

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Scott Sprouse, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JESUS V. MARTINEZ,

APPELLANT

Appellate Case No. 2016-000527

INITIAL BRIEF OF APPELLANT

Fletcher N. Smith, Jr.
Attorney At Law
112 Wakefield Street
Greenville, S.C. 29601
864-232-6541

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

1. THE TRIAL COURT JUDGE COMMITTED REVERSIBLE ERROR IN NOT DIRECTING A VERDICT OF AQUITTAL OR GRANTING A NEW TRIAL UNDER THE FACT THAT REASONABLE MEN COULD NOT FIND BEYOND A REASONABLE DOUBT FROM THE EVIDENCE EACH AND EVERY ELEMENT OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.....

2. THAT THE LAW OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS VOID FOR VAGUENESS AND THUS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES

STATEMENT OF THE CASE

Appellant was indicted on two criminal charges: assault and battery of a high and aggravated nature and pointing and presenting a firearm. R.*

At the trial, the alleged victim testified that the appellant struck him in the head with his fist and not a gun. Tr. Page (s) 35, 36, and 37.

Trey Mills, the alleged victim testified that he assaulted the appellant when he pushed the appellant. Tr. Page (s) 35, 36, 37 and 45, Line 10 – 11.

The alleged victim, Trey Mills, sustained no injury. Tr. Page 37.

At the conclusion of the state's case, the appellant moved for a directive verdict. Tr. Page 77. The trial judge denied that motion. Tr. Page 77. Subsequently, the jury found the appellant guilty of assault and battery of a high and aggravated nature and presenting a firearm. Tr. Page 131. At that time, the appellant moved for a directive verdict notwithstanding the jury's verdict and/or a new trial. Tr. Page 132.

The defendant was then sentenced by the trial court judge. Tr. Page (s) 137-138.

The incident out of which the indictments arose occurred in Anderson, South Carolina. Appellant at the time was a Hispanic male who was being represented by Trey Mills, a lawyer whom he had some disagreement over a personal injury settlement amount. Tr. Page (s) 25, 27.

The complaining witness, Trey Mills, a lawyer and at this time was engaged in the practice of personal injury law. Tr. Page(s) 25, 27. At the time of the incident, the appellant visited the Law Office of Trey Mills to discuss the signing of some personal injury settlement checks. Tr. Page (s) 25, 26, 27.

The appellant and his lawyer met in the conference room of the attorney's office. Tr.

Appellant was accused by the attorney of brandishing a firearm and then hitting the attorney in the head with his fist and gun. Tr. Page (s) 35, 36, 37.

There were no eye witnesses to this altercation except the attorney, Trey Mills, and the appellant. Tr. Page(s) 137-138. No other witnesses testified to seeing the altercation or the alleged gun.

Law enforcement officers conducted an investigation and did not locate a weapon nor any threatening note that was alleged to have been presented to the lawyer, Trey Mills. Tr. Page(s) 52-65. Appellant's truck was also searched and his property was searched.

Appellant did not testify at trial. Tr. Page (s) 137-138.

The appellant was found guilty. Tr. Page (s) 137-138.

The appellant was sentenced. Tr. Page (s) 137-138.

ARGUMENT 1

THE TRIAL COURT JUDGE COMMITTED REVERSIBLE ERROR IN NOT DIRECTING A VERDICT OF AQUITTAL OR GRANTING A NEW TRIAL UNDER THE FACT THAT REASONABLE MEN COULD NOT FIND BEYOND A REASONABLE DOUBT FROM THE EVIDENCE EACH AND EVERY ELEMENT OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

Assault and battery of a high and aggravated nature arises when a person unlawfully injures another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. S.C. Section 16-3-600.

In this case the testimony was as follows:

Trey Mills sustained no injury nor did he have any bruises in the area he said he was struck by the appellant. Tr. Page 37.

Trey Mills testified that he pushed appellant. Tr. Page 45, Lines 10 through 11.

Trey Mills also testified that the appellant struck him with his fist. Tr. Page 45, Lines 4 through 5.

The evidence was that the appellant was in the alleged victim's law office and struck the alleged victim with his fist and with a gun but with his fist after the alleged victim pushed or struck the appellant. The alleged sustained no serious or visible injury. Tr. Page (s) 35, 36, and 37.

The victim, Trey Mills, did not appear to feel threatened at the time he was being allegedly threatened or he would not have pushed the appellant. Tr. Page (s) 35, 36, and 37. He argued with the appellant in his law office. Tr. Page(s) 137-138.

Applying the assault and battery of a high and aggravated nature rules to the facts in the light most favorable to the State, it is clear reasonable men could not find from the evidence beyond the reasonable doubt each and every element of the assault and battery of a high and aggravated nature law in that the alleged victim, Trey Mills, was struck with a fist and maybe a gun and after Trey Mills pushed the appellant and Trey Mills sustained no serious injuries.

