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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Thomas W. Cooper, Circuit Court Judge

Appellate Case No. 2023-000696

THE STATE,

Respondent,

v.

NYASIA MARIE GRANT,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

STANDARD OF REVIEW5

ARGUMENT6

 I. The trial judge properly denied Appellant’s directed verdict motion on the
 charge of assault and battery of a high and aggravated nature.6

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

In Re Reymundo M., 52 Cal. App. 5th 78 (2020) 7

State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002)..... 5

State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004)..... 5

State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008)..... 5

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)..... 5

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012)..... 5

State v. Johnson, 119 N.E.3d 914, 2018 -Ohio- 3670 (2018)..... 7

State v. Mitchell, 382, S.C. 1, 675 S.E.2d 435 (2009)..... 7

State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000) 5

Statutes

S.C. Code Ann. § 16-3-29 (Supp. 2019)..... 6

SC Code §16-3-600(A)(1) 7

Section 16-3-600 of the Code of Laws of South Carolina..... 6

Section 16-3-600(B)(1)(b) of the SC Code..... 8

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's directed verdict motion on the charge of assault and battery of a high and aggravated nature.

STATEMENT OF THE CASE

Appellant was indicted in April of 2023 for assault and battery of a high and aggravated nature and possession of a weapon during a violent crime. Appellant proceeded to a jury trial April 24-26, 2023, in Charleston County in front of the Honorable Thomas W. Cooper. Appellant was represented by Lyndsay Luthringer and Nicholas D'Angelo. The jury found Appellant guilty of both charges. He was sentenced to five years imprisonment on both charges to run concurrently. This appeal follows.

STATEMENT OF FACTS

On September 19, 2019, Felicia Gethers went to the Refuel gas station near her house to purchase a few items. (R. 220). Gethers was chatting with the cashiers when Nyasia Grant, Appellant, entered the gas station and began yelling obscenities at Gethers. (R. 220). Gethers testified when she turned around, Appellant knocked things out of her hands. (R. 220). Gethers further testified that she then threw something at Appellant in return and Appellant left the gas station. (R. 220). Gethers then remained in the store for a bit after the encounter with Appellant. (R. 224).

Gethers testified that she exited the gas station, walked to her car, and as she was opening her car door she heard the same voice from inside the store. (R. 225). As Gethers turned around, Appellant stabbed her in the arm with a serrated kitchen knife and ran off. (R. 225-228). Appellant then fled in a white dodge charger and Gethers was able to give the 911 operator a partial plate before her phone died. (R. 230-231). Gethers then drove to her house to attempt to stop the bleeding. (R. 233). Gethers made a makeshift tourniquet and then switched into her Ford Focus because she could charge her phone in that vehicle on the way to the hospital. (R. 235). Gethers returned to the house after receiving a call from her landlord that police were there. (R. 235).

Shelby Walker with Mount Pleasant Police Department (MPPD) arrived at Gethers house. (R. 79). Walker testified that Gethers had a substantial amount of blood on her clothing and a stab wound on her upper left arm. (R. 79-80). Logan Armbruster with MPPD also testified that there was a large amount of blood around the driver's side area of Gethers vehicle and a trail of blood leading into the house, indicating that a serious injury had occurred, and a person may need medical attention. (R. 139-140). Armbruster testified that when Gethers removed the dressing she had put on to stop the bleeding, he observed a very large incision in her left arm,

deep enough where the fatty tissue could be seen. (R. 147-148). Gethers received approximately ten stitches. (R. 244).

Appellant was found four days later after a BOLO was sent out on her vehicle. (R. 81-82). Appellant was arrested and a search incident to arrest was done on the vehicle and a knife was located in the center console. (R. 85). Gethers was shown a photo lineup and identified Appellant as her attacker. (R. 97-101).

STANDARD OF REVIEW

In an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the State. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). “In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant’s guilt or from which his guilt may be logically deduced.” State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant’s guilt, or from which the defendant’s guilt could be fairly and logically deduced, the case must go to a jury. Id. The appellate court may only reverse the trial judge’s denial of a directed verdict motion if there is no evidence supporting the trial judge’s ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

ARGUMENT

The trial judge properly denied Appellants directed verdict motion on the charge of assault and battery of a high and aggravated nature.

