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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILIP DAVID GUDERYON,

APPELLANT

Opinion No. 5955 (S.C. Ct. App. Filed December 7, 2022)

APPELLATE CASE NO. 2017-002168

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued in this case on December 7, 2022, a Petition for Rehearing was filed on December 22, 2023, which was denied by the South Carolina Court of Appeals on March 22, 2023.

QUESTIONS PRESENTED

1.

The Court of Appeals erred in upholding the trial judge's denial of a directed verdict motion on the ABHAN charge where causation was not established because although the state alleged that a blow to the "back of the head" caused the injury; nonetheless, there was no proof that a strike to the back of the head from petitioner occurred in the case.

2.

The Court of Appeals erred in upholding the trial judge's denial of petitioner's requested self-defense charge, which was specialized and tailor-made to reflect petitioner's right to act in self-defense under lesser circumstances that involved an assault or threat to assault in response to less than deadly force, as opposed to the self-defense instruction given charging that the responding action would have been applicable if serious bodily injury or death resulted, because "a self-defense charge is erroneous where the trial judge fails to charge on the elements of [self] defense which are applicable to the issues raised by the defendant."[2]

3.

The Court of Appeals erred in upholding the trial judge's erroneous charge to the jury's question regarding clarity on the level of intent required for ABHAN and the lesser assault offenses.

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[2] State v. Day, 341 SC 410, 535 S.E.2d 431 (2000).

STATEMENT OF THE CASE

Petitioner was convicted of assault and battery of a high and aggravated nature during the October 2017 term of the Horry County General Sessions Court before Judge Benjamin H. Culbertson. Assistant Solicitors Joshua D. Holford and Cara J. Walker prosecuted the case and J. Eric Fox represented petitioner at trial. Judge Culbertson sentenced petitioner to imprisonment for a period of ten years.

Petitioner appealed, but on December 7, 2022, his conviction and sentence were affirmed by the South Carolina Court of Appeals. App. 1. A petition for rehearing was filed on December 22, 2022. App. 16. On March 22, 2023, the petition for rehearing was denied by the South Carolina Court of Appeals. App. 30.

Petitioner appealed. This petition for writ of certiorari follows.

QUESTION I

The Court of Appeals erred in upholding the trial judge's denial of a directed verdict motion on the ABHAN charge where causation was not established because although the state alleged that a blow to the "back of the head" caused the injury; nonetheless, there was no proof that a strike to the back of the head from petitioner occurred in the case.

At the conclusion of the state's case, defense counsel moved for a directed verdict on the ABHAN charge. R. 150, ll. 16-19. Defense counsel explained the state failed to show causation. R. 150, ll. 19-20. The video presented by the state merely showed Justin on the ground. R. 151, ll. 1-7. The video did not show how he ended upon the ground. R. 151, ll. 1-7. He argued that "[i]t could be true that [Appellant] did punch him in the face, but that he fell, struck his head and injured himself completely unrelated to that event." R. 151, ll. 9-11. The state simply could not prove what caused Justin's injury. R. 157, l. 8 – R. 158, l. 22. Due to the state's "fatal gap in evidence," defense counsel argued Appellant was entitled to a directed verdict. R. 152, ll. 1-3.

The state theorized that Appellant approached Justin from behind and struck him in the back of the head, which somehow caused Justin to fall backwards with his feet up. R. 153, ll. 12-18. To support its theory, the state relied almost exclusively on Dr. Cheatle's testimony that the injury was to the rear of Justin's head. R. 154, ll. 3-21.

Although he ultimately denied the motion for directed verdict, Judge Culbertson indicated "[t]his was a close call." R. 160, l. 25 – R. 161, l. 1. He explained that he did not know that there was evidence that proved the state's theory or where a reasonable juror could rely upon beyond a reasonable doubt that there was a sucker punch to the back of the head. R. 161, ll. 1-5. However, he thought the state had presented evidence that "there was a punch by [Appellant]

that created great bodily injury." R. 161, ll. 6-8. Judge Culbertson was perplexed because there was "evidence of a crime, but not based upon the state's theory." R. 161, ll. 13-15. He saw absolutely no evidence of a sucker punch to the back of the head, which was the entirety of the state's case. R. 161, ll. 15-18. He concluded there was a punch and "there was evidence that it was a likelihood or did cause great bodily injury." R. 161, l. 24 – R. 162, l. 4.

Ambrose Heavener was a patron of Carlos' n Charlie's on October 17, 2015. R. 199, l. 15 – R. 200, l. 14. He recalled an altercation happening that night. R. 200, ll. 15-17. More specifically, he remembered there was a "standoff" followed by "a swing." R. 200, ll. 18-23. He heard people arguing, which caused him to turn around to determining what was happening. R. 201, ll. 14-18. Heavener saw "two people standing pretty much chest to chest, face to face, … going at it pretty good for a minute there." R. 201, l. 21 – R. 202, l. 1. The people had "their fists kind of balled at their sides and just looked like they were fixing to start a fight." R. 202, ll. 1-3. He then saw a guy approach the men, trying to calm them down. R. 202, ll. 16-23.

The Court of Appeals placed the trial judge's ruling in its opinion as reflected below.

