

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Lexington County
Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

AUG 04 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CANDICE BEASLEY,

APPELLANT

APPELLATE CASE NO. 2016-001908

INITIAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS3

ARGUMENT

The trial judge erred in failing to direct a verdict for infliction of great bodily injury upon a child when there was no direct evidence or substantial circumstantial evidence that Appellant inflicted “great bodily injury” upon the child under S.C. Code Ann. § 16-3-95 or, more specifically, that the injuries caused “serious or permanent disfigurement.”.....8

CONCLUSION.....11

TABLE OF AUTHORITIES

Cases

State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004) 8

State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995) 8

State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995)..... 8

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001) 8

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) 8

State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000) 8

State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) 8

Statutes

S.C. Code Ann. § 16-3-95..... 1, 6, 8, 9

Other Authorities

Black's Law Dictionary (10th ed. 2014) 9

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to direct a verdict for infliction of great bodily injury upon a child when there was no direct evidence or substantial circumstantial evidence that Appellant inflicted “great bodily injury” upon the child under S.C. Code Ann. § 16-3-95 or, more specifically, that the injuries caused “serious or permanent disfigurement?”

STATEMENT OF THE CASE

A Lexington County Grand Jury indicted Appellant on April 15, 2015 for infliction of great bodily injury upon a child, and on June 1, 2015 for unlawful conduct towards a child. R. *. Her case was called to trial on August 10, 2015 before the Honorable Doyet A. Early, III, and a jury. Tr. 1. Assistant Solicitor Suzanne Mayes represented the state, and Stephen L. Hudson represented Appellant. Tr. 1.

On August 12, 2015, the jury found Appellant guilty. Tr. 511, ll. 11-24. Judge Early sentenced her to ten years' imprisonment for infliction of great bodily injury upon a child and ten years concurrent for unlawful conduct towards a child. Tr. 530, ll. 12-18.

On November 3, 2015, a hearing was held on Appellant's Motion for a New Trial. Tr. 1. By order dated August 24, 2016, Judge Early denied the motion. R. *.

This appeal follows.

STATEMENT OF THE FACTS

Appellant is Minor's godmother. Tr. 405, ll. 3-4. On March 1, 2014, Appellant obtained custody of Minor after his mother could no longer adequately care for the child. On that date, Appellant paid for Minor, who lived in Missouri, to fly to Columbia, South Carolina, where Appellant lived with her two sisters. Tr. 406, l. 1 – 407, l. 4. Minor's mother, who was a member of the United States Army, had recently served time in Iraq and was suffering from post-traumatic stress disorder (PTSD). Tr. 297, ll. 12-16. Appellant, as Minor's godmother, agreed to take Minor into her home. Tr. 407, ll. 3-4.

Minor, who was five years old, had significant behavioral and disciplinary "problems." Tr. 407, ll. 5-9. After an initial adjustment period, Appellant enrolled Minor in daycare, which he attended until he started kindergarten in August 2014. At both daycare and later when he started school, Minor was frequently reprimanded for outbursts, being aggressive towards other children, and not following directions. Tr. 109, ll. 15-18; Tr. 348, l. 2 – 353, l. 22. For example, on one occasion, Minor kicked another student in the groin during his physical education class. Tr. 117, ll. 15-22.

At first, Appellant used corporal punishment as a means to discipline Minor when he would act out at daycare or at home. She would spank Minor on the bottom while he was fully dressed with a belt. However, Appellant quickly realized that spanking had no effect on Minor. Tr. 408, l. 18 – 410, l. 5. Consequently, she began to implement a positive reinforcement method of discipline. Appellant created a daily chart and each day that Minor behaved well, he would receive a star for that day. If he received a whole week of stars, Appellant would reward Minor by taking him to the beach or out to dinner. Tr. 409, ll. 12-21. The last time Appellant spanked Minor was in July 2014 before he started kindergarten. Tr. 409, l. 22 – 410, l. 5.

