STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 159619
Plaintiff-Appellee,	Court of Appeals No. 340377
v.	Macomb Circuit No. 16-0712-FC
BRAD HAYNIE,	
Defendant-Appellant.	

PLAINTIFF-APPELLEE'S BRIEF ON APPEAL

**** ORAL ARGUMENT REQUESTED ****

PROOF OF SERVICE

ERIC J. SMITH (P46186)
Macomb County Prosecuting Attorney
JOSHUA D. ABBOTT (P53528)
Chief Appellate Attorney
By: EMIL SEMAAN (P73726)
Assistant Prosecuting Attorney
Attorney for Plaintiff-Appellee
Macomb County Prosecutor's Office
1 South Main Street – 3rd Floor
Mount Clemens, Michigan 48043
Ph: (586) 469-5350

CECILIA QUIRINDONGO BAUNSOE (P68374)
Attorney for Defendant-Appellant
39520 Woodward Avenue, Ste 230
Bloomfield Hills, Michigan 48304
Ph: (248) 732-2850

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To: **CECILIA QUIRINDONGO BAUNSOE (P68374)**
Attorney for Defendant-Appellant
39520 Woodward Avenue, Ste 230
Bloomfield Hills, Michigan 48304

Emil Semaan
Emil Semaan (P73726)
Assistant Prosecuting Attorney
Macomb County Prosecutor's Office

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ISSUE I

DID THE TRIAL COURT ABUSE ITS DISCRETION IN REFUSING TO GIVE A REQUESTED JURY INSTRUCTION ON THE LESSER OFFENSE OF ASSAULT AND BATTERY?

Court of Appeals Answer: "No"

Trial Court's Answer: "No"

Defendant-Appellant's Answer: "Yes"

Plaintiff-Appellee's Answer: "No"

COUNTER-STATEMENT OF FACTS

In October of 2015, 76-year-old Patricia Haynie ("Patricia") lived in a custom design double-wide trailer in Sterling Heights. (Tr. 8-2-17, 33-34, 40). Her son, 47-year-old Bradley Haynie ("Haynie"), lived in his grandmother's condominium in Harrison Township. (Tr. 8-2-17, 29, 34). Although he had a steady job at a local plant, Bradley had a problem with alcohol dating back to his early teenage years, as well as various mental health issues. (Tr. 8-2-17, 31-32). Patricia, who had numerous health problems, often stayed at Haynie's condominium because she was Haynie's driver. (Tr. 8-2-17, 33, 35-36).

Patricia had close friend, Fred Yaks ("Yaks"), who lived nearby. (Tr. 8-2-17, 36-37). Hayne was friendly with Yaks until late September of 2015, when their relationship turned sour. (Tr. 8-2-17, 37-39).

On October 7, 2015, Patricia was at Haynie's condominium "waiting for [Haynie] to fix [her] dinner." (Tr. 8-2-17, 40). Patricia sat on a black couch while Haynie was in the kitchen making dinner. (Tr. 8-2-17, 40-44). Earlier that day, Patricia had picked Haynie up from his job. (Tr. 8-2-17, 42). Patricia observed Haynie consume some "new doctor's prescription pills" as he continued to prepare dinner. (Tr. 8-2-17, 45).

Approximately a "half hour to an hour after he took those new pills at the kitchen table," Haynie laid down the knife he was using to make dinner and stated: "[M]om, I've got to save you, Lucifer has you, your eyes are big black coals." (Tr. 8-2-17, 46). Haynie's face had "the most terrified look." (Tr. 8-2-17, 46). Patricia thought: "[O]h my God, what's happening now, what's wrong." (Tr.

8-2-17, 47). Haynie, who had his hands on the kitchen counter, told Patricia: "[M]om, I've got to save you, I have to save you, I'm going to save you." (Tr. 8-2-17, 47). Haynie "came around the counter and right at" Patricia. (Tr. 8-2-17, 47). Patricia, still seated on the couch, raised her cane at Haynie, trying to stop him. (Tr. 8-2-17, 47-48). Haynie grabbed the cane away from Patricia and threw it into the kitchen. (Tr. 8-2-17, 48).

