STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NYASIA MARIE GRANT,

APPELLANT

APPELLATE CASE NO. 2023-000696

FINAL BRIEF OF APPELLANT

GARY H. JOHNSON
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUE ON APPEAL

Whether 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 when the state failed to present evidence that the minor stab wound to the upper arm of the victim caused "great bodily injury"?

STATEMENT OF THE CASE

Appellant was indicted by the April 2023 term of the Charleston County grand jury for the offenses of assault and battery of a high and aggravated nature under S.C. Code Ann. § 16-3-600 (2015) and possession of a weapon during a violent crime under S.C. Code Ann. § 16-23-490 (2010). R. 407. Appellant was tried before the Honorable Thomas W. Cooper and a jury on April 24 - 26, 2023. Appellant was represented by Lyndsay Luthringer and Nicholas D'Angelo, while Phillip Abshire and Jordan Norvell represented the state. R. 1.

Appellant was found guilty of both charges. R. 388, l. 8 – 472, l. 4. Judge Cooper sentenced appellant to five years imprisonment, concurrent, on each charge. R. 405, ll. 2 – 15.

This appeal follows.

STATEMENT OF THE FACTS

At trial, appellant's counsel admitted to the jury that Nyasia assaulted Felicia Gethers by stabbing her with a dinner knife. R. 62, l. 11 – l. 17. The sole defense offered was that the minor wound to Gethers' left arm caused by the incident amounted to an assault and battery of the second degree and not an assault and battery of a high and aggravated nature as charged in the indictment. R. 62, l. 10 – 63, l. 17.

Gethers knew appellant before the stabbing as an acquaintance of her nephew. R. 159, ll. 2 – 19. Animosity between the two centered around an incident in which Gethers stabbed her nephew about a month before the altercation with appellant. R. 17, ll. 7 – 22. The assault in the present case followed an altercation inside a convenience store between appellant and Gethers. The altercation inside the store was captured on the store's security cameras, and officer Shelby Walker described what the video showed to the jury: that appellant and Gethers had a verbal altercation and slapped items out of each other's hands.[1] R. 70, l. 23 – 71, l. 9. Not captured on video was a second encounter between Gethers and appellant in the parking lot. There, appellant approached Gethers from behind as she was about to enter her vehicle and cursed at her. R. 225, ll. 17 – 23. Appellant then stabbed Gethers in the arm with a serrated kitchen knife as Gethers turned around. R. 225, ll. 17 – 23; 228, ll. 16 - 24.

The state made a pre-trial motion to exclude questioning surrounding the prior incident with Gethers' nephew. R. 13, ll. 3 – 9. Appellant's counsel asserted the incident was relevant and that the defense "has maintained this is always a self-defense case." R. 17, ll. 7 – 22. While counsel for appellant did not make a formal proffer of the testimony surrounding the prior incident, the

[1] This video lacked audio, and the recording of the incident was not preserved as evidence for trial. R. 71, ll. 19 – 23; 78, ll. 4 – 17.

solicitor made such a proffer unnecessary by verifying the events as truthful to the trial court and not contesting the key element: Gethers did in fact stab her nephew before the incident with appellant. R. 13, ll. 10 – 24. During opening statements, counsel for appellant focused on the severity of the assault as the sole defense. R. 112, l. 1 – 119, l. 23.

Having reduced the focus of trial to solely the severity of the harm to Gethers, her conduct after the stabbing was essential. After the assault, Gethers used her cell phone to call 911 and provide the license tag and description of appellant's car as it was leaving the scene. R. 230, l. 21 – 231, l. 13. Gethers did not wait at the scene or seek medical attention at this time, deciding instead to go home to care for the wound since it was bleeding. R. 233, ll. 10 – 17. Once she was home, Gethers wrapped her arm in a towel and decided to drive a different vehicle to charge her phone on the way to the hospital.[2] R. 234, l. 22 – 235, l. 8. Rather than going to the hospital, Gethers detoured to a friend's house to try and charge her phone due to traffic. R. 235, l. 19 – 23; 253, l. 19 – 254, l. 6. From her friend's house, Gethers received a call that the police were at her house, so she drove back home.[3] R. 254, ll. 3 – 18. After meeting (and at times joking with police), Gethers refused medical transport and indicated she would get to the hospital on her own. R. 254, l. 15 – 256, l. 2.

Once she was at the hospital, she did not immediately go inside but remained outside the emergency room to smoke a cigar before going inside. R. 257, l. 4 – 23. Dr. Daniel Lewis treated Gethers' wound with a two-layer repair, suturing the subcutaneous layer and the outer skin. R. 290, ll. 12 -23. While Dr. Lewis ordered cautionary tests to rule out other potential concerns, the

[2] Gethers testified that her cell phone's battery died as she was talking to 911 and it needed charging. R. 232, ll. 9 – 19.

[3] Since Gethers had left the scene of the assault before they arrived on scene, the police had to determine her identity and locate her on their own. R. 76, l. 17–77, l. 5.

actual wound was easily closed with sutures and required only lidocaine as a numbing agent for the procedure. R. 303, ll. 2 – 17. Dr. Lewis testified that in his nineteen years of practice, he experienced no deaths from this type of wound. R. 303, l. 24 – 304, l. 6. The only expected lasting impact from the wound was a scar. R. 303, ll. 7 - 17.

Judge Cooper denied appellant's motion for a directed verdict, finding that while a "stretch," the state had produced enough evidence to submit the case to the jury. R. 309, l. 3 – 310, l. 12.

STANDARD OF REVIEW

"In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight." State v. Phillips, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." Id. "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). Therefore, "[i]f a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Id. "However, penal statutes will be strictly construed against the state." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute's scope be resolved in the defendant's favor." State v. Miles, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017).

ARGUMENT

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 when the state failed to present evidence that the minor stab wound to the upper arm of the victim caused great bodily injury.

A. The statutory scheme covering assault and battery is ambiguous.

A person commits the offense of assault and battery of a high and aggravated nature (ABHAN) "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." S.C. Code Ann. § 16-3-600 (B)(1) (2015) (emphasis added). In contrast, S.C. Code Ann. § 16-3-600 (D)(1) (2015) declares a person "commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and (a) *moderate bodily injury to another person results* or moderate bodily injury to another person could have resulted" (emphasis added). The statutory scheme focuses on the nature of the resulting injury to differentiate the degrees of assault and battery. The statutory scheme's ambiguity centers on the added language of *means likely to produce* phrasing. Here, the use of the word "likely" creates ambiguity. When an action creates "moderate bodily" injury as that term is defined under the statute, an ambiguity exists between the specific, statutorily defined injury and the "means likely to produce" provision of ABHAN. Any such ambiguity must be strictly construed against expanding the scope of ABHAN to cover "moderate bodily" injury defined in specific terms under the statutory scheme. *See* State v. Miles, 421 S.C. at 164, 805 S.E.2d at 210 (requiring "any doubt about a statute's scope be resolved in the defendant's favor.").

The statute defines great bodily injury as "bodily injury which causes a 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) (2015). In contrast, moderate bodily injury means "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 (B)(1) (2015).

"The Legislature uses inconsistent language throughout Title 16, Chapter 3 of the South Carolina Code to define specific elements required to constitute an offense against an individual's person, especially when the element requires an 'injury.'" State v. Robinson, 437 S.C. 226, 232, 878 S.E.2d 8, 11 (Ct. App. 2022). "[T]he terms under the assault and battery statute are inconsistent." Id.

