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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLIFTON KIMBLE,

APPELLANT

APPELLATE CASE NO. 2024-002126

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by refusing to grant appellant's motion for a directed verdict concerning his ABHAN charge because the evidence presented did not support a finding of great bodily injury, an essential element of the crime, as defined in S.C. Code Ann. § 16-3-600(B)(1)?

STATEMENT OF THE CASE

In November 2020, the Richland County grand jury indicted appellant for assault and battery of a high and aggravated nature (ABHAN), kidnapping, and first-degree burglary. R. 366-367. On December 9, 2024, his case was called to trial before the Honorable Jocelyn Newman and a jury. Anna Browder and Joseph Kreush represented the state, and Johnathan Harvey represented appellant. After the court heard pretrial motions, appellant moved to relieve Harvey as counsel and requested a continuance to find replacement counsel. The court ultimately denied appellant's request for a continuance, and Harvey remained as counsel. At the conclusion of trial, the jury found appellant guilty of ABHAN and acquitted him of kidnapping and first-degree burglary. R. 334, l. 14 – 335 l. 8. The court sentenced appellant to ten years' imprisonment. R. 361, ll. 9-12.

This appeal follows.

STANDARD OF REVIEW

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Passio*, 433 S.C. 666, 673, 861 S.E. 2d 785, 789 (Ct. App. 2021) (quoting *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *Id.* "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

A question of statutory interpretation is a question of law, which is subject to *de novo* review. *State v. Taylor*, 436 S.C. 28, 34, 870 S.E. 2d 168, 171 (2022). The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Smith v. State*, 412 SC. 472, 477, 772 S.E. 2d 286, 289 (Ct. App. 2015).

ARGUMENT

The trial court erred by refusing to grant appellant's motion for a directed verdict concerning his ABHAN charge because the evidence presented did not support a finding of great bodily injury, an essential element of the crime, as defined in S.C. Code Ann. § 16-3-600(B)(1).

Relevant facts

The state charged appellant with ABHAN, kidnapping, and first-degree burglary, concerning the incident on June 5, 2020, involving appellant and the complainant, Melissa Cupid. R. 366-367.

Trial

At the beginning of trial, a Richland County 9-1-1 records custodian testified, and the state entered the 9-1-1 call placed on June 5, 2020. R. 18, ll. 7-13; 20, ll. 16-22; State's Exhibit 1 (911 Call) (on file with this Court). On that call, which was placed by I.O., Cupid's then-minor son, who described that his mom was on the floor making noises and breathing loudly. State's Exhibit 1. The operator inquired where the injury was, and I.O. responded that it was "her mouth." State's Exhibit 1. Both Cupid and I.O. can be heard on the 9-1-1 call. State's Exhibit 1.

Deputy William Taylor testified that he responded to a call at Claudia Drive, and when he arrived, he saw Cupid in the doorway with a towel over her mouth. R. 23, l. 17 – 24, l. 6. He observed that Cupid's eye was swollen and that her lip was bleeding. R. 25, ll. 19-21. He focused on the 9-1-1 caller. R. 25, ll. 9-11. He testified that he was concerned that Cupid was disoriented. R. 26, ll. 4-6. He made no incident report. R. 27, ll. 18-20. In addition, he neither gathered evidence nor called for any investigative assistance. R. 29, ll. 19-23.

Ceara Forbes, who worked at the front desk for the Richland County Sheriff's Office, testified that on June 6, 2020, Cupid filed a report regarding appellant assaulting her. R. 31, l. 6 – 32, l. 18. She testified that Cupid had a visible injury, which was a swollen cheek and busted lip. R. 32, ll. 20-22. She took photographs of the injury. R. 32, l. 23 – 33, l. 25. She testified that Cupid informed her she had come from the hospital. R. 34, ll. 7-8. The hospital's discharge paperwork was attached to her report. R. 34, ll. 11-12.

I.O. testified that Cupid was his biological mother. R. 43, ll. 6-9. He testified that he was fourteen when he made the 9-1-1 call. R. 45, ll. 9-10. On the day of the incident, he was in his brother's room and heard banging on front the door. R. 48, ll. 14-24. He believed that the banging was appellant. R. 49, l. 12 – 50, l. 2. He testified that he heard the front door open a bit. R. 50, ll. 18-20. He then heard banging and yelling. R. 52, ll. 2-4. He testified that he heard what sounded like choking and gasping. R. 52, ll. 12-22. After he heard gasping for air, he heard more banging, a thud, and appellant leaving. R. 53, ll. 5-12. He checked on Cupid. R. 53, l. 23. She initially was unconscious, but she woke up a minute or two later, after he shook her a few times. R. 54, l. 17 – 55, l. 4. When she woke up, she was confused. R. 55, ll. 5-7.

Cupid testified that she and appellant had been on-and-off for six and one-half years. R. 74, ll. 2-7. On June 5, 2020, she asked appellant to go to her house and help I.O. get online for his therapy appointment, while she was at work. R. 76, ll. 20-24. When she returned home from work, appellant was there. R. 78, l. 24 – 79, l. 1. They then went to the store together but got in an argument. R. 80, ll. 1-24. She gave appellant the option to ride back or walk back, and while he was walking back, they were talking on the phone. R. 81, ll. 2-6. When Cupid returned home, she put his stuff on the front porch. R. 81, ll. 21-24.

She testified that once appellant got back to the house, he knocked on the door and rang the doorbell while giving reasons why she should open the door. R. 82, l. 23 – 83, l. 5. She opened the door. R. 83, ll. 20-25. She testified that he grabbed her outside of the house and pushed her back in. R. 84, ll. 10-11. He pushed her back into the bedroom. R. 84, ll. 18-21. She testified that in her bedroom he choked her. R. 84, ll. 20-21. She testified that she could not breathe and was fighting for her life. R. 85, ll. 1-2, 8-9, 11-18. She then attacked him and tried to get him back out of the door, but she was not successful. R. 85, l. 21 – 86, l. 3. She testified that appellant punched her on the right side of her face. R. 86, ll. 7-8, 13-16. Cupid testified that her son woke her up and that she remembered "being dead." R. 87, ll. 3-4. She explained that when authorities came, she did not know what was going on. R. 87, ll. 7-8. She believed she was going to die. R. 88, l. 2. Her neighbor took her to the hospital, and she received six stitches because her tooth went through her lip. R. 88 ll. 15-16. She was also given muscle relaxers for some bruising. R. 88, ll. 17-18. Afterwards, she walked from the hospital back to her house. R. 88, l. 21.

The state entered four pictures of Cupid's injuries into evidence. R. 90, ll. 13-14. The photos depicted her lip and bruising to her back. *See* R. 89-93. Regarding one photo that showed her injuries the next day, Cupid testified that she had two black eyes. R. 91, ll. 20-23. Finally, she testified that appellant was 5'10" or 5'11" with a "bulky build." R. 94, ll. 17-22.

On cross-examination, Cupid testified that on the day she went to the hospital she was 6'3" and 270 pounds. R. 102, ll. 10-20. She agreed that she felt comfortable having appellant in her house to help I.O. with his therapy session. R. 109, ll. 9-14. Defense counsel admitted a photograph of the whole family standing together with appellant. R. 112, ll. 3-6. The photograph showed her height and his height. R. 113, ll. 6-8.

Dr. Michael Hayes testified as an expert in emergency medicine. R. 121, l. 24 – 122, l. 2. Dr. Hayes saw Cupid on June 6, 2020. R. 122, l. 24 – 123, l. 5. Cupid had a laceration to the lower lip. R. 123, ll. 10-11. Dr. Hayes described concern for facial fracture requiring a CT scan of the face, injury to the head with a CT scan to the head, and a CT scan of the cervical spine. R. 123, ll. 11-14. He explained that although there was choking in Cupid's situation, he did not have a large concern for a trachea injury, or he would have added contrast to the scan. R. 123, ll. 15-18. All the scans were negative. R. 123, ll. 21-22. He testified that the injuries could be indicative of blunt force to the head or neck and was common of possible assault by someone else. R. 124, ll. 3-11. He diagnosed her with a concussion. R. 123, 11. 15-18. He testified that if you have a concussion, "you need to avoid any more injury because concussion on concussion leads to a more permanent disability." R. 125, ll. 6-9. He testified that blunt force could cause a concussion. R. 125, ll. 15-21.

On cross-examination, Dr. Hayes confirmed that the CT head scan, facial sinus scan, and cervical spine scan, none of which added contrast, were all negative. R. 128, l. 20 – 129, l. 10. Each CT scan finding was unremarkable. R. 129, ll. 14-20. He testified that there was no designation of bruising on the throat. R. 130, ll. 1-2. He did not notice any hemorrhaging in Cupid's eyes and his treatment of Cupid did not require any type of partial admission with anesthesia. R. 130, ll. 13-20. Dr. Hayes explained that concussion was a variable injury, but based on what he observed there was no reason for any type of admission. R. 130, l. 25 – 131, l. 7. He agreed that no orbital fractures were present nor was a black eye. R. 132, l. 16 – 133, l. 8. He explained that because he did not have a high index of suspicion of tracheal injury, he did not add contrast to the CT scan. R. 133, l. 20 – 134, l. 1-3.

