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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Allendale County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLEVELAND MAXWELL,

APPELLANT.

APPELLATE CASE NO. 2024-001125

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by failing to charge second-degree assault where the jury could have reasonably inferred the alleged assault "could have" inflicted "moderate bodily injury" as described in section 16-3-600 of the South Carolina Code?

STATEMENT OF THE CASE

Appellant was indicted by the Allendale County grand jury in March of 2024 for: discharging a firearm into an occupied vehicle, domestic violence of a high and aggravated nature, and attempted murder. R. 221-226. He went to trial before Judge Carmen Mullen and a jury on June 17–20, 2024. R. 1, 3, 120, 210. He was represented by Steve Plexico, and Reed Evans prosecuted the case for the state. R. 2.

After an *Allen* charge,[1] the jury found him guilty on the discharge of a firearm and DVHAN charges. R. 199:5-10, 202:14-19. It acquitted him of attempted murder and found him guilty of the lesser included offense of first-degree assault and battery. R. 202:9-13. Judge Mullen entered concurrent ten-year sentences on all three convictions. R. 217:17-25.

This appeal follows.

[1] *Allen v. United States*, 164 U.S. 492 (1896).

STATEMENT OF FACTS

Appellant met Ariana Taylor through work and then they became involved. R. 48:22-49:14. Ultimately, they had a daughter who was born in August of 2021, Teriana. R. 50:11-22. Taylor testified at trial that most days she would leave her house at about six in the morning to drop their child off at appellant's home before she went in to work. R. 53:11-54:13. She testified he regularly drove a Dodge Charger. R. 55:8-17. She testified that on September 9, 2022, she dropped Teriana off as normal with appellant. R. 55:18-56:9. Later that day she and her aunt picked the daughter up from appellant's house. R. 58:13-24. Appellant was not home at the time, but he then arrived with Teriana while they were still there and returned her to Taylor. R. 59:2-20. Taylor testified appellant was upset when he arrived. R. 59:24-60:1. According to Taylor, appellant told her "he should do it now," without explanation. R. 60:23-61:4. She took that to mean, "That he was going to do something." R. 61:5-6.

The next morning, September 10, Taylor woke up early to go in to work, and she was going to give a coworker a ride. R. 61:10-25. She was going to leave Teriana with the same aunt that went with her to see appellant the day before. R. 62:1-13. Taylor testified she put Teriana in the car and then ran back inside the house because she forgot to pack diapers. R. 62:21-25. Teriana was in her car seat in the backseat of the car on the passenger side. R. 63:14-21. Taylor testified that when she came back out of the house, she saw appellant's Charger in the driveway and that appellant then rolled the car window down. R. 64:20-65:15. By then she was sitting in the car with it running and the driver's door open. R. 65:18-24. She testified appellant said, "I told you. I told you," and then started shooting his pistol. R. 67:18-24. Taylor testified he fired at her and the car but she was not hit. R. 68:7-15. She then put the car in reverse and drove down the street. R. 68:21-25. She testified he fired six or seven times. R. 69:1-2. After

she drove down the street, she testified appellant continued to shoot, so she ran away from the car, leaving Teriana. R. 69:14-71:25. She called 911 at this time. R. 72:5-9. Neither Taylor nor Teriana were injured. R. 73:16-19. Taylor also testified appellant did not want to hurt her but just scare her. R. 76:7-11. SLED agent Kristen Truex investigated Taylor's car and identified five bullet holes, but she could not determine how many shots were fired. R. 46:23-47:4.

Appellant requested the trial court charge the jury on ABHAN, assault and battery first, and assault and battery second, all as lesser included offenses of attempted murder. R. 138:24-139:1. The trial court did not charge the jury on second-degree assault and battery.[2] R. 194:4-195:14. The jury ultimately acquitted him of attempted murder and convicted him of first-degree assault and battery. R. 202:9-13.

