

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)

THE STATE,

RESPONDENT,

V.

KYLE MAURICE ROBINSON,

PETITIONER

APPELLATE CASE NO. 2022-001481

REPLY TO RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS

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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.....1

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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.

Respondent’s argument details exactly *why* this Court should grant certiorari.¹ According to Respondent, “a legal injury as opposed to a bodily injury satisfies the ‘injures’ element of assault and battery first degree.” Ret. at 6. However, Respondent presents a back-up position: “[E]ven if the state were required to prove a bodily injury, Petitioner’s act of grabbing [Minor] by the neck and pressing her against a wall satisfied the minimal requirement of a slight physical injury.” Ret. at 6. The Court of Appeals specifically held the statute did *not* require a physical injury at all of any kind. State v. Robinson, Op. No. 5930 (S.C. Ct. App. filed Aug. 3, 2022) (Howard Adv. Sh. No. 27 at 81); App. 1-8. Thus, if the state’s back-up position is correct, then this Court should grant certiorari to reverse the decision issued by the Court of Appeals and require the state prove a physical, bodily injury.

¹ Briefly on the facts as stated by Respondent, two small matters must be corrected. Respondent contended that Minor claimed Petitioner eventually stopped his alleged assault “when he heard the footsteps of [Minor]’s sister.” Ret. at 3. However, Minor testified that *she* heard her sister’s footsteps approaching and that is when Petitioner stopped. R. 31, ll. 15-18. While Minor implied that Petitioner also heard these footsteps, she did not claim to know that Petitioner had heard the footsteps. Additionally, Respondent claimed Minor’s sister saw Petitioner exit the bathroom and leave the house “[f]rom the kitchen.” Ret. at 3. Sister testified that while she was in the kitchen she saw Petitioner walk out of the bathroom. R. 78, ll. 1-7. She later said she *could not remember where* she was standing when Petitioner exited the bathroom. R. 78, ll. 13-15. At some point, Sister went to the living room. R. 78, l. 7. While Sister was in the living room, she made eye contact with Petitioner, and he left the house. R. 78, ll. 4-15.

Petitioner agrees with Respondent and the Court of Appeals that the question presented is a matter of statutory construction. Furthermore, Petitioner agrees with Respondent that when interpreting a statute, the court must look to the plain meaning of the words used in the statute. In fact, Petitioner argued at trial, and on appeal, that the statute requires exactly what it says it requires – evidence of an injury in addition to a nonconsensual touching of private parts.

After noting the legislature did not define the term “injures,” but did define “others using terms physical or bodily,” Respondent asserted the legislature “clearly did not intend to limit ‘injures’ only to some type of bodily or physical injury.” Ret. at 8. Petitioner adamantly disagrees. The legislature provided definitions to be used for the terms expressed in the statute, and these definitions require physical, bodily injuries.

Despite the insistence by Respondent that Petitioner has proposed a third category of injury, it is the legislature that created this third category. See Ret. at 10. First, 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). Second, 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 or dislocation.” S.C. Code Ann. § 16-3-600(A)(2). “Moderate 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. This third category of injuries, which was created by the legislature and exists in the language of the statute at issue,

was those that were neither severe nor moderate. The answer to what the Legislature meant by “injure” is contained in the statute.


Petitioner does not dispute a dictionary definition of “injures” as offered by Respondent. See Ret. at 8. However, Petitioner disputes Respondent’s claim that the definition offered is the one that interprets “injures” with its usual and ordinary meaning as the rules of statutory construction require. In fact, it appears Respondent cherry picked a definition it liked best for purposes of its argument, but the definition presented is hardly the one most commonly associated with the word, “injures.” Merriam-Webster defines “injure” as “to inflict bodily hurt on,” “to impair the soundness of,” “to inflict material damage or loss on,” “to harm, impair, or tarnish the standing of,” “to give pain to,” “to do an injustice to.” Merriam-Webster (updated July 21, 2021), <https://www.merriam-webster.com/dictionary/injures>. The American Heritage Dictionary of the English Language defines injure as “[t]o cause physical harm to; hurt,” “[t]o experience injury in (oneself or a body part),” “[t]o cause damage to; impair,” “[t]o commit an injustice or offense against; wrong,” “[t]o cause distress to; wound.” The American Heritage Dictionary (5th ed. 2002), <https://www.ahdictionary.com/word/search.html?q=injure>. Barron’s defines “injury” as “any wrong or damage done to another, either in his person, rights, reputation, or property. ... *Unlike the ordinary meaning of injury (that which damages the body)*, a legal injury is any damage resulting from a violation of a legal right.” Steven H. Gifis, Barron’s Law Dictionary, 252 (4th ed. 1996) (emphasis added). The usual and ordinary meaning of “injures” is an act that causes a physical, bodily injury.

Respondent appears to doubt the Court of Appeals’ opinion that “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)” due to Respondent’s numerous arguments that the state showed

a physical injury. See e.g., Ret. at 10 (“Thus, even by Petitioner’s suggested rationale, the trial judge correctly concluded that evidence of [Minor] suffering an injury existed and therefore the case was properly submitted to the jury to determine the weight of that evidence.”). If this Court agrees with Respondent’s back-up position, and Petitioner’s only position, that a physical, bodily injury is required by the plain and ordinary meaning of the statute, then this Court should grant certiorari to fix the published decision issued by the Court of Appeals as it does not require a physical, bodily injury at all.

CONCLUSION

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



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Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of November, 2022.