On redirect examination, Dr. Hayes testified that a concussion could lead to loss of consciousness, though it does not always, and blunt force could be a punch to the face. R. 134, ll. 20-25. He agreed that absence of orbital fractures did not mean that no blunt force to the face occurred, and that you could be strangled without a tracheal injury. R. 135, ll. 1-9. Dr. Hayes testified that unremarkable did not mean an injury did or did not occur and explained that they were "just looking for things that are worrisome from standpoint of the health of the person." R. 135, ll. 13-17, 23-25. He testified that bruising could occur days later. R. 136, ll. 18-23. Finally, on recross-examination, Dr. Hayes testified that he was confident in ordering Cupid to be discharged. R. 137, ll. 15-17. After the state rested its case, defense counsel moved for a directed verdict which the court denied without explanation. R. 137, ll. 23-24; 138, ll. 14-23.

Appellant testified in his own defense. R. 162, l. 20. On June 5, 2020, he called and texted Cupid. R. 180, ll. 3-21. He went to the house at 2:58 p.m. to help I.O. with therapy and used his key to open the door. R. 187, ll. 14-17. After having dinner with the family, he went with Cupid to the smoke shop, at her request. R. 189, l. 22 – 190, l. 17; R. 191, ll. 20-21. Once there, they argued and he asked Cupid for her keys to sit in the car, but she said no. R. 191, l. 20 – 193, l. 14. He walked back to Claudia Drive. R. 193, ll. 15-16. While he was walking, Cupid called him. R. 194, l. 5. Once at Claudia Drive, he saw his stuff on the front porch. R. 195, ll. 8-9. He testified that while he was loading his stuff in his car, Cupid came to the door. R. 196, ll. 15-17. He testified that Cupid was yelling at him, bumped him with her body, and hit him. R. 201, ll. 1-3; 201, l. 13 – 202, l. 15. He testified that he grabbed her right hand with his left hand. R. 203, ll. 15-18. They struggled. R. 203, ll. 18-19. He pushed her away and then ran into the house. R. 204, ll. 3-11. He closed the door, Cupid banged on the door, and after a minute and a half he let her in. R. 204, l. 17; 205, ll. 1, 7-9. After he opened the door, Cupid charged him. R.

206, ll. 11-13. He testified that Cupid was hitting him and yelling at him. R. 207, ll. 5-10, 18-19. He testified that Cupid pushed him into the bedroom. R. 208, ll. 16-20. He testified that he pushed Cupid out of the way, and she fell back hitting the filing cabinet in her room, and then the floor. R. 209, ll. 4-11.

On cross-examination, appellant testified that he pushed Cupid away and ran into the house. R. 232, l. 18. He testified that Cupid hit him on the back, shoulder, head, and everywhere. R. 234, l. 5. He testified that he did not punch Cupid. R. 235, l. 2. He testified that he did not know how Cupid ended up with a busted lip but that he did push her away from him. R. 235, ll. 3-9. He testified that Cupid hit the file cabinet. R. 236, ll. 24-25. The defense rested its case. R. 244, ll. 5-6.

Renewed directed verdict motion

Defense counsel renewed the motion for directed verdict as to each charge. R. 245, ll. 10-11. As to the ABHAN charge, defense counsel argued that there had been no evidence of a great bodily injury, which was an element of the charge. R. 245, ll. 12-16. He asserted that Dr. Hayes's testimony did not lay the requisite evidentiary foundation for the statute's definition of great bodily injury. R. 245, ll. 16-20. He concluded that there was not sufficient evidence that the act was accomplished by means likely to produce death or great bodily injury. R. 245, ll. 21-25. The court denied the motion. R. 246, ll. 9-10. The court emphasized that it was concerned with the existence of evidence not its weight. R. 246, ll. 14-17. It noted that the evidence showed that Cupid sustained a concussion with memory loss, which fit within the statute's definition. R. 245, l. 20 – 247, l. 6.

Charge on law and verdict

The court charged the jury on the law, and specifically, as to ABHAN, the court explained that state must prove beyond a reasonable doubt that "the Defendant unlawfully injured another person; and either: that great bodily injury to another person resulted; or that the act was accomplished by means that likely produced great bodily injury or death." R. 319, ll. 2-6. The court continued that great bodily injury meant "bodily injury which causes substantial risk of death, or which causes serious, permanent disfigurement, or protracted loss, or impairment of the function of a bodily member or organ." R. 319, ll. 7-11.

The jury sent a note requesting the definition of great bodily injury. R. 329, ll. 15-16; R. 364. The court provided the statute's single-sentence definition to the jury. R. 330, ll. 24-25; R. 365. The jury sent another note requesting a transcript of Cupid and Kimble's testimony. R. 331, ll. 11-12; R. 363 The court had the court reporter cue the portion of the testimony that the jury requested to hear. R. 331, ll. 21-22. The requested testimony was played for the jury. R. 333, ll. 14-15.

The jury then returned a verdict of guilty as to the ABHAN charge, and acquitted appellant of kidnapping and first-degree burglary. R. 334, l. 14 – 335, l. 8.

Sentencing

Prior to sentencing, defense counsel renewed all prior motions. R. 338, ll. 3-4. The court ultimately imposed a sentence of ten years imprisonment, with credit for two days' time served, and signed a permanent restraining order for twenty years prohibiting contact with Cupid and her children. R. 360, l. 20 – 361, l. 13.

Discussion

The trial court erred by refusing to grant appellant's motion for a directed verdict as to the ABHAN charge because the evidence presented did not support a finding of great bodily injury, and thus, did not reasonably tend to prove his guilt.

Importantly, "to be convicted of assault and battery of a high and aggravated nature (ABHAN), an individual must unlawfully injure another person, and the type of injury is one that meets the definition of great bodily injury (as defined in the statute) or the act that caused the injury is accomplished by means likely to produce death or great bodily injury." *See State v. Robinson*, 437 S.C. 226, 233, 878 S.E. 2d 8, 12 (Ct. App. 2022) (citing S.C. Code Ann. § 16-3-600(B)(1) (2015)) (internal quotation marks omitted and alterations adopted). Great bodily injury is defined as "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).

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. *State v. Lollis*, 343 S.C. 580, 584, 541 S.E. 2d 254, 256 (2001). "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." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E. 2d 448, 452 (2016) (citing *State v. Cherry*, 361 S.C. 588, 594, 606 S.E 2d 475, 478 (2004)). To that end, "[s]uspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Lollis*, 343 S.C. at 584, 541 S.E. 2d at 256 (quotation marks omitted). However, if there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. *State v. Pinckney,* 339 S.C. 346, 349, 529 S.E. 2d 526, 527 (2000).

The state charged appellant with ABHAN, and although the state presented evidence that Cupid sustained injuries on June 5, 2020, to be convicted of ABHAN, the statute requires more. Critically, § 16-3-600(B)(1) requires *great bodily injury* or that the act is accomplished by means likely to *produce death or great bodily injury* in order to support an ABHAN conviction. *See* S.C. Code Ann. § 16-3-600(B)(1)(a)-(b). In contrast, the General Assembly defined moderate bodily injury as a 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." *See* S.C. Code Ann. § 16-3-600(A)(2). Comparing the definitional language, it is evident that a great bodily injury is characterized by its severe and lasting impact on the victim's health and physical abilities while moderate injury is characterized by its less severe, temporary impact on the victim, even if the injury still requires medical treatment.

The state failed to produce evidence that the complainant's injury resulted in great bodily injury or was accomplished by means likely to produce death or great bodily injury. S.C. Code. Ann. § 16-3-600(A)(1). Instead, the state produced evidence that the CT scan of Cupid's face was negative, and orbital fractures were not present. R. 129, ll. 7-10; 132, l. 16 – 133, l. 8. Although testimony established that Cupid was choked, Dr. Hayes testified that he did not have a large concern for trachea injury and thus did not add contrast to the CT scan of the cervical spine and that there was no designation of bruising on the throat. R. 123, ll. 15-22; 130, ll. 1-2.

Further, while the state presented evidence that Cupid had a concussion, lost consciousness, and suffered from memory loss, those injuries are more clearly embraced by moderate bodily injury. R. 54, l. 22 – 55, l. 4; 124, ll. 15-17. Particularly, a moderate bodily

injury is defined as including "prolonged loss of consciousness," and the testimony showed that the complainant's son found Cupid unconscious but that she woke up in a minute or two. R. 54, l. 22 – 55, l. 4; S.C. Code. Ann. § 16-3-600(A)(2). Moreover, the memory loss was temporary because Cupid testified that, at the time of trial, she no longer suffered memory loss. R. 89, ll. 7-13. Finally, the state's medical expert testified that the treatment of Cupid's injuries did not require the use of anesthesia and explained that while an unremarkable finding on scans did not mean an injury did or did not occur, they were "just looking for things that are worrisome from standpoint of the health of the person." R. 130, ll. 17-20; 135, ll. 13-25; S.C. Code An. § 16-3-600(A)(2). Based on the condition that Cupid presented and because her injuries were not worrisome, Dr. Hayes discharged Cupid. R. 135, ll. 24-25; 137, ll. 15-17.

