8-8-2017

State v. Nuse Appellant's Reply Brief Dckt. 44574

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 44574**
	)	
v.	)	**ADA COUNTY**
	)	**NO. CR-FE-2015-13951**
CHYNNA DAWN NUSE,	)	
	)	
Defendant-Appellant.	)	
_____	)	

_____

REPLY BRIEF OF APPELLANT

_____

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

_____

HONORABLE SAMUEL A. HOAGLAND
District Judge

_____

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

Ms. Nuse appeals from her conviction for battery against a healthcare worker. She contends the evidence was insufficient to support her conviction because there was no evidence she touched or struck another person, and thus no evidence she committed battery within the meaning of Idaho Code § 18-903(b). Ms. Nuse submits this Reply Brief to respond to one of the "facts" in the Respondent's Brief, and to respond to the State's legal argument.

Statement of Facts and Course of Proceedings

Ms. Nuse included a statement of facts and course of proceedings in her Appellant's Brief, *see* Appellant's Br., pp.1-3, which she relies on and incorporates herein. Ms. Nuse includes this statement only to respond to the State's mischaracterization of the reason Ms. Nuse was dissatisfied with the services she received from her treating physician. The State asserts Ms. Nuse "became upset with Dr. Urban after he would not provide her stronger medication during Nuse's emergency room visit." (Respondent's Br., p.4.) In support of this short, simple statement, the State cites eleven pages from the trial transcript. (Respondent's Br., p.4, citing Tr., p.138, L.11 – p.149, L.3.) This statement is incorrect, and is not supported by the evidence. Dr. Urban testified as follows:

> Q. And what—how did the defendant take that [news that the treatment plan was going to be discharge and follow up with her doctor]?
>
> A. Not well. She thought I had not appropriately addressed her pain, and specifically was requesting further testing. And that point, based on the results that I'd reviewed, I didn't feel [it] was indicated emergently.
>
> Q. What further testing was she requesting?
>
> A. An ultrasound.

(Tr., p.147, Ls.14-23.) Dr. Urban had previously offered Ms. Nuse intravenous Toradol, which she had refused. (Tr., p.148, Ls.9-21.) But it was only when Dr. Urban refused to order an ultrasound that the situation "escalated." (Tr., p.150, L.23 – p.151, L.7.) Dr. Urban testified Ms. Nuse "escalated" because "[s]he felt that she needed more testing to specifically address her problem." (Tr., p.151, Ls.9-15.)

ISSUE

Was the evidence sufficient to support Ms. Nuse's conviction for battery against a healthcare worker?

ARGUMENT

The Evidence Was Insufficient To Support Ms. Nuse's Conviction For Battery Against A Healthcare Worker

Ms. Nuse does not dispute that the jury could arguably have found her guilty of battery against a healthcare worker based on a violation of I.C. § 18-903(a) (defining battery as "[w]illful and unlawful use of force or violence upon the person of another"). But the evidence was insufficient to support her conviction based on a violation of I.C. § 18-903(b) (defining battery as "[a]ctual, intentional and unlawful *touching or striking* of another person against the will of the other") (emphasis added).

The charging document alleged Ms. Nuse committed battery under either § 18-903(a) or (b), and the jury should have been instructed as to both of these "alternative methods of committing a battery." *See State v. Carlson*, 134 Idaho 389, 400 (Ct. App. 2000) (stating § 18-903 "sets forth three alternative methods of committing a battery"); *see also* ICJI 1203, cmt. (stating "[t]he definition [of battery] should be tailored to fit the allegations in the charging document") (citations omitted). But the jury was only instructed with respect to § 18-903(b). (Tr., p.193, L.19 – p.194, L.17; R., pp.125-26.) The evidence was insufficient to support Ms. Nuse's conviction because there was no evidence Ms. Nuse either touched or struck Dr. Urban, and thus no rational trier of fact could have found beyond a reasonable doubt that Ms. Nuse committed this essential element of the offense as instructed. *See State v. Eliasen*, 158 Idaho 542, 546 (2015) (stating the relevant inquiry for appellate review of the sufficiency of the evidence is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt).

The question presented in this case is whether Ms. Nuse's act of throwing her IV at Dr. Urban, resulting in IV fluid and blood coming into contact with his glasses and cheek,

constitutes "touching or striking" within the meaning of the battery statute. It does not. The statute does not define the phrase "touching or striking," so this Court must look to the common, everyday meaning of these words. *See State v. Yzaguirre*, 144 Idaho 471, 477 (2007) ("Where the legislature has not provided a definition in the statute, terms in the statute are given their common, everyday meanings.") To ascertain the ordinary meaning of undefined words in a statute, this Court has often turned to dictionary definitions. *See Arnold v. City of Stanley*, 158 Idaho 218, 221 (2015). The words "touching" and "striking" are the gerunds of "touch" and "strike." As relevant here, the word "touch" means "to bring a bodily part into contact with especially so as to perceive through the tactile sense," "to put hands upon in any way or degree," or "to strike or push lightly especially with the hand or foot or an implement." *See* Merriam-Webster Online Dictionary, *at* https://www.merriam-webster.com/dictionary/touch (last visited July 19, 2017). The word "strike" means "to aim and usually deliver a blow, stroke, or thrust (as with the hand, a weapon, or a tool)." *See* Merriam-Webster Online Dictionary, *at* https://www.merriam-webster.com/dictionary/strike (last visited Jul7 19, 2017).

Ms. Nuse neither touched nor struck Dr. Urban. She did not use her IV as an implement or a tool to deliver contact to him, but instead threw her IV across the room, a distance of approximately six feet, resulting in some fluids coming into contact with his face. The Legislature has criminalized similar conduct when undertaken by prisoners and pretrial detainees against certain classes of people. *See* I.C. § 18-915B (providing, in pertinent part, that it is a felony for a prisoner or pretrial detainee to "knowingly propel[ ] any bodily fluid or bodily waste at any detention officer, correctional officer, staff member, private contractor or employee of a county or state correctional facility"). But it has not defined this crime as battery, and has not

characterized it as "touching or striking." The State did not present any evidence that Ms. Nuse either touched or struck Dr. Urban within the meaning of the battery statute.

Because the State failed to present substantial evidence proving beyond a reasonable doubt that Ms. Nuse committed a battery within the meaning of Idaho Code § 18-903(b), this Court must vacate her conviction for battery upon a healthcare worker.

CONCLUSION

For the reasons stated above, as well as those set forth in her Appellant's Brief, Ms. Nuse respectfully requests that this Court vacate her conviction and remand this case to the district court with instructions to enter an acquittal.

DATED this 8th day of August, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CHYNNA DAWN NUSE
205 W 38TH STREET UNIT 9
GARDEN CITY ID 83714

SAMUEL A HOAGLAND
DISTRICT COURT JUDGE
E-MAILED BRIEF

CHARLENE W DAVIS
DEPUTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas