

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable G. Thomas Cooper, Circuit Court Judge
Appellate Case No. 2016-000176

THE STATE,

Respondent,

v.

DEMETRIK MAURICE CEASER,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The record amply supports the circuit court's determination the evidence did not support a jury charge on criminal domestic violence as a lesser included offense of criminal domestic violence of a high and aggravated nature.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In July 2015, the Florence County Grand Jury indicted Appellant Demetrik Maurice Ceaser on one count of criminal domestic violence of a high and aggravated nature (CDVHAN), one count of second degree assault and battery, and one count of unlawful conduct toward a child, arising from an altercation on March 29, 2014.¹ The matter was called for a jury trial on January 19, 2016, before the Honorable G. Thomas Cooper, Circuit Court Judge.

Kerile Thomas (“Victim”) testified she lived with Appellant for approximately a year (February 2013 – February 2014), and they had a daughter together. On March 29, 2014, Victim and her mother (“Mother”) took the child over to Appellant’s home so he could spend time with her. Appellant indicated he did not have any food for the child, so he gave Victim his debit card to go pick up some food. (Trial Transcript [TT], pp. 94-103; Record on Appeal [R.], pp. 10-19).

When Victim and Mother returned with food and a drink for the child, Victim got out of the car and placed the drink on top of the car while she got the food out. Appellant came outside to the car and demanded the debit card receipt, which was laying inside the car. When Appellant started to open the car door, Victim told him not to touch her car. Appellant suddenly picked up the drink and threw it in Victim’s face. She swung at the cup to knock it away from her face and Appellant hit her in the face, knocking her to the ground and rendering her unconscious. (TT, pp. 103-108; R., pp. 19-24).

When Victim started regaining consciousness, she was still on the ground and her head hurt, but she could hear the child crying, so she crawled over to the child and got her inside the car. She then saw “a lot of blood” on Mother, so they immediately got in the car and left.

¹ The circuit court directed a verdict in Appellant’s favor on the unlawful conduct of a child charge, and the jury acquitted him on the second degree assault and battery charge. Therefore, those charges are not at issue in this appeal.

Victim drove while Mother called 911. They drove to a Walmart parking lot, and then to a bowling alley parking lot until they were notified the police were at Appellant's house and wanted them to return to the house. (TT, pp. 108-116; R., pp. 24-32).

After meeting with the police, Victim was transported by ambulance to the hospital, where it was determined she had a fractured cheekbone, facial lacerations and contusions resulting from blunt force trauma to the face. She testified she continued to suffer from bad headaches and a painful mouth related to the injuries she sustained. (TT, pp. 116-118, State's Exhibits 2-12; R., pp. 32-34).²

Mother corroborated Victim's account of what happened leading up to and including Appellant's punch to Victim's face. Mother testified she got out of the car and went around to help Victim, but Appellant threatened her so she threw her shoe at him. The shoe missed Appellant, so she grabbed his shirt while he punched her in the face. She eventually fell to the ground and Appellant started kicking her. (TT, pp. 141-149; R., pp. 57-65).

After Mother got up, she saw Victim was holding the child, and they left. Mother called 911 as they drove away, and they waited in a parking lot until the police notified them they were at the scene. The police advised Mother they needed her and Victim to return to Appellant's house, so they drove back over there. (TT, pp. 149-154; R., pp. 65-70).

Mother was also transported to the hospital by ambulance. She sustained a fractured eye socket, a laceration on her face that required stitches, and another facial laceration that was glued shut. She also sustained bruises on her shoulder. (TT, pp. 154-161; R., pp. 70-77).

² The photographic exhibits will be transported to the Court for consideration.

Police officers testified regarding the investigation and Appellant's arrest. The emergency room physician testified regarding Victim's and Mother's injuries. (TT, pp. 180-219; R., pp. 96-135).

At the conclusion of the State's case-in-chief, the circuit court denied Appellant's directed verdict motion as to the CDVHAN and second degree assault and battery charges. The court then granted the motion as to the unlawful conduct toward a child charge. (TT, pp. 219-225; R., pp. 135-137).

Appellant testified he and Victim had violent arguments during their relationship, stating Victim always initiated the violence. He further stated Victim moved out of their home the day after a particularly violent episode, claiming she just started hitting him over some text messages she misinterpreted. (TT, pp. 231-236; R., pp. 138-143).

