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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Doyet A. Early, Circuit Court Judge
Appellate Case No. 2016-001908

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SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

CANDICE BEASLEY,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The circuit court properly denied Appellant's directed verdict motion because there was ample evidence in the record from which the jury could find Appellant inflicted great bodily injury on the minor victim.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

On June 1, 2015, the Lexington County Grand Jury indicted Appellant Candice Beasley on one count of infliction of great bodily injury upon a child, and one count of unlawful conduct toward a child. The matter was called for a jury trial on August 10, 2015, before the Honorable Doyet A. Early, III, Circuit Court Judge.

Testimony established that on October 14, 2014, school officials discovered substantial injuries, including bruises and open wounds, on the body of a five year old kindergarten student (the minor victim), who was in Appellant's custody. School administrators immediately contacted law enforcement and the SC Department of Social Services (DSS). Photographs taken that day reflected numerous marks and bruises on the minor victim's torso, arms and legs, including some with open, bleeding wounds. The minor victim told authorities Appellant inflicted the injuries by beating him with a jump rope. He described the jump rope and told authorities where it was located in the home. (Trial Transcript [TT], pp. 105-125, 181-202; State's Exhibits 6-22 [Photographs]; Record on Appeal [R.], pp. 19-39, 95-116.).¹

A detective and a DSS investigator went to Appellant's home that day to discuss the minor victim's condition with her. Appellant denied inflicting, or even knowing about, the minor victim's injuries. She also denied having a jump rope in the residence, but gave consent for a search of the residence, during which the detective found a jump rope matching the minor victim's description in the exact place the minor victim indicated it was located. (TT, pp. 202-235, 265-288; R., pp. 116-149, 179-202).

The minor victim testified he resided with Appellant, who was his godmother, and her two sisters, at the time the school officials discovered his injuries. He stated the bruises and wounds reflected in the photographs happened when Appellant beat him with a jump rope on

¹State's Exhibits 1-22 (Photographs) have been transported to the Court for consideration.

more than one occasion, identified the jump rope discovered in Appellant's residence as the one she used to beat him, and stated he did not feel safe in Appellant's residence. (TT, pp. 135-153, 179-180; R., pp. 49-67, 93-94).

- Appellant testified she never saw the minor victim's injuries prior to October 14, 2014, and she never beat him with the jump rope. (TT, pp. 433-436; R., pp. 341-344). One of her sisters testified she witnessed Appellant spank the minor victim one time with the rope. (TT, pp. 439-445; R., pp. 347-353).

The jury convicted Appellant on both charges, and the circuit court sentenced her to ten years incarceration (concurrent) on each conviction. (TT, pp. 511, 529-530; R., pp. 412, 423-424). Appellant moved for a new trial, which was heard on November 3, 2015, and denied by Order filed September 20, 2016. (Hearing Transcript [HT], pp. 1-19, Order filed September 20, 2016; R., pp. 425-443, 452). This appeal followed.

ARGUMENT

The circuit court properly denied Appellant's directed verdict motion because there was ample evidence in the record from which the jury could find Appellant inflicted great bodily injury on the minor victim.

Appellant contends the trial court erred in denying her motion for directed verdict as to the infliction of great bodily injury upon a child charge because the State failed to submit evidence the minor victim's injuries caused "serious or permanent disfigurement" as required by the statute.² A cursory review of the record reveals this contention is patently meritless.

In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. State v. Phillips, 416 S.C. 184, 785 S.E.2d 448, 452 (2016). When ruling on the motion, the trial court must view the evidence in the light most favorable to the State, and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *Id.*

South Carolina Code §16-3-95(A) (2015) provides "[i]t is unlawful to inflict great bodily injury upon a child," and §16-3-95(C) defines "great bodily injury" as "bodily injury which creates a substantial risk of death **or** which causes **serious or** permanent disfigurement, . . .". (emphasis added). Appellant contends the circuit court erred in denying her directed verdict motion because the State presented no direct or substantial circumstantial evidence she inflicted "great bodily injury" upon the minor victim, specifically, "there was no evidence that Minor's injuries caused 'serious or permanent disfigurement.'" (Brief of Appellant, p. 8). In essence,

²Appellant does not challenge her conviction on the unlawful conduct toward a child charge.