> I've reviewed the case law and it deals with the existence of evidence and, even though the State—I don't know that there's evidence that proves their theory or where a reasonable juror can rely upon beyond a reasonable doubt that there was a sucker punch to the back of the head, they certainly have presented evidence that there was a punch by the [Appellant], that created great bodily injury to the victim and coupled with—what was it the doctor—well, that's substantiated by Dr. Cheatle's testimony of the great bodily injury, and [Jimer]'s testimony that no, there was no hassle, we shook hands, we were okay, and then I felt this whoosh come over my shoulder. What I was wrestling with and I want to put it on the record is what do you do when, yes, there is enough evidence of a crime but not based upon the State's theory, I mean, I don't see where there is any evidence of a sucker punch to the back of the head, but that's the State's case, that's the State's theory, that's what the State is going on. Now, they have raised the argument in defense of the directed verdict, that it doesn't matter. Well, that hasn't been their theory at all along. I can't find a case on

> point in that regard. And so based upon that, I'm gonna go ahead and I'm gonna deny your motion although it is the State's theory that there is a sucker punch to the back of the head. But I think there is enough evidence to get to the jury that there was a punch that caused—there is evidence that it was a likelihood or did cause great bodily injury and based upon [Jimer]'s testimony that we were okay gets around the self-defense at this juncture.

Ultimately, the Court of Appeals held as follows:

> Our review of the record confirms substantial circumstantial evidence exists to support Appellant's guilt in that his single punch caused Victim's injuries, likely by way of a punch to Victim's face that caused Victim to fall and strike his head on the floor. The State presented abundant evidence, including Appellant's own statement to police[3] requiring the circuit court to deny his directed verdict motion. Heavener testified Victim "went down" right after Appellant "hit [Victim] on the face on the left side because [Appellant] was standing on that side of [Victim]." Sumpter testified Appellant "hit [Victim] right in the face. I'm not sure if it was the nose or where, but [Appellant] hit [Victim] in the face." Sumpter continued, "Yeah, he went straight back. . . . like a sack of potatoes. He just went straight backwards. Like, you know, he had like nothing there, he's just out on his feet." Thus, considering the evidence in the light most favorable to the State, substantial circumstantial evidence exists that tended to show Appellant punched Victim and this punch resulted in great bodily injury and ultimately Victim's death. *See State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013) (stating "[c]ircumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury.").
>
> For purposes of the circuit court's analysis at the directed verdict stage, it does not matter which story the jury would later choose to believe. The State's theory—supported by the photograph of Victim's face and Dr. Cheatle's testimony as to the hematoma on the back of Victim's head—was that Victim sustained a [contrecoup] injury as the result of a single blow which caused him to fall backward. The jury may have instead chosen to believe the version presented by the defense witnesses—that Appellant

[3] Despite Appellant's contention that he did "not use deadly force" and "all of the evidence indicated Appellant struck [Victim] once," that single blow ultimately caused Victim's death. Notwithstanding his argument that there "was no indication that Appellant used a weapon or excessively beat [Victim]," Appellant, by his own words, "kick boxed for thirteen years" and "really didn't even hit him with everything."

> punched Victim in the face with such force that he fell backward and sustained a contrecoup injury when his head struck the floor. In either scenario, the blow proximately caused Victim's injuries, which eventually resulted in his death. *See State v. Des Champs*, 126 S.C. 416, 120 S.E. 491, 493 (1923) ("The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred."). Accordingly, the circuit court properly denied Appellant's motion for a directed verdict.

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).

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, the Lollis Court directed a verdict of acquittal in the defendant's favor where the state presented no direct evidence that Lollis was involved in setting fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. The Court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51. As explained by the Court, although our courts have abandoned the traditional circumstantial evidence jury charge, the language of the charge is instructive in making a directed verdict determination. The traditional charge provided:

> Every circumstance relied upon by the State be proven beyond a reasonable doubt; and … all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590, 720 S.E.2d at 52 (quoting State v. Hernandez, 382 S.C. 620, 626 n.2, 677 S.E.2d 603, 606 n.2 (2009)).

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the victim in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

The state charged Appellant with ABHAN. Thus, the state was required to show Appellant "unlawfully injure[ed] another person and (a) great bodily injury to another person result[ed]; or (b) the act [was] accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600 (B)(1). "A person cannot be convicted of any crime defined in terms of a result … unless his act is the proximate cause of the result." McAnninch. Page 90. The Supreme Court explained "[t]he proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury and without which the result would not have occurred." State v. Des Champs, 126 S.C. 416, 416, 120 S.E. 491, 493 (1923) (internal quotation and citation omitted). Proximate cause "is more broadly, rather than more narrowly, applied against the wrongdoer in a criminal prosecution than against the tort-feasor in a civil action." Id. at 416, 120 S.E. at 493. "Thus, in a criminal action, the wrongdoer whose crime has resulted in injury to another will not be absolved on the ground that the wrongful act or negligence of the person injured contributed to the injury as proximate cause." Id.

Thus, the statute required the state prove that Appellant's conduct *caused* Justin's injury. See State v. Greene, 423 S.C. 263p, 814 S.E.2d 496, 498-499 (2018) (discussing causation in the context of a homicide by child abuse case); State v. Dantonio, 376 S.C. 594, 604-606, 658 S.E.2d 337, 343-344 (Ct. App. 2008) (explaining causation in a felony driving under the influence case); State v. Burris, 334 S.C. 256, 265 n.11, 513 S.E.2d 104, 109 n.11 (1999) (noting "the rule the unlawful activity must proximately cause death"); State v. Burton, 302 S.C. 494, 497-498, 397 S.E.2d 90, 92 (1990) (discussing causation in a murder case); State v. Matthews, 291 S.C. 339, 346-347, 353 S.E.2d 444 449 (1986) (discussing causation); State v. Brown, 205 S.C. 514, 32 S.E.2d 825, 827 (1945) (discussing causation). More specifically, the state was required to prove that Appellant's act of hitting Justin once caused great bodily injury or was likely to produce death or great bodily injury. The state was unable to do so.