The Legislature has thus crafted a statutory scheme that focuses on the nature and extent of the injury caused by the assault, not the overt act or mechanism of the assault itself. In the present case, the statutory scheme surrounding "great bodily injury" versus "moderate bodily injury" outlined by S.C. Code Ann. § 16-3-600 (B)(1) and (D)(1) are vague and ambiguous. State v. Robinson, 437 S.C. at 232, 878 S.E.2d at 11. This is particularly true when the nature of the injury falls squarely within the moderate bodily injury category, but the means of inflicting such injury may *potentially* cause a greater injury in other instances. Due to this ambiguity, under the rule of lenity, the trial court should have strictly construed the ambiguous statutory terms in favor of appellant as it reviewed the evidence at the directed verdict stage, resolving any ambiguities in favor of granting the directed verdict. Instead, the trial court simply indicated the "evidence that it has heard is an issue of some stretch, quite frankly" but found enough of such stretched evidence to submit the matter to the jury. R. 310, l 1 – 3. This is the opposite of what should have occurred.

B. The trial court erred in determining an admitted moderate bodily injury wound supplied sufficient evidence of great bodily injury, or the likelihood of great bodily injury, to avoid a directed verdict on a charge under S.C. Code Ann. § 16-3-600(B)(1).

Under the statutory scheme, moderate bodily injury covers any "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)(2015). Here, it was undisputed that Gethers required only regional anesthesia for the suturing of the wound to her arm. R. 290, ll. 12 – 23. Likewise, moderate bodily injury covers "moderate disfigurement" like the residual scar on Gethers' left arm. Applying the words chosen by the Legislature, the injury to Gethers fell squarely within S.C. Code Ann. § 16-3-600 (A)(2)(2015) as "moderate" bodily injury.

By contrast, there was a complete absence of evidence of "serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ" supporting the charge for "great" bodily injury. Dr. Lewis indicated Gethers suffered no permanent disfigurement or impairment other than the residual scar itself.[4] R. 304, ll. 7 – 17. It was also firmly established that the nature of the arm wound could not have caused death.

> Q. A long time. I think you said you've probably seen over 10,000 patients. That's a lot of patients. I think you told me when we had been talking on the phone that in all those years of practicing ER medicine, you've never seen anyone die from an injury like this to their arm, have they?
>
> A. Not seen any death from this sort of injury, correct.

R. 303, l. 21 – 304, l. 6. Under the facts presented at trial, Gethers suffered neither a "serious, permanent disfigurement" nor was the wound such that death or "serious, permanent disfigurement" was likely to result from the wound. R. 303, ll. 7 – 17, l. 24 – 304, l. 6

[4] "That's not, I guess, a traditional medical term, so I would just use that she has a scar. She would have a scar on her arm, which would be, you know, a permanent mark from this injury, correct." R. 304, ll. 14-17.

Gethers' own behavior established the incident created no more than moderate bodily injury. Gethers did not wait at the scene but drove herself home instead. R. 235, ll. 10 – 17. Gethers then decided to drive a different vehicle over to a friend's house instead of going to the hospital because of traffic. R. 234, l. 19 – 23; 253, l. 19 – 254, l. 6. Gethers then drove herself back home. R. 254, ll. 3 – 18. After meeting and joking with police, Gethers refused medical transport and indicated she would get to the hospital on her own. R. 254, l. 15 – 256, l. 2. Once she was at the hospital, Gethers did not immediately go inside but remained outside the emergency room to smoke a cigar before going inside. R. 257, l. 4 – 23.

The trial court erred in failing to direct a verdict of acquittal on the ABHAN charge and elevated the actual act that took place (a stabbing) as the sole basis to satisfy the statutory requirements under S.C. Code Ann. § 16-3-600 (B)(1) despite a lack of credible evidence of any "great bodily injury" as that term is defined by the statutory scheme. In contrast, the facts fell squarely within the statutory requirements of S.C. Code Ann. § 16-3-600 (D)(1) involving "moderate bodily injury."

The facts of the present case can be contrasted with State v. Guderyon, 438 S.C. 476, 884 S.E.2d 202 (Ct. App. 2022). In Guderyon, the Court of Appeals observed the importance that the punch to the victim's face proximately caused Victim's injuries which resulted in death. Id. at 488, 884 S.E.2d at 208. The Court of Appeals in Guderyon upheld the conviction, focusing not on the mechanism of the injury (a single punch to the face) but on the proximate harm actually caused (a head injury resulting in death). Here, the act involved (a single stab wound to the left arm) proximately caused a minor injury (a cut requiring local anesthesia and some stitches in the left arm). Unlike Guderyon, there was no death or risk of death in the present case as shown by the testimony of the medical experts and Gethers' own behavior in the hours following the event.

Instead, there was a minor wound amounting to moderate bodily injury as an "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 (B)(1) (2015). While a stabbing may certainly cause death or great bodily injury, *it failed to do so in the present case.* The trial court was obligated to evaluate the facts of the case based upon the proximate harm caused by the action, not the abstract possibilities the mechanism of the injury could have caused.

The trial court erred in determining that an injury that falls directly under the provision of S.C. Code Ann. § 16-3-600 (B)(1) (2015) as a moderate bodily injury can support a conviction under S.C. Code Ann. § 16-3-600 (B)(1) (2015) as an assault and battery of a high and aggravated nature. The trial court should have strictly construed the ambiguous statutory terms in favor of appellant as it reviewed the evidence at the directed verdict stage, and the trial court's acknowledgement that the "evidence that it has heard is an issue of some stretch, quite frankly" dictates reversal and an order of acquittal on the charge of assault and battery of a high and aggravated nature. R. 310, l 1 – 3. *See* State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001); State v. Robinson, 437 S.C. 226, 878 S.E.2d 8 (Ct. App. 2022); State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017).

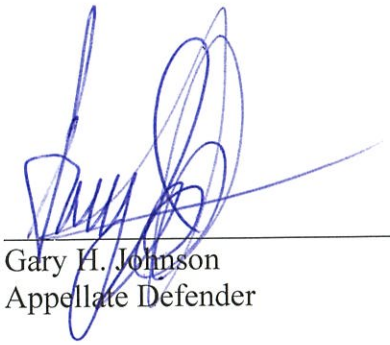
C. A directed verdict of acquittal was also required for appellant's conviction for possession was knife during the commission of a violent crime under S.C. Code Ann. § 16-23-490 (2010).

Appellant's conviction for possession of a knife during the commission of a violent crime under S.C. Code Ann. § 16-23-490 (2010) is dependent upon the guilty verdict for assault and battery of a high and aggravated nature under S.C. Code Ann. § 16-3-600 (B)(1) (2015). Violent crimes supporting a conviction under S.C. Code Ann. § 16-23-490 (2010) are listed in S.C. Code Ann. § 16-1-60 (2015). In connection with the present case, only a guilty verdict of assault and battery of a high and aggravated nature would support the conviction. Since appellant was entitled

to a directed verdict on the ABHAN charge, as discussed *supra*, a directed verdict was also required for the charges under S.C. Code Ann. § 16-23-490 (2010).

CONCLUSION

By reasons of the foregoing arguments, appellant's convictions should be reversed, and an order of acquittal be issued on both the charge of assault and battery of a high and aggravated nature and violation of S.C. Code Ann. § 16-23-490 (2010).



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of June, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

This 19th day of June, 2024.

Gary H. Johnson
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
Jun 19 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NYASIA MARIE GRANT,

APPELLANT

APPELLATE CASE NO. 2023-000696

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant 4 in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 19th day of June, 2024.

Gary H. Johnson
Appellate Defender

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

ATTORNEY FOR APPELLANT

From: Warren, Kaylynn
To: Ambree Muller
Cc: Johnson, Gary; Grace Sommer
Subject: 2023-000696 The State v. Nyasia Marie Grant
Date: Wednesday, June 19, 2024 9:35:00 AM
Attachments: 2023-000696 The State v. Nyasia Marie Grant Final Brief of Appellant.pdf

---

Good Morning,

Attached for service in the above-referenced case is the Final Brief of Appellant which will be filed today, June 19, 2024, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330