

Summary of SC94646, *State of Missouri v. Anwar Randle*

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen
Argued and submitted April 22, 2015; opinion issued August 4, 2015

Attorneys: Randle was represented by Srikant Chigurupati of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man found guilty of second-degree assault and a related count of armed criminal action appeals the trial court's judgment. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri vacates the judgments and remands (sends back) the case. Because third-degree assault is a "nested" lesser-included offense of second-degree assault, the trial court erred in refusing to give the jury the man's proposed instruction for third-degree assault.

Facts: The state charged Anwar Randle with first-degree burglary, one count of first-degree assault and two counts of armed criminal action. The state alleged that, in November 2009, Randle broke into a home occupied by a woman with whom Randle had been involved and a man and that Randle hit the man repeatedly with a bottle until the bottle broke on the man's head. At trial, Randle testified he entered the home with his own keys and threw the bottle at the man in self-defense. The trial court instructed the jury that it could find Randle guilty of second-degree assault if the state proved, beyond a reasonable doubt, that Randle "knowingly" caused injury to the man by shattering the bottle over the man's head. The court rejected Randle's proposed instruction for the lesser-included offense of third-degree assault, which would require the jury to determine if Randle "recklessly" injured the man. The jury found Randle guilty of second-degree assault, armed criminal action based on the assault and trespass. The court sentenced Randle to six months in jail for the trespass conviction and seven-year prison sentences for the assault and armed criminal action convictions. Randle appeals.

VACATED AND REMANDED.

Court en banc holds: The trial court erred in refusing to give the jury Randle's proposed instruction for the lesser-included offense of third-degree assault. As this Court held in the 2014 decision in *State v. Jackson*, because a jury has a right to disbelieve all, some or none of the evidence presented in any particular case, there almost always is a basis in the evidence for acquitting a defendant of an immediately higher-included offense. When a lesser-included offense is "nested" – when it is separated from the higher offense by one differential element for which the state bears the burden of proof – a defendant is entitled, upon proper request, to an instruction for the nested lesser-included offense. Second- and third-degree assault are nested lesser-included offenses. They both require the state to prove the infliction of physical injury; the mental state is the differential element, with second-degree assault requiring proof that the defendant acted "knowingly" and third-degree assault requiring proof that the defendant acted "recklessly." As such, if Randle "knowingly" inflicted physical injury, he necessarily engaged in conduct sufficient to establish that he "recklessly" inflicted physical injury. He was entitled, therefore, to his requested instruction. The judgment is vacated.