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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

Honorable B. Alex Hyman, Circuit Court Judge

MATTHEW L. JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000923

BRIEF OF PETITIONER PURSUANT TO *WHITE V. STATE*

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ISSUE PRESENTED

Whether the trial court erred refusing to instruct the jury on the lesser included offense assault and battery, first degree?

STATEMENT OF THE CASE

On September 7, 2018, a Newberry County grand jury indicted petitioner for attempted murder. App. 1. Petitioner's case was called to trial before the Honorable Donald B. Hocker, and a jury on March 26, 2019. App. 3. Petitioner was represented by Charles Verner and the state was represented by Dale Scott and Taylor Daniel. App. 3.

The jury found petitioner was not guilty of attempted murder but guilty of assault and battery of a high and aggravated nature. App. 602, ll. 17-22. Judge Hocker sentenced petitioner to fifteen years and three months' imprisonment. App. 619, l. 23—620, l. 1.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 623-30; 646-47. On November 27, 2023, an evidentiary hearing was held before the Honorable B. Alex Hyman. App. 648-86. Petitioner was represented by Ashley McMahan and the state was represented by assistant attorney general Zachary Jones. App. 648.

On May 21, 2024, Judge Hyman signed an order granted belated appellate review pursuant to *White v. State*, and denying PCR as to all other claims. App. 687-96. The PCR court found petitioner was entitled to belated review of direct appeal issues where defense counsel acknowledged he should have filed an appeal and was surprised to learn he had not filed an appeal. Additionally, the counsel for the state conceded at the hearing, based on defense counsel's testimony, review pursuant to *White* was warranted. Therefore, the PCR court found petitioner established he did not voluntarily and intelligently waive his right a direct appeal. App. 695.

The PCR court found defense counsel was not ineffective for failure to call eyewitnesses James Casey Gregory (Casey) and James Peterson (James) to testify at trial. The court found James was not present at the physical altercation and his testimony "mostly" concerned the

undisputed fact petitioner had an earlier verbal confrontation with alleged victim Antonio (Tony) Jackson. The court found Casey's testimony was "largely cumulative to other testimony presented at trial" and did not explain who initiated the physical confrontation. The court further found (Casey's) testimony was "of limited probative value" where Casey testified he did not see the fight between petitioner and Tony. The court stated, "[f]or these reasons the [c]ourt finds [petitioner] has not met his burden of proving he was prejudiced by [c]ounsel's failure to call [James] and [Casey]." App. 692-94.

Petitioner now files this brief addressing the direct appeal issue, as required by Rule 243, SCACR, simultaneously with a petition.

STANDARD OF REVIEW

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Hill,* 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014); *see also State v. Drafts,* 288 S.C. 30, 340 S.E.2d 784 (1986); *State v. Gourdine,* 322 S.C. 396, 472 S.E.2d 241 (1996). "An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion." *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007).

"An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* at 570, 647 S.E.2d at 166–67. "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." *Id.* at 570, 647 S.E.2d at 167. "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." *Sams*, 410 S.C. at 308, 764 S.E.2d at 513 (citing *State v. Cole,* 338 S.C. 97, 525 S.E.2d 511 (2000)). "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." *Id.* (citing *State v. Tucker,* 324 S.C. 155, 478 S.E.2d 260 (1996); *State v. Cooney,* 320 S.C. 107, 463 S.E.2d 597 (1995); *State v. Gadsden,* 314 S.C. 229, 442 S.E.2d 594 (1994)).

ARGUMENT

The trial court erred refusing to instruct the jury on the lesser included offense assault and battery, first degree.

Relevant facts[1]

On June 6, 2018, Antonio (Tony) Jackson was at Lake Murray spending the day with family and friends. Tony's fiancé, Ashleigh Cockrell, their child and her children shared with another man[2] were present, as well as her two sisters Alexis Cockrell and Ayleah Cook. Also, at the lake were Ashleigh and Tony's close friends, John and Ashley Platts. There were two other young men, NB and JB, in the area who were not with Tony's group but knew Tony from spending time at the lake. Around 8pm, a two physical fights erupted. One fight between petitioner and Tony and another between petitioner's mother and Ashleigh and her sisters. After the fight Tony was taken to the hospital to treat knife wounds.

At trial the state's theory of the case was that petitioner had a verbal confrontation earlier in the day with alleged victim, Tony Jackson, after he hugged one of Ashleigh's daughters. The state alleged the two left with an understanding but later in the day petitioner returned to the lake unprovoked, looking for a fight and attacked Tony with a knife.

Trial testimony

The state called seven eyewitnesses, including Tony, to the incident. Relevant portions of their testimonies are summarized below. Defense counsel called one witness on petitioner's behalf. That witness, Christy Eigner, was not present during the incident.

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1 Many of the facts below are incorporated directly from the petition.

2 Russell (RJ) Severance is the father of two of Ashleigh's children. Severance is a good friend and one-time roommate of petitioner. App. 79, ll. 14-25.