Appellant argues evidence regarding the degree of disfigurement can only be provided by medical expert testimony.

Expert evidence is not required as to issues involving matters about which the jury is as competent to form an intelligent and accurate opinion as an expert witness, or where the normal experiences and qualifications of laypersons serving as jurors permit them to draw proper conclusions from the given facts and circumstances. 31A Am.Jur.2d Expert and Opinion Evidence §30 (November 2017 Update). In denying Appellant's motion, the circuit court found the word "disfigurement speaks for itself," and whether the minor victim's scars constituted a serious disfigurement was a question for the jury. Given the photographic evidence presented, the court ruled there was evidence of scarring, which was a type of disfigurement, and the jury would have to determine whether the scars constituted a "serious disfigurement."³ (TT, pp. 328-334; R., pp. 242-248).

A common definition of "serious" is "excessive or impressive in quality, quantity, extent, or degree." <https://www.merriam-webster.com/dictionary/serious> (last checked November 17, 2017). "Disfigure" is commonly defined as "to impair (as in beauty) by deep and persistent injuries." <https://www.merriam-webster.com/dictionary/disfigure> (last checked November 17, 2017). These are terms well within the ordinary juror's common understanding, knowledge and experiences, and as such, expert testimony is not required for the jury to decide whether a visible injury is serious and disfiguring.

The issue of whether a victim incurred great bodily harm, permanent disability, or permanent disfigurement for purposes of a criminal statute is a question of fact, and the fact finder's determination should not be disturbed on appeal when supported by sufficient competent

³The circuit court found medical expert testimony would be necessary to establish whether the disfigurement was "permanent."

evidence. E.A. v. State, 599 So. 2d 251, 252 (Fla. Dist. Ct. App. 1992) (citing Owens v. State, 289 So.2d 472, 474 [Fla. 2d DCA 1974]). ““Great bodily harm defines itself and means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple assault and battery....”” *Id.* (quoting Owens); see also People v. Thigpen, ____ N.E.3d ____, 2017 WL 4969993 at *4) (IL. App. 1st 2017) (bodily harm is physical pain or damage to the body, including lacerations, bruises, or abrasions, whether temporary or permanent, and whether injury constitutes great bodily harm is a question of fact to be determined by the trier of fact).

The fact the minor victim in this case was severely beaten simply cannot be realistically disputed. The injuries to this five year old child’s body, as reflected in the photographs taken on October 14, 2014, included deep bruises and clear marks from the jump rope, as well as some open and bleeding cuts. The emergency room doctor who examined the minor victim on October 14, 2014, testified the child had wounds in various stages of healing, with fresh wounds appearing moist, pink and open, and if an injury penetrates several depths of the skin, it is more likely to result in a scar. (TT, pp. 316-320; R., pp. 230-234). The photographs clearly showed several open wounds, as well as wounds scabbed over.

Subsequent photographs taken on November 4, 2014, clearly show multiple marks still visible on the minor victim’s body.⁴ (State’s Exhibits 19-22 [Photographs]). The ordinary lay

⁴In addition to the photographs, the jury was able to observe the minor victim, and according to the solicitor’s closing argument, and statements during the new trial motion hearing, he stood in front of the jury where the jurors could see there were still visible scars on his body. (TT, p. 486, HT, p. 15; R., pp. 387, 439).

juror could certainly review the photographs and reasonably determine the wounds were both “serious,” and “disfigurement,” without an expert stating the obvious.⁵

The circuit court properly found there was evidence in the record from which the jury could find Appellant inflicted injuries to the minor victim resulting in serious disfigurement under §16-3-95. Accordingly, the denial of Appellant’s directed verdict motion should be affirmed.

⁵This case presents a classic example of “I know it when I see it.” Jacobellis v. State of Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring opinion).

CONCLUSION

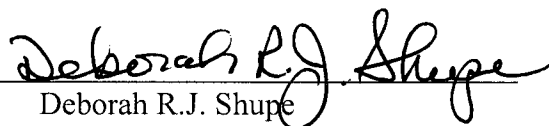
Based on the foregoing, the State submits Appellant's conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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.

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