Quite simply, "there must be a causal relationship between the defendant's act" and the resulting harm "before criminal liability may be imposed." State v. Jenkins, 276 S.C. 209, 211, 277 S.E.2d 147, 148 (1981) (exploring causation in a homicide case). In the context of homicide cases, where the issue of causation principally arises, "[o]ne who inflicts an injury on another is deemed by law to be guilty of homicide where the injury contributes mediately or immediately to the death of the other. The fact that other causes also contribute to the death does not relieve the actor from responsibility." State v. Riley, 219 S.C. 112, 112, 64 S.E.2d 127, 130 (1951). In other words, the "intervening cause must be one not produced by the wrongful act or omission, but independent of it, and adequate to bring the injurious results." Des Champs, 126 S.C. at 416, 120 S.E. at 493.

The Court reversed a reckless homicide conviction where the state failed to prove that reckless operation of a vehicle was the proximate cause of the accident that caused the death. State v. Dobson, 281 S.C. 36, 38-39, 314 S.E.2d 310, 311 (1984). Dobson and his friend were riding in a

jeep in which Dobson was driving. Id. at 37, 314 S.E.2d at 311. When the jeep overturned, Dobson's friend was killed. Id. On appeal, Dobson argued "the state failed to prove a reckless act on his part which was the proximate cause of the accident." Id. at 38, 314 S.E.2d at 311. Dobson argued a mechanical malfunction, not his undisputed drinking while driving, caused the accident. Id.

The Court explained that when a "case rests entirely on circumstantial evidence, a directed verdict is proper when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis." Id. According to the Court "[e]ven if a finding of recklessness were warranted by the evidence of [Dobson]'s intoxication, the state failed to meet the circumstantial evidence test in showing that this recklessness was the proximate cause of the accident." Id. The Court was particularly impressed by the expert testimony offered by Dobson that "the locking of the left front wheel caused the accident." Id. Recognizing that the state's expert contradicted Dobson's theory regarding the cause of the accident, the Court concluded Dobson's expert's theory was "a reasonable hypothesis." Id. at 39, 314 S.E.2d at 311. In fact, the record contained "no other explanation for the overturning of the jeep." Id. According to the Court, "[t]he evidence was simply too speculative to submit the reckless homicide issue to the jury." Id.

As the trial judge noted, no evidence in the record supported the state's theory that Appellant struck Justin in the back of the head. The evidence indicated that Appellant struck Justin in the face with a single punch. The undisputed evidence – the video and still photographs – further indicated that Justin fell backward, landing with his feet straight up toward the ceiling, as the judge noted. Additionally, the undisputed evidence – the video and the still photographs – showed two bouncers dragging Justin from the dance floor to the door. The bouncers deposited Justin on the floor and re-positioned him. Thereafter, the bouncer dumped him outside. There was no evidence

presented regarding where the bouncers put Justin – was he dropped on his head on a concrete sidewalk by the bouncers? There was no evidence presented regarding how the bouncers handled Justin – did the bouncers knock his head against walls, doors, or other objects? The state's evidence simply failed to show that Appellant's act of punching Justin in the face caused the injuries described by Dr. Cheatle. For this reason, the trial judge erred in failing to direct a verdict of acquittal on the charge of ABHAN.

The state charged Appellant with ABHAN. Thus, the state was required to show Appellant "unlawfully injure[ed] another person and (a) great bodily injury to another person result[ed]; or (b) the act [was] accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600 (B)(1). "A person cannot be convicted of any crime defined in terms of a result … unless his act is the proximate cause of the result." William S. McAninch, et al., The Criminal Law of South Carolina 90 (6th ed. 2013). The Supreme Court explained "[t]he proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury and without which the result would not have occurred." State v. Des Champs, 126 S.C. 416, 416, 120 S.E. 491, 493 (1923) (internal quotation and citation omitted). Proximate cause "is more broadly, rather than more narrowly, applied against the wrongdoer in a criminal prosecution than against the tort-feasor in a civil action." Id. at 416, 120 S.E. at 493. "Thus, in a criminal action, the wrongdoer whose crime has resulted in injury to another will not be absolved on the ground that the wrongful act or negligence of the person injured contributed to the injury as proximate cause." Id.

Thus, the statute required the state prove that Appellant's conduct *caused* the deceased's injury. See State v. Greene, 423 S.C. 263p, 814 S.E.2d 496, 498-499 (2018) (discussing causation in the context of a homicide by child abuse case); State v. Dantonio, 376 S.C. 594, 604-606, 658

S.E.2d 337, 343-344 (Ct. App. 2008) (explaining causation in a felony driving under the influence case); State v. Burris, 334 S.C. 256, 265 n.11, 513 S.E.2d 104, 109 n.11 (1999) (noting "the rule the unlawful activity must proximately cause death"); State v. Burton, 302 S.C. 494, 497-498, 397 S.E.2d 90, 92 (1990) (discussing causation in a murder case); State v. Matthews, 291 S.C. 339, 346-347, 353 S.E.2d 444 449 (1986) (discussing causation); State v. Brown, 205 S.C. 514, 32 S.E.2d 825, 827 (1945) (discussing causation). More specifically, the state was required to prove that Appellant's act of hitting the deceased once caused great bodily injury or was likely to produce death or great bodily injury. The state was unable to do so.