Ashleigh Cockrell, Tony's, fiancé, testified about the incident. App. 78-140. Ashleigh testified on June 6, 2018, she and her family were spending the day at Lake Murray. App. 84, l. 1—85, l. 12. Early in the afternoon she was at the lake with Tony her three children and their friend, her sister Alexis and her children, and Ashley Platts and her kids App. 86-88. At some point Ashleigh noticed petitioner standing on the dock. App. 93, ll. 14-21. She heard Tony say "hey man what are you doing hugging my daughter." Ashleigh looked up and saw one of her girls hugging petitioner and Tony approaching. App. 94, l. 16—95, l. 12. Ashleigh explained to Tony that her daughter knew petitioner through the child's father, Severance. App. 96, l. 10—97, l. 3. She testified Tony and petitioner had a tense exchange but it was short and the two men shook hands at the end. App. 96, ll. 1-16. She denied that anyone screamed at or threatened petitioner. App. 97, l. 4—98, l. 2.

Later in the afternoon Ashley Platts' husband John Platts and Ashleigh's sister Ayleah Cook joined them at the lake. App. 88, ll. 9-24; 99, l. 15—100, l. 11. Ashleigh testified that as her group was packing up to leave she saw a woman—later identified as Sheila, petitioner's mother—walking up with her hands in the air yelling. Alexis approached Sheila and said "we got kids up here, take that back down the hill." Then Ayleah got involved and warned Sheila not to "come at" Alexis. Ashleigh testified Sheila hit Ayleah. Ashleigh said that she and Alexis had to pull Sheila off their sister App. 105-09. During cross-examination Ashleigh admitted she hit Sheila but denied knowing Sheila had her teeth knocked out during the fight. App. 132, l. 16—133, l. 5.

Ashleigh testified the next thing she remembered was petitioner walking straight at Tony. App. 109, ll. 10-16. She noticed other men came with petitioner but they did not get involved and just stayed close to their car. App. 111, ll. 4-21. Ashleigh testified as soon as petitioner and

Tony got close petitioner "started swinging." She stated, "they were just both throwing licks back and forth." App. 112, ll. 3-8. She did not realize Tony had been stabbed until the two men broke apart and she saw blood on Tony. App. 112, ll. 11-24.

Ashleigh's sister, Alexis Cockrell, testified next for the state. App. 142-81. Alexis's testimony was essentially the same as Ashleigh's on all relevant points. Alexis denied any threats or obscenities were yelled at petitioner during the first encounter between Tony and petitioner. App. 148, l. 11—149, l. 16. She testified petitioner's mother, Sheila, threw the first punch at her sister. App. 155, ll. 1-23. Alexis saw the fight between Tony and petitioner and agreed the fight was "mutual." App. 162, ll. 20-25. She did not see who threw the first punch between Tony and petitioner. App. 156, ll. 13-18. Alexis testified when they realized Tony was hurt she tried to tackle petitioner so they could take care of Tony. App. 158, ll. 12-22; 163, ll. 14-17.

Ashleigh's sister Ayleah Cook also testified for the state. App. 182-202. Ayleah said she was not present for the first confrontation between petitioner and Tony. App. 184, ll. 6-8. She said she was already in the car ready to leave the lake when she heard Sheila yelling at her sister Alexis. Ayleah said the yelling prompted her to get out of the car. App. 186, l. 10—187, l. 11. Ayleah approached Sheila and told her not to get in her sister's face. She said that is when Sheila hit her. App. 189, ll. 3-6. Ayleah insisted no one hit Sheila and Sheila started the physical fight. She admitted she fought back. App. 189, l. 7-20. Ayleah did not remember knocking any of Sheila's teeth out. App. 11-18.

Ayleah denied that petitioner got involved in her fight with his mother. She testified she did not see any of the fight between petitioner and Tony. App. 192, ll. 1-13; 197, ll. 5-12.

Next, John Platts testified. App. 203-44. John said his wife and he were good friends

with Ashleigh and Tony and their families spent time together. App. 206, ll. 14-24. John testified he got to the lake around two or three in the afternoon. App. 204, ll. 3-10. John first saw petitioner when he arrived at the lake. Petitioner was on the phone and seemed to be having an argument with the person on the other end. App. 208, ll. 3-23.

John saw the women fighting but testified at the same time petitioner was coming towards he and Tony "looking dead at Tony." App. 216, l. 11—216, l. 3. He said as petitioner walked he had his hands behind his back. John testified by the time Tony and petitioner were close petitioner took a swing. App. 217, ll. 4-14. He denied petitioner had any involvement in the fight between the women. App. 217, ll. 15-23. John contended petitioner threw the first punch at Tony, "without a doubt." App. 218, ll. 7-12; 223, ll. 1-7. He said the men with petitioner did not get involved in the fight just stood at the car. App. 219-220. John denied getting involved in the fight. App. 236, ll. 17-24.

