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S.C. SUPREME COURT

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

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kyle Maurice Robinson, Appellant.

Appellate Case No. 2019-001256

Appeal From York County
William A. McKinnon, Circuit Court Judge

Opinion No. 5930
Heard June 16, 2022 – Filed August 3, 2022

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia; and Solicitor Kevin Scott Brackett,
of York, all for Respondent.

WILLIAMS, C.J.: In this criminal appeal, Kyle Maurice Robinson argues the trial court erred in failing to grant his motion for a directed verdict. Specifically, Robinson argues that under subsection 16-3-600(C)(1)(a)(i) of the South Carolina Code (2015), the State failed to produce any evidence proving he injured a minor and therefore failed to prove an essential element of assault and battery in the first degree. We affirm.

FACTS/PROCEDURAL HISTORY

On July 27, 2017, a sixteen-year-old minor (Minor) was at home watching her younger sister while her mother and live-in grandparents were at work. In the late afternoon, Minor and her sister were playing cards when they noticed a car parked in front of their house. Minor went to the front door to see who was in the car. It was Robinson, and he exited the car and asked Minor if his daughter was there.¹ Minor informed Robinson his daughter was not home, and Robinson asked if he could use Minor's bathroom.

Minor agreed and claimed that when she pointed to the bathroom, Robinson requested she walk with him. When she escorted Robinson to the bathroom, he grabbed her by the shirt, pulled her into the bathroom, and backed her into a corner after she refused to enter the bathroom with him voluntarily. Minor testified that as Robinson backed her into the corner, he had his left hand around her neck to press her against the wall but he was not choking her. Minor admitted having Robinson's hand around her neck was uncomfortable but it was not squeezing her, just holding her in place. She stated he was groping her breasts with his free hand. After Minor yelled, "Get the f*** off of me," Robinson released her neck, began "tugging" at her shorts, and exclaimed "I have \$60 if you let me do you."

Minor testified that during the altercation, she noticed Robinson was sweating profusely and appeared to be intoxicated. Robinson ended the molestation when he heard Minor's younger sister walking down the hall. Minor's sister stated that she heard Minor exclaim "Stop, stop" from the bathroom. Robinson then ran out of the bathroom, exited the house, and drove off. Several minutes later, Minor's brother returned home, and the two of them called their mother after Minor told him what happened. Upon arrival, Minor's mother called the police, and they arrested Robinson within walking distance of Minor's home approximately half an hour later. Officer Jerry Sanders testified he observed and photographed Minor's neck at the scene. Officer Sanders stated Minor's neck was uninjured and was not reddened.

In December 2017, a York County grand jury indicted Robinson for criminal solicitation of a minor, and in July 2019, it indicted Robinson for assault and battery in the first degree. At trial, after the State rested, Robinson moved for a directed verdict on the first-degree assault and battery charge. Robinson argued that under subsection 16-3-600(C)(1)(a)(i), the State failed to provide evidence that

¹ Robinson's daughter was Minor's cousin and also lived in Minor's home.

Minor was physically injured from the encounter with Robinson. Specifically, Robinson asserted that to submit the charge to the jury, the subsection required the State prove an actual, physical injury in addition to a nonconsensual touching of an individual's private parts. Read in unison with the remainder of the statute's subsections that define and require a physical injury, Robinson claimed the term "injures" under subsection 16-3-600(C)(1)(a)(i) must be construed to require some physical injury rather than a nebulous, legal injury. Robinson claimed an injury is "any physical harm or irritation or ailment."

The trial court denied Robinson's motion, finding the statute only calls for a legal injury in conjunction with the nonconsensual touching of an individual's private parts. After admitting its confusion as to why the legislature set forth two separate requirements under the first-degree assault and battery subsection, the court stated that lacking further guidance from appellate courts, it would interpret the term "injures" in the traditional legal sense. It found that "nonconsensual touching is a legal injury and does not require some sort of vital injury."

Robinson did not raise a defense at trial, and the jury found him guilty of both charges. The trial court sentenced Robinson to five years' imprisonment for each charge and mandatory registration as a sex offender for each charge. This appeal followed.

ISSUE ON APPEAL

Did the trial court err in refusing to grant Robinson's motion for a directed verdict because the State failed to produce any evidence that Robinson physically injured Minor under subsection 16-3-600(C)(1)(a)(i)?²

STANDARD OF REVIEW

When reviewing a motion for a directed verdict, appellate courts view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *State v. Harris*, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015). If direct or substantial circumstantial evidence exists that tends to prove the guilt of the accused, appellate courts must affirm the trial court's decision to submit the case to the jury. *Id.*

² Robinson did not appeal his conviction for criminal solicitation of a minor and the mandatory registration as a sex offender for that crime.

LAW/ANALYSIS

Robinson claims the trial court erred in refusing to grant his motion for a directed verdict as to his first-degree assault and battery charge because the State failed to prove he injured Minor as required under the statute. He asserts that under subsection 16-3-600(C)(1)(a)(i), the term "injures" requires the State prove an actual, physical injury in addition to nonconsensual touching of the victim's private parts. We disagree and affirm.

This case presents an issue of first impression. This court must define and give effect to the term injures for purposes of first-degree assault and battery. In pertinent part, the statute provides, "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" § 16-3-600(C)(1)(a)(i) (emphases added).

"The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* Appellate courts do not construe particular clauses of a statute in isolation but read them "in conjunction with the purpose of the whole statute and the policy of the law." *White v. State*, 375 S.C. 1, 7, 649 S.E.2d 172, 175 (Ct. App. 2007). "The legislature's intent should be ascertained primarily from the plain language of the statute." *Landis*, 362 S.C. at 102, 606 S.E.2d at 505. "Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." *Id.* (citation omitted).

The Legislature uses inconsistent language throughout Title 16, Chapter 3 of the South Carolina Code to define specific elements required to constitute an offense against an individual's person, especially when the element requires an "injury." For instance, assault and battery by mob requires an "act of violence" be "inflicted by a mob *upon the body* of another person." S.C. Code Ann. § 16-3-210 (2015) (emphasis added). Further, an individual is only guilty of hazing if he intentionally or recklessly commits an act that has a foreseeable potential to cause "*physical*

harm to a person for the purpose of initiation or admission" into an organization. S.C. Code Ann. § 16-3-510 (2015) (emphasis added). Even defined terms under the assault and battery statute are inconsistent. Compare S.C. Code Ann. § 16-3-600(A)(1) (2015) ("Great bodily injury" means *bodily injury* which causes" (emphasis added)), with S.C. Code Ann. § 16-3-600(A)(2) (2015) ("Moderate bodily injury" means *physical injury* that involves" (emphasis added)).

In spite of these inconsistencies, the plain language of subsection 16-3-600(C)(1)(a)(i) is clear in defining what constitutes assault and battery in the first degree. Despite Robinson's assertion that the statute requires the State prove two separate elements, we find 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." § 16-3-600(C)(1)(a)(i). Robinson argues that because the Legislature followed the term "injures" with the conjunction "and," it intended to create a conjunctive list that establishes two distinct elements for the State to satisfy to prove assault and battery in the first degree—(1) a physical injury and (2) a separate, nonconsensual touching of the victim's private parts with lewd intent. Contrarily, after a plain reading of the subsection, it is evident the Legislature included "and" to further modify and define the nature of the act that caused the injury it intended to constitute assault and battery in the first degree.

Robinson also argues that because the Legislature defined "great bodily harm" and "moderate bodily harm" to include physical, bodily injury, it also intended "injures" as used in the subsection to require a physical, bodily injury. This interpretation tortures any plain reading of the statute and would severely limit the statute's breadth. See *Landis*, 362 S.C. at 102, 606 S.E.2d at 505 ("Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation."). The expression of a clear definition requiring a bodily injury for certain categories of assault and battery implies the exclusion of that requirement for the categories that do not have such a clear definition. See *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 134, 492 S.E.2d 103, 106 (1997) (stating that if the Legislature had intended a result in a statute, it would have said so).