As this Court and the trial judge noted, no evidence in the record supported the state's theory that Appellant struck the deceased in the back of the head. The evidence indicated that Appellant struck the deceased in the face with a single punch. The undisputed evidence – the video and still photographs – further indicated that the deceased fell backward, landing with his feet straight up toward the ceiling, as the judge noted. Additionally, the undisputed evidence – the video and the still photographs – showed two bouncers dragging the deceased from the dance floor to the door. The bouncers deposited the deceased on the floor and re-positioned him. Thereafter, the bouncer dumped him outside. There was no evidence presented regarding where the bouncers put the deceased – was he dropped on his head on a concrete sidewalk by the bouncers? There was no evidence presented regarding how the bouncers handled the deceased – did the bouncers knock his head against walls, doors, or other objects? The state's evidence simply failed to show that Appellant's act of punching the deceased in the face caused the injuries described by Dr. Cheatle. The Court of Appeals erred in upholding the trial judge's denial of petitioner's motion for a directed verdict of acquittal on the charge of ABHAN.

QUESTION II

The Court of Appeals erred in upholding the trial judge's denial of petitioner's requested self-defense charge, which was specialized and tailor-made to reflect petitioner's right to act in self-defense under lesser circumstances that involved an assault or threat to assault in response to less than deadly force, as opposed to the self-defense instruction given charging that the responding action would have been applicable if serious bodily injury or death resulted, because "a self-defense charge is erroneous where the trial judge fails to charge on the elements of [self] defense which are applicable to the issues raised by the defendant."[4]

During the charge conference, defense counsel objected to the portions of the self-defense instruction requiring the evidence show Appellant was in imminent danger of death or serious bodily injury in order for self-defense to apply. R. 248, ll. 9-17. Defense counsel explained he could not imagine "that a person that is assaulted with something less than deadly force, a fist, does not have the right to defend himself." R. 248, ll. 21-24. He further explained that "from the Defense point of view," the incident involved "a punch for a punch." R. 249, ll. 7-9. According to defense counsel, the law must permit a person to "resist a punch with a punch." R. 249, ll. 12-16. Self-defense must include the ability of a person punched in the face, or threatened with a punch in the face, to be able to respond in self-defense. R. 249, ll. 18-21. Thus, defense counsel objected to the self-defense jury instruction including language that Appellant must have been in fear of death or great bodily injury in order to exercise his right to self-defense. R. 249, ll. 21-22.

The state agreed that the "the law could not be that a person must be in fear of losing his life in every situation," but relied upon the portion of the charge regarding fear of serious bodily injury as sufficient to cover situations in which a deadly threat was not posed. R. 250, ll. 19-23. According

[4] State v. Day, 341 SC 410, 535 S.E.2d 431 (2000).

to the state, in order to exercise one's right to self-defense, one "must be in fear of death or serious bodily injury." R. 251, ll. 19-25. Anything less than fear of death or serious bodily injury precluded the use of self-defense. R. 251, ll. 19-25.

Judge Culbertson agreed with defense counsel, but explained his hands were "tied" by the lack of authority from the appellate courts to provide a different instruction. R. 249, ll. 23-24; R. 250, ll. 1-7. Judge Culbertson succinctly explained defense counsel's argument that based upon the proposed jury instruction for self-defense, a person "just in fear of injury" would not be able to defend himself. R. 250, l. 24 – R. 251, l. 7. Put simply, "[t]he question is here if somebody puts you in fear, not of your life, not of serious bodily injury, but just in fear of injuring you, can you not defend yourself?" R. 251, ll. 13-18. Judge Culbertson spoke frankly when he admitted he did not "know the answer because the Appellate Court hasn't addressed it, but at least that gives you your grounds for appeal is whether or not self-defense is available to any defendant who is not in fear of death, not in fear of serious bodily injury, but is in fear of injury or moderate injury." R. 252, l. 1-6; R. 252, ll. 12-19. According to the judge, it was for the appellate courts to decide "if it's serious bodily injury or it's death, then that means self-defense is not available" when the conduct "involves less than serious bodily injury or death." R. 253, ll. 1-5. Although he "tend[ed] to agree with [the defense's] argument," Judge Culbertson refused to alter the standard self-defense instruction. R. 253, ll. 6-8. The Court of Appeals held as follows:

> Appellant next argues the circuit court erred in instructing the jury that in order for self-defense to apply, Appellant must have been in fear of great bodily injury or death when he struck Victim. We find no abuse of discretion here, as the circuit court charged the current and correct law of self-defense in South Carolina. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("The trial court is required to charge only the current and correct law of South Carolina.").
>
> "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues

> presented at trial." *Id.* at 478, 697 S.E.2d at 583. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *Id.*

Appellant, who did not use deadly force, must have been in fear of serious bodily injury or death because this Court's decision provides no definitive ruling on the matter. First, this Court noted that the question presented on appeal was one "our appellate courts may need to address," but the Court of Appeals declined to do so because the circumstances warranting an appellate decision on the matter did not exist here. The circumstances included the Court of Appeals questioning whether Appellant was entitled to a self-defense instruction at all and remarking that the trial court provided a specialized and appropriate jury instruction in light of the evidence presented at trial.

Notably, the state did not object to the judge instructing the jury on self-defense – neither at trial nor in its appellate brief. At all times, the state agreed Appellant was entitled to a jury instruction on self-defense. The state merely objected to changing the language to make clear that Appellant need not fear death or serious bodily injury in order to exercise his right to self-defense.

While it is true that there was evidence in the record that Appellant walked to the dance floor area to where his friend was engaged in a heated verbal altercation with the deceased, Appellant was without fault in bringing on the difficulty. By all accounts, Appellant approached the two men on the dance floor in order to diffuse the situation. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Not only was Appellant's conduct not in violation of law, but it was not calculated to produce the occasion.