During cross-examination counsel pushed back on John's version of the incident and pointed out inconsistencies in his trial testimony and his written statement and statements made that were recorded on Deputy Corey Cook's body worn camera. App. 225-31. John admitted he told police the two men with petitioner had weapons, although he did not mention that during his testimony on direct. App. 226, ll. 2-25. When asked about his earlier statement that he and Tony were trying to break up the women who were fighting he did not give a direct answer but averred that they "didn't really actually have to." App. 230, l. 24—231, l. 7.

The following day two minor brothers N.B. and J.B., both present at the lake during the fight, testified. App. 246-307. The important parts of their testimony were essentially the same. Both young men knew Tony and his family well from spending time at the lake. App. 248, ll. 18-20; 264, ll. 15-21; 265, ll. 3-7; 298, ll. 9-11. N.B. testified petitioner did not get involved in

the women's fight. App. 259, ll. 1-6. Both testified petitioner started the fight with Tony. App. 259, ll. 5-21; 290, ll. 20-23; 293, ll. 6-22.

Tony testified he did not start the fight with petitioner or initiate it in any way. App. 443, l. 18—444, l. 4. Tony testified he had multiple knife wounds from the fight. App. 438, l. 22—442, l. 4; 445, ll. 4-20. He testified he had surgery to treat the injuries and was out of work for months. App. 442, l. 1—443, l. 17.

At the conclusion of trial, the trial court, and attorneys for both parties put on the record their previous conversation regarding jury instructions. App. 576-578. The court summarized the conversation stating that defense counsel requested the court charge lesser included offenses including: "assault and battery of a high and aggravated nature, assualt and battery, one two and three." App. 576, ll. 4-10. The court ultimately ruled the jury would be charged with attempted murder, assualt and battery of a high and aggravated nature, and assualt and battery, second degree. App. 577, ll. 10-15.

Discussion

Here, there was evidence presented at trial that the lesser included offense of assault and battery, first degree was committed. It was reversible error for the trial court to refuse to instruct the jury on assualt and battery, first degree.

In reviewing jury charges for error, we examine the trial court's charge as a whole in light of the evidence and issues presented at trial. *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citation omitted). "The trial court is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007) (citation omitted) (internal quotation marks omitted). In determining whether the

evidence requires a charge on a lesser-included offense, we view the facts in the light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996); *State v. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019).

Assault and Battery of a High and Aggravated Nature

S.C. Code §16-3-600(B)(1) provides, "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." S.C. Code §16-3-600(A) provides, "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 or impairment of the function of a bodily member or organ."

Assault and Battery in the First Degree

S.C. Code §16-3-600 provides:

> (C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:
>
> (a) injures another person, and the act:
> (i) involves nonconsensual touching of the private parts ... with lewd and lascivious intent; or
> (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft, **or**
>
> (b) offers or attempts to injure another person with the present ability to do so, and the act:
> (i) is accomplished by means likely to produce death or great bodily injury; or
> (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C. Code §16-3-600(C)(3) provides, "Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1),

and attempted murder, as defined in Section 16-3-29." The trial court, erred in refusing to instruct the jury with the lesser included offense of first degree assault and battery pursuant to section (C)(1)(b)(i).

The trial judge refused to charge the lesser included offense of assault and battery first degree because of "the injuries." App. 576, ll. 15-23. In *State v. Middleton*, 407 S.C. 312, 755 S.E.2d 432 (2014), the South Carolina Supreme Court clarified that first degree assault and battery under section (C)(1)(b) does not require an injury. The Court in *Middleton* did not address whether first degree assault and battery under section (C)(1)(b) requires the absence of resulting injury.

In *Kerr v. State*, the South Carolina Supreme Court wrote:

> The primary rule of statutory construction is that the Court must ascertain the intention of the legislature. *E.g.*, *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning, without resort to subtle or forced construction to limit or expand the statute's operation. *Id.* Furthermore, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. *Id.*

345 S.C. 183, 188, 547 S.E.2d 494, 496–97 (2001).

In *State v. Hudson*, the South Carolina Court of Appeals wrote:

> If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. However, if the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.

336 S.C. 237, 246–47, 519 S.E.2d 577, 582 (Ct. App. 1999) (internal citations omitted).

Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State,* 307 S.C. 446, 415 S.E.2d 799 (1992). The statute is unclear as to the requirement of the absence of an injury.

Assault and Battery in the Second Degree

S.C. Code §16-3-600(D)(1) provides, "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; or (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing." S.C. Code §16-3-600(D)(1) S.C. Code §16-3-600(D)(3) provides, "Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29." S.C. Code §16-3-600(A) provides:

> For purposes of this section: (2) "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. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

Here there was evidence from which the jury could have found moderate bodily injury or something less as is allowed by assault and battery in the first degree. The only testimony regarding Tony's injuries was Tony's own testimony. There was no additional medical

testimony offered by the state. Multiple witnesses testified that they saw blood and realized Tony had been stabbed. The trial judge erred in refusing to instruct the jury with the lesser included offense of assault and battery in the first degree.

CONCLUSION

By reason of the foregoing argument, petitioner's convictions should be reversed, and this case remanded for a new trial.

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This 3rd day of December, 2024.