same, as the Court of Appeals held, then there would *never* be an instance where there would be an attempt to injure involving a nonconsensual touching. The Court's ruling would render the statutory offense found within S.C. Code Ann. § 16-3-600(D)(1)(b) a nullity. The rules of statutory construction forbid such a result.

Prior to the Act, "[s]erious bodily harm to the prosecuting witness [was] not necessary to establish an assault and battery of a high and aggravated nature." See State v. DeBerry, 250 S.C. 314, 319, 157 S.E.2d 637, 640 (1967). This Court explained that "[s]hould a stranger on the street embrace a young lady, or a large man improperly fondle a child, the assault and battery would be aggravated though no actual bodily harm was done." Id. at 319-320, 157 S.E.2d at 640. "The Legislature is presumed to be aware of [the appellate courts'] interpretation of its statutes." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003); see also State v. McKnight, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) (explaining "[t]here is a presumption that the legislature had knowledge of previous legislation as well as of judicial decisions construction that legislation when later statutes are enacted concerning related subjects"). Aware of the court's rulings regarding assault and battery offenses, the legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses. See Middleton, 407 S.C. at 315, 755 S.E.2d at 434; see also State v. King, 422 S.C. 47,

62-63, 810 S.E.2d 18, 26 (2017) (explaining the South Carolina Sentencing Reform Commission recommended that the General Assembly enact legislation to abolish the common law offense of ABHAN). In writing the assault and battery statutes, the legislature made clear which offenses required an injury and which did not; thus, the legislature rejected the prior court decisions that required no actual injury for certain offenses. See State v. King, 422 S.C. 47, 63, 810 S.E.2d 18, 26 (2017) (explaining the legislature *created* the *new* offenses of attempted murder and degrees of assault and battery).

Claiming to "acknowledge the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the Act) abolished all common law assault and battery offenses and all prior statutory assault and battery offenses," the Court of Appeals insisted upon relying on the common law to interpret the new statutory offense. State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81); App. 1-8. The Court of Appeals used cases interpreting common law assault and battery of a high and aggravated nature to decide whether statutory assault and battery in the first degree required an injury. Id. Citing a trio of cases, the Court of Appeals noted that none of the cited cases "contained evidence that the victims' persons were physically harmed or violently injured." Id. Based upon this observation, the Court of Appeals concluded that statutory assault and battery did not require a physical or bodily injury either despite the clear language of the statute. Id.

This Court should grant certiorari to review this novel question of law involving substantial constitutional issues. The question of whether the statute requires exactly what it says it requires should be answered by this Court. In a published opinion, the Court of Appeals informed the bench, the bar, and the public that the Act does not mean what it says. The Court of Appeals substituted its wisdom for that of the legislature. This Court should grant review to

rectify this error. As explained, the plain language of S.C. Code Ann. § 16-3-600 (C)(1)(a)(i) requires the state to present some evidence of an injury, and the statutory construction as a whole supports this interpretation. This Court should issue an opinion explaining as much.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari to review this novel question and order briefing on the issue presented.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of October, 2022.

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KYLE MAURICE ROBINSON,

PETITIONER

APPELLATE CASE NO. 2019-001256

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov; and the South Carolina Court of Appeals; and on Kyle Maurice Robinson, PO Box 1095, Chester, SC 29706, this 20th day of October, 2022.

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