[2] The trial court also did not charge the jury on assault and battery of a high and aggravated nature. R. 194:4-195:14. However, because the jury convicted appellant of the lesser offense of first-degree assault and battery, that failure is unimportant.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (quoting *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). "An appellate court will not reverse a circuit court's decision regarding a jury instruction unless there is an abuse of discretion." *State v. McGowan*, 430 S.C. 373, 379, 845 S.E.2d 503, 505 (Ct. App. 2020) (citing *State v. Cottrell*, 421 S.C. 622, 643, 809 S.E.2d 423, 435 (2017)). "[I]f there is any evidence from which the jury could infer the defendant committed a lesser rather than a greater offense, the trial judge must charge the lesser-included offense." *State v. Mekler*, 368 S.C. 1, 15, 626 S.E.2d 890, 897 (Ct. App. 2005) (citing *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004)). Whether "any evidence" exists to warrant a charge is a question of law this Court reviews de novo on appeal. *State v. Williams*, 427 S.C. 246, 249, 830 S.E.2d 904, 906 (2019).

ARGUMENT

Second-degree assault and battery must be charged if moderate bodily injury "could have resulted" from the alleged conduct.

Assault and battery was codified in 2010 when the General Assembly abolished the common law versions of the offense and created four degrees of statutory assault and battery. *State v. Middleton*, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) (first citing Act No. 273, 2010 S.C. Acts 1937, then citing S.C. Code Ann. § 16-3-600). These offenses encompass attempted batteries, and the severity of the offense depends on the injury that could result or does result. § 16-3-600.

Second-degree assault and battery is a lesser included offense of first-degree assault and battery. § 16-3-600(D)(3). The difference between first- and second-degree assault and battery is the severity of the injury that could result.[3] *See* § 16-3-600(C)(1)(b)(i), (D)(1)(a). First-degree assault and battery occurs where one "attempts to injure another person . . . by means likely to produce death or great bodily injury." § 16-3-600(C)(1)(b)(i). Second-degree assault and battery occurs where one "attempts to injure another person" and "moderate bodily injury to another person *could have resulted*." § 16-3-600(D)(1)(a) (emphasis added).

Moderate and great bodily injury are both defined terms in subsection (A) of the statute:

> (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.
>
> (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

[3] There is another difference inapplicable to this case. First-degree assault and battery can also occur—regardless of the severity of the potential injury—in two additional circumstances: when the offense is committed during a robbery, burglary, kidnapping, or theft; or when it involves the "nonconsensual touching of the private parts of a person." § 16-3-600(C)(1)(a).

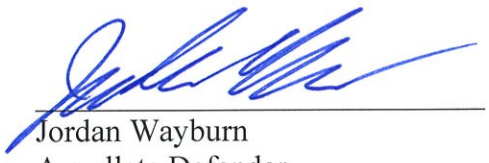
> bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

§ 16-3-600.

Here, the evidence, if believed, was that appellant fired a pistol towards an occupied vehicle without causing injury. Obviously, a handgun can cause death in many instances. But it can also cause relatively minor injuries, such as by grazing a person thereby barely causing a scrape. Here, particularly given Taylor's testimony that appellant did not intend to hurt her, the jury should have been charged on second-degree assault and battery. Moderate bodily injury—be it "moderate disfigurement" or an "injury that requires medical treatment [including] the use of regional . . . anesthesia" or "a fracture or dislocation"—could have resulted from the gunshots. That is the language of the statute—"could have resulted"—and therefore the trial court erred by refusing the charge. *See White*, 361 S.C. at 412, 605 S.E.2d at 542 ("A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." (citing *Brightman v. State*, 336 S.C. 348, 350-351, 520 S.E.2d 614, 615 (1999))); *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622-23 (2011) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); 59 Corpus Juris, *Statutes* § 600, at 1011 (1932) ("In the construction of a statute it will be presumed that the legislature understood the meaning of the words it used [and] that it intended to use them . . . .").

CONCLUSION

For the reasons stated above, appellant respectfully requests this Court reverse his assault and battery conviction.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2025.

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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."

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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 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 10th day of October, 2025.

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