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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO NEWBERRY COUNTY
Court of Common Pleas
The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2024-000923

Matthew L. Jackson,

Petitioner,

v.

State of South Carolina,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO *WHITE V. STATE*

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

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

The trial court correctly refused to instruct the jury on assault and battery in the first degree pursuant to S.C. Code Ann. section 16-3-600(C)(1)(b)(i), where it was undisputed that Petitioner actually injured Victim and did not merely "offer or attempt" to injure him.

STATEMENT OF THE CASE

On June 6, 2018, Tony Jackson ("Victim") was at Sunset Boat Dock with his friends and family. (App.pp.85–89). Petitioner arrived at the dock and approached Victim's family. (App.p.93). Petitioner hugged Victim's seven-year-old daughter, and Victim (who did not personally know Petitioner) asked him, "What are you doing hugging my daughter?" (App.pp.93–97). Victim's girlfriend, Ashleigh Cockrell, introduced Petitioner to Victim and explained that Petitioner was her ex's roommate and that her daughter knew him as "Matt Matt." (App.p.96–97). Petitioner and Victim shook hands, and Petitioner left the dock. (App.p.96). Later that day, as Victim and his family prepared to leave, Petitioner returned with his mother Sheila Jackson and three friends, later identified as Cameron Goff, Casey Gregory and B.J. Lipscomb. (App.pp.104–06, 110–11, 387–88). Sheila Jackson attacked Ashleigh's sister, Ayleah Cook. (App.pp.107–08). While the women were fighting, Petitioner attacked Victim. (App.p.112). During this altercation, Petitioner cut Victim multiple times with a knife. (App.pp.112–13; p.237). Victim was taken to the hospital by his friend, John Platts, to treat his wounds. (App.p.113). Victim had to be transported to Richland County due to the severity of his injuries. (App.p.48). Victim suffered muscular issues and developed a hernia as a result of his injuries. (App.p.443). Petitioner and Sheila Jackson fled the scene before law enforcement arrived. (App.p.113; p.221). Petitioner was later arrested in Sumter, South Carolina. (App.p.347).

In September 2018, the Newberry County Grand Jury indicted Petitioner for Attempted Murder (2018-GS-36-00482). Petitioner was represented by Assistant Public Defender Charles V. Verner, Esquire ("Counsel"). Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel prosecuted the case.

On March 26, 2019, Petitioner proceeded to a jury trial before the Honorable Donald B.

Hocker, where he was convicted of the lesser included offense of Assault and Battery of a High and Aggravated Nature. Judge Hocker sentenced Petitioner to fifteen years and three months imprisonment. Petitioner did not appeal his conviction or sentence.

On February 19, 2020, Petitioner filed an application for post-conviction relief ("PCR") challenging his conviction for the following reasons:

1. Ineffective Assistance of Counsel
   a. "Public Defender was not supposed to be able to represent me due to the fact I had a previous ineffective counsel PCR against him."
   b. "My witnesses were never subpoenaed."
      i. "Newberry Sheriffs refused to transport two of my witnesses to court."
   c. "My attorney said that he would file appeal and didn't."
2. Prosecutorial Misconduct
   a. "Prosecution showed judge pictures of crime I wasn't convicted for during sentencing."
3. "Jury was compromised by witness."
4. Judicial Misconduct
   a. "Presiding Judge had grudge against me, he stated that I should have gotten more time for a previous offense."
   b. "Judge failed to charge all lesser included offenses."

Petitioner subsequently filed an amended application on November 15, 2023, raising the following claims:

1) Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner
   (a) Failure to call James Gregory as a witness in the trial.
   (b) Failure to file a direct appeal from the conviction and sentence.

An evidentiary hearing convened on November 27, 2023, at the Newberry County Courthouse before the Honorable B. Alex Hyman, circuit court judge. Petitioner was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent. At the outset of the evidentiary hearing, Petitioner raised an additional allegation of ineffective assistance of counsel for failure to call James Peterson as a witness during the trial. On May 21, 2024, Judge Hyman issued an order

finding that Petitioner was entitled to belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). Judge Hyman denied and dismissed Petitioner's remaining PCR claims.