The state also failed to elicit testimony or present any evidence that Cupid experienced permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.[1] Particularly, Cupid provided no testimony that she had any remaining injuries or

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[1] Other jurisdictions have considered what amounts to a "protracted loss or impairment of the function of any bodily organ," albeit concerning assault statutes with different definitional terms. *See Villarreal v. State*, 716 S.W. 2d 651 (Tex. Crim. App. 1986) (reversing and remanding for the entry of acquittal because the evidence of the victim's inability to raise his arm for two weeks caused by the pain of two fractured ribs failed to show a "protracted impairment" or that appellant caused "serious bodily injury"); *Thomas v. State*, 418 So. 2d 964, 964-65 (Ala. Crim. App. 1982) (explaining that two close range shots fired into the appellant's ex-wife's back causing recurring pain in her back from scar tissue pressing against her nerves satisfied the definition of "serious physical injury," and thus, sufficient evidence supported the jury's determination that the injuries caused protracted loss or impairment of the function of a bodily organ); *State v. Mentola*, 691 S.W. 2d 420, 422 (Mo. App. S.D. 1985) (determining that a jaw fracture preventing a victim from chewing food for six weeks was a "protracted loss or impairment."); *State v. Norwood*, 8 S.W. 3d 242 (Mo. App. W.D. 1999) (determining that defendant jumping up and down on victim's head along with testimony that the injuries were potentially debilitating and that the victim had no memory of the events leading up to the assault at the time of trial, sufficiently established protracted loss or impairment of bodily function); *People v. Lewis*, 277 A.D. 2d 603, 714 N.Y.S. 830 (N.Y. App. Div. 2000) (concluding that evidence that the victim testified to memory loss, headaches, and intense pain which persisted at the time of trial was sufficient protracted impairment of health to establish serious physical

persisting symptoms. Thus, viewing the evidence in the light most favorable to the state, the injuries at issue were temporary and encompassed by the statutory definition of moderate bodily injury rather than great bodily injury. *Compare* S.C. Code Ann. § 16-3-600(A)(1), *with id.* § 16-3-600(A)(2). Accordingly, the trial court erred by finding that a concussion with memory loss fit into the statutory definition of great bodily injury. R. 246, l. 20 – 247, l. 6.

Finally, even considering that the complainant testified that she thought she might die, R. 88, l. 2, the state presented no evidence that any of the acts were likely to *produce* death, S.C. Code. Ann. § 16-3-600(B)(1)(b). Similarly, the state failed to prove that any of appellant's acts were "accomplished by means likely to produce death or great bodily injury." *See* § 16-3-600(B)(1)(b). Instead, Dr. Hayes testified that blunt force *could* cause a concussion, and that additional injury should be avoided after suffering a concussion because it "leads to more permanent injury." R. 125, ll. 6-9, 15-21. In sum, the trial court erred by refusing to grant appellant's motion for a directed verdict where the evidence, as here, merely raises a suspicion of guilty, and did not amount to the requisite proof. *Phillips*, 416 S.C. at 192, 785 S.E. 2d at 452; *Lollis*, 343 S.C. at 584, 541 S.E. 2d at 256.

Therefore, simply demonstrating that the complainant sustained injuries, without producing evidence of a substantial risk of death or serious, permanent disfigurement, does not meet the requirement of great bodily injury, under the ABHAN statute. Because the state failed to present direct or substantial circumstantial evidence to establish great bodily injury, an essential element of the charged offense, the court erred by submitting the case to the jury. *Pinckney*, 339 S.C. at 349, 529 S.E. 2d at 527.

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injury). The state's evidence in appellant's case falls below such a showing of protracted loss or impairment.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests that this Court reverse his conviction and sentence and enter a directed verdict of acquittal.

Molly M. Keegan
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December, 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."

This 31st day of December, 2025.

Molly M. Keegan
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CLIFTON KIMBLE,

APPELLANT

APPELLATE CASE NO. 2024-002126

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 31st day of December, 2025.

Molly M. Keegan
Appellate Defender

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