Regarding the matter of bringing on the difficulty, note the Supreme Court's holding in State v. Slater, 373 S.C. 66, 644 S.E.2d 50, 52 (2007), where the Court held that Slater engaged in

conduct that amounted to bringing on the difficulty when he approached an altercation that was already underway with a loaded weapon by his side. Slater also acted in violation of the law by carrying a weapon, which the Court held was the proximate cause of the homicide.[5] Id. at 71, 644 S.E.2d at 53. Unlike Slater, Appellant was not in unlawful possession of a weapon. In fact, Appellant was not in possession of a weapon at all. In another case, the Supreme Court held Williams was not entitled to a charge on self-defense because he was at fault in bringing on the difficulty when he took a loaded, unlawfully-possessed pistol to an illegal drug transaction. State v. Williams, 427 S.C. 246, 250-251, 830 S.E.2d 904, 906 (2019).

When a person does not use deadly force, the person "need not anticipate serious bodily harm before responding with non-deadly force." William S. McAninch, et al., The Criminal Law of South Carolina 620 (6th ed. 2013). Additionally, the person "need not retreat before responding with non-deadly force." Id. To support this proposition, the authors explained that "the key to self-defense is proportionality of the response." Id. (citing State v. Wood, 1 S.C.L. (1 Bay) 351 (1794)). After recounting the facts of the case, the authors explained "that one need not submit to every assault." Id. Rather, "[a] person is entitled to defend against reasonably anticipated unlawful bodily harm even though it would not be serious, but in defending, he must respond proportionally." Id.

"The general rule is that where a person reasonably believes he is threatened with bodily harm he may use whatever force appears to be reasonably necessary to protect himself." Byrd v. Isgitt, 338 So.2d 374, 375 (La. Ct. App. 1976). "The general rule at common law is that a person may use reasonable force to protect himself against one who threatens him with physical injury." Note, Justification for the Use of Force in the Criminal Law, 13 Stan. L. Rev. 566, 566-567 (1961);

[5] The Williams Court clarified that the proximate cause question posed in Slater should have been whether the illegally possessed weapon is the proximate cause of the difficulty or occasion that led to the killing. State v. Williams, 427 S.C. 246, 254 n.4, 830 S.E.2d 904, 908 n.4 (2019).

"For the purposes of self-defense which stops short of killing or attempting to kill, there is no duty to retreat, and no need for the apprehension of serious bodily harm." Beyer v. Birmingham Ry., Light & Power, Co., 64 So. 609, 611 (Ala. 1914); see also Adams v. State, 75 So. 641, 641 (Ala. Ct. App. 1917).[6]

The Supreme Court of Appeals of West Virginia analyzed a similar issue in the civil context. Shires v. Bogges, 77 S.E. 542, 545 (W. Va. 1913). The trial judge instructed the jury that the defendant could exercise his right to self-defense only if he believed the plaintiff intended to do him some great bodily harm. Id. The court was asked whether the law limited self-defense in this manner. Id. According to the court, the law did not. Id.

The South Carolina Supreme Court has long held that a trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller, 297 S.C. at 443, 377 S.E.2d at 330.

In Fuller, the defendant solicited a prostitute. Id. at 441, 377 S.E.2d at 329. However, when the pair arrived at the prostitute's trailer, they discovered it was occupied. The defendant then left.

[6] See also Hartley v. Oldtman, 410 S.W.2d 537, 543 (Mo. Ct. App. 1966) (explaining that "[w]here a person has reasonable grounds to believe, and does believe that another is about to assault him, or do bodily harm to one to whom he owes a duty to protect, he need not wait until the other person actually strikes or makes an assault before resorting to the application of reasonable force to repel the attack" and that "where the person does not use a deadly weapon, fear of bodily harm only is sufficient to support a justification by self-defense); Silfast v. Matheny, 136 P.2d 260, 262 (Ore. 1943) (approving a jury charge that the intentional infliction of bodily harm by a means not intended or likely to cause death or serious bodily harm is privileged for the purpose of preventing the other from inflicting bodily harm upon the actor in certain circumstances); Anders v. Clover, 165 N.W. 640, 641 (Mich. 1917) (explaining "[t]here can be no doubt that one assaulted may justly exercise such reasonable force as may be, or as appears to him at the time to be, necessary to protect himself from bodily harm in repelling said assault.).

Id. When the defendant later returned to the prostitute's trailer, he found a car driven by a white woman was blocking the road. Id. The defendant asked her to move her car. Id. Two men approached the defendant's car and asked him "what he was 'trying to do to that white lady.'" Id. One of the men used a racial slur and grabbed the defendant by the throat. Id. at 441, 377 S.E.2d at 329-30.

The defendant fired a warning shot allowing him to drive away. Unbeknownst to the defendant, the street was a dead end. Id. at 442, 377 S.E.2d at 330. Due to the men blocking his escape, the defendant ultimately crashed his car against a rail. Id. The two men yelled, "'we're going to take care of you.'" Id. The defendant thought he saw something shiny in one of the men's hands and fired four shots at them, killing both. Id. No gun was found on the men. Id.

The trial judge only instructed the jury on the basic elements of self-defense. Id. The Court held it was error to only give the general charge when the defendant "repeatedly requested additional charges." Id. at 443, 377 S.E.2d at 330. The Court found the trial judge erred by not giving three specific charges on self-defense that further explained the principles in the general charge. First, the trial judge failed to charge the jury that the defendant had the right to act on appearances. Id. at 443-44, 377 S.E.2d at 330-31 (citing State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955)). Second, the trial judge failed to charge the jury that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." Id. (citing State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951)). Third, the trial judge failed to charge that an individual has no duty to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." Id. (citing State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920)).