The statute in question is S.C. Code Section 16-3-600 which provides as follows:

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.

This language and the holding and dicta in *State v. Foxworth* 269 S.C. 496, 238 S.E. 2d 172 (1977) seems to be in conflict with S.C. Code Section 16-3-600 which was passed by the legislature. Thus the cited prior precedents of the appellate courts of this state seem to be in conflict with the statutory scheme set up by the legislature. Moreover, in the definition section of the statute bodily injury for purpose of the statute is defined as follows:

A) 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.

(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.

Thus, there was insufficient evidence from which reasonable men or a reasonable jury could find beyond a reasonable doubt that the appellant threatened the alleged victim with force likely to result in death or great bodily injury.

If a trial court judge fails to grant appellant's motion for directive verdict or new trial when reasonable men could not find from the evidence each and every element of any criminal cause of action that the State is required to prove beyond a reasonable doubt, the court commits reversible error and the judgment must be reversed.

ARGUMENT 11

THAT THE LAW OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS VOID FOR VAGUENESS AND THUS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

The statute in question is S.C. Code Section 16-3-600 which provides as follows:

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.

The Appellant would assert that this statute is void for vagueness in that the prior Supreme Court Precedent in *State v. Foxworth* 269 S.C. 496, 238 S.E. 2d 172 (1977) stated: We have stated before that actual bodily harm to the prosecuting witness is not necessary to establish an assault and battery of a high and aggravated nature. ***State v. DeBerry*, 250 S.C. 314, 157 S.E.2d 637 (1967) cert. denied, 391 U.S. 953, 88 S.Ct. 1857, 20 L.Ed.2d 867.**

The Appellant would assert that this statute is void for vagueness in that the prior Supreme Court Precedent in *State v. Foxworth* 269 S.C. 496, 238 S.E. 2d 172 (1977) stated: We have stated before that actual bodily harm to the prosecuting witness is not necessary to establish an assault and battery of a high and aggravated nature. **State v. DeBerry, 250 S.C. 314, 157 S.E.2d 637 (1967) cert. denied, 391 U.S. 953, 88 S.Ct. 1857, 20 L.Ed.2d 867.**

This language cited in prior precedents of the court seem to be in conflict with the statutory scheme set up by the legislature. In the definition section of the statute bodily injury for purpose of the statute is defined as follows:

A) 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.


(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.

Based upon the conflict between South Carolina Supreme Court Precedent and the statute it is clear that the Statute and its interpretation by the trial court judge is a violation of the Appellants due process right and thus a new trial should be granted or directed verdict of acquittal should have been granted.

The Appellant would assert that this statute is in conflict with the language of S.C. Code Section 16-3-600 and the definitions of what constitutes a injury that would satisfy the elements of the statute. See *State v. Foxworth* 269 S.C. 496, 238 S.E. 2d 172 (1977) stated:

We have stated before that actual bodily harm to the prosecuting witness is not necessary to establish an assault and battery of a high and aggravated nature. *State v. DeBerry*, 250 S.C. 314, 157 S.E.2d 637 (1967) cert. denied, 391 U.S. 953, 88 S.Ct. 1857, 20 L.Ed.2d 867.

Respectfully Submitted



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APPEAL FROM ANDERSON COUNTY
Scott Sprouse, Circuit Court Judge

JESUS VARGAS MARTINEZ,

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Versus

STATE,

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CERTIFICATE OF SERVICE

I, Fletcher N. Smith, Jr., hereby certify that I have this 23, day of September, 2016, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

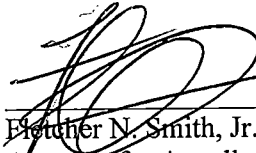
Initial Brief of Appellant, and Designation of Matter

The Honorable Jenny Abbott Kitchings
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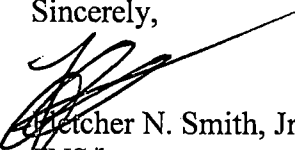
In Re: State v. Jesus Vargas Martinez
Appeal No:2016-000527

Dear Ms. Abbott Kitchings:

Please find enclosed one original and two (2) copies of Initial Brief of Appellant and Designation of Matter in the above referenced case.

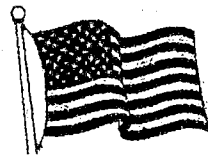
Feel free to contact me with any questions regarding this matter.

Sincerely,

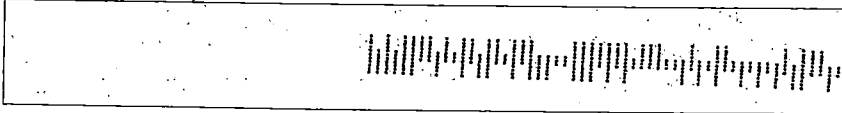

Fletcher N. Smith, Jr.
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Enclosure(s)

cc: The Honorable Richard A. Shirley
Catherine Townsend Huey, Esquire
Alan McCrory Wilson, Wilson



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