When Minor started kindergarten, his school likewise utilized positive reinforcement as a means to improve his behavior. Minor was placed in a behavioral program called PBIS, which stands for Positive Behavior Intervention and Support. The program is designed for students who struggle with their behavior. As a part of this program, Minor was assigned a mentor. He was required to meet with his mentor, who was a male teacher, every morning before school and every afternoon after school to review his “daily checklist” and discuss what was expected of him and how he could make better decisions. Tr. 106, l. 15 – 108, l. 21. Despite Minor’s participation in this program, he was still engaging in outbursts and being physically aggressive towards other children. He was constantly reprimanded for his behavior. Tr. 347, l. 7 – 353, l. 22.

On October 14, 2014, Minor spilled syrup on his clothes during breakfast at school and had to change. While one of his kindergarten teachers was assisting him, she noticed marks or injuries on his body that were not visible when Minor was fully dressed. Tr. 373, l. 10 – 375, l. 3. The teacher notified Minor’s mentor, who was also his physical education teacher, who in turn notified the school resource officer and the assistant principal. Tr. 110, l. 9 – 112, l. 5. The Department of Social Services (DSS) and the Lexington County Sheriff’s Department were also notified. An investigator with each agency responded to the school. Tr. 204, ll. 3-12; Tr. 266, l. 20 – 267, l. 5.

After speaking with Minor, who claimed the injuries were caused by Appellant striking him with a jump rope, the investigators, Charlene Mooneyhan with DSS and Shannon Dykes with the sheriff’s department, met with Appellant at her home. Tr. 207, ll. 1-7; Tr. 267, l. 18 – 268, l. 8. Appellant told the investigators that she had no knowledge of Minor’s injuries and

denied striking him with a jump rope. Tr. 213, ll. 12-22; Tr. 217, ll. 15-19; Tr. 218, ll. 20-21; Tr. 276, l. 7 – 277, l. 7; Tr. 281, ll. 9-12.

Appellant told the investigators and later testified at trial that Minor bathed and dressed himself each day and that she did not see him undressed and did not notice any injuries to his body. Tr. 213, l. 23 – 214, l. 8; Tr. 412, l. 10 – 413, l. 4. Minor confirmed during his testimony that he always bathed and dressed himself. Tr. 169, l. 25 – 170, l. 20. The only time Appellant saw Minor without a shirt on was at the beach or pool which they had not been to since the summer months. Tr. 413, l. 5 – 414, l. 7.

After speaking with Appellant that day, Charlene Mooneyhan took Minor, who had been placed in emergency protective custody, to the emergency room. Tr. 207, ll. 8-24; Tr. 225, ll. 6-19. Dr. Maxcy Nowell, who was qualified as an expert in emergency medicine at trial, examined Minor at the hospital. Tr. 313, l. 12 – 315, l. 4. Nowell testified that Minor “had several bruises in various stages of healing to his lower extremities, back, and lower abdomen” and that some of the bruises “had a semicircular pattern.” Tr. 315, ll. 9-14. He opined that “the pattern of the injuries suggested they were repetitive injuries [caused by] the same or similar object” and maintained that the semicircular pattern of the injuries could “be consistent with [being struck with] a looped cord.” Tr. 316, l. 18 – 317, l. 9.

Dr. Nowell later admitted that Minor was not brought to the emergency room because of an emergency, but simply for a physical examination. Tr. 321, ll. 11-20. He opined that Minor’s injuries were not life threatening and that he saw no need for any imaging or laboratory testing to be performed. Tr. 322, l. 18 – 323, l. 3. Dr. Nowell also did not recommend any form of treatment for Minor. Tr. 324, ll. 11-19. This was the extent of his testimony.

During her testimony before the jury, Appellant again denied striking Minor with a jump rope or having any knowledge of his injuries. Tr. 412, ll. 1-9; Tr. 414, ll. 8-12; Tr. 415, ll. 14-19.