Our interpretation of the subsection—requiring only a single injury occurring from a single nonconsensual touching of an individual's private parts—agrees with the other portions of the statute and is supported by the traditional understanding of assault and battery as delineated by our courts for over a century. Moreover, when

read in conjunction with the remaining subsections, this interpretation is aligned with the Legislature's intent in enacting the statute as a whole. *See White*, 375 S.C. at 7, 649 S.E.2d at 175 (stating appellate courts do not construe particular clauses of a statute in isolation but read them "in conjunction with the purpose of the whole statute and the policy of the law"). In each subsection, the Legislature uses varying degrees to define the type of injury that must occur to constitute that level of assault and battery. For instance, to be convicted of assault and battery of a high and aggravated nature (ABHAN), an individual must "unlawfully injure[] another person" and the type of injury is one that meets the definition of "great bodily injury" (as defined in the statute) or the act that caused the injury "is accomplished by means likely to produce death or great bodily injury." *See* S.C. Code Ann. § 16-3-600(B)(1) (2015). Similarly, an individual is guilty of assault and battery in the second degree if he "unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so" and either (1) moderate bodily injury results or could have resulted from the act that caused the injury or (2) "the act involves the nonconsensual touching of the private parts of a person." *See* S.C. Code Ann. § 16-3-600(D)(1) (2015). Each subsection either defines the harm caused by a defendant's act upon the victim's person or the nature of the act itself—e.g. a nonconsensual touching of another's private parts with lewd intentions.

Although we 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," our jurisprudence offers insight as to the requirements of assault and battery in the first degree. *State v. Middleton*, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). Historically, assault was defined as "an unlawful attempt, coupled with a present ability, to commit a violent injury upon the person of another" and a battery was the "successful accomplishment of such [an] attempt." *State v. Jones*, 133 S.C. 167, 179, 130 S.E. 747, 751 (1925), *overruled on other grounds by State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Until the Act was ratified, ABHAN was "an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as . . . *indecent liberties or familiarities with a female*." *Id.* (emphasis added). Under the aggravating circumstance of indecent liberties, our supreme court upheld a defendant's conviction for ABHAN when the defendant caused a female victim to stop her car, then reached in with both hands to grab her saying, "I want you," and brushed her neck with his hand as she sped away. *State v. Williams*, 257 S.C. 257, 264, 185 S.E.2d 529, 532 (1971). In *State v. Cunningham*, the supreme court upheld a defendant's conviction for ABHAN when the defendant grabbed the victim by the wrist, threw her onto her bed, held

her hands together while removing her underwear, and attempted to have sex with her. 253 S.C. 388, 392, 171 S.E.2d 159, 161 (1969). Finally, in *State v. Rouse*, our supreme court affirmed the trial court's denial of the defendant's motion for a directed verdict and affirmed his conviction for ABHAN when the evidence showed the defendant made brief physical contact with the victim "in an offer of sexual intercourse" and "made indecent sexual demonstrations with the exposed private parts of his body." 262 S.C. 581, 584–85, 206 S.E.2d 873, 874–75 (1974). None of these cases contained evidence that the victims' persons were physically harmed or violently injured.

Here, we find Robinson's actions fall squarely within the definition of assault and battery in the first degree under our interpretation of the subsection. Minor testified Robinson backed her into a corner while holding her in place with his left hand. She also claimed that while she was forced against the wall, Robinson groped her breasts with his free hand. After screaming for Robinson to get off of her, Robinson let go of Minor's throat, attempted to remove her shorts, and offered her money to have sex with him. As evidenced by Minor's exclamation for Robinson to get off of her, his actions were nonconsensual and clearly the object of the groping was Minor's breasts, which satisfies the definition of "private parts" as set forth by the statute. *See* S.C. Code Ann. § 16-3-600(A)(3) (2015) ("'Private parts' means the genital area or buttocks of a male or female or the breasts of a female."). Further, the evidence shows Robinson's intent in calling Minor to the bathroom and forcing her into the corner was lewd and lascivious because he offered her money to have sex, revealing an overt sexual desire. Although Minor testified that Robinson did not hurt her, only that his hand around her neck was "uncomfortable," a physical, bodily injury is 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). Because (1) our interpretation of the subsection appears to be consistent with the remainder of the statute, (2) our jurisprudence has never required an actual, physical injury to a victim's person to constitute an assault and battery, and (3) the nature of Robinson's actions falls squarely within the definition of first-degree assault and battery, we find the trial court did not err in denying Robinson's motion for a directed verdict.