At this point, Haynie explained to his mother that "he was going to have to twist [her] arms into knots and lift [her] up and shake [her] until he got Lucifer to let go of [her] and [her] eyes came back to normal." (Tr. 8-2-17, 48-49). Haynie "just picked [Patricia] up and shook [her] and shook [her]." (Tr. 8-2-17, 49). Ultimately, Haynie released his mother and she was able to dial 9-1-1 on her nearby cellular telephone. (Tr. 8-2-17, 49-51). Haynie remained standing in front of her, repeating: "I want my mother back, are you my mother?" (Tr. 8-2-17, 51-52).

As they heard "911 say that they were sending lots of cops," Haynie again grabbed his mother by her arms. (Tr. 8-2-17, 53). In response, Patricia bit Haynie. (Tr. 8-2-17, 53-54). At this point, Patricia "saw one big fist come at [her] and that's all [she] remember[ed]" of the assault. (Tr. 8-2-17, 54-55). The next time that Patricia regained consciousness she felt pain and she heard a paramedic telling her to he was going to have to "put a staple" in her head. (Tr. 8-2-17, 54-55).

Deputy Brandon Cleland ("Deputy Cleland") of the Macomb County Sheriff's Office ("MCSO") was on road patrol that evening when he received a

dispatch to the Harrison Township condominium. (Tr. 8-2-17, 91-94). Deputy Cleland and another MCSO deputy knocked on the front door. (Tr. 8-2-17, 95). Two other MCSO deputies went around to the rear of the condominium. (Tr. 8-2-17, 95). At first, no one answered the front door. (Tr. 8-2-17, 95). Ultimately, Patricia answered the front door. (Tr. 8-2-17, 96). Patricia's "entire head was covered with blood" and she "appeared to be injured very badly." (Tr. 8-2-17, 96-97). She could "[b]arely" talk and "might have actually been crawling." (Tr. 8-2-17, 96-97). The MCSO deputes had Patricia sit on a bench outside the residence and "called for the fire department." (Tr. 8-2-17, 98).

At this point, the MCSO deputies entered the condominium to look for Haynie. (Tr. 8-2-17, 98-99). They called out for him and Haynie was in the basement. (Tr. 8-2-17, 99). Haynie was cooperative but he "had a knife in his hands as he came upstairs." (Tr. 8-2-17, 99-100). Haynie gave the knife to Deputy Cleland and the MCSO deputies arrested Haynie without incident. (Tr. 8-2-17, 100-101).

MCSO Deputy Anthony Stone ("Deputy Stone"), an evidence technician, subsequently arrived at the condominium to "process it for evidence." (Tr. 8-2-17, 106). Deputy Stone took photographs of the interior of the condominium. (Tr. 8-2-17, 108-114). He viewed what appeared to be blood on the cushion portion of the couch in the living room. (Tr. 8-2-17, 109). On the couch sat two horseshoes attached to a "metal bar" with "wood on it." (Tr. 8-2-17, 109). Deputy Stone observed "red stains" on the horseshoes. (Tr. 8-2-17, 109-110). Another splintered horseshoe lay in the floor. (Tr. 8-2-17, 110). In Haynie's

bedroom, Deputy Stone saw a "whiskey bottle . . . laying on top of the dresser." (Tr. 8-2-17, 111). A "large knife" was on the night stand. (Tr. 8-2-17, 112). Deputy Stone viewed "another whiskey bottle" in the basement. (Tr. 8-2-17, 113). Deputy Stone drew a "rough sketch of the crime scene" which he later used to draw a final sketch at the MCSO. (Tr. 8-2-17, 113-114).

At McLaren Hospital, physicians put Patricia's body in "heavy casts." (Tr. 8-2-17, 55-56). Deputy Stone took photographs of Patricia's condition at the hospital. (Tr. 8-2-17, 114-116). Patricia later went from the hospital to a nursing home. (Tr. 8-2-17, 56-57).

On the morning of October 8, 2015, MCSO Detective Gerald Hanna ("Detective Hanna"), the officer-in-charge of the investigation of the assault, obtained the audiotape of Patricia's 9-1-1 call. (Tr. 8-2-17, 123-125). Later that day, Detective Hanna interviewed Haynie. (Tr. 8-2-17, 126-129). Haynie told Detective Hanna that he could not remember what happened the previous evening—he had been drinking heavily that day. (Tr. 8-2-17, 126-129). During the interview, Haynie blamed Yaks for the assault. (Tr. 8-2-17, 126-129). Subsequently, he obtained Patricia's medical records from McLaren Hospital. (Tr. 8-2-17, 129). Patricia's medical records showed that she sustained two broken arms, lacerations to the head, a fractured vertebrae, as well as other substantial injuries to her head and body. (Tr. 8-2-17, 129-130).

The prosecution charged Haynie with Assault with Intent to Commit Murder (MCL 750.83). The defendant posited a legal insanity defense pursuant to MCL 768.21a. After a trial before Macomb County Circuit Court Judge

Jennifer M. Faunce ("Judge Faunce"), a jury found Haynie guilty but mentally ill of Assault with Intent to Do Great Bodily Harm Less Than Murder (MCL 750.84). (Tr. 8-4-17, 95-96). On September 14, 2017, Judge Faunce sentenced the defendant to a term of 67 to 120 months' imprisonment on his conviction.

The Defendant appealed his convictions and the Court of Appeals affirmed his conviction holding that assault and battery was not a lesser included offense of assault with intent to murder. *People v Haynie*, 327 Mich App 555, 561; 934 NW2d 71 (2019). The Court also held that even if assault and battery were a lesser included offense, a rational view of the evidence did not support an instruction. *Id.* at 562. Judge Gleicher dissented from both holdings. *Id.* at 568. The Defendant filed an Application for Leave to Appeal to this Honorable Court, which granted the Application limited to the issues of (1) whether assault and battery is a lesser included offense of assault with intent to commit murder; and if so (2) whether a rational view of the evidence in this case could support a conviction for assault and battery.

ISSUE I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO GIVE A REQUESTED JURY INSTRUCTION ON THE LESSER OFFENSE OF ASSAULT AND BATTERY.

STANDARD OF REVIEW

An appellate court reviews a trial court's determination regarding whether a jury instruction is applicable to the facts of the case for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

ARGUMENT

A requested instruction on a necessarily included lesser offense cannot be given unless conviction for the greater offense would require 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 the instruction. *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). Trial courts are not permitted to instruct juries on cognate lesser offenses, only necessarily lesser included offenses. *Id.* at 354. Cognate offenses share several elements, and are of the same class or category as the greater offense, but the cognate has some elements not found in the greater offense. *People v Mendoza*, 468 Mich 527, 532 n 4; 664 NW2d 685 (2003). Necessarily lesser included offenses, however, are proved with the same facts as the greater offense, but lack an element of

the greater offense. *Cornell*, 466 Mich at 361. In other words, a person cannot "commit the greater offense without first committing the lesser offense." *Id.*

Here, Judge Faunce did not abuse her discretion in refusing to instruct the jury on the lesser offense of assault and battery. As indicated, such an instruction is appropriate where the lesser offense is necessarily included in the greater offense and a rational view of the evidence would support such an instruction. *Mendoza*, 468 Mich at 541. Assault and battery is a necessarily lesser included offense of Assault with Intent to Commit Murder and Assault with Intent to Do Great Bodily Harm Less Than Murder.[1] Thus, an Assault and Battery would have been appropriate if "a rational view of the evidence would support such an instruction. *Mendoza*, 468 Mich at 541. However, the evidence must be sufficient, "more than a modicum," that the defendant could have been convicted of the lesser offense. *People v Cheeks*, 216 Mich App 470, 479-480; 549 NW2d 584 (1996). Here, as set forth in the counterstatement of facts and the Court of Appeals' majority opinion, the Defendant's intent was to kill or seriously injure his mother.