Appellant stated he did not know Victim was bringing the child over to his house on the day of the incident, and he gave her his debit card to go get some food. After Victim returned, Appellant bent down into the car to get the receipt, and stated Victim started hitting him with her hip and then punched him in the chest when he straightened up. At that point, Appellant squeezed the drink cup that was on top of the car and "what was left in the cup [he] threw on her." He testified Victim then hit him, and he struck her one time in response. (TT, pp. 236-240; R., pp. 143-147).

Appellant further testified Mother came at him after he struck Victim, and he punched her three times in the face to get her off of him and protect his daughter. He also testified he kicked Mother after she fell down because she was holding his shirt. (TT, pp. 240-244, 260; R., pp. 147-151, 167).

During discussions regarding jury charges, the circuit court agreed to charge the law of self-defense, but declined to charge simple CDV as a lesser included of CDVHAN, finding the evidence did not support the CDV charge. (TT, pp. 265-273; R., pp. 170-178). After the jury charges, Appellant renewed his objection to the exclusion of the CDV jury charge. (TT, pp. 320-321; R., pp. 225-226).

The jury convicted Appellant on the CDVHAN charge, but acquitted him on the second degree assault charge, and the circuit court sentenced him to three years incarceration. (TT, pp. 326-335; R., pp. 231-240). This appeal followed.

ARGUMENT

The record amply supports the circuit court's determination the evidence did not support a jury charge on criminal domestic violence as a lesser included offense of criminal domestic violence of a high and aggravated nature.

Appellant contends the circuit court erred in denying his request for a jury charge on the lesser included offense of CDV because there was evidence from which the jury could have found Victim's injuries did not constitute a "serious bodily injury" as required for CDVHAN. This contention ignores a significant portion of the statute, and glosses over evidence regarding Victim's injuries.

"The law to be charged to the jury is determined by the evidence presented at trial," and "due process requires that a lesser included offense instruction be given *only* when the evidence warrants such an instruction." Cook v. State, 415 S.C. 551, 784 S.E.2d 665, 669 (2015) (emphasis in original) (internal citations omitted). The jury charge determination is committed to the trial court's discretion, and appellate courts will not reverse the trial court's jury charge decisions absent an abuse of discretion." State v. Wright, 416 S.C. 353, 785 S.E.2d 479, 490 (Ct. App. 2016).

In order to convict a person of CDV, the State must prove the person either "cause[d] physical harm or injury to [his] own household member," or "offer[ed] or attempt[ed] to cause physical harm or injury to [his] own household member with apparent present ability under circumstances reasonably creating fear of imminent peril." S.C. Code Ann. § 16-25-65(A) and (B) (2015). If, in addition to proving CDV, the State proves one of the aggravating circumstances set forth in subsection §16-25-65(A)(1), such as that the defendant's conduct "result[ed] in serious bodily injury to the victim," the person is guilty of CDVHAN. State v. Golston, 399 S.C. 393, 732 S.E.2d 175, 178 (Ct. App. 2012).

In most prosecutions for CDVHAN, there will be evidence the defendant committed acts which constitute only CDV in addition to acts which constitute CDVHAN, but the mere existence of evidence the defendant committed the CDV acts does not warrant a jury charge on simple CDV. *Id.* “Rather, to warrant a jury charge on the lesser offense, the evidence viewed as a whole must be such that the jury could conclude the defendant is guilty of the lesser offense *instead of* the indicted offense.” *Id.* (emphasis in original).

In this case, Appellant argues Victim did not sustain “serious bodily injury,” and therefore, the circuit court erred in denying his request for a CDV jury charge. The fallacy of this argument is two-fold: 1) Appellant glosses over a significant part of the applicable statute and minimizes the evidence of Victim’s injuries; and 2) he relies on a definition of “serious bodily injury” from a completely separate section of the South Carolina Code, without any indication the legislature intended that definition to apply to CDVHAN.

The CDVHAN statute provides a person “commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death.” S.C. Code Ann. § 16-25-65(A)(2) (2015) (emphasis added). Notwithstanding Appellant’s classification of his action as a “moderate blow” and Victim’s injuries as “simple,” punching a person so hard in the face it knocks her unconscious (even briefly) and fractures her cheekbone, clearly manifests “extreme indifference to the value of human life,” and “would reasonably cause a person to fear imminent great bodily injury or death.”³

³Appellant attempts to minimize his conduct by pointing to Victim’s weight versus his weight. Even assuming Appellant weighed the same on the day of the attack as he did the day he entered prison, weight does not equal or indicate strength, and simply comparing the weight of Appellant and Victim does not account for the advantage of a surprise attack.

