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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

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Opinion No. 2021-UP-370 (S.C. Ct. App. filed November 3, 2021)

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THE STATE,

RESPONDENT,

V.

JODY RAY THOMPSON,

PETITIONER.

APPELLATE CASE NO. 2022-000051

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APPENDIX

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LARA M. CAUDY  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

AMBREE M. MULLER  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEY FOR PETITIONER

BARRY J. BARNETTE  
Solicitor, Seventh Judicial Circuit  
180 Magnolia Street, Third Floor  
Spartanburg, SC 29306  
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Jody Ray Thompson, Appellant.

Appellate Case No. 2019-000313

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Appeal From Spartanburg County  
J. Derham Cole, Circuit Court Judge.

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Unpublished Opinion No. 2021-UP-370  
Submitted October 1, 2021 – Filed November 3, 2021

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**AFFIRMED**

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Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Ambree Michele Muller, both of Columbia; and Solicitor Barry Joe Barnette, of Spartanburg, all for Respondent.

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**PER CURIAM:** Jody R. Thompson appeals his convictions for two counts of attempted murder, two counts of assault and battery of a high and aggravated nature (ABHAN), possession of a weapon during a violent crime, and unlawful

carrying of a pistol. On appeal, Thompson argues the trial court erred in refusing to instruct the jury on the lesser-included offense of second-degree assault and battery. We affirm.

Based on the evidence presented at trial regarding Thompson's use of a gun and the manner in which he fired the gun, we find the trial court did not err by refusing to charge the jury on the lesser-included offense of second-degree assault and battery. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Niles*, 412 S.C. 515, 521, 772 S.E.2d 877, 880 (2015) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019) ("In determining whether the evidence requires a charge on a lesser-included offense, we view the facts in the light most favorable to the defendant."); *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) ("To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense."); S.C. Code Ann. § 16-3-600(B)(1) (2015) ("A person commits the offense of [ABHAN] 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."); S.C. Code Ann. § 16-3-600(C)(1)(b)(i) (2015) ("A person commits the offense of assault and battery in the first degree if the person unlawfully . . . offers or attempts to injure another person with the present ability to do so, and the act . . . is accomplished by means likely to produce death or great bodily injury . . ."); S.C. Code Ann. § 16-3-600(A)(1) (2015) (defining "[g]reat bodily injury" 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(D)(1)(a) (2015) ("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] moderate bodily injury to another person results or moderate bodily injury to another person could have resulted . . ."); S.C. Code Ann. § 16-3-600(A)(2) (2015) (defining "[m]oderate bodily injury" as a physical injury that "causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ").

**AFFIRMED.**<sup>1</sup>

**HUFF, THOMAS, and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

V.

JODY RAY THOMPSON,

APPELLANT.

APPELLATE CASE NO. 2019-000313

---

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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Opinion No. 2021-UP-370

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PETITION FOR REHEARING

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On November 3, 2021, this Court affirmed Appellant's convictions and sentence in an unpublished opinion. State v. Thompson, 2021-UP-370 (S.C. Ct. App. filed November 3, 2021). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter based upon the significant points overlooked and/or misapprehended by this Court in reaching its decision.

A Spartanburg County Grand Jury indicted Appellant for four counts of attempted murder. A jury found him guilty of two counts of attempted murder and two counts of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). On appeal,

Appellant argued the trial judge erred by refusing to instruct the jury on the lesser included offense of second degree assault and battery when there was evidence upon which the jury could have found Appellant committed only the lesser offense instead of the indicted offense of attempted murder.

In a per curiam opinion, this Court held the trial judge did not err by refusing to charge the jury on the lesser included offense of second degree assault and battery “[b]ased on the evidence presented at trial regarding Thompson’s [Appellant’s] use of a gun and the manner in which he fired the gun.”

In so holding, this Court overlooked the proper standard of review. In reviewing jury charges for error, this Court must examine the trial court’s charge as a whole in light of the evidence and issues presented at trial. State v. Williams, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019) (citing State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)). “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.” Id. (quoting Suber v. State, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007)) (internal quotation marks omitted) (emphasis added). In determining whether the evidence requires a charge on a lesser included offense, this Court must view the facts in the light most favorable to the defendant. Id. (citing State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996)).

Attempted murder is codified in S.C. Code Ann. § 16-3-29, which states in relevant part, “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” The “degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees.” State v.

Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) (citing S.C. Code Ann. § 16-3-600). “Under the statute, ABHAN is a lesser-included offense of attempted murder.” Id. (citing § 16-3-600(B)(3)). “Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN.” Id. (citing § 16-3-600(C)(3)). “Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense.” Id. (citing § 16-3-600(D)(3) and § 16-3-600(E)(3)).

Section 16-3-600(D)(1) states in relevant part, “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 of 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, slinters, or any other minor injuries that do not ordinarily require extensive medical care.” S.C. Code Ann. § 16-3-600(A)(2).

Unlike the trial judge concluded, the fact that an individual suffered a gunshot wound does not make that injury *per se* “great bodily injury.” Stated another way, a gunshot wound, although caused by a deadly weapon, is not *per se* “great bodily injury.” *In the light most favorable to Appellant*, the jury could have found Irby, Rice, and Glenn’s injuries merely constituted “moderate bodily injury.” While there was not a great deal of testimony or other evidence concerning their injuries, it appears Rice suffered a superficial graze wound to her right

temple and Glenn and Irby underwent a simple surgery to remove the bullet from their foot and leg respectively. None of them suffered any serious or lasting injury. As far as Smith, who was not injured, the jury could have found Appellant “offered or attempted to injure” Smith and “moderate bodily injury” could have resulted.

Accordingly, if the jury concluded Appellant acted without malice and without a specific intent to kill, it could have found him guilty of the lesser included offense of second-degree assault and battery. Consequently, the trial judge erred by refusing to instruct the jury on this lesser included offense. Respectfully, this Court should grant rehearing, reverse Appellant’s convictions and sentence, and remand for a new trial.

Based on the foregoing, Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in affirming Appellant’s convictions and sentence.

Respectfully Submitted,

s/ Lara M. Caudy  
LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of November, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JODY RAY THOMPSON,

APPELLANT.

APPELLATE CASE NO. 2019-000313

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Jody Ray Thompson, #346145, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of November, 2021.

s/ Lara M. Caudy\_\_\_\_\_

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

# The South Carolina Court of Appeals

The State, Respondent,

v.

Jody Ray Thompson, Appellant.

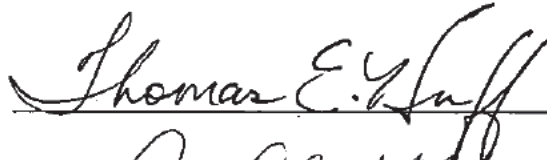
Appellate Case No. 2019-000313

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ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:  
Alan McCrory Wilson, Esquire  
Lara Mary Caudy, Esquire  
Ambree Michele Muller, Esquire  
Barry Joe Barnette, Esquire  
The Honorable J. Derham Cole

**FILED**  
**Dec 16 2021**

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