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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 REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

For appellant's ABHAN conviction to stand, the injuries to Melissa Cupid (hereinafter, Complainant) must have risen to the level of *great bodily injury* or been caused by means likely to *produce death or great bodily injury. See* S.C. Code Ann. § 16-3-600(B)(1)(a)-(b). The state failed to make such a showing. The trial court thus erred by denying appellant's motion for a directed verdict as to the offense of ABHAN. R. 108, ll. 22-23; 246, ll. 9-10.

The photographic evidence relied upon by the state established that Complainant sustained some bruising to her back and a few stitches to her lip. R. 90, l. 7 – 93, l. 19; R. 363-365; BOR at 9. These injuries neither fit within the definition of great bodily injury, nor do they establish that great bodily injury resulted from any act of appellant. S.C. Code Ann. § 16-3-600(B)(1)(a)-(b). The photographic evidence also does not reasonably tend to prove appellant's guilt and does not support the state's contention that the jury could reasonably conclude that appellant inflicted great bodily injury or used means likely to produce death or great bodily injury. BOR at 9. The offense of ABHAN requires bodily injury which "causes a substantial risk of death" or which results in "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). Neither the photographic evidence cited by the state, nor the evidence of injuries contained in the record, support that Complainant sustained injuries rising to that level.

The state also relies on *State v. Chatman*, 336 S.C. 149, 519 S.E.2d 100 (1999), but *Chatman* is not dispositive of the issue before this Court. There, our Supreme Court considered a trial court's refusal to charge the jury on involuntary manslaughter. *Chatman*, 336 S.C. at 152-53, 519 S.E.2d at 101-02. In finding that Chatman was entitled to an involuntary manslaughter charge, the Court noted that the doctor who performed the autopsy testified that his findings were

consistent with sufficient force being applied to the decedent's neck from Chatman's shoulder pressing into the decedent's neck. *Id.* The Court stated that the evidence established that Chatman did not attempt to strangle the decedent with his hands. *Id.* The Court thus concluded that this was not "the traditional strangulation situation" and that Chatman pressing his shoulder into the decedent's neck for several minutes was not the kind of action that would naturally tend to cause serious bodily injury or death. *Id.*

In any event, our Supreme Court's reasoning in *Chatman* suggests that the act of strangulation alone does not naturally tend to cause serious bodily injury or death in every instance. *Chatman*, 336 S.C. at 152-53, 519 S.E.2d at 101-02. To that end, the evidence in appellant's case showed that the state's own medical expert did not have a large concern or high index of suspicion for tracheal injury and testified that there was no designation of bruising on the Complainant's throat. *See id.*, at 152, 519 S.E.2d at 101 (explaining that Chatman had decedent in a chokehold for several minutes and decedent died from asphyxiation due to manual strangulation); R. 123, ll. 15-22; 130, ll. 1-2; 133, l. 20 – 134, l. 3. Even further, Complainant's testimony that she was briefly choked did not establish that means used were likely to cause death or great bodily injury. R. 84, ll. 20-21; 85, ll. 11-21. While Complainant may have subjectively thought she was going to die in the moment, an objective look at the injuries she ultimately sustained show that she was, in fact, not facing any substantial risk of death. R. 88, l. 2. In addition, the state's medical expert testified that Complainant did not require any partial admission with anesthesia, that he was confident in his decision to discharge Complainant, and Complainant testified that she walked home from the hospital. R. 130, ll. 13-20; 137, ll. 15-17; R. 88, l. 21. Therefore, where there were no physical manifestations in this case that

Complainant was facing a risk of death, the evidence is simply not sufficient to support a conviction for ABHAN.

Crucially, the state presented no evidence that the appellant's acts were likely to *produce* death or great bodily injury as required by § 16-3-600(B)(1)(b). The state failed to present any evidence that choking could have led to death, any testimony concerning the effects choking may have had on Complainant, or any evidence that any of appellant's acts caused great bodily injury or had the potential to cause great bodily injury or death. *But see People v. Perron*, 172 A.D.2d 879, 567 N.Y.S.2d 947 (N.Y. App. Div. 1991) (physician who examined the victim testified "that the pressure applied to the victim's windpipe, which cut off her oxygen supply, was significant in time and quantity as to be 'life threatening,' and that the victim had severe bruises on her neck and was "choked to an extent sufficient to cause unconsciousness and that 'it's just a matter of minutes between someone whose going to be unconscious to someone who's going to be dead.'"). In contrast, the state's medical expert merely testified that blunt force could cause a concussion, which he diagnosed Complainant with, and he diagnosed her with a contusion to the head and face and cervical strain. R. 124, ll. 15-20; 125, ll. 15-21; *see State v. Young*, 800 So.2d 847 (La. 2001) (physician noted injuries to victim's vocal cords and opined that the choking could have resulted in a substantial risk of death); *People v. Miller*, 290 A.D. 814, 736 N.Y.S.2d 773 (N.Y. App. Div. 2002) (physician testified that if defendant had continued to strangle victim, permanent brain damage or death was thirty-to-sixty seconds away).

Therefore, because the state failed to present direct or substantial circumstantial evidence to establish an essential element of the charged offense, the trial court erred by refusing to grant appellant's directed verdict motion on the ABHAN charge. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000).

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.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Initial Reply Brief of Appellant and Designation of Matter in the above-referenced case have been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 31st day of December, 2025.

Molly M. Keegan
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