At the conclusion of the state's presentation of evidence, Appellant moved for a directed verdict for infliction of great bodily injury upon a child. Defense counsel argued there was no evidence Minor's injuries constituted "great bodily injury" under S.C. Code Ann. § 16-3-95. Specifically, he maintained there was no evidence the injuries created any substantial risk of death, constituted serious or permanent disfigurement, or caused protracted loss or impairment of any body function or organ. Tr. 327, l. 14 – 328, l. 21. The trial judge initially agreed. Tr. 328, ll. 22-23.

The assistant solicitor argued that the injuries constituted "permanent or serious disfigurement," which is the element of the offense the state was relying upon. Tr. 328, l. 24 – 329, l. 2. The solicitor acknowledged there was no expert testimony or medical evidence that the injuries caused serious or permanent disfigurement, but maintained that the jury could infer so from the photographs of Minor's injuries. Tr. 329, l. 5 – 330, l. 23.

The judge found there was no evidence that the scarring caused by the injuries was permanent as to constitute "permanent disfigurement." However, he concluded there was sufficient evidence based on the photographs of the injuries from which the jury could find that the injuries constituted "serious disfigurement." Therefore, the judge denied the motion. Tr. 333, l. 4 – 334, l. 13. Specifically, he ruled:

I know permanent, without a question, would require expert opinion. Whether or not the photographs showing the scarring is enough to make it a jury question on serious disfigurement or whether it takes medical testimony to say it's serious - - serious may be more of a subjective determination.

If you [have] a pretty back and you have no scarring on it and now you [have] these scars, that may be a jury question as to whether or not that's a serious

disfigurement or not. That's what I'm struggling with. There's no medical evidence of it, but there's pictures in the record.

And, of course, at this stage of the game, I'm not concerned with the weight of the testimony but the existence of the testimony. So does the fact that we have pictures and the child's testimony that, obviously, a normal back would not have these marks and scars, so it is disfigurement, then the question becomes whether or not it's serious disfigurement and whether or not the jury can infer that or make that decision from photographs as opposed to the requirement of a doctor saying it's serious.

The doctor could only say they're there . . . But serious is sort of a degree of a scar, not the existence of a scar . . . [T]here are scars here. Are they serious or are they just benign scars that everybody can live with and not serious? That's probably a jury question. I think that evidence is in existence.

I'll respectfully deny your motion for directed verdict on that issue.

Tr. 333, l. 4 – 334, l. 13.

Appellant renewed her motion for a directed verdict at the conclusion of her presentation of evidence, which the judge denied. Tr. 453, l. 22 – 454, l. 13.

The jury ultimately found Appellant guilty of infliction of great bodily injury upon a child and unlawful conduct towards a child. Tr. 511, ll. 11-24. She was sentenced to ten years' imprisonment for infliction of great bodily injury upon a child and ten years concurrent for unlawful conduct towards a child. Tr. 530, ll. 12-18.

ARGUMENT

The trial judge erred in failing to direct a verdict for infliction of great bodily injury upon a child when there was no direct evidence or substantial circumstantial evidence that Appellant inflicted “great bodily injury” upon the child under S.C. Code Ann. § 16-3-95 or, more specifically, that the injuries caused “serious or permanent disfigurement.”

Appellant was entitled to a directed verdict on the offense of infliction of great bodily injury upon a child because there was no direct evidence or substantial circumstantial evidence that Appellant inflicted “great bodily injury” upon Minor, which is a material element of S.C. Code Ann. § 16-3-95(A). More specifically, there was no evidence that Minor’s injuries caused “serious or permanent disfigurement.”

“The accused is entitled to a directed verdict when the evidence merely raises a suspicion of guilt.” State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004) (citing State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) and State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995)). “The accused also is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged.” Id. (citing State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001); State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995)). “However, if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)).