By way of footnote, Appellant asserts Victim “never testified that she ‘feared imminent serious bodily injury or death.’” (Brief of Appellant, p. 11, n. 2). Once again, Appellant misses the point. The mere fact he was able to catch Victim off guard with the blow and render her momentarily unconscious, in part by throwing a drink in her face just prior to inflicting the blow, and she could not recall specifics of the attack, does not alleviate the viciousness of Appellant’s action, or lead to the indisputable conclusion Victim could not fear imminent serious bodily injury, which the State contends she had already sustained.⁴ If his argument is accepted, a defendant can escape penalty for CDVHAN by merely knocking the victim unconscious, thereby rendering her unable to testify regarding the circumstances surrounding the attack.

Appellant also attempts to avoid the consequences of his action by relying on a definition of “serious bodily injury” found in S.C. Code §23-31-400 (2007). Title 23, Chapter 31, Article 6 involves the use of a firearm while under the influence of alcohol or a controlled substance. For purposes of Article 6, “[s]erious bodily injury” means a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.” S.C. Code Ann. §23-31-400(A)(2) (2007).

The defendant in Golston also attempted to use this definition in arguing he was entitled to a CDV jury charge. By way of footnote, this Court declined to rule the definition applied to CDVHAN, but found the victim’s injuries met the definition even if it applied. 732 S.E.2d at 179, n. 6. While Appellant correctly indicates the victim’s injuries in Golston were more serious than Victim’s injuries, a mere comparison of severity does not render Victim’s injuries insignificant.

⁴ In fact, Victim’s injuries may well have been worse but for the intervention of her mother.

In asserting the jury could not possibly have found Victim's injuries serious as defined in §23-31-400(A)(2) because she suffered only temporary pain treated with medication and spent only three hours in the hospital emergency room, Appellant mischaracterizes and ignores the evidence. Contrary to his assertion, the **undisputed** evidence indicated Victim was **still** suffering the side effects of her injuries approximately two years after the attack when the case was tried. Victim testified she was supposed to see a specialist and have surgery related to her fractured cheekbone, but had not been able to afford it. She further testified she continued to suffer from "really, really, really bad headaches" and her mouth hurt, all of which was also related to her facial injuries.⁵ (TT, pp. 117-118; R., pp. 33-34). Appellant presented no evidence, medical or otherwise, to contradict her testimony.

Appellant's contention the jury's request for a written CDVHAN charge somehow evidences a struggle with determining guilt that supports his assertions is likewise unavailing. The jury did not ask for a definition of "serious bodily injury," or ask that the medical testimony be replayed, which might indicate some confusion about what constituted "serious bodily injury." There is no evidence in the record that the jury was struggling with the issue of whether Victim's injuries were sufficiently serious under the statute. As evidenced by Appellant's acquittal of charges related to Victim's mother, the jury would not have hesitated to find for Appellant on the CDVHAN charge if it found Victim's injuries did not constitute "serious bodily injury."

In light of the extent and severity of Victim's injuries, the circuit court properly determined the evidence did not support a jury charge on simple CDV. Accordingly, the circuit

⁵Appellant makes much of the medical reference to the cause of Victim's facial injuries, including the fracture, lacerations and contusions, as "moderate" blunt force trauma to her face. As the circuit court found, however, the blow "had pretty severe consequences regardless of the - of the degree of the blow." (TT, p. 270; R., p. 175).

court did not abuse its discretion in denying Appellant's request for such a charge, and its ruling should be affirmed.

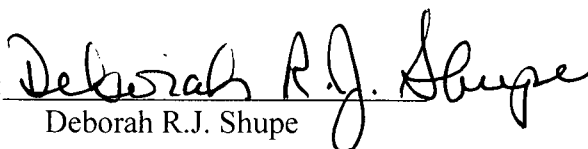
CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's conviction should be affirmed.

Respectfully submitted,

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December 29, 2016

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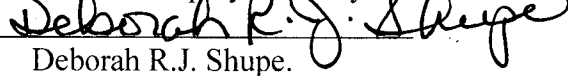
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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