The South Carolina Supreme Court held a trial judge erred in failing to charge on the specific elements of self-defense that were applicable to the defendant's theory in State v. Day, 341

S.C. 410, 418, 535 S.E.2d 431, 435 (2000). As stated by the Court, "[a] self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Id. The Court found the instruction given in Day incomplete because the trial judge failed to instruct the jury that the defendant had the right to judge the conduct of the deceased more harshly than otherwise because of the deceased's drug consumption. Id.; see also State v. Hendrix, 270 S.C. 653, 660-661, 244 S.E.2d 503, 507 (1978) (including the intoxication of the deceased under its analysis of the imminent peril element of self-defense and stating intoxication would provide a basis for the defendant to judge the conduct of his adversary more harshly than otherwise).

Regarding the duty to retreat, the Court of Appeals held that Appellant could have simply walked off the dance floor. The case law is that an individual has no duty to retreat if by doing so the danger of being injured would increase. See State v. Jackson, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). Additionally, this Court may have overlooked persuasive authority discussed infra that an individual who does not use deadly force need not retreat.

The issue is whether a person who does not use deadly force must fear serious bodily injury or death in order to invoke self-defense. The general consensus is that when a person does not use deadly force, the person "need not anticipate serious bodily harm before responding with non-deadly force." William S. McAninch, et al., The Criminal Law of South Carolina 620 (6th ed. 2013). Additionally, the person "need not retreat before responding with non-deadly force." Id. To support this proposition, the authors explained that "the key to self-defense is proportionality of the response." Id. (citing State v. Wood, 1 S.C.L. (1 Bay) 351 (1794)). After recounting the facts of the case, the authors explained "that one need not submit to every assault." Id. Rather, "[a] person is

entitled to defend against reasonably anticipated unlawful bodily harm even though it would not be serious, but in defending, he must respond proportionally." Id.

Persuasive authority from other jurisdictions supports Appellant's contention. "The general rule is that where a person reasonably believes he is threatened with bodily harm he may use whatever force appears to be reasonably necessary to protect himself." Byrd v. Isgitt, 338 So.2d 374, 375 (La. Ct. App. 1976). "The general rule at common law is that a person may use reasonable force to protect himself against one who threatens him with physical injury." Note, Justification for the Use of Force in the Criminal Law, 13 Stan. L. Rev. 566, 566-567 (1961). "For the purposes of self-defense which stops short of killing or attempting to kill, there is no duty to retreat, and no need for the apprehension of serious bodily harm." Beyer v. Birmingham Ry., Light & Power, Co., 64 So. 609, 611 (Ala. 1914); see also Adams v. State, 75 So. 641, 641 (Ala. Ct. App. 1917); Hartley v. Oldtman, 410 S.W.2d 537, 543 (Mo. Ct. App. 1966) (explaining that "[w]here a person has reasonable grounds to believe, and does believe that another is about to assault him, or do bodily harm to one to whom he owes a duty to protect, he need not wait until the other person actually strikes or makes an assault before resorting to the application of reasonable force to repel the attack" and that "where the person does not use a deadly weapon, fear of bodily harm only is sufficient to support a justification by self-defense); Silfast v. Matheny, 136 P.2d 260, 262 (Ore. 1943) (approving a jury charge that the intentional infliction of bodily harm by a means not intended or likely to cause death or serious bodily harm is privileged for the purpose of preventing the other from inflicting bodily harm upon the actor in certain circumstances); Anders v. Clover, 165 N.W. 640, 641 (Mich. 1917) (explaining "[t]here can be no doubt that one assaulted may justly exercise such reasonable force as may be, or as appears to him at the time to be, necessary to protect himself from bodily harm in repelling said assault.); Shires v. Bogges, 77 S.E. 542, 545 (W. Va. 1913)

(holding the law did not limit self-defense to situations in which the person feared some great bodily harm); Michel v. State, 989 So.2d 679, 681 (Fla. Dist. Ct. App. 2008); Commonwealth v. Nobel, 707 N.E.2d 819, 821 (Mass. 1999) (explaining that an individual may use nondeadly force in self-defense when he has a reasonable concern over his personal safety); State v. Ouellette, 37 A.3d 921, 927 (Me. 2012) (providing for the elements of justified use of non-deadly force); State v. Rost, 429 S.W.3d 444 (Mo. Ct. App. 2014) (discussing the use of non-deadly force in self-defense).

Despite the South Carolina Supreme Court's long line of cases directing a trial court to craft a self-defense charge tailored to the facts of the case presented, the trial judge failed to do so here. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989); State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000); see also State v. Hendrix, 270 S.C. 653, 660-661, 244 S.E.2d 503, 507 (1978) (including the intoxication of the deceased under its analysis of the imminent peril element of self-defense and stating intoxication would provide a basis for the defendant to judge the conduct of his adversary more harshly than otherwise). Important for this appeal, the trial judge voiced his frustration that his hands were tied because no appellate court had authorized such an instruction.

The Court of Appeals erred in upholding the trial judge's error in instructing the jury that in order for petitioner to avail himself of self-defense, the law required that he be in imminent danger of death or serious bodily injury or reasonably believed he was in such danger because this erroneous instruction eviscerated petitioner's claim of self-defense, and in effect prevented the jury from considering self-defense, and permitted the state's burden to disprove self defense to be lessened. Petitioner did not use deadly force against Justin. All of the evidence indicated that petitioner struck Justin once. There was no indication that petitioner used a weapon or excessively beat Justin. Petitioner was prejudiced by the erroneous self-defense instruction.

QUESTION III

The Court of Appeals erred in upholding the trial judge's erroneous charge to the jury's question regarding clarity on the level of intent required for ABHAN and the lesser assault offenses.

