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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appellate Case No. 2022-001378

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs.

Patrick Gerald Clemons,

Appellant/Defendant.

REPLY BRIEF

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Petitioner respectfully submits this brief reply to Respondent's response brief.

ARGUMENT

I. What mental state is required to commit South Carolina Assault and Battery, Second Degree, in violation of S.C. Code Ann. §16-3-600?

The Government appears to argue South Carolina's General Assembly, in passing the 2010 Omnibus Crime Reduction and Sentencing Reform Act (the Act), intended to make it more difficult for solicitors to prosecute assault and battery offenses in this State because it intended to wholly supplant the prior common law understanding of these crimes so that now the statutes only criminalize conduct that is purposeful or knowing.¹ The Government argues there is no indication ...the legislature intended to...criminalize less intentional conduct." Response Brief, p. 20. Respectfully, neither the statute nor the history of the legislation supports that conclusion.

As Petitioner argues in his opening brief, the relevant statute, §16-3-600(D)(1) contains the applicable *mens rea* as to the assault prong (a person "offers or attempts to injury"), which is specific intent. As to the battery prong, the statute *may be* silent as to *mens rea* but provides that to violate the statute, one must act "unlawfully." If "unlawfully" conveys the appropriate *mens rea*,

¹ At times in its briefing the Government appears to assume that "intentional" conduct only relates to purposeful or knowing conduct, but South Carolina law recognizes that reckless or criminally negligent conduct can also meet the "intent" requirement for criminal culpability. See Response Brief, p. 19 ("Similarly, this Court's discussion about transferred intent in *Smith* would have been unnecessary if ABHAN requires only recklessness. But ABHAN—and therefore every other iteration of statutory Assault and Battery—requires intentional conduct."); p. 18 ("It further shows that ABHAN requires true intent, not recklessness"). In South Carolina, "intent" encompasses both specific and general intent crimes and includes knowledge, malice, recklessness, and negligence among others. If the Government is correct and its definition of "intentional" is applicable to all assault and battery and CDV offenses, then juries should be instructed on the *mens rea* principles of purpose, knowledge, and/ or malice.

then it can be violated by negligent conduct. If the statute is silent, then the Court consults the common law which provides, under South Carolina law, that the statute can be violated by “such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to criminal intent.” *State v. Ferguson*, 303 S.C. 269, 272, 395 S.E.2d 182, 183 (1990). In either event, the battery prong of the statute can be violated by less than a “purposeful” or “knowing” state of mind at the time of the crime.

The Government’s argument that a review of appellate opinions involving statutory ABHAN and assault and battery convictions shows that it is only being used to prosecute “intentional conduct” is unavailing. That there is some universe of appellate opinions showing what may be described as “purposeful” or “knowing” criminal conduct does not mean that less culpable conduct is not also being prosecuted in our state courts (or that it could be prosecuted). Indeed, given the minimal sentences these lesser-degrees of assault and battery carry, it is not likely that these convictions are as regularly challenged in the appellate courts by those convicted of them as those who receive more significant sentences in light of their more culpable conduct.²

But also, there is nothing in the history of the Act to suggest the legislature intended to make it more difficult to prosecute assault and battery crimes. Indeed, the Act created new crimes the state can now prosecute. *See State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017) (noting the Act created the offense of attempted murder and created various levels and degrees of assault and battery offenses). South Carolina does not require a *mens rea* of “purposeful” or “knowing” on

² In fact, the court of appeals explicitly rejected the notion that the Act requires some greater level of force in committing criminal offenses than has historically been recognized in this state. *State v. Robinson*, 437 S.C. 226,236, 878 S.E.2d 8, 13 (Ct. App. 2022) (“[O]ur jurisprudence has never required an actual, physical injury to a victim’s person to constitute an assault and battery”).

the part of an offender to support a criminal conviction for assault and battery 2nd degree under the Act.

II. What mental state is required to commit South Carolina Criminal Domestic Violence of a High and Aggravated Nature, in violation of S.C. Code Ann. §16-25-65?

A similar analysis applies to the CDV statute, §16-25-20(A), which is also divided into an assault offense and a battery offense: It is unlawful to (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. The *mens rea* for the assault is specific intent, per the language of the statute. To determine the *mens rea* of the battery, courts must refer to the common law which provides the statute may be violated recklessly or negligently. As Petitioner argued in the opening brief, it does not comport with the history of the CDV statute to suggest that legislators intended to make it harder to prosecute these cases by insisting that the culpable conduct be limited to only "purposeful" or "knowing" conduct. As Respondent's brief ably points out, our state legislature has long been concerned about prosecuting criminal domestic violence in this State. It is impossible to conceive that our General Assembly intended to make it more difficult to prosecute criminal domestic violence cases by insisting that an offender's conduct be rooted in the highest (and most difficult to prove) mental states and that it would eschew prosecuting reckless or criminally negligent misconduct against a household member. Respectfully, this Court should reject the Government's argument that South Carolina's CDV statute can only be violated with the heightened *mens rea* requirement of "purposeful" or "knowing" misconduct.

CONCLUSION

Respectfully, this Court should find the *mens rea* required, under both statutes, is specific intent as to the assault prong, and general intent, which encompasses both recklessness and criminal negligence, as to the battery prong.

Respectfully submitted,

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