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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-001481

THE STATE,

Respondent,

v.

KYLE MAURICE ROBINSON

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE

The Court of Appeals properly affirmed the trial court's decision denying Petitioner's motion for a directed verdict finding "injures" as used in §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.

STATEMENT OF THE CASE

Petitioner was indicted in December of 2017 for one count of criminal solicitation of a minor. (2017-GS-46-5084). In July 2019, Petitioner was indicted by the York County Grand Jury for one count of assault and battery first degree. (2019-GS-46-4368). On July 22-24, 2019 a jury trial was held in the York County Court of General Sessions with the Honorable William A. McKinnon presiding. Petitioner was represented by Melissa Inzerillo, Esquire., and Jonathan Bonds, Esquire. The State was represented by Assistant Solicitor Erin Joyner of the Sixteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Petitioner of both counts. Following the verdict, the trial judge sentenced Petitioner to two concurrent terms of five years' imprisonment. Petitioner timely filed a notice of appeal and an initial brief. The Court of Appeals affirmed Petitioner's convictions and sentence. State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed August 3, 2022); (App. 1-8). In a *per curiam* opinion, the court held that the trial judge did not err in denying Petitioner'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. A petition for rehearing was timely filed and denied on October 5, 2022. (App. 3-8). A timely Petition for Writ of Certiorari was filed on October 20, 2022. This Return follows.

STATEMENT OF FACTS

In July 2017, Victim was sixteen years old and lived in Rock Hill with her mother, sister, maternal grandparents, and cousin, Kylisha. (R. 11-12). Petitioner is Kylisha's father. (R. 11). On July 27, 2017, Petitioner came to Victim's house and asked if Kylisha was home. (R. 18). When Victim told Petitioner that Kylisha was not at home, Petitioner asked Victim if he could use the restroom. (R. 18). Victim agreed to let Petitioner use the restroom and pointed in its direction. (R. 22). Petitioner asked Victim to show him where the restroom was and Victim led Petitioner to the door of the restroom. (R. 21-22). When Victim and Petitioner reached the door, Petitioner grabbed Victim by her shirt and pulled her into the restroom. (R. 23). Petitioner placed his left hand on Victim's neck and backed her into the corner of the restroom. (R. 23-27). While holding Victim with his left hand, Petitioner used his right hand to grab Victim's breasts. (R. 27). Petitioner eventually let go of Victim's neck and began to tug on Victim's shorts. (R. 27-28). As he tugged on Victim's shorts, Petitioner told Victim "I got \$60 if you let me do it." (R. 28, lines 10-13). Victim observed that Petitioner was sweating profusely and appeared to be under the influence of alcohol. (R. 29-30). Petitioner eventually stopped his assault on Victim when he heard the footsteps of Victim's sister (Sister). (R. 31). Victim went to the living room window and saw the car that Petitioner arrived in drive away. (R. 32).

At trial, Sister testified she saw Petitioner arrive and ask Victim where the restroom was located. (R. 77). Sister heard Victim's voice coming from the bathroom saying, "Stop. Stop." (R. 77, lines 20-23). After Sister heard Victim's voice, she ran to the kitchen which was located close to the bathroom. From the kitchen, Sister saw Petitioner exit the bathroom and leave the house. (R. 78). Victim called her mother (Mother) and asked her to come home. (R. 90). When Mother arrived at the house, Victim disclosed to her that she had been assaulted. (R. 91). Mother

called law enforcement. (R. 91-92). Petitioner was arrested a short time later at a location near Victim's house. (R. 110). At the conclusion of trial, Petitioner was convicted of both charges.

STANDARD OF REVIEW

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). “On an appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling.” State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court “views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

ARGUMENT

The Court of Appeals properly affirmed the trial court's decision denying Petitioner'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.

Petitioner argued the Court of Appeals (1) erred in holding that the term "injuries" 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.

However, as the trial court observed, a legal injury as opposed to a bodily injury satisfies the "injures" element of assault and battery first degree. (R. 165). Furthermore, even if the State were required to prove a bodily injury, Petitioner's act of grabbing Victim by the neck and pressing her against a wall satisfied the minimal requirement of a slight physical injury. Therefore, the Court of Appeals did not err in affirming the trial court's decision to deny Petitioner's motion for a directed verdict on the charge of assault and battery first degree.