In its indictment, the state alleged that Appellant committed "an unlawful act of injury to Justin Hodges which resulted in great bodily injury or the act was accomplished by means likely to produce death or great bodily injury to [Justin Hodges] in violation of Section 16-3-600(b), S.C. Code of Laws, 1976, as amended." R.351-352. Judge Culbertson agreed the evidence presented entitled Appellant to jury instructions on the lesser-included offenses of assault and battery in the second and third degrees. R. 242, ll. 23-25. He instructed the jury thusly. R. 294, l. 7 – R. 296, l. 12.

During deliberations, the jury asked, "[A]re we to consider intent as to which level of assault this is or is this the resulting harm the deciding factor?" R. 312, ll. 22-25; R. 326. While discussing the question, the judge explained that he planned to instruct the jury that "[t]o conviction the Defendant of assault and battery of a high and aggravated nature, the state must prove beyond a reasonable doubt that the Defendant intended to unlawfully injure another person and either great bodily injury to that person resulted or the act was accomplished by means likely to produce death or great bodily injury." R. 313, ll. 13-24. His proposed instructions for the lesser-included offenses provided almost identical language. R. 314, ll. 5-11; R. 314, ll. 18-22.

Defense counsel objected "to adding the word intent to the court's previous charge." R. 316, ll. 11-12. He requested a "charge on intent as a general proposition." R. 316, ll. 14-16. The judge's previous instruction to the jury was a correct statement of the law regarding the definitions of the charged offense and the lesser-included offenses. R. 316, ll. 16-19. According to defense counsel, by "placing emphasis on that word, intent," there was a danger that the judge

would "suggest an answer to their question." R. 316, ll. 16-23. He explained that by including the additional word, the court was placing emphasis on it. R. 316, l. 24 – R. 317, l. 1. Additionally, defense counsel argued that the judge's reading and "emphasizing [of] that word" was suggesting an outcome to the jury. R. 317, ll. 1-3. The state was required to prove intent as to the resulting harm rather than proof of the intent to injure.

Over objection, the judge instructed the jury as follows: "To convict the Defendant of assault and battery of a high and aggravated nature, the State must prove beyond a reasonable doubt that the Defendant intended to unlawfully injure another person, and either great bodily injury to that person resulted or the act was accomplished by means likely to produce death or great bodily injury." R. 319, ll. 10-16. His instructions on the lesser-included offenses followed the same pattern, including the addition of the word "intended" as the verb and "unlawfully injure another person" as the object of the verb. R. 319, l. 16 – R. 320, l. 18. Approximately ten minutes later, the jury returned with a guilty verdict of ABHAN. R. 320, l. 22 – R. 321, l. 6.

Criminal liability is normally based upon the concurrence of two factors: the defendant's criminal intent and the actual, physical act constituting the offense." State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000) (citing United States v. Bailey, 444 U.S. 394, 402 (1980)). "A defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense." Id. (citing State v. Ferguson, 302 S.C. 269, 271, 395 S.E.2d 182, 183 (1990)). "Assault, like every other non-strict liability offense, consists of two basic elements, act and *mens rea*." McAninch, supra, at 242. The Court of Appeals found that the trial judge's charge to the jury's inquiry, which was that they had only to find intent and jury without further specifications regarding intent on the

various assault charges, was an acceptable charge on the matter. The Court of Appeals held as follows:

> The proposed instructions for the lesser-included offenses tracked this language. Appellant objected "to adding the word intent to the Court's previous charge" and requested a "charge on intent as a general proposition." According to Appellant, by adding the word "intent" and "placing emphasis on that word, intent," the circuit court would "suggest an answer to their question."
>
> In argument before this court, the State asserted there is zero doubt Appellant intended an injury to Victim, noting, "When you punch someone, the intent that you have is to cause an injury." Moreover, there is no question that Victim's resulting injury qualified as great bodily injury given the fact that he had to have part of his brain removed before he ultimately died. Appellant's deliberate blow to Victim's head was evidence of intent to injure—the severity of the resulting harm provided the jury evidence of the statutory degree. *See e.g.*, 6A C.J.S. *Assault* § 86 (2018) (explaining battery is a general intent crime, "and thus the required mental state entails only an intent to do the act that causes the harm"). The circuit court's instructions accurately communicated the law applicable to the trial evidence.

The state charged Appellant with ABHAN, and the judge determined the evidence presented supported jury instructions on two lesser-included offenses. Thus, the state was required to show Appellant "unlawfully injure[ed] another person and (a) great bodily injury to another person result[ed]; or (b) the act [was] accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600 (B)(1). Similarly, for assault and battery in the second degree, the state was required to prove Appellant "unlawfully injure[d] another person," and "moderate bodily injury to another result[ed] or moderate bodily injury to another person could have resulted." S.C. Code Ann. § 16-3-600 (D)(1). And, finally, for assault and battery in the third degree, the state was required to prove Appellant "unlawfully injure[d] another person, or offer[ed] or attempt[ed] to injury another person with the present ability to do so." S.C. Code Ann. § 16-3-600 (E)(1). The statutory provisions omit any reference to the mental state required for any of the offenses.

The assault and battery statutes are divided based upon the degree of harm caused by the conduct of the defendant's conduct. It is the degree of harm that distinguishes the various levels. The punishment meted out to the offender depends upon the degree of harm. Thus, the criminal intent of the offender must apply to the intent to injury and the resulting injury. When the judge instructed the jury that it was only necessary for Appellant to have intended to injury Justin, the judge alleviated the state's burden of proving the resulting injury was also intended. The nature of the injury Justin suffered was quite serious by any measure. Thus, when the judge explained that the resulting injury, whether great bodily injury, moderate bodily injury, or just bodily injury, controlled the offense, the jury found Appellant guilty of ABHAN in less than ten minutes.