CONCLUSION

Based on the foregoing, Robinson's conviction for assault and battery in the first degree is

AFFIRMED.

KONDUROS and VINSON, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

KYLE MAURICE ROBINSON,

APPELLANT

APPELLATE CASE NO. 2019-001256

Appeal from York County

William A. McKinnon, Circuit Court Judge

Opinion No. 5930

PETITION FOR REHEARING

On August 3, 2022, this Court affirmed Appellant’s conviction for assault and battery in the first degree. State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81). This Court held that despite the plain language of the statute, “a physical, bodily injury is 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. Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter due to significant legal and factual points overlooked by this Court.

As recognized by this Court, Appellant’s appeal presented an issue of first impression concerning the interpretation of the newly enacted statute. Within the Omnibus Crime Reduction and Sentencing Reform Act of 2010, the Legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses. State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). The Legislature then created a statutory scheme to address assault and battery offenses. Id. Despite clear language that the Legislature abolished the common law offenses, this Court relied upon precedent interpreting those common law offenses to affirm Appellant’s conviction. This was error.

The state charged Appellant with assault and battery in the first degree. 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). More precisely, the state alleged Appellant “injured [Minor] 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 Appellant violated section 16-3-600(C)(1)(a)(i) of the South Carolina Code.

At trial, there was no dispute that Minor claimed Appellant 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. Appellant contended, and still does, that “injure” as used in the statute requires a bodily injury. However, the trial judge ruled the state was not required to prove an injury occurred because the nonconsensual touching itself was an injury. Although the judge noted his hesitancy with such a ruling because of the Legislature’s decision to include language that required both an injury and nonconsensual touching, he nevertheless, ruled in a way that made the “injure” language superfluous, in direct contradiction of the rules of statutory construction.

Likewise, this Court affirmed the trial judge’s ruling and rendered the Legislature’s chosen words meaningless. This Court held the plain language of the subsection was “clear” that “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.’” State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81). In doing so, this Court violated the rules of statutory construction.

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 involve 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 this Court's ruling in the instant case, every robbery, burglary, kidnapping, and theft would likely involve an assault and battery in the first degree as this Court 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 this Court's formulation, 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.

After providing these definitions, 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). This Court failed to address Appellant’s argument that the interplay 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 Appellant'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(D)(1)(b). Specifically, the Act provides that "[a] person commits the offense of assault and battery in the second degree if the person unlawfully ... 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 this Court held, then there would *never* be an instance where there would be an attempt to injure involving a nonconsensual touching. This Court's ruling renders 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. This Court did not address Appellant's argument regarding the significance of this subsection in understanding its companion found in section 16-3-600(C)(1)(a)(i).

As the Supreme Court noted in Middleton, supra, the Act substantially overhauled South Carolina's criminal law. 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). The 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). This Court’s reliance on the cases concerning “the traditional understanding of assault and battery as delineated by our courts for over a century” is misplaced.

Appellant respectfully requests this Court rehear this matter pursuant to Rule 221(a), SCACR.

Respectfully Submitted,



SUSAN B. HACKETT
Appellate Defender

This 9th day of August, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

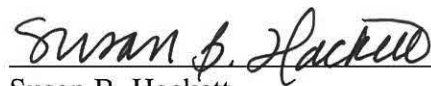
KYLE MAURICE ROBINSON,

APPELLANT

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 Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov; and Kyle Maurice Robinson, at PO Box 1095, Chester, SC 29706, this 9th day of August, 2022.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

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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ATTORNEYS FOR RESPONDENT

August 23, 2022

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.

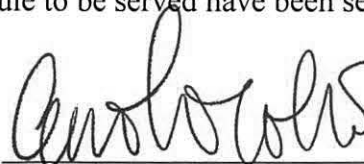
Kyle Maurice Robinson,

Appellant.

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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The South Carolina Court of Appeals

The State, Respondent,

v.

Kyle Maurice Robinson, Appellant.

Appellate Case No. 2019-001256

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams

C.J.

U. Ke

J.

[Signature]

J.

Columbia, South Carolina

cc:

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William M. Blicht, Jr., Esquire
Kevin Scott Brackett, Esquire
Susan Barber Hackett, Esquire

FILED
Oct 05 2022
