STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Williamsburg County
The Honorable R. Ferrell Cothran, Circuit Court Judge
Appellate Case No.2018-001080

THE STATE, RESPONDENT,

v.

JOHN ARTHUR JAMES, III,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly denied Appellant's request for a jury charge of the lesser included offense of assault and battery, second degree, because the evidence did not support such a charge.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

On January 25, 2018, a Williamsburg County Grand Jury indicted Appellant John Arthur James, III, on one count of assault and battery of a high and aggravated nature (ABHAN), and one count of possession of a weapon during the commission of a violent crime, arising from a shooting incident on July 15, 2017, in an IGA parking lot. The matter was called for a jury trial on May 28, 2018, before the Honorable R. Ferrell Cothran, Jr.

James Singletary ("Singletary") testified he went to the IGA the day of the shooting to get something to eat. When he drove into the parking lot, he spoke to a friend, and then parked his car. As Singletary opened his car door, Appellant walked up and punched him three times in the face. Singletary stated Appellant "hollered, he got a weapon, he got a weapon," but Singletary was unarmed at the time. Appellant then ran around in a circle, came back to Singletary's car and kicked the car door. (Trial Transcript [TT], pp. 45-48, State's Exhibit 1; Record on Appeal [R.], pp. _____).[1]

Appellant fell down after kicking Singletary's car, then got up, ran over to his mother, who was by her car in the parking lot, and told her to "give [him] that damn thing out of the box." Singletary spoke to his friend for about thirty seconds, and started toward his car to leave, but Appellant started yelling at him, so Singletary got a machete out of the trunk of his car and started walking toward Appellant. Singletary stopped and said he was going to call the police. Appellant then got out of his mother's car with a gun. Appellant fired a shot toward Singletary, who turned around and started walking away for Appellant. (TT, pp. 48-50; R., pp. _____).

[1] State's Exhibit 1 (Video) will be transported to the Court for consideration.

As Singletary walked away, Appellant came up behind him. When Singletary got to a corner of the building, Appellant shot him twice in the abdomen from approximately six feet away. (TT, pp. 50-51; R., pp. _____).

Dr. John Gause testified he was working at McLeod Regional Medical Center in July 2017, and in his capacity as a general surgeon, he was called to the emergency room on July 15th after Singletary was transported there by ambulance. He stated Singletary had gunshot wounds in his abdomen and groin, with multiple injuries (six holes) to his small bowel. Dr. Gause operated and removed approximately fifteen inches of Singletary's small intestine, and hooked the remaining bowel back together. Dr. Gause testified that without the surgery and removal of part of his small intestine, Singletary would have died from peritonitis (an infection caused by stool leaking from the bowel into the abdominal cavity). In addition to losing part of an internal organ (small intestine), Singletary was left with a surgical scar on his midline. (TT, pp. 76-80; R., pp. _____).

At the close of the State's case-in-chief, Appellant moved for a directed verdict on the ground the State failed to prove Singletary suffered the "level of bodily injury" required for an ABHAN conviction because the surgery involving his small intestine was not complex, and the only permanent disfigurement was a scar. The State argued being shot twice causes substantial risk of death, and Dr. Gause testified Singletary would have died without the surgery to treat his internal injuries, which was sufficient to present the case to the jury. The circuit court agreed and denied Appellant's directed verdict motion. (TT, pp. 131-132; R., pp. _____).[2]

The circuit court instructed the jury on ABHAN, the lesser included offense of assault and battery, first degree, and self-defense. After the jury left the courtroom, Appellant objected to the

[2]Appellant also moved for a directed verdict on the ground the State failed to disprove his self-defense claim, which the court also denied. (TT, pp. 132-134; R., pp. _____). Appellant does not challenge that ruling on appeal.

court's failure to charge the lesser included offense of assault and battery, second degree, which he had requested during a previous bench conference. The court acknowledged Appellant made the request, but denied the requested charge, stating: "I don't think the facts of this case warrant that. It's either going to be ABHAN or first degree or not guilty." (TT, pp. 326-343; R., pp. _____).

The jury convicted Appellant of ABHAN and possession of a weapon during a crime of violence, and the court sentenced him to concurrent prison terms of twenty years and five years, respectively. (TT, pp. 347-357; R., pp. _____). This appeal followed.

STANDARD OF REVIEW

In reviewing jury charges for error, the appellate court must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 583 (2010); State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 463 (Ct.App.2003). A jury charge does not require reversal if it is substantially correct and covers the law in light of the evidence presented at trial. Mattison, 697 S.E.2d at 583 (internal citations omitted). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *Id.* (*citing* State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298, 303 (2002). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *Id.* at 584 (*citing* State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 [2007]).

ARGUMENT

The circuit court properly denied Appellant's request for a jury charge of the lesser included offense of assault and battery, second degree, because the evidence did not support such a charge.

Appellant contends the circuit court erred in denying his request for a jury charge on assault and battery, second degree, because the evidence could support a finding Singletary only suffered "moderate bodily injury," rather than "serious bodily injury." This contention is meritless on its face.

"The law to be charged must be determined from the evidence presented at trial." Mattison, 697 S.E.2d at 583 (*quoting* State v. Knoten, 347 S.C. 296, 555 S.E.2d 391, 394 [(2001]). "The trial court is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Williams, No. 2018-000994, _____S.C. _____, _____ S.E.2d _____, 2019 WL 2440954, at *4 (S.C. Sup. Ct., June 12, 2019) (*quoting* Suber v. State, 371 S.C. 554, 640 S.E.2d 884, 886 [2007]). To determine if the evidence requires a charge on a lesser-included offense, the facts must be viewed in the light most favorable to the defendant. *Id.* (*citing* State v. Byrd, 323 S.C. 319, 474 S.E.2d 430, 431 [1996]).

A person commits the offense of assault and battery of a high and aggravated nature if he unlawfully injures another person, resulting in great bodily injury to another person, or the act is accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. §16-3-600(B)(1) (2015). "'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." S.C. Code Ann. §16-3-600(A)(1) (2015). ABHAN is a felony, punishable by up to twenty years incarceration. S.C. Code §16-3-600(B)(3) (2015).

A person commits assault and battery, second degree "if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and: (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted." S.C. Code Ann. §16-3-600(D)(1)(a) (2015). "'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." S.C. Code Ann. §16-3-600(A)(2) (2015).

Assault and battery, second degree, is a lesser-included offense of assault and battery, first degree, assault and battery of a high and aggravated nature, and attempted murder. S.C. Code Ann. §16-3-600(D)(3) (2015). Assault and battery in the second degree is a misdemeanor, punishable by a fine not to exceed $2500s, or not more than three years incarceration or both S.C. Code Ann. §16-3-300(D)(2) (2015).[3]

[3] "A person commits the offense of assault and battery in the first degree if the person unlawfully: (a) injures another person, and the act: . . . or (b) offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. §16-3-600(C)(1)(a) and (b) (2015). "Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29." S.C. Code Ann. §16-3-600(B)(2) (2015). Assault and battery in the first degree is a felony, punishable by up to ten years incarceration. S.C. Code Ann. §16-3-600(C)(2) (2015). Appellant completely skips over the felony of assault and battery in the first degree, and goes to the misdemeanor charge.

Appellant admits he shot Singletary two times, and does not dispute the medical evidence regarding Singletary's injuries and the treatment necessary to repair them, but makes the incredible assertion the evidence did not rise to the level of great bodily injury because Singletary only had a scar from the surgery necessary to remove the bullet and part of his small intestine, and the doctor testified most people do well after partial removal of their small intestine. He contends there was no evidence presented to the jury regarding the extent of the scar, or how much or how long Singletary's small intestine was impaired, and therefore, the jury could have found Singletary sustained only moderate bodily injury.

Focusing on the length of Singletary's surgical scar and recovery from surgery, Appellant attempts to draw attention away from the extent of Singletary's injuries. It is undisputed Appellant shot at Singletary three times, and the last two shots hit Singletary in the abdomen and groin, resulting in six holes in Singletary's small intestine. It is also undisputed his injuries required surgery and removal of a portion of his small intestine, without which Singletary would have died. In light of this undisputed evidence, it defies common sense and reason to contend his injuries were merely "moderate bodily injury."

To the contrary, based on the undisputed evidence presented, Appellant's actions "cause[d] a substantial risk of death or . . . serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." Nothing in §16-3-600(A)(1) (definition of great bodily injury) or §16-3-600(B)(1) (ABHAN) requires that a permanent disfigurement or protracted loss of a bodily member or organ be visible to the naked eye, or that the victim's recovery from the injuries be difficult. The doctor testified Singletary would have died without surgical intervention, and the internal injuries caused by Appellant's actions required permanent removal

of a portion of an organ. This evidence removed any issue regarding "great bodily injury" versus "moderate bodily injury."[4]

Considering the evidence in the light most favorable to Appellant, the circuit court's finding that a charge on the lesser included offense of assault and battery, second degree, was not warranted is amply supported by undisputed evidence in the record. Therefore, the circuit court properly denied Appellant's request for a jury charge on assault and battery ,second degree.

[4]Arguably, any "great bodily injury" necessarily encompasses "moderate bodily injury," but an assault and battery, second degree charge is **not** proper in every assault and battery case. When, as in this case, the evidence before the jury regarding the extent of a victim's injuries can lead only to a finding of great bodily injury, giving a charge regarding "moderate bodily injury" would only serve to mislead and confuse the jury.

CONCLUSION

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

Respectfully submitted,

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July 26, 2019

STATE OF SOUTH CAROLINA

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Appeal from Williamsburg County
The Honorable R. Ferrell Cothran, Circuit Court Judge
Appellate Case No.2018-001080

THE STATE, RESPONDENT,

v.

JOHN ARTHUR JAMES, III,

APPELLANT.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Joanna K. Delany
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 26th day of July, 2019.

Sally Ellison

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Legal Assistant

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RE: State v. John Arthur James, III
Appellate Case No. 2018-001080

Dear Ms. Delaney:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: Honorable Jenny A. Kitchings (original and one copy enclosed)
Victim Services