The trial judge instructed the jury on ABHAN and the lesser-included offenses of assault and battery in the second and third degrees. During their deliberations, the jury asked, "[A]re we to consider intent as to which level of assault this is or is the resulting harm the deciding factor?" Over objection, the judge instructed the jury as follows: "To convict the Defendant of assault and battery of a high and aggravated nature, the State must prove beyond a reasonable doubt that the Defendant intended to unlawfully injure another person, and either great bodily injury to that person resulted or the act was accomplished by means likely to produce death or great bodily injury." His instructions on the lesser-included offenses followed the same pattern, including the addition of the word "intended" as the verb and "unlawfully injure another person" as the object of the verb. Approximately ten minutes later, the jury returned with a guilty verdict of ABHAN.

The question presented on appeal is whether the different levels of assault and battery require merely an intent to injure allowing the potentially unintentional resulting injury to control the criminal charge or whether there must be an intent to cause the particular injury that results. In State v. Bryant, 316 S.C. 216, 447 S.E.2d 852 (1994), the South Carolina Supreme Court confronted

a similar question. An officer attempted to arrest Bryant for failure to stop for a blue light. Id. at 218, 447 S.E.2d at 853. Bryant and the officer struggled. Id. at 218, 447 S.E.2d at 853-854. During the struggle, Bryant pushed the officer against the patrol car causing damage in excess of $200. Id. at 218, 447 S.E.2d at 854. At his trial for malicious injury to personal property – the police car, Bryant moved for a directed verdict because there was no evidence of intent to cause damage to the car. Id. After explaining that the state was required to show "willful, unlawful and malicious damage" to the police car, the Court explained that willful was synonymous with intentional. Id. at 219, 447 S.E.2d at 854. Based on the evidence presented, the state failed to provide any evidence that Bryant intended to cause damage to the patrol car when he pushed the officer against it. Id. "The only reasonable inference form the evidence [was] that the damage to the patrol car was an unintended harm." Id. Bryant's "intent to assault and batter the police officer [could not] be transferred to the property damage since the harm caused was different from the type of harm intended." Id. There was no evidence that Bryant willfully caused harm to the car. Id.

South Carolina is not alone in requiring the resulting harm be the intended harm. See People v. Williams, 254 N.Y.S.2d 193, 194-195 (N.Y. App. Div. 1964) (explaining that "[j]ust as in simple assault, New Jersey requires an intent, not merely to injure, but to 'inflict *the* injury' so in atrocious assault there must necessarily be an intent to 'inflict the atrocious injury.'"); People v. Katz, 49 N.E.2d 482, 484 (N.Y. 1943) (holding that where the statute forbade conduct that willfully and wrongfully wounded another or inflicted grievous bodily harm upon another, the state was required to prove intent co-extensive with the act prohibited and explaining that under the common law, for an assault to be considered a felony, then felonious intent must be proven); Knott v. State, 573 So.2d 179, 180 (Fla. Dist. Ct. App. 1991) (holding that a defendant who did not intend injuries received by victim did not commit aggravated battery); People v. Lattimore, 955 N.E.2d 1244, 1254

(Ill. App. Ct. 2011) (explaining that for purposes of the state's aggravated battery statute, the person must act to accomplish the result).

South Carolina's new assault and battery statutes are divided based upon the degree of harm caused by the conduct of the defendant's conduct. It is the degree of harm that distinguishes the various levels. The punishment meted out to the offender depends upon the degree of harm. Thus, the criminal intent of the offender must apply tò the intent to injury and the resulting injury. When the judge instructed the jury that it was only necessary for Appellant to have intended to injure, the judge alleviated the state's burden of proving the resulting injury was also intended. The nature of the injury suffered was quite serious by any measure. Thus, when the judge explained that the resulting injury, whether great bodily injury, moderate bodily injury, or just bodily injury, controlled the offense, the jury found Appellant guilty of ABHAN in less than ten minutes.

The Court of Appeals erred in upholding the trial judge's charge that all that was necessary for a conviction for ABHAN was that a defendant intended to injure someone and the resulting injury qualified as great bodily injury.

CONCLUSION

Based on the foregoing arguments, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above-raised issues.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

This 28th day of April, 2023

ATTORNEY FOR PETITIONER

RECEIVED
Apr 28 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILIP DAVID GUDERYON,

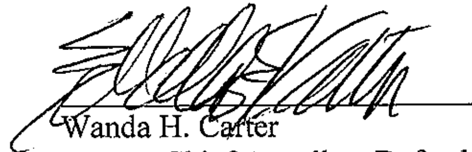
APPELLANT

Opinion No. 5955 (S.C. Ct. App. Filed December 7, 2022)

APPELLATE CASE NO. 2017-002168

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); and the South Carolina Court of Appeals; and on Philip D. Guderyon, #374208, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 28th day of April, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

From:	Leverett, Scott
To:	SC - BLITCH WILLIAM
Cc:	SC - COLLINS CAROLINE; Carter, Wanda
Subject:	Philip D. Guderyon - Petition for Writ of Certiorari to the Court of Appeals - Appellate Case No. 2023-000633
Date:	Friday, April 28, 2023 3:04:00 PM
Attachments:	Philip D. Guderyon - Petition for Writ of Certiorari to the Court of Appeals - Appellate Case No. 2023-000633.pdf Philip Guderyon - COA Cert Appendix - Appellate Case No. 2023-000633.pdf

Dera Mr. Blitch,

Attached please find a copy of the petition for Writ of Certiorari to the Court of Appeals and accompanying appendix in the above referenced case that is being filed today, April 28, 2023, with the Supreme Court.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense