STATE OF MICHIGAN
IN THE COURT MICHIGAN SUPREME COURT

STATE OF MICHIGAN
Plaintiff-Appellee,

SC No.: 159619
COA No.: 340377
vs Lower Court No. 2016-000712-FC

BRAD HAYNIE
Defendant-Appellant,
_____/

BRIEF ON APPEAL

*** * ***

ORAL ARGUMENT REQUESTED

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

The Defendant-Appellant, Brad Haynie, was arrested and charged with one count of Assault with Intent to Murder, contrary to MCL 750.83. (See PSI).

On or about August 04, 2018, following a jury trial, the jury returned a verdict of guilty on the lesser offense of Assault with Intent to do Great Bodily Harm Less than Murder. (Id. p. 95).

On September 14, 2018 the trial court sentenced Mr. Haynie to 67 months to 120 months in the Michigan Department of Corrections. (See JOS).

Following his sentence, Mr. Haynie sought appeal of his conviction. His appeal was denied on or about April 16, 2019

Mr. Haynie now seeks appeal from the Order entered by the Court of Appeals on April 16, 2019 denying his Appeal. In denying Mr. Haynie's appeal, the majority held in pertinent part that assault and battery is not a necessarily included offense of assault with intent to murder but rather a cognate lesser offense. The Court of Appeals also held that a rational view of the facts of Mr. Haynie's case did not support a finding a conviction for assault and battery mainly because of the extent of the Complainant's injuries.

In holding that Mr. Haynie was not entitled to the assault and battery instruction the majority relied on *People v Ora Jones*, 395 Mich 379; 236 NW2d 461 (1975) which was overturned by *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002). This latter opinion, as stated in the minority dissent, held in pertinent part that assault and battery was a necessarily included offense of assault with intent to murder and also held that the

controlling law on the issue was a much older opinion; *Hanna v People*, 19 Mich 316 (1869).

The majority decision of the Court of Appeals is clearly erroneous and will cause material injustice and its decision conflicts with other decisions by this Court and the Court of Appeals. MCR 7.302(B)(3) and (5). Mr. Brad Haynie is respectfully requesting this Court grant his Appeal and remand the case to the trial court for a new trial.

Mr. Haynie filed an Application for Leave to Appeal to this Honorable Court on or about May 19, 2019. This Honorable Court granted Leave on the Application on or about October 03, 2019 on the issue of whether assault and battery is a necessarily included offense of assault with intent to murder and also the issue of whether a rational view of the facts in the instant case could support a conviction for assault and battery.

This Court has jurisdiction pursuant to MCR 7.312 and this Brief is timely filed pursuant to MCR 7.312 (E)(1).

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STATEMENT OF THE QUESTIONS PRESENTED

1. IS ASSAULT AND BATTERY A NECESSARILY INCLUDED OFFENSE OF ASSAULT WITH INTENT TO MURDER FOLLOWING COURT OF APPEALS PRECEDENT IN *PEOPLE V CORNELL*, 466 Mich 335; 646 NW2d 127 (2002) AND *PEOPLE V HANNA*, 19 Mich 316 (1869) AND WAS IT WAS ERROR FOR THE TRIAL COURT TO DENY MR. HAYNIE'S REQUEST FOR THE INSTRUCTION AS A RATIONAL VIEW OF THE FACTS OF THE CASE COULD SUPPORT A FINDING OF GUILT OF ASSAULT AND BATTERY; THEREBY ENTITLING HIM TO REVERSAL OF HIS CONVICTION AND REMAND TO THE TRIAL COURT FOR A NEW TRIAL?

   Defendant-Appellant answers "YES"
   Appellee answered "NO"
   The trial court answered "NO"
   The Court of Appeals answered "NO"

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The Defendant-Appellant, Brad Haynie, was arrested and charged with one count of Assault with Intent to Murder, contrary to MCL 750.83. (See PSI).

A preliminary examination was held and the matter was bound over to the Macomb County Circuit Court. (See ROA).

Trial counsel filed a motion to Quash the bind-over which was heard and denied by the trial court in a written opinion and order dated August 16, 2016. (See ROA).

Due to Mr. Haynie's long history of mental illness, he was referred to the forensic center at the request of the People. (4/26/2016 Tr. p. 4 and 5/17/16 Tr. p. 7). Mr. Haynie was found competent to stand trial by the examiner at the Forensic Center and trial counsel stipulated to the findings. (07/28/2016 Tr. p. 4).

On November 29, 2016, retained counsel appeared for Mr. Haynie and he requested that Mr. Haynie be referred back to the Forensic Center on the issue of criminal responsibility. (11/29/16 Tr. p. 4). The matter was adjourned again. (Id. p. 5).

The matter resumed on April 24, 2017 at which time trial counsel indicated to the court that the Forensic Center had found Mr. Haynie not criminally responsible. (Id. p. 4). Counsel subsequently filed a Notice of Insanity Defense. (05/11/2017 Tr. p. 4).

Subsequent to the 05/11/2017 hearing, trial counsel had Mr. Haynie evaluated by another forensic examiner, who also found that Mr. Haynie was legally insane at time of the commission of the crime. (08/03/2017 Trial Tr. p. 91). Mr. Haynie was also examined by a neurologist who found that Mr. Haynie suffered from brain damage. (08/03/2017 Trial Tr. p. 60-63).

Trial commenced on August 01, 2017. (08/01/2017 Trial Tr.). Trial counsel objected to the introduction of certain photos, citing their gruesome nature. (Id. p. 3-4). The trial court denied the objection. (Id. p. 5).

The jury was brought up, and the court proceeded with preliminary instructions. (Id. p. 5-13). The panel was sworn in. (Id. p. 8-9). The selection of the jury proceeded. (Id. p. 13-212). The jury was sworn in and the matter was concluded for the day. (Id. p. 212-213).

The matter resumed the following day and the jury was provided with the first set of instruction. (08/03/2017 Trial Tr. p. 4-15). The parties then proceeded to opening statements. (Id. p. 15-26).

The first witness called by the People was Patricia Haynie, Mr. Haynie's Mother and the Complainant on the case. (Id. p. 27). She testified that Mr. Haynie is her Son. She further testified that he was diagnosed with paranoid schizophrenia. (Id. p. 30). She also testified that he had dyslexia but managed to graduate from high school and worked the same job at Ford for 22 years until his arrest. (Id. p. 31-32). She testified further that Mr. Haynie started drinking at age 12 and that he had a problem with alcohol. (Id. p. 32).

She further testified that in October 2015 she lived by herself. (Id. p. 33). Mr. Haynie paid for everything for her. (Id. p. 34). She would also sometimes stay overnight in Mr. Haynie's condo with him. (Id. p. 35).

She testified that on October 07, 2016 she was at the condo with Mr. Haynie who was cooking dinner for her. (Id. p. 40). She testified that Mr. Haynie was doing fine and that she did not believe he had been drinking that day. (Id. p. 41, 43). Ms. Haynie testified that her Son's mood changed after he took his new pills that he had been prescribed. (Id.

p. 46). She testified that suddenly her Son put the kitchen knife down and looked at her with a terrified look and told her that he had to save her from Lucifer. (Id.). He then attacked her. (Id. p. 46-50, 53-54). She went on to describe the injuries she received which included broken bones. (Id. p. 55-57). Lastly, Mrs. Haynie testified that her Son had never assaulted her before. (Id. p. 57).

Mrs. Haynie further testified that her Son had been hospitalized multiple times for his mental health issues. (Id. p. 64-65). Most recently he had been hospitalized for believing that he smelled bodies. (Id.). He went willingly with the police. (Id.). She further testified that her Son following an inpatient rehab stay began talking to voices. (Id.). He would also write down license plate numbers thinking he was being followed and also stay several nights in a row in hotels because he was worried the voices would hurt his Mother. (Id. p. 66). Mrs. Haynie believed this was in September 2017. (Id.).

At that time, Mr. Haynie also had beliefs that the UAW and the Free Masons were after him and he had the police come out and check his Gatorade for poison. (Id. p. 67).

Mrs. Haynie testified that the night of the incident Mr. Haynie was not acting drunk but rather out of his mind. (Id. p. 68). She again testified that he took new pills prescribed to him at Samaritan Hospital where he went just prior to going to Brighton Hospital for rehab. (Id. p. 72). About 30 minutes to an hour later he lost his mind and started talking about saving his Mother from Lucifer. (Id. p. 74-75, 76). That's when the attack started.

Mrs. Haynie believed her Son was insane. (Id. p. 78). She did not believe her Son intended to kill her, but rather save her from Lucifer. (Id. p. 79). She believed his change in mood was due to the change in medications. (Id. p. 85). She stated that he was in good spirits coming out from Samaritan but then came out a "raving lunatic" from Brighton

Hospital. (Id. p. 87-89). This was in September 2015. (Id.). After Brighton Hospital was when Mr. Haynie started hearing voices and being paranoid as described above. (Id.).

The next witness called was Deputy Cleland of the Macomb County Sheriff's Department. (Id. p. 91). He arrived first to the condo and was let in by Mrs. Haynie. (Id. p. 96). He found her injured and bloody. (Id.). Officers located Mr. Haynie in the basement. (Id. p. 99). Deputy Cleland testified that he found no evidence or signs of alcohol at the condo nor was there any signs that Mr. Haynie was intoxicated. (Id. p. 102-103).

The next witness called was Deputy Stone from the Macomb County Sherriff's Department. (Id. p. 105). He had been a detective for a year and a half. (Id.). Prior to that he was an evidence technician with the Department and he was the assigned evidence technician on the date of the incident. (Id.). He collected the evidence and took photographs of Mrs. Haynie. (Id. p. 106-116).

The next witness called was Detective Hanna. (Id. p. 120). He was the Officer in charge of the case. (Id. p. 121). The 911 tape was played for the jury. (Id. p. 125). Mr. Haynie's taped interview with the police was played for the jury. (Id. p. 126). Mrs. Haynie's medical records were also introduced. (Id. p. 130). Detective Hanna further testified that Mr. Haynie was not administered any breath test for alcohol. (Id. p. 136). The People rested. (Id. p. 138). The matter concluded for the day. (Id. p. 138).

The trial resumed the following day. 08/03/2017 Jury Trial Tr.). Defense counsel called his first witness, Dr. Iren Assar. (Id. p. 3). Dr. Assar worked at the Center for Forensic Psychiatry as a forensic psychiatrist. (Id. p. 4). After conducting a full evaluation on Mr. Haynie, Dr. Assar found that Mr. Haynie was legally insane at the time

the crime was committed and therefor that he was not criminally responsible for his acts. (Id. p. 19-24). The findings were supported by the report admitted as Exhibit B. Dr. Assar consistently testified that the delusions experienced by Mr. Haynie were consistent with mental illness and not intoxication. (Id. p. 37-38). Finally, Dr. Assar testified that out of 47 criminal responsibility examinations, 4 people were found to be legally insane. (Id. p. 48-49).

The next witness called was Dr. Emily Escott. (Id. p. 51). She was a clinical psychologist. (Id.). Through her employment she was primarily performing psychological and neuro-psychological evaluations. (Id. p. 53). Dr. Escott was qualified as an expert in neuropsychological testing over no objection. (Id.). Dr. Escott's neuropsychological testing report was admitted as Exhibit D. (Id. p. 54). The testing revealed that Mr. Haynie suffered significant impairment in the areas of auditory memory as well as that of delayed memory recall. (Id. p. 57). Mr. Haynie also struggled in several areas of executive functioning. His primary deficits were: Diminished motor speed, a lack of cognitive flexibility and abstract reasoning, verbal fluency and planning and solving problems. (Id. p. 56-57).

Dr. Escott also performed a personality test on Mr. Haynie. (Id. p. 58). The results revealed his clinical scales supported the presence of disorganized thinking, confusion, perceptual disturbances, which are like delusions, hallucinations, hearing things that aren't there, seeing things that aren't there, very intense depression, potentially some suicidal ideations, some psychotic paranoia and very significant paranoia. (Id. p. 59). Dr. Escott believed that something about Mr. Haynie's brain that was either damaged or not functioning properly. (Id. p. 62).

The next witness called was Dr. Abramsky. (Id. p. 69). Dr. Abramsky was a clinical and forensic psychologist. (Id.). He testified that he works as a treatment professional and also does forensic evaluations. (Id. p. 71). He had been qualified as an expert in forensic psychology hundreds of times. (Id.). He had been qualified as an expert in forensic psychology, criminal and civil psychology. Dr. Abramsky was qualified as an expert in clinical and forensic psychology over no objection. (Id. p. 72). Dr. Abramsky's report generated on Mr. Haynie was admitted as Exhibit F. (Id.). Dr. Abramsky reviewed Dr. Escott's report prior to evaluating Mr. Haynie. (Id. p. 74). Dr. Abramsky diagnosed Mr. Haynie as mentally ill. (Id. p. 77).

Dr. Abramsky also testified that there were two components to find someone legally insane. (Id. p. 79). First that someone is mentally ill, and as a result of that illness, the person does not know the difference between right or wrong or cannot conform their behavior through requirements of the law. (Id. p. 79-80). Dr. Abramsky believed that Mr. Haynie met the criteria for legal insanity. (Id. p. 80-81, 91). He did not attribute this to black out from drinking. (Id.).

Dr. Abramsky also testified that he reviewed Dr. Assar's report and that he agreed with the findings in the report. (Id. p. 89). Dr. Abramsky believed that he had enough information to form the opinion that Mr. Haynie was legally insane at the time he committed the instant offense. (Id. p. 91). He believed that Mr. Haynie met the definition of legal insanity both legally and clinically. (Id. p. 94). The proceedings were adjourned for the day. (Id. p. 211).

The matter resumed the next day. (08/04/2018 Trial Tr.).

Trial counsel made a motion for a directed verdict which was denied by the court. (Id. p. 3-6). Trial counsel requested the jury be instructed not only on the lesser included offense of Assault with Intent to do Great Bodily Harm Less than Murder but also on aggravated assault and assault and battery. (Id. p. 8-9). The trial court denied the request. (Id. p. 9).

The trial court also denied trial counsel's request to include the second half of Jury Instruction 7.10 which allowed for an involuntary intoxication defense relating to the ingestion of drugs. (Id. p. 9-10).

The last witness called was Patricia Lunardi, Mr. Haynie's sister. (Id. p. 16). She testified that Mr. Haynie was a great help to their Mother and that he had a loving relationship with his Mother. (Id. p. 17). She testified that her Brother's mental health had gradually declined since he was 17 years old. (Id. p. 19). She saw his paranoia get worse over the past few years. (Id.). Mr. Haynie had delusions thinking his girlfriend worked for the UAW and was hired to spy on him. (Id. p. 20). He also withdrew socially. (Id. p. 20). She saw him hallucinating. (Id.). She testified that her brother had been involuntarily committed to the mental hospital. (Id. p. 23).

The parties proceeded to closing arguments. (Id. p. 28-75). The jury was instructed. (Id. p. 75-94). The jury was instructed on the charge of Assault with Intent to Murder and the lesser included offense of Assault with Intent to do Great Bodily Harm Less than Murder. The trial court did not instruct on Assault and Battery. (Id. p. 84-85). The trial court instructed on the insanity defense too. (Id. p. 85-89).

The jury returned a verdict of guilty on the lesser offense of Assault with Intent to do Great Bodily Harm Less than Murder. (Id. p. 95).

Sentencing was held on September 14, 2017. (S. Tr.).

Trial counsel objected to the scoring of OV 1 and 2. The court denied the objection. Trial counsel objected to the scoring of OV 3 at 25 points. He believed it would have been properly scored at 10 points. (Id. p. 14). Trial counsel objected to the scoring of OV 4 and the court agreed. (Id. p. 16-17). Trial counsel objected to the scoring of OV 7 at 50 points and the trial court upheld the scoring. (Id. p. 18). Lastly, trial counsel objected to the scoring of OV 10. The court agreed and scored OV 10 at 0. (Id. p. 19).

The trial court sentenced Mr. Haynie to the top of his guidelines to 67 months to 120 months in the Michigan Department of Corrections. (Id. p. 40).

Mr. Haynie appealed his conviction to the Court of Appeals. In his appeal Mr. Haynie argued two issues. First, he argued that the trial court erred in denying his request for an instruction on the misdemeanor offense of assault and battery and also that the verdict by the jury was against the great weight of the evidence. The Court of Appeals in a 2-1 published opinion dated April 16, 2019 affirmed Mr. Haynie's convictions holding in pertinent part that no error occurred when the trial court denied Mr. Haynie's request for a jury instruction of assault and battery and also that the verdict was not against the great weight of the evidence. (See Opinion and Order attached). In holding that Mr. Haynie was not entitled to the assault and battery instruction the majority relied on *People v Ora Jones*, 395 Mich 379; 236 NW2d 461 (1975) which was overturned by *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002). This latter opinion, as stated in the minority dissent, held in pertinent part that assault and battery was a necessarily included offense of assault with intent to murder and also held that the controlling law on the issue was a much older opinion; *Hanna v People*, 19 Mich 316 (1869).

Mr. Haynie filed an Application for Leave to Appeal to this Honorable Court on or about May 19, 2019. This Honorable Court granted Leave on the Application on or about October 03, 2019 on the issue of whether assault and battery is a necessarily included offense of assault with intent to murder and also the issue of whether a rational view of the facts in the instant case could support a conviction for assault and battery.

The Defendant-Appellant bases his appeal on the foregoing facts.

ARGUMENT I

ASSAULT AND BATTERY IS A NECESSARILY INCLUDED OFFENSE OF ASSAULT WITH INTENT TO MURDER FOLLOWING COURT OF APPEALS PRECEDENT IN *PEOPLE V CORNELL*, 466 Mich 335; 646 NW2d 127 (2002) AND *PEOPLE V HANNA*, 19 Mich 316 (1869) AND IT WAS ERROR FOR THE TRIAL COURT TO DENY MR. HAYNIE'S REQUEST FOR THE INSTRUCTION AS A RATIONAL VIEW OF THE FACTS OF THE CASE COULD SUPPORT A FINDING OF GUILT OF ASSAULT AND BATTERY; THEREBY ENTITLING HIM TO REVERSAL OF HIS CONVICTION AND REMAND TO THE TRIAL COURT FOR A NEW TRIAL.

STANDARD OF REVIEW

Claims of instructional error are reviewed de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002), remanded on other grounds 467 Mich 888 (2002), *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003).

PRESERVATION OF THE ISSUE

The issue was properly preserved by Mr. Haynie requesting the jury instruction prior to the jury being instructed.

ANALYSIS

A jury's verdict is presumed valid; therefore, the defendant bears the burden of showing that an instructional error was outcome-determinative. *People v Rodriguez*, 463 Mich 466, 473-474; 620 NW2d 13 (2000). An instructional error is outcome-determinative if it undermined the reliability of the verdict. *People v Cornell*, 466 Mich 335, 363-364; 646 NW2d 127 (2002); *Rodriguez*, supra at 474. The reliability of a verdict is undermined if, considering the entire case, a lesser included offense instruction that was supported by substantial evidence was not given. *Cornell*, supra at 365. Conversely,

the failure to give a lesser included offense instruction is harmless if the instruction was not clearly supported by substantial evidence. Id. A defendant is entitled to an instruction on a necessarily included lesser offense if a rational view of the evidence would support it; however, a defendant is not entitled to an instruction on a cognate lesser offense. *Id*. at 357, 359.

1. ASSAULT AND BATTERY IS A NECESSARILY INCLUDED OFFENSE OF ASSAULT WITH INTENT TO MURDER

The trial court erred in refusing to give an instruction on assault and battery because assault and battery is a necessarily included lesser offense of assault with intent to do great bodily harm less than murder. A necessarily included offense is one that must be committed as part of the greater offense; it would be impossible to commit the greater offense without first having committed the lesser. *People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001).

An instruction on a requested lesser offense should be given if (1) the lesser offense is a necessarily included lesser offense, i.e., all of its elements are contained within the elements of the charged offense, (2) conviction of the greater charged offense would require the jury to find a disputed factual element that is not part of the lesser offense, and (3) a rational view of the evidence would support conviction of the lesser offense rather than the charged offense. *People v Cornell*, 466 Mich 335, 356-359; 646 NW2d 127 (2002).

Assault and battery is a necessarily included lesser offense because a defendant who is guilty of assault with intent to do great bodily harm less than murder necessarily

first commits assault and battery. See *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002) citing *Hanna v People*, 19 Mich 316 (1869).

The elements of simple assault are as follows:

> First, that the defendant either attempted to commit a battery on the complainant or did an act that would cause a reasonable person to fear or apprehend an immediate battery. A battery is a forceful, violent, or offensive touching of the person or something closely connected with the person of another.
>
> Second, that the defendant intended either to commit a battery upon the complainant or to make the complainant reasonably fear an immediate battery.
>
> Third, that at the time, the defendant had the ability to commit a battery, appeared to have the ability, or thought he/she had the ability.

See M Crim JI 17.1

Black's Law dictionary defines criminal assault as

"Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm". (Black's Law Dictionary 7th Edition p. 109).

The elements of assault with intent to murder are as follows:

> First, that the defendant tried to physically injure another person.
>
> Second, that when the defendant committed the assault, he / she had the ability to cause an injury, or at least believed that he / she had the ability.
>
> Third, that the defendant intended to kill the person he / she assaulted , and the circumstances did not legally excuse or reduce the crime.

See M Crim JI 17.3

Black's Law Dictionary definiens assault with intent to murder as follows:

"An assault carried out with the additional criminal purpose of intending to murder". (Black's Law Dictionary 7th Edition p. 110).

It is clear that simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979). "[B]attery . . . is the willful touching of the person of another by the aggressor or by some substance put in motion by him; or, as it is sometimes expressed, a battery is the consummation of the assault." *Tinker v Richter*, 295 Mich 396, 401; 295 NW 201 (1940). This holds true for the charge of Assault with Intent to Murder as well as well as the conviction offense of Assault with Intent to do Great Bodily Harm less than Murder.

The elements of assault with intent to do great bodily harm are (1) an attempt or threat with force or violence to do corporal harm to another, i.e., an assault, and (2) an intent to do great bodily harm. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Simple assault is plainly a necessarily included lesser offense of assault with intent to do great bodily harm, inasmuch as an assault is one of the elements of the greater crime.

As stated in the dissenting Opinion in the case at bar: "[I]n *Cornell*, the this Honorable Court examined this State's lesser included offense jurisprudence, found it in disarray, and retethered the law to the language of a statute first enacted in 1846. That statutory language remains substantially similar, in relevant part, today: [U]pon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury, or the judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of

a degree of that offense inferior to that charged in the indictment, or of an attempt to commit that offense. See MCL 768.32(1). Based on the statute, the Cornell Court concluded that a defendant is entitled to a requested instruction on a necessarily included lesser offense "if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *Cornell*, 466 Mich at 357. This Court recently reaffirmed Hanna's contribution to lesser included offense calculations, noting that "Cornell returned MCL 768.32(1) to its original construction as given by this Court in Hanna[.]" *People v Jones*, 497 Mich 155, 165; 860 NW2d 112 (2014). See *People v Haynie*, 327 Mich App; ___ NW2d ___ (2019).

Hanna, *supra* answers the question presented in this case. The Court of Appeals held that assault and battery is a lesser included offense of "assaults with various degrees of aggravation," including assault with intent to commit murder: [A]ssaults are substantially and in effect divided by the statute into degrees; and that an indictment for any of the higher grades, or assaults with various degrees of aggravation, must include the inferior degree of simple assault; or, if the higher degree is charged, including a battery, as in the present case, the simple assault and battery are included, and that the defendant may be convicted of the included offense under this section. (Id. at 322.) This Court reaffirmed that holding in *People v Prague*, 72 Mich 178, 180; 40 NW 243 (1888), and has never retreated from it. As stated in the dissenting Court of Appeals Opinion in the case at bar, the majority directly contravenes the Court of Appeals' opinions in *Hanna*, *Prague*, and *Cornell.*

Finally, both MCL 750.81 and MCL 750.83 contain the term 'assault", with similar definitions. The question of what meaning to give to a statute is a question of statutory interpretation. The main goal of statutory interpretation is to ascertain and give effect to the Legislature's intent. *People v Peltola*, 489 Mich 174; 803 NW2d 140 (2011). The most reliable indicator of the Legislature's intent is the words in the statute. (*Id.).*

To suggest that assault and battery is not a necessarily included offense of assault with intent to murder contradicts the plain language of the statutes. The words contained in the statutes are interpreted in light of their ordinary meaning and their context within the statute and are read harmoniously to give effect to the statute as a whole. (*Id.).* If the language is unambiguous and clear, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *People v Giovanni,* 217 Mich App 409; 722 NW2d 237 (2006). A provision is not ambiguous just because reasonable minds can differ regarding the meaning of the provision. Rather, a provision of the law is ambiguous only if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning. *People v Gardner,* 482 Mich 41; 753 NW2d 78 (2008). Here the words contained in the two statutes are identical and when interpreted in light of their ordinary meaning leads to the logical conclusion that they are meant to have the same meaning.

Therefore, in conclusion, and following set precedent by the Court of Appeals, the only logical conclusion to be drawn is that Assault and Battery is a necessarily included offense of Assault with Intent to Murder.

2. A RATIONAL VIEW OF THE FACTS OF THE CASE COULD SUPPORT A CONVICTION FOR ASSAULT AND BATTERY

An inferior-offense instruction is appropriate only when a rational view of the evidence supports a conviction for the lesser offense. *Cornell*, 466 at 545. A trial court's failure to give a lesser included offense instruction is harmless error if "the evidence did not clearly support a conviction for the lesser included offense." *Id.* at 365-366. There must be "more than a modicum" of evidence to show that defendant could have been convicted of the lesser-included offense. *People v Cheeks*, 216 Mich App 470, 479-480; 549 NW2d 584 (1996).

Defendant's intent is central to this determination. Defendant's intent can be inferred from "the act, means, or the manner employed to commit the offense." *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001) (citation omitted). The victim's injuries are also relevant. *People v Dillard*, 303 Mich App 372, 378; 845 NW2d 518 (2003), reversed on other grounds 500 Mich 14 (2017).

The majority Court of Appeals opinion in the within case dismissed the necessity to instruct on the lesser offense of assault and battery because of the extent of the complainant's injuries. However, as stated by the dissent, an assault and battery can result in horrific injuries, including death. For example, in *People v Datema*, 448 Mich 585; 533 NW2d 272 (1995), the this Honorable Court held that a conviction for involuntary manslaughter may be premised on an assault and battery. Rather than the severity of injury, what distinguishes an assault and battery from an assault with intent to commit murder is the perpetrator's intent. The former crime requires proof that the defendant intended to commit a battery. To prove assault with intent to commit murder, the prosecutor must convince the jury that the defendant intended to kill the victim

There was ample evidence that a rational jury could have found Mr. Haynie guilty of assault and battery as opposed to assault with intent to murder. Notably, the jury found Mr. Haynie not guilty of the Assault with Intent to Murder, and instead rendered a verdict of guilty but mentally ill of Assault with Intent to do great bodily Harm Less than Murder; showing that the jury believed that Mr. Haynie was guilty but mentally ill, of a lesser offense than the one originally charged. A defendant's mental state at the time of the offense, also bears on his or hers intent.

Evidence at trial sustained a finding of guilty of assault, especially given the findings relating to Mr. Haynie's mental health. In the case at bar, the Jury was presented with testimony from 5 witnesses supporting the theory that Mr. Haynie was legally insane at the time he committed the instant offense.

Both Dr. Assar and Dr. Abramsky testified that after completing a full examination they both found that Mr. Haynie was legally insane at the time of the commission of the offense. (See above testimony as well as Exhibits B and D). Additionally, Dr. Escott testified that Mr. Haynie suffered from brain damage which affected his cerebral functioning in a multitude of ways. She also believed that this brain damage affected Mr. Haynie's ability conform his actions. (See above testimony as well as Exhibit F). All three witnesses were qualified as experts in their respective fields over no objection of the prosecutor. They all testified consistently and independently of each other's opinions.

Mr. Haynie's Mother as well as his Sister both testified that Mr. Haynie's mental health had decreased in the recent months and that he was paranoid and delusional. Both testified that Mr. Haynie's actions of that day were not typical. They testified that he had

a loving relationship with his Mother and that he had never been violent towards her ever. (See above testimony). Mr. Haynie's Mother testified that on the day of the incident, her Son went from acting perfectly normal to suddenly attacking her while stating that she was possessed by Lucifer.

All this testimony supported a finding of not guilty by reason of insanity and support an argument that Mr. Haynie did not possess the requisite intent to murder or even an intent to do great bodily harm.

A stated, what distinguished the Assault with Intent to Murder from the Assault and Battery was Mr. Haynie's intent. Not the brutality of the assault. As stated by the dissenting opinion, there was a genuine issue as to Mr. Haynie's intent in the instant case; as evidence again by the fact that the jury found him not guilty of the assault with intent to murder charge, testimony that he had never previously hurt his Mother and evidence of his mental state. Important too, was his Mother's testimony that she did not believe that Mr. Haynie's Mother did not believe he intended to kill her or even seriously wound her.

Therefore, a rational jury could have found Mr. Haynie guilty of assault and battery and as stated by the dissenting Opinion Mr. Haynie was entitled to the assault and battery instruction and therefore his conviction should be set aside and he should be granted a new trial.

CONCLUSION

Because the offense of Assault and Battery is a necessarily included offense of Assault with Intent to Murder and because a rational view of the evidence in the case at bar could support a conviction for assault and battery, the trial court erred in not instructing the jury on Assault and Battery.

The error is not harmless and therefore Mr. Haynie's conviction must be set aside and the case remanded to the trial court for a new trial.

RELIEF REQUESTED

Mr. Haynie respectfully requests that this Honorable Court grant his Appeal, set aside his conviction and remand the case for further proceedings.

Respectfully submitted,

__s/Cecilia Quirindongo Baunsoe_____
Cecilia Quirindongo Baunsoe (P68374)
Attorney for Defendant-Appellant

Dated: November 17, 2019

STATE OF MICHIGAN
IN THE COURT MICHIGAN SUPREME COURT

STATE OF MICHIGAN
Plaintiff-Appellee,

SC No.: 159619
COA No.: 340377
vs Lower Court No. 2016-000712-FC

BRAD HAYNIE
Defendant-Appellant,
_____/

CERTIFICATE OF SERVICE

The undersigned certifies that the Defendant-Appellant's Supreme Court Brief on Appeal as well as this Certificate of Service were served upon:

Macomb County Prosecutor's Office
Appellate Division
Attorney for Plaintiff-Appellee
1 South Main Street
Mount Clemens, MI 48043

on November 18, 2019 via MiFile Electronic Service

Date: November 18, 2019

/s/ Cecilia Quirindongo Baunsoe
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