Appellant was indicted for infliction of great bodily injury upon a child pursuant to S.C. Code Ann. § 16-3-95(A), which reads in relevant part: “It is unlawful to inflict great bodily

injury upon a child.” “Great bodily injury” is defined under subsection (C) as “bodily injury which creates a substantial risk of death or *which causes serious or permanent disfigurement*, or protracted loss or impairment of the function of any bodily member or organ.” S.C. Code Ann. § 16-3-95(C) (emphasis added).

The trial judge erred by failing to direct a verdict because the state failed to present any evidence Appellant inflicted “great bodily injury” upon Minor, a material element of the offense. The trial judge correctly found there was no evidence that Minor’s injuries created “a substantial risk of death,” caused “permanent disfigurement,” or caused “protracted loss or impairment of the function of any bodily member or organ,” and instructed the jury accordingly. See Tr. 500, l. 16 – 501, l. 8. However, the judge incorrectly found there was evidence, namely photographs, from which the jury could find Minor’s injuries caused “serious disfigurement” under the statute. The assistant solicitor also conceded there was no evidence Minor’s injuries created “a substantial risk of death,” or caused “protracted loss or impairment of the function of any bodily member or organ.” She further admitted there was no testimony or evidence that any of the alleged “disfigurement” or scarring was “permanent.” Tr. 328, l. 24 – 329, l. 9 (“Well, Your Honor, . . . the State’s position is that that would be - - - *serious disfigurement would be a jury issue* for the jury to determine based on the disfigurement that’s documented in the photographs.”) (emphasis added).

“Disfigurement” is defined as an “impairment or injury to the appearance of a person or thing.” Black’s Law Dictionary (10th ed. 2014). There was no evidence from which the jury could have found Minor’s injuries caused *serious* disfigurement. Consequently, Appellant was entitled to a directed verdict.

Dr. Nowell, the doctor who examined Minor at the emergency room the day his injuries were discovered, admitted that Minor was not brought to the ER because of an emergency, but merely to be physically examined by a doctor. Tr. 321, ll. 14-20. He opined that Minor's injuries were not life threatening and that he saw no need for any imaging or laboratory testing to be performed. Tr. 322, l. 18 – 323, l. 3. Dr. Nowell also did not recommend any form of treatment for Minor. Tr. 324, ll. 11-19. He described Minor's injuries as "bruises" and "wounds" in "various stages of healing," some of which "had a semicircular pattern." Tr. 315, l. 9 – 317, l. 4. The doctor failed to testify regarding his opinion, if any, of the severity or seriousness of the wounds nor did he maintain that the injuries constituted "disfigurement." The jury was therefore left to speculate whether the injuries caused "serious disfigurement."

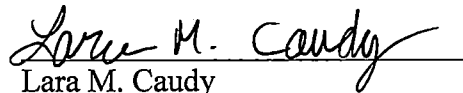
Several other witnesses claimed Minor's injuries were "severe," but none of these witnesses were experts nor permitted to give opinion testimony. Moreover, the photographs of Minor's injuries taken at the time the injuries were discovered on October 14, 2014, and a few weeks later on November 4, 2014, were not evidence from which the jury could have found the injuries caused "serious disfigurement." The pictures merely show minor wounds or lacerations on the skin, which the jury was told required no treatment. These exhibits were not evidence of "great bodily injury" or "serious disfigurement." Consequently, Appellant was entitled to a directed verdict and the trial judge erred by denying the motion.

Respectfully, this Court should direct a verdict of acquittal for infliction of great bodily injury upon a child.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for infliction of great bodily injury upon a child.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

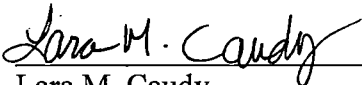
V.

CANDICE BEASLEY,

APPELLANT

CERTIFICATE OF SERVICE

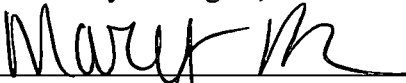
The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case have been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served upon Candice Beasley, #365065, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 4th day of August, 2017.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2017.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: May 12, 2027.