STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Frank R. Addy, Circuit Court Judge
Appellate Case No. 2019-000365

The State, Respondent,

vs.

David Paul Merritt, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Appellant checked into the Lexington County Detention Center to serve his weekend time on an unrelated charge. (T.54; R.32). Appellant showed up smelling of alcohol and was going to be placed in confinement since he was intoxicated on arrival. (T.55-56; R.33-34). As part of his booking, two officers, Officer Anderson and Officer Stevens, took Appellant to a restroom to conduct a strip search. (T.55-56; R.33-34). Appellant became upset about his keys and because Officer Anderson confronted him about the alcohol and indicated Appellant was being placed in confinement. (T.56; 73; R.34; 51).

Appellant took off his shoes and pants, then sat down on the toilet refusing to comply with instructions from the officers. (T.56-57; R.34-35). Officer Anderson pulled out his handcuffs to attempt to restrain Appellant. The officers struggled with Appellant and took him to the floor. Appellant pulled his hand out from under him, and put it on Officer Anderson's shirt. Appellant had feces on his hand when he smeared it on Officer Anderson. (T.56; 59; R.34; 37). Appellant extended his hand with feces, swiped it, and it went all over Officer Anderson. (T.61; 64-65; R.39; 42-43).

STANDARD OF REVIEW

Directed Verdict

"On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court recently reiterated: "[W]hen ruling on a directed verdict motion, the trial court views 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.'" State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

"Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding "any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt" in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

Jury Charge

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "In general, the trial court is required to charge only the current and correct law of South Carolina." Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "'A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused.'" State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)).

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "'In reviewing jury charges for error, [the Court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.'" Brandt, 393 S.C. at 549, 713 S.E.2d at 603 (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013)).

ARGUMENT

I. The trial court properly construed section 24-13-470 in light of the legislative intent underpinning the statute. As a result, the court properly denied Appellant's motion for a directed verdict. Additionally, the trial court properly instructed the jury on the interpretation of the statute in his jury charge.

Appellant contends the trial court erred in denying his motion for a directed verdict and in charging the jury based on his interpretation of the statutory requirements of section 24-13-470 of the South Carolina Code. The trial court properly interpreted section 24-13-470 in light of the legislative intent advanced within the section. After making the correct interpretation, the trial court properly denied Appellant's motion for a directed verdict and correctly charged the jury with the correct and relevant law.

The statute in question provides:

> (A) An inmate, a detainee, a person taken into custody, or a person under arrest, who attempts to throw or throws body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on an employee of a state correctional facility or local detention facility, a state or local law enforcement officer, a visitor of a state correctional facility or local detention facility, or any other person authorized to be present in a state correctional facility or local detention facility in an official capacity is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. This section shall not prohibit the prosecution of an inmate for a more serious offense if the inmate is determined to be HIV-positive or has another disease that may be transmitted through body fluids.
>
> (B) A person accused of a crime contained in this section may be tested for a blood borne disease within seventy-two hours of the crime if a health care professional believes that exposure to the accused person's body fluid may pose a significant health risk to a victim of the crime.
>
> (C) This section does not apply to a person who is a "patient" as defined in Section 44-23-10(3).

S.C. Code Ann. § 24-13-470 (Supp. 2018).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). A statute's language must be construed in light of the intended purpose of the statute. State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). Whenever possible, legislative intent should be found in the plain language of the statute itself. Id. The statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). "The statute must be interpreted with realistic circumstances and rationales in mind." State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011); State v. Baker, 310 S.C. 510, 512, 427 S.E.2d 670, 672 (1993) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.").

If the statute is ambiguous, however, courts must construe the terms of the statute. Lester v. S.C. Workers' Comp. Comm'n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606–07 (2006). In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the legislature. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("However plain the ordinary meaning of the words used in the statute may be,

the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature. . . .").

The primary question in this case is the definition of the word "throw." The concern is whether the feces which was clearly on Appellant's hand and came from the floor and was placed on the officer's shirt had to be projected or leave his hand in order for it to be thrown according to the statute. This Court should not construe the term "throw" so narrowly and, instead, should consider all definitions of the term or either declare the term ambiguous.

"Throw" as a verb has eighteen definitions, some with sub-definitions, in Merriam Webster.[1] By choosing a word with so many definitions, the legislature purposefully selected and intended a broad reach for the statute. The legislature did not intend to limit its reach to only a single action propelling the feces or other bodily substance and requiring it to leave the individuals hand as it flew through the air.

One such definition is "to propel through the air in any manner." While it never left Appellant's hands, the feces in this case were clearly propelled through the air from the floor onto the officer's shirt using Appellant's hand. He had to pick up the feces, move it through the air and wipe it on the officer's shirt, thereby propelling it through the air onto the shirt. Further, another definition is "to send forth" as in "shed" which would certainly apply in this case as he sent forth his feces and shed them on the officer's shirt. The word "throw" also means "to drive or impel violently," which is what Appellant did when he grabbed his feces and smeared it against the officer. A fourth definition is to deposit or let fall. Again, Appellant threw the feces if it is defined this way as he deposited it and let it fall off his hand onto the officer's shirt. The fact several definitions could apply that have such a broad scope demonstrates the legislature did not intend to

[1] See https://www.merriam-webster.com/dictionary/throw

severely limit the ways in which an inmate could transfer feces or other bodily substance onto an officer.

The trial court considered the language of the statute in light of the actions taken by Appellant. The court found that to construe the word "throw" to mean that the feces had to leave his hand resulted in an absurd result which clearly conflicted with the intent of the legislature in passing the statute. In reading the statute, in particular Subsection B of section 24-13-470, the trial court found the safety and health of the officers was of concern and went beyond merely the indignity of having feces or other bodily substances on them.

If this Court finds that the actions performed by Appellant are not covered by one of the eighteen definitions of "throw," then this Court should find the word ambiguous in light of the numerous definitions. Once determined to be ambiguous, then the Court's primary focus is to effectuate the intent of the legislature without creating an absurd result. The trial court performed this exact function, by looking at the statute as a whole, determining a restrictive reading of the word "throw" would lead to an absurd result, and determining the legislative intent was best served by finding the definition to be "transferred." The trial court did not err in finding this as an appropriate definition of the word "throw" in the statute.

As seen above, either the actions of Appellant fall within the vast definition of "throw" or the trial court properly construed the term in light of the clear legislative intent to protect the officers from the indignity and harm potentially caused by involuntarily and violently coming in contact with Appellant's feces. In either case, the trial court properly denied Appellant's motion for directed verdict because the evidence supported a finding that Appellant threw or transferred the feces to the officer's uniform.

Once the trial court properly defined the term, he was required to charge the jury with its proper definition. A trial court must charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). However, "[o]nly the law applicable to the case should be charged to the jury." State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002).

In the instant case, once the trial court determined the word "throw" to be ambiguous and resulting in an absurd outcome, he was required to charge the jury with the correct interpretation of the statute such that they could properly apply the statute and effectuate the legislative intent. Appellant's argument would lead to a conclusion that the jury would never be able to execute the intent of the legislature because it would never be instructed with the full depth of the statute. Even when a court has to interpret the statute so that it can be properly applied, it would be required to only give the language of the statute and not the proper interpretation of the statute to the jury to fully consider in its deliberations. This is contrary to the clear purpose of jury instructions.

"The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.'" State v. Blurton, 352 S.C. 203, 207–08, 573 S.E.2d 802, 804 (2002) (quoting State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). Giving the jury only the statute and not the full definition as the trial court did would only have served to mislead the jury. As a result, the trial court properly charged the jury once he determined the legislative intent of section 24-13-470.

Accordingly, the trial court did not abuse its discretion in denying Appellant's motion for a directed verdict or in properly charging the jury with the definition which fulfilled the legislative intent behind section 24-13-470. This Court should affirm Appellant's conviction and sentence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 12, 2020

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed March 12, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 12th day of March, 2020.

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