Appellant argues the trial court erred in refusing to direct a verdict of acquittal on a charge of assault and battery of a high and aggravated nature. Specifically, that the State failed to present any evidence that the minor stab wound to the upper arm of the victim caused great bodily injury. Appellant's argument lacks merit because stabbing someone with a serrated knife is "likely to produce death or great bodily injury." Accordingly, such conduct constitutes assault and battery of a high and aggravated nature (ABHAN) regardless of whether great bodily injury actually occurs.

S.C. Code Ann. § 16-3-29 (Supp. 2019). Section 16-3-600 of the Code of Laws of South Carolina provides:

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) Great bodily injury to another person results; or

(b) The act is accomplished by means likely to produce death or great bodily injury.

...

(A) For purposes of this section

(1): "Great Bodily Injury" means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss of impairment of the function of a bodily member or organ.

S.C. Code Ann. § 16-3-600 (Supp. 2019).

A great bodily injury is described as an injury that causes a substantial risk of death. SC Code §16-3-600(A)(1). “A substantial risk of death” does not mean that the injury must result in death. Although South Carolina has not defined substantial risk, Ohio has defined it as “a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur, or that a certain circumstance may exist.” State v. Johnson, 119 N.E.3d 914, 923, 2018 - Ohio- 3670 (2018).

In this case, Appellant stabbed Gethers in the upper part of her left arm. Stabbing someone with a serrated knife is a means likely to produce death or great bodily injury. In fact Appellant in his brief states “While a stabbing may certainly cause death or great bodily injury, it failed to do so in the present case.” (Initial Brief of Appellant pg. 11). The State only needed to prove that the injury that was caused, whether great bodily injury or not, was accomplished by a means **likely** to produce great bodily injury or death. However, in this case the State did both. A knife is a means likely to produce great bodily injury or death. In Re Reymundo M., the California Court of Appeals held that lunging with a knife was sufficient evidence that he used the knife in a manner likely to produce death or great bodily injury despite not being in striking distance to actually reach the victim. In Re Reymundo M., 52 Cal. App. 5th 78 (2020). In State v. Mitchell, our Supreme Court held that the distinction between robbery and armed robbery is the use of a deadly weapon. State v. Mitchell, 382, S.C. 1, 675 S.E.2d 435 (2009). The issue in that case was that one of the robbers did not initially come with a weapon but found a pocketknife in one of the victim’s pockets and the court held that he then became armed with a deadly weapon when yielding the pocketknife. Id. Typically, pocketknives are usually small, however in this case Appellant stabbed Gethers with a serrated kitchen knife. If a small pocketknife is considered a deadly weapon then a larger kitchen knife is a deadly weapon as well. Stabbing someone with a

knife is likely to produce great bodily injury or death. Under Section 16-3-600(B)(1)(b) of the SC Code of Laws there is more to the analysis than simply the injuries sustained.

Appellant stabbed Gethers with a serrated kitchen knife. (R. 225-228). Gethers didn't just have a scratch. She was stabbed with sufficient force to be able to see inside her body and create a hematoma on the other side of her arm. Walker with MPPD, testified that Gethers had a substantial amount of blood on her clothing and a stab wound on her arm. (R. 79-80). Armbruster testified that there was a substantial amount of blood in Gethers car and leading up to the house and that when he saw the wound it was deep enough that fatty tissue could be seen. (R. 139-140, 138-148). Gethers needed ten plus stitches for the stab wound. (R. 244).

Daniel Lewis, an expert in emergency medicine, testified that he had to do a two layer suture repair and that she had a hematoma on the other side of her arm indicating the depth of the wound. (R. 285-290). Lewis further testified that this wound was dangerous because of its proximity to large blood vessels, brachial arteries and nerves. (R. 293). Lewis testified that if a brachial artery is nicked or severed that it could lead to death if not handled quickly. (R. 294). Appellant was caught off guard by Appellant's yelling and turned into the attack. Had she not moved her arm as she was turning around, she could have been stabbed in the chest. Further, Appellant admits that a knife is a deadly weapon. (Initial Brief of Appellant, pg. 11). It would not be known as a deadly weapon if the weapon did not cause a substantial risk of death. Therefore, there was ample evidence of not only a great bodily injury, but evidence that it was accomplished by means likely to produce great bodily injury or death.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

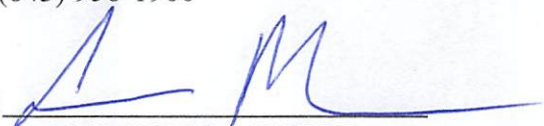
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CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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