Petitioner subsequently filed a notice of appeal and petition for a writ of certiorari in this Court. As required by Rule 243(i), SCACR, Petitioner also filed a "Brief of Petitioner Pursuant to *White v. State*" concerning his direct appeal issue. This Brief of Respondent Pursuant to *White v. State* follows.

ARGUMENT

The trial court correctly refused to instruct the jury on assault and battery in the first degree pursuant to S.C. Code Ann. section 16-3-600(C)(1)(b)(i), where it was undisputed that Petitioner actually injured Victim and did not merely "offer or attempt" to injure him.

Petitioner was indicted for attempted murder. During a charge conference at Petitioner's trial, Counsel asked the trial court to charge the jury on the lesser-included offenses of assault and battery of a high and aggravated nature ("ABHAN"), and assault and battery in the first degree ("AB 1st"), second degree ("AB 2nd"), and third degree ("AB 3rd"). Counsel explained that he initially only wanted AB 2nd as a lesser included offense; however, he decided to ask for AB 1st after the trial court indicated its intent to charge ABHAN. The State conceded that AB 2nd was an appropriate charge, but disagreed that AB 1st was appropriate. Ultimately, the court decided to charge ABHAN and AB 2nd as lesser included offenses, but the court declined to charge AB 1st because of "the injuries." (App.pp.576–77).

Petitioner contends the trial court erred because, in his view, S.C. Code Ann. section 16-3-600(C)(1)(b)(i) does not require "the absence of resulting injury." Petitioner's reading of the statute is mistaken, and the trial court correctly ruled that AB 1st would not be appropriate under the facts of this case.

Section 16-3-600 provides, in pertinent part:

> (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.
>
> . . .
>
> (C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:
>
> (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 . . . .
>
> . . .
>
> (D)(1) 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 . . . .

Petitioner does not deny that he actually injured Victim by wounding him with a knife; nevertheless, he claims that a jury could still have found he was guilty of AB 1st, rather than ABHAN. Petitioner's argument is premised on section 16-3-600(C)(1)(b)(i), which states that a person commits AB 1st if the person "offers or attempts to injure another person with the present ability to do so . . . by means likely to produce death or great bodily injury." Petitioner appears to suggest that the language of section 16-3-600(C)(1)(b)(i) applies even where the assailant's "attempts to injure another person" are *successful*; he reasons that the statute does not require the "absence of resulting injury" in order to qualify for a charge on AB 1st. (Brief of Petitioner at 11).

The statutory reading proposed by Petitioner is seriously flawed, for several reasons. In the first place, situations in which a person *actually* injures another person by means likely to produce death or great bodily injury *are already covered* within the statutory definition of ABHAN: subsection (B)(1)(b) provides that a person is guilty of ABHAN when that person "injures another person . . . by means likely to produce death or great bodily injury." It would be absurd to read subsection (C)(1)(b)(i) to include conduct already criminalized by subsection (B)(1)(b)—as if the legislature intended to proscribe the *same* conduct under two *different* degrees of assault and battery, with different penalties.

In addition, the legislature clearly intended to distinguish actual injuries from mere "offers

or attempts" to injure. This is clear from the text of subsection (D)(1), which defines the offense of AB 2nd: "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 . . . ." (emphasis added). If "offers or attempts" included *successful* attempts to injure, it would not be necessary for the legislature to specify that AB 2nd *also* applies to actual injuries. The use of the disjunctive "or" proves that the legislature recognized the difference between actual injuries and "offers or attempts" to injure.

The more natural and correct reading of the statute is that while *actual* injuries by means likely to produce death or great bodily injury constitute the crime of ABHAN, mere unsuccessful "offers or attempts" to inflict such injuries constitute the lesser offense of AB 1st. This reading harmonizes the greater and lesser offenses based on a reasonable criterion: the presence or absence of resulting injuries. As Petitioner himself acknowledges, "[s]tatutes 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." (Brief of Petitioner at 12) (citing *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992)). Petitioner's reading of the statute does not meet that standard.

The trial court correctly determined that, because there was no dispute that Petitioner actually injured Victim, as a matter of law Petitioner's conduct did not constitute AB 1st under subsection (C)(1)(b)(i). Therefore, the trial court correctly refused to charge AB 1st.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the trial court.

Respectfully submitted,

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April 4, 2025