As the Court of Appeals 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.

“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” State v. Baucom, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). “The legislature’s intent should be ascertained primarily from the plain language of the statute.” State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). “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.

In determining whether a directed verdict should be granted, “the trial judge shall consider only the existence or non-existence of the evidence and not its weight.” Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court “views the evidence and all reasonable inferences in the light most favorable to the State.” Bennett, 415 S.C. at 235, 781 S.E.2d at 353. “On an appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling.” Lindsey, 355 S.C. at 20, 583 S.E.2d at 742. When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, “[T]he relevant question is 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.” Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original). “[I]f there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury.” State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

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.

The Court of Appeals also pointed to a few cases stating that “our jurisprudence offers insight as to the requirements of assault and battery in the first degree.” State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed August 3, 2022); (App 6). The Court of Appeals cited to State v. Rouse, 262 S.C. 581, 206 S.E.2d 873 (1974), among other similar cases, in which this court affirmed the trial court’s denial of the defendant’s motion for a directed verdict and affirmed defendant’s conviction for ABHAN when the evidence showed the defendant made brief physical contact with the victim stating specifically “none of these cases contained evidence that the victims’ persons were physically harmed or violently injured.” State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed August 3, 2022); (App. 7).

On appeal, Petitioner primarily argues the trial judge erred by denying his motion for a directed verdict, because the State did not produce any evidence that Petitioner injured Victim. On the contrary, The Court of Appeals properly found that Petitioner’s actions fell within the definition of assault and battery under their interpretation of the statute. To the extent Petitioner argues the State was required to prove a bodily injury within Petitioner’s suggested “third category” the State succeeded in proving such an injury. The State proved that Petitioner grabbed Victim by her neck through her testimony. Victim testified that, while Petitioner was not choking her, the experience of having Petitioner’s hands around her neck was “uncomfortable” and that

she struggled to keep her balance to avoid falling down from the force of Petitioner pressing her against the wall. (R. 25, lines 24-25- Tr. 91, lines 1-10). Victim did not have any cuts or bruises from Petitioner's assault, nor did she require medical care. However, Petitioner's proposed third category of injury includes "other minor injuries that do not ordinarily require extensive medical care." Thus, even by Petitioner'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 to determine the weight of that evidence.

While Petitioner does not provide clarity on the specific type of bodily injury that he believes the State should be required to prove on appeal, Petitioner's trial counsel was very specific when he was asked what constituted an injury under the statute in the following exchange with the trial judge:

The Court: Now Mr. Bonds, let's talk about assault and battery third for a second.

Mr. Bonds: Yes, Your Honor.

The Court: Does a slap qualify for assault and battery third?

Mr. Bonds: I believe so, Your Honor.

The Court: Why?

Mr. Bonds: Because it's an unwanted touching and I believe a slap would cause, again, some minor physical—some redness. Some sort of injury.

The Court: But is redness an injury?

Mr. Bonds: I think if a person hurts then certainly. While it's a slight injury it would still be an injury.

The Court: What's your definition of an injury?

Mr. Bonds: I think an injury would be any physical harm or irritation or ailment even slight would be considered an injury. I don't think in this case I don't want to put words in the solicitor's mouth but I believe that we're talking about physical injury at this point.

(R. 164, lines 7-25- R. 165, lines 1-2).

As previously argued, the legislature did not intend to require the State to produce evidence of a bodily injury to prove the “injures” element of assault and battery first degree. However, if we assume for the sake of argument that a bodily injury is required, the State would only be required to prove “any physical harm or irritation or ailment even slight” as Petitioner’s trial counsel suggested. Here, the State produced direct evidence of a slight physical harm or irritation through Victim’s testimony that Petitioner grabbed her by the neck and forced her against the wall. (R. 23-27). Therefore, the trial judge correctly denied Petitioner’s motion for a directed verdict. Petitioner’s Petition for Writ of Certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and that certiorari be denied.

Respectfully submitted,

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