Indeed, the Court of Appeals stated:

> At trial, Patricia testified that defendant told her that he was "going to have to twist [her] arms into knots and lift [her] up and shake [her] until he got Lucifer to let go of [her] and [her] eyes came back to normal." Defendant then took her hands, lifted her off the couch, and shook her twice. After the second shake, defendant punched Patricia and knocked her unconscious. When Deputy Brandon Cleland arrived at defendant's condominium, he saw that Patricia's face was covered in blood, and he believed that she

[1] Thus, the People concede the first issue as raised by this Honorable Court.

> might have crawled to the door. Patricia's head wound required 16 or 17 staples to close. Detective Anthony Stone, an evidence technician, took pictures of the scene of the assault after defendant was arrested. By the couch where Patricia was assaulted, Detective Stone photographed a metal bar that had wood on it and horseshoes on either end. The wood on the bar was "splintered," and there were "red stains" on the cracked portion of the bar. There were also bloodstains on the couch. Because of the brutality of the assault, no rational view of the evidence could support a finding of simple assault and battery. [*Haynie*, 327 Mich App at 562-563].

The Court of Appeals also responded to one of the dissent arguments by stating:

> The dissent takes issue with our conclusion that "no rational view of the evidence could support a finding of simple assault and battery." However, the dissent's rationale in concluding that defendant's request for an assault and battery instruction should have been granted because a "rational view of the evidence supported it" relies solely on Patricia's belief that her son did not intend to kill or grievously wound her when he attacked her. However, Patricia's belief regarding her son's intent is irrelevant, and is contrary to her own testimony that defendant *intended* to twist her arms and shake her until "Lucifer to let go of [her.]" [*Id.* at 327 Mich App at n2].

Thus, a rational view of the evidence did not support an instruction on assault and battery.

The dissent argued that "there is no quantum of injury necessarily associated with an assault and battery. An assault and battery can result in horrific injuries, including death." *Id.* at 571. The dissent reasoned that "[r]ather 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." *Id.* at 571. The dissent, by way of example, cited to *People v Datema*, 448 Mich 585; 533 NW2d 272 (1995).

The issue in *Datema* was "whether the misdemeanor-manslaughter rule should be abandoned in light of the change in Michigan's homicide law resulting from this Court's opinion in *People* v *Aaron,* 409 Mich 672; 299 NW2d 304 (1980)." *Datema*, 448 Mich at 588. The Court held that "if an assault and battery is committed with specific intent to inflict injury and causes unintended death, the actor may be found guilty of (at least) involuntary manslaughter." *Id.* at 608. Thus, *Datema* is not dispositive and should not even be persuasive on this issue.

While intent is the distinguishing element, the actions of the Defendant and the severity of the injuries can be probative of intent:

> Because of the difficulty in proving an actor's intent, only minimal circumstantial evidence is necessary to show that a defendant had the requisite intent. Intent to cause serious harm can be inferred from the defendant's actions, including the use of a dangerous weapon or the making of threats. Although actual injury to the victim is not an element of the crime, injuries suffered by the victim may also be indicative of a defendant's intent. [*People v Stevens*, 306 Mich App 620, 629; 858 NW2d 98 (2014)].

Here, the actions and injuries evince an intent greater than a simple assault. Indeed, the Defendant didn't simply push or one-punch the victim, rather he

conducted a very brutal assault, using physical force including a weapon, and caused grievous injuries. Given the totality of these facts, it would be difficult to imagine any rational jury rendering a verdict on simple assault.

The dissent relied on the testimony of the Defendant's mother that he did not intend to cause her great bodily injury. *Haynie*, 327 Mich App at 571. However, the dissent's reliance is flawed for two reasons. First, this extremely short snapshot of the testimony does not truly reflect the testimony. Indeed, throughout her testimony, the Defendant's mother testified that the man beating wasn't her son, rather it was as though it was someone else in her son's body. She testified:

> Q. And were you, obviously were you afraid?
> A. Yes. He wasn't my son. My son was there, but his mind wasn't. I was terrified that he wasn't going to come back to me.
> Q. And let me -- were you afraid for your life at that point?
> A. No, because I knew my son would help me. He would snap out of it and help me, like he'd always done.
> Q. In your terminology, did he ever snap out of it?
> A. I don't -- no, because, after I bit him, he was enticed like I was that I bit him, I hurt him, and he -- I saw one big fist come at me and that's all I remember. [Tr. 8-2-17, 54].

The mother's testimony is replete with instances where she believed her son was having a mental break and that the person assaulting her was not her son and that her son would save her from the other person. (See Tr. 8-2-17, 76, 79-80).

The mother's testimony was not indicative of the Defendant's intent, rather it was her opinion as to his mental state, which leads to the second flaw

in the dissent's reliance. The mother's testimony does not establish a lesser intent of assault and battery, rather it establishes a diminished capacity. Indeed, the Defendant's mental state is what complicates the issue regarding intent and whether a rational view of the evidence supports the assault and battery instruction.

In *People v Carpenter*, 464 Mich 223, 232; 627 NW2d 276 (2001), our Supreme Court examined the continuing validity of the "so-called 'diminished capacity' defense," which allowed a defendant, "even though legally sane, to offer evidence of some mental abnormality to negate the specific intent required to commit a particular crime." This Court rejected the continuing validity of the diminished capacity defense and held that "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation." *Id.* at 239. Indeed, the *Carpenter* Court stated:

> [W]e agree with the prosecution that our Legislature, by enacting the comprehensive statutory framework described above, has already conclusively determined when mental incapacity can serve as a basis for relieving one from criminal responsibility. We conclude that, through this framework, the Legislature has created an all or nothing insanity defense. Central to our holding is the fact that the Legislature has already contemplated and addressed situations involving persons who are mentally ill or retarded yet not legally insane. As noted above, such a person may be found "guilty but mentally ill" and must be sentenced in the same manner as any other defendant committing the same offense and subject to psychiatric evaluation and treatment. MCL 768.36(3). *Through this statutory provision, the Legislature has demonstrated its policy choice that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal*

> *responsibility by negating specific intent.* [*Id.* at 237, emphasis added.]

Thus, a defendant may still offer testimony on his or her mental disorder or limited mental capabilities if offered for a purpose other than to avoid or reduce criminal responsibility by negating the intent element of an offense.

Here, allowing for an instruction on assault and battery is akin to saying that the Defendant's intent was negated by his mental illness. The only element that all the parties and courts seem to agree is in dispute is the Defendant's intent. The only evidence that truly distinguishes this element is the Defendant's mental state. However, *Carpenter* was clear that mental illness cannot reduce or negate the intent element. Unless this Court is considering overruling *Carpenter*, which would require more extensive briefings by the parties, the determination of whether a rational view of the evidence supports the lesser charge of assault and battery must be done without regards to the Defendant's mental state or illness. This begs the question of whether any defendant, mental state omitted, would be entitled to the instruction given the facts of the assault in this case. The answer must be no. Thus, Judge Faunce did not abuse her discretion in deciding not to instruct the jury on this lesser offense.

RELIEF REQUESTED

Given the foregoing, Plaintiff respectfully urges this Honorable Court to **AFFIRM** the Defendant's conviction.

Respectfully Submitted,

ERIC J. SMITH (P46186)
Prosecuting Attorney

JOSHUA D. ABBOTT (P53528)
Chief Appellate Attorney

By: *Emil Semaan*
EMIL SEMAAN (P73726)
Assistant Prosecuting Attorney

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