

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Doyet A. Early, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

VENSON TYRONE JONES,

APPELLANT

APPELLATE CASE NO. 2018-001206

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal for assault and battery of a high and aggravated nature when the State failed to prove that the battery resulted in great bodily injury or that the battery was accomplished by means likely to produce death or great bodily injury?

STATEMENT OF THE CASE

In March of 2017, the Barnwell County Grand Jury indicted Appellant, Venson Tyrone Jones, for assault and battery of a high and aggravated nature, indictment #2017-GS-06-00059. On May 21, 2018, Appellant appeared before the Honorable Doyet A. Early, III, for pre-trial motions and jury selection. Wallis Alves represented Appellant. David W. Miller, Jackson Cooper and Michael Emmer represented the State. On June 13, 2018, Appellant proceeded with a bench trial before Judge Early. Wallis Alves represented Appellant at the bench trial. David W. Miller, Jackson Cooper and Michael Emmer prosecuted the case. On June 19, 2018, Judge Early found Appellant guilty and sentenced him to seven years in prison. A timely notice of intent to appeal was served on June 26, 2018. This appeal follows.

STANDARD OF REVIEW

In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). During trial, “[w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” *Id.* at 593, 606 S.E.2d at 477–78 (citing State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002)); see also Rule 19(a), SCRCrP. The trial court should “grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as ‘[s]uspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (citations omitted). On the other hand, “a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *Id.* (emphasis removed).

On appeal, “[w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state.” *Id.* (citing State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)); see also State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (finding that when ruling on cases in which the state has relied exclusively on circumstantial evidence, appellate courts are likewise only concerned with the existence of the evidence and not its weight). If the state has presented “any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” this Court must affirm the trial court's decision to submit the case to the jury. Cherry, 361 S.C. at 593–94, 606 S.E.2d at 478; cf. Mitchell, 341 S.C. at 409, 535 S.E.2d at 127 (“The trial judge is required to 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.’ ” (emphasis removed) (citation omitted). State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013)

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for assault and battery of a high and aggravated nature when the State failed to prove that the battery resulted in great bodily injury or that the battery was accomplished by means likely to produce death or great bodily injury.

Judge Early found Appellant guilty of assault and battery of a high and aggravated nature. Wanda Badger, the mother of Appellant's four children, testified that Appellant struck her in the head and arm with a hammer. (R. pp. 60-63). Badger testified that she did not have a skull fracture but received about twenty staples as a result of being struck by the hammer. (R. p. 81, lines 18-23; p. 64, lines 1-9). Badger spent a few hours being treated at the emergency room and was released the same day. (R. p. 82, line 20 – p. 83, lines 1-2). The State introduced photographs of the injuries but did not present any medical evidence or testimony. In addition to Badger, the State called three other witnesses: 1. Betty Hill, Appellant's mother; 2. Charles Hill, Appellant's step father; and Christopher McClary, the 911 dispatcher.

At the close of the State's case Appellant moved for a directed verdict of acquittal. (R. pp. 88 – 100). The judge took the motion under advisement and the defense presented a witness and renewed the motion for a directed verdict. (R. p. 123, lines 3-5). The judge correctly found that there was not great bodily injury to the person but denied the motion for a directed verdict finding that being struck in the head with a hammer is an act that is likely to produce great bodily injury or death. (R. p. 123, line 6 – p. 124, lines 1-13). The judge erred in finding that the State, in this case, proved that being struck in the head with a hammer is an act that is likely to produce great bodily injury or death.

S.C. Code Ann. § 16-3-600(B)(1) provides, "A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.” Great bodily injury is defined as “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).

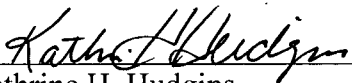
S.C. Code Ann. § 16-3-600(D)(1) provides, “A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and: (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted. . . .” Moderate bodily injury is defined as 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).

In the present case the State failed to introduce any direct evidence or substantial circumstantial evidence that Appellant’s action in striking Badger with a hammer was likely to produce death or great bodily injury, as defined by the statute. There was no evidence the injury caused a substantial risk of death or serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ. If the case had been tried before a jury rather than the judge, there was evidence from which the jury could infer that Appellant committed assault and battery in the second degree rather than assault and battery of a high and

aggravated nature and the judge would have erred if he had not charged the jury with the lesser included offense. At the directed verdict stage in this bench trial the State failed to prove assault and battery of a high and aggravated nature. "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003).

CONCLUSION

Based on the above argument, this Court should reverse Appellant's conviction and sentence.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of May, 2019.

STATE OF SOUTH CAROLINA
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Honorable Doyet A. Early, Circuit Court Judge

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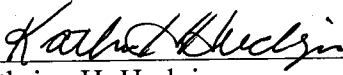
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Venson Tyrone Jones states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Doyet A. Early, which was held on June 19, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Venson Tyrone Jones.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 31st day of May, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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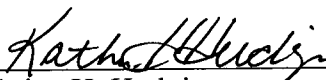
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) August 1, 2017, pre-trial transcript;
- (3) January 16, 2018, pre-trial transcript;
- (4) April 25, 2018, pre-trial transcript;
- (5) May 21-22, 2018, pre-trial transcript/jury selection;
- (6) June 13, 2018, bench trial transcript;
- (7) June 19, 2018, sentencing transcript;
- (8) Court's Exhibit #2 – Competency Evaluation.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 31, 2019

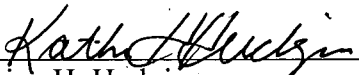

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

May 31, 2019.


Kathrine H. Hudgins
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South Carolina Commission on Indigent
Defense
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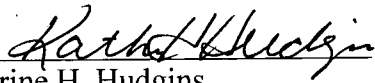
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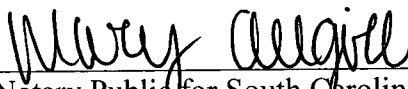
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Venson Tyrone Jones, 376914, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 31st day of May, 2019.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of May, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027