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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Honorable Alex Kinlaw Jr., Circuit Court Judge

THE STATE,

Petitioner,

v.

OLANDIO R. WORKMAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON APPEAL

A trial court should not instruct the jury on irrelevant matters. In this DVHAN case, the jury was instructed on DV 1st as a lesser included offense. Defense counsel requested the court to define DV 2nd because it may form an element of DV 1st in some circumstances, but it was not the pertinent aggravating circumstance here. Did the trial court err by refusing to define DV 2nd?

STATEMENT OF THE CASE

On February 21, 2017, a Greenville County Grand Jury indicted Appellant, Olandio R. Workman, for domestic violence of a high and aggravated nature (DVHAN), kidnapping, and possession of a weapon during the commission of a violent crime. Appellant proceeded to jury trial before the Honorable Alex Kinlaw, Jr., on September 17–20, 2018. The State presented testimony from the victim, Loretta Workman, as well as the law enforcement officers who investigated the case and an expert in delayed disclosure of domestic violence. The evidence showed that Appellant confined and beat Mrs. Workman over a period of three days, and used two guns to intimidate, and at one point strike, Mrs. Workman. The events happened in the presence of the couple's two children and Appellant took Mrs. Workman's phone during the incident. Appellant did not testify. The court instructed the jury on the law of domestic violence first degree (DV 1st) as a lesser included of DVHAN. The parties agreed a charge on domestic violence second degree (DV 2nd) as a lesser included offense was not warranted by the evidence. However, Appellant argued it was necessary for the court to define DV 2nd because it is one of several alternative elements of DV 1st. Appellant was convicted as charged of each offense and sentenced to 12 years for DVHAN, 15 years for kidnapping, and 5 years for possession of a weapon during the commission of a violent crime, with the sentences to run concurrently. Appellant appealed his DVHAN conviction. After briefing and oral argument, the South Carolina Court of Appeals issued a published opinion reversing Appellant's conviction for Domestic Violence of a High and Aggravated Nature. State v. Workman, Op. No. 5922 (S.C.Ct.App. filed July 13, 2022) (Howard Adv.Sh. No.25 at 21). The State filed a petition for rehearing, which was denied on August 12, 2022. This petition for a writ of certiorari follows.

STATEMENT OF FACTS

On August 29, 2016, Deputy Shannon McHale was dispatched to 440 Davis Rd. in Greenville County regarding a welfare check on Loretta Workman. (App. p. 121, ll. 7-9). One of Mrs. Workman's coworkers had called 911 because Mrs. Workman had not shown up for work. (App. p. 121, ll. 9-12). Deputy McHale arrived just before 7:00 p.m. and Appellant, Olandio Workman, answered the front door. (App. p. 122).

Deputy McHale informed Appellant she was there to speak to Mrs. Workman, but Appellant replied that Mrs. Workman was not home. (App. p. 122, ll. 22-24). Appellant told Deputy McHale that she could not search the residence and that Mrs. Workman was with her mother and would be back in an hour. (App. p. 123). Appellant claimed Mrs. Workman's cell phone was broken and he did not know her mother's phone number. (App. p. 124, ll. 14-21).

Deputy McHale spoke with neighbors who informed her that they had not seen Mrs. Workman in a few days, but if Mrs. Workman's vehicle was in the driveway and the children were home, then Mrs. Workman was home. (App. pp. 124, l. 25 – 125, l. 4). Deputy McHale had dispatch contact local hospitals and learned none of them had admitted Mrs. Workman as a patient. (App. p. 125, ll. 16-19). Police contacted Mrs. Workman's boss who stated she had not been at work and that this was out of the ordinary for her. (App. p. 125, ll. 20-24). Mrs. Workman's boss further informed police that Mrs. Workman left her a voicemail on Saturday but it was "garbled" and she had been unsuccessful at reaching Mrs. Workman since then. (App. pp. 125, l. 25 – 126, l. 4). Police also made contact with the original complainant, Mrs. Workman's co-worker. (App. p. 206, ll. 6-15). She told police she had noticed scratches on Mrs. Workman a few weeks earlier and it was enough to "raise an eyebrow." (App. p. 206, ll. 17-22). Deputy McHale testified that Mrs. Workman's cell phone provider informed them that

Mrs. Workman's cell phone had been off for at least 27 hours but the last known location was 440 Davis Rd. (App. p. 126, ll. 11-20). After conducting a thorough investigation, Deputy McHale believed that Mrs. Workman was inside the home and obtained a search warrant and the assistance of SWAT. (App. p. 127, ll. 7-13).

SWAT officers responded to the scene and attempted to get the occupants of the home to come out, calling over a loudspeaker for over an hour. (App. p. 225). Around this time, police received a 911 call from a male caller stating he had been stabbed at an address that backed up to the Workmans' home through the woods. Police were unable to locate any stabbing victim. (App. pp. 130, l. 15 – 131, l. 4). The phone number that called to report the stabbing belonged to Appellant. (App. p. 131, ll. 1-16).

Eventually, SWAT entered the home and located a battered Mrs. Workman and her two children in a bedroom. Appellant was no longer there. (App. p. 129, ll. 15-21). When asked why she refused to come out, Mrs. Workman originally told officers she was asleep and did not hear them calling. (App. p. 229, ll. 6–7). However, the Workmans' 6-year-old son told police he heard them calling but his mother refused to let him leave the bedroom. (App. p. 231, ll. 14–17). He said his parents had been "fighting" and "his daddy" caused the injuries to Mrs. Workman. (App. p. 280, ll. 16–23).

Police searched the home and located two guns in the master bedroom. They found an AK-47-style rifle under the mattress on the bed and a 9mm handgun in a nightstand. (App. pp. 163–64). Each gun was loaded, with a bullet in the chamber. (App. p. 138, l. 19). They also found a container full of ammunition. (App. pp. 168–70; 183). Mrs. Workman also told officers about a third gun that was never located. (App. p. 237, ll. 13–18).

Deputy McHale testified that Mrs. Workman "had bruising to her face" and two black eyes that were "really badly swollen. I -- I'd assumed she could barely see out of them as to how swollen they were." (App. p. 130, ll. 5-9). Sergeant Ramon Rivera testified Mrs. Workman "had two black eyes" and "swelling around her [cheek] bone area" and "finger marks" on her arms and neck. (App. pp. 212, l. 21 – 213, l. 21). She also seemed disoriented and confused. (App. pp. 212–13).

Sergeant Robert Perry attempted to interview Mrs. Workman, but she appeared "traumatized . . . irritable, irritated at us for being there." (App. p. 226, ll. 15-24). Mrs. Workman originally told him her injuries occurred during a bar fight. (App. p. 228, ll. 6-8). Sergeant Perry testified he wanted to get Mrs. Workman into a shelter for battered women, but Mrs. Workman and her children left to stay with her sister-in-law. (App. pp. 232, l. 9 – 235, l. 9). Sergeant Perry set up a meeting with DSS with Mrs. Workman for the following morning, but learned that Mrs. Workman had left the state with her children. (App. pp. 240, l. 21 – 241, l. 19).

Days later, Mrs. Workman contacted Sergeant Perry. (App. pp. 244, l. 17 – 246, l. 10). Sergeant Perry testified Mrs. Workman was "very apologetic . . . for not cooperating more [on the] night of the incident." (App. p. 246, ll. 11-17). Sergeant Perry recounted Mrs. Workman's "story of a continual cycle of domestic violence, control, abuse, fear, intimidation" at the hands of Appellant. (App. p. 247, ll. 15-18). Mrs. Workman told him the last incident began after Appellant accused her of cheating and this was not the first time she and Appellant had issues. (App. pp. 247–48).

Mrs. Workman testified and described the incident in detail. She explained that on Saturday the 27th, Appellant arrived home that evening and immediately began asking: "Where's

your phone? Who have you been talking to? I know you've been cheating on me, you cheating, lying bitch . . . ." (App. p. 293, ll. 8-24). Mrs. Workman testified that this was common behavior for Appellant and she gave him her phone to search. (App. p. 294, ll. 1-5). Appellant then began "constantly" and "repeatedly" punching Mrs. Workman about her face and body. Mrs. Workman testified that the children were present and were "running in and out, watching TV, playing." (App. p. 294, ll. 20-25). The abuse "continued the whole three days." Mrs. Workman testified Appellant kept accusing her of cheating: "Every time I even opened my mouth, 'you're lying.' And he'd smack me again, or he'd punch me again, or choke me, and throw me to the floor." (App. p. 295, ll. 5-14).

Mrs. Workman did not go to work on Monday because Appellant told her the trailer would blow up if she attempted to open any of the doors or windows.[1] (App. pp. 299, l. 21 – 300, l. 11). She testified Appellant "wasn't allowing me to go anywhere. He took the keys to the cars, everything." (App. p. 300, ll. 4–5). Mrs. Workman no longer had access to a phone because Appellant "broke it." (App. p. 301, ll. 18–19). She testified she would have called her mom if she could have. (App. pp. 301–02).

Mrs. Workman further testified that Appellant at various times held a gun as he beat her. When asked why he was holding the guns, Mrs. Workman responded, "I guess for intimidation. And he was threatening me with them." (App. p. 298, ll. 14–15). She testified that at one point Appellant struck her with the pistol as she raised her hands to defend herself. (App. p. 299, ll. 1–13). She testified Appellant was "holding [the gun], carrying it around the house" in front of the children. (App. p. 299, ll. 13–20).

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[1] She testified, "I don't know what he's capable of. You see what he did to my face." (R. p. 300, ll. 10–11).

On Monday when the police arrived to check on her, Mrs. Workman did not hear the initial knock on the door because she was in the shower. (App. p. 305, ll. 2-4). Appellant told her the police were at the door and ordered her to put makeup on to "cover up the bruises on [her] face" and "lay down in the bedroom with the kids and not to make a sound." (App. p. 305, ll. 10-20). Mrs. Workman also testified that she was unaware that the guns were in the bedroom at that time because she thought Appellant had kept them in the living room with him. (App. pp. 305, l. 25 – 306, l. 1). Mrs. Workman testified she could hear the police horn asking them to exit the home, but she did not leave because she thought Appellant was still there and would hurt her. (App. p. 306, ll. 4-18). She testified she wanted the police to "rescue" her. (App. p. 306, l. 22).

Charge conference

Before closing arguments, the court held a charge conference. The attorneys agreed that DV 1st should be charged as a lesser included offense of DVHAN. (App. p. 426, ll. 21–23). The attorneys also agreed DV 2nd should not appear on the verdict form as a lesser included offense. (App. p. 436, ll. 8–21). However, defense counsel argued the court should nevertheless define the offense of DV 2nd and moderate bodily injury "as it relates to" DV 1st because the presence of moderate bodily injury forms a potential basis of guilt for DV 1st when combined with other aggravating factors. (App. pp. 426–36). Defense counsel argued, "my fear is that we're going to get a question from the jury about what is criminal domestic violence second degree." (App. p. 434, ll. 15–17). The trial court declined to charge the jury on DV 2nd, reasoning it would confuse the jury to instruct them on an uncharged offense. (App. p. 433). However, the court agreed to define DV 2nd for the jury "if they have that question." (App. pp. 435–36).

STANDARD OF REVIEW

"To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. A trial judge's failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011) (internal citation omitted).

ARGUMENT

The Court of Appeals erroneously found Workman was prejudiced by the trial court's refusal to instruct the jury on the uncharged offense of DV 2nd and "moderate bodily injury" because those issues were not material and the jury convicted Workman of the highest charged offense.

Appellant claims the trial court erred by refusing to define DV 2nd and "moderate bodily injury" within its charge on the lesser-included DV 1st. Specifically, Appellant contends that the definition of "moderate bodily injury" was necessary because it provides a potential basis for guilt for DV 1st. His argument fails because the presence of DV 2nd or "moderate bodily injury" was not an issue in this case. The State did not rely on the degree of injury as a circumstance of aggravation. Instead, the case was based primarily on Appellant's use of a gun, an aggravating circumstance that stands apart from the degree of injury. Appellant suffered no prejudice because the requested charge was not pertinent to the jury's determination of guilt, evidenced by the fact that the jury found him guilty of DVHAN and never reached DV 1st. This Court should reverse the Court of Appeals and affirm Appellant's conviction for DVHAN.

a. Considerations governing the grant of certiorari.

Rule 242 of the appellate court rules provides: "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The rule then gives a list of non-exclusive factors to guide this Court's decision whether to grant certiorari: (1) Where there are novel questions of law; (2) Where there is a dissent in the decision of the Court of Appeals; (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) Where substantial constitutional issues are directly involved; (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242, SCACR.

This Court should grant certiorari because the Court of Appeals' published opinion reaches an incorrect result on a novel question of law. The opinion discusses at length the "skip rule," which stands for the proposition that when a jury is given the choice between a charged offense and two lesser-included offenses and the trial court gives an erroneous instruction on the lowest offense, the jury's finding of guilt on the highest offense will render the error harmless. The court recognized that the "skip rule" was not directly applicable to this case because DV 2nd was not charged as a lesser-included offense, but rather stood as a potential basis for guilt as an element of DV 1st. Nonetheless, the opinion focuses heavily on out-of-state "skip rule" cases, observing that there is no South Carolina case directly on point. At the end of the opinion, the court wrote: "Because the supreme court has not opted to find the failure to give instructions harmless when the jury convicted on the higher offense, we will not find the error in failing to give a complete charge on the lesser included offense harmless here." State v. Workman, Op. No. 5922 (S.C.Ct.App. filed July 13, 2022) (Howard Adv.Sh. No.25 at 37). This passage indicates the Court of Appeals believed itself bound by the lack of precedent from this Court, and gives the reader the impression that an error in a jury instruction on a lesser offense cannot be harmless. This Court should grant certiorari to clarify this area of law.

b. Workman was not prejudiced by the trial court's refusal to charge the law of DV 2nd and "moderate bodily injury."

Workman was not prejudiced by the trial court's refusal to charge the law of DV 2nd and "moderate bodily injury" because these issues were not materially at issue and did not influence the jury's verdict. The Court of Appeals opinion gives the reader the incorrect impression that an erroneous jury charge on a lesser-included offense cannot be harmless. However, the correct analysis is a fact-based examination whether the instruction contributed to the verdict rendered. The Court of Appeals opinion focuses almost exclusively on the State's argument that Workman

was not prejudiced because he was convicted of the highest charged offense, but neglects the fact-based analysis assessing the actual prejudice resulting from the instruction.

Workman was charged with DVHAN, which is part of complicated statutory scheme establishing various degrees of the crime of domestic violence (DV). Domestic violence is "causing physical harm or injury to a person's own household member," or offering or attempting to do the same "with the apparent present ability under circumstances reasonably creating fear of imminent peril." S.C. Code Ann. § 16-25-20 (A)(2015). Domestic violence may be enhanced to DV 2nd, DV 1st, or DVHAN depending on the presence of certain aggravating factors. Many of the aggravating factors overlap between the various degrees of DV. For example, the presence of minor children will enhance a simple DV to a DV 2nd. If combined with moderate bodily injury, the presence of minor children will enhance a DV 2nd to a DV 1st. S.C. Code Ann. § 16-25-20 (2015). Combined with "great bodily injury," the presence of minor children will enhance the crime to a DVHAN. S.C. Code Ann. § 16-25-65 (A)(1)(2015). The same is true with other aggravating factors, including kidnapping or limiting access to a telephone. In these scenarios, the degree to which an aggravating factor will enhance a DV depends on the degree of injury. DVHAN may also be accomplished without bodily injury if committed by actions causing fear of "imminent great bodily injury or death" along with another circumstance of aggravation. S.C. Code Ann. § 16-25-65 (A)(2)(2015).

However, there is one aggravating circumstance that automatically enhances a simple domestic violence to a DV 1st or DHVAN: the use of a gun. Under § 16-25-20 (B), an act constituting domestic violence will be enhanced to a DV 1st if "the person uses a firearm in any manner." S.C. Code Ann. § 16-25-20 (B)(4). This enhancement, unlike those enumerated in subsection (5), does not depend on the person accomplishing the act while "in the process of

committing domestic violence in the second degree." S.C. Code Ann. § 16-25-20 (B)(5). Likewise, an act constituting domestic violence will be enhanced to a DVHAN if the person uses a deadly weapon in circumstances which "would reasonably cause a person to fear imminent great bodily injury or death." S.C. Code Ann. § 16-25-65 (D)(1). This is true "with or without an accompanying battery." S.C. Code Ann. § 16-25-65 (A)(2). This distinction—fear of imminent great bodily injury or death—separates DV 1st and DVHAN when a gun is involved. The degree of injury, if any, is not relevant to the determination of guilt under this theory.

The State did not present evidence or argue that Mrs. Workman suffered moderate bodily injury. Ms. Workman's injuries as detailed in this case did not meet the statutory definition of moderate bodily injury. S.C. Code Ann. § 16-25-10 provides: "'Moderate bodily injury' means 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 or 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, splinters, or any other minor injuries that do not ordinarily require extensive medical care.**" (emphasis added). Ms. Workman's injuries consisted of bruises and facial swelling, for which she was seen at her home by first responders. She did not go to the hospital or receive any follow-up treatment. (App. p. 274, 305, 311). The definition of moderate bodily injury precludes that finding under the facts of this case. Appellant could not have been guilty of DV 1st under §16-25-20 (B)(5) and was not prejudiced by the court's failure to elaborate on this portion of the statute.

Instead, the case was based on Appellant's use of a gun and other facts showing an extreme indifference to the value of human life. The unrebutted fact that Appellant used a gun to strike and intimidate Mrs. Workman made the issue of moderate bodily injury immaterial. If the State had based its case on Mrs. Workman's degree of injury, arguing that the combination of moderate bodily injury and another aggravating factor listed in § 16-25-20 (B) transformed what would have been a DV 2nd into a DV 1st, it would have been necessary to define moderate bodily injury. But under the specific facts of this case, such a charge would not have aided in the jury's understanding of the true issue in the case—whether Appellant's conduct manifested an extreme indifference to the value of human life reasonably causing Mrs. Workman to fear death or great bodily injury. As it relates to DV 1st, the use of a firearm "in any manner" will enhance a simple domestic violence to a DV 1st regardless of the degree of injury, if any. Because of Appellant's use of a firearm, moderate bodily injury was not an issue in the case.

In footnote 1 of its opinion, the Court of Appeals noted that the solicitor referenced other aggravating factors in its closing argument: that the offense occurred in the presence of a minor and during the commission of a kidnapping. The court pointed out that the solicitor referenced these factors first in relation to their significance as aggravating factors to support a finding of DVHAN. The Court then points out that the solicitor also referenced these aggravating factors in relation to DV 1st, where they may be used as enhancers in conjunction with the presence of moderate bodily injury.

While the solicitor did briefly and summarily mention that these aggravating factors when discussing DV 1st, this was apparently unintentional. The solicitor did not argue that Ms. Workman suffered moderate bodily injury, a necessary predicate for these factors to have any

significance in relation to DV 1st. He mentioned these aggravating factors in passing, noting that he had already discussed these factors in his argument related to DVHAN.

The solicitor had just argued explicitly that Workman met the elements for DV 1st under §(B)(4) by virtue of his use of a gun: "[T]here's multiple ways to prove it. I want you to look at number four. The person uses a firearm in any manner . . . . **That's what the defendant did. The State meets that element.**" (App. p. 458, lines 2–11). By contrast, the solicitor did not argue that the State met the elements of (B)(5). He stated: "Likewise, if the offense is committed in the presence or [while being] perceived by a minor. We've already gone over that. Also, C, the offense is committed during the commission of a kidnapping. That's what we're going to discuss right now." (App. p. 458, lines 12–16). This passing reference was the extent of the solicitor's argument relating to (B)(5).

The solicitor was not arguing for guilt under this subsection, and likely did not really intend to quote from it. He barely mentioned the "perceived by a minor" element, noting he had "already gone over that" when discussing DVHAN. Likewise, his passing reference to kidnapping was not an argument in earnest that this aggravating factor was present in the context of DV 1st. Rather, the solicitor merely noted that kidnapping "[is] what we're going to discuss right now" **because Workman was charged with kidnapping**. The solicitor immediately went on to discuss the elements of kidnapping. Accordingly, while the solicitor did briefly mention these aggravating factors in passing after discussing DV 1st, he did not argue that Workman was guilty under subsection (B)(5) of the DV 1st statute, and a reasonable juror would not have understood the comments in that way. As noted above, the solicitor never argued Ms. Workman suffered moderate bodily injury and never uttered the words "moderate bodily injury" or "Domestic Violence in the Second Degree" during his entire closing argument. The State

respectfully disagrees with the Court of Appeals' finding that the State argued "it met the elements [of DV 1st] in ways other than the use of a firearm . . . ." But regardless of the solicitor's argument, the facts did not support a finding of guilt under (B)(5) and so the jury could not reasonably have convicted under that subsection.

In order to merit reversal, "a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232 (Ct. App. 2006). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining issues." Id. The question whether an erroneous jury instruction is prejudicial to a defendant depends on the evidence presented and arguments of counsel. The question is "whether the erroneous jury charge affected the jury's deliberations" and, thus, contributed to the verdict. State v. Bowers, Op. No. 2019-001776, 2 (S.C. Sup.Ct. filed June 29, 2022) (Howard Adv.Sh. No.23 at 23). To say that an error did not contribute to the verdict is to find that error "**unimportant in relation to everything else the jury considered** on the issue in question, as revealed in the record." Arnold v. State, 309 S.C. 157, 166, 420 S.E.2d 834, 839 (1992). The significance of the erroneous charge must be judged based on its probable impact on "reasonable jurors, when measured against other evidence considered by those jurors . . . ." Id. "Harmless error review looks to the basis on which the jury **actually rested its verdict**." Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) (emphasis added).

That the jury did not even consider DV 1st is evidenced by their note asking whether they were required to consider DV 1st "if one point is met" for DVHAN. (R. p. 549, ll. 4–7). Because the jury found Workman guilty of the greater offense, any deficiency in the definition of the lower offense is harmless. See State v. Bunnell, 340 N.C. 74, 82, 455 S.E.2d 426, 430-431 (N.C.

1995) (finding no error in the trial judge's refusal to instruct the jury on voluntary manslaughter where the jury was instructed on the greater offenses of first-degree murder and second-degree murder and convicted Bunnell of first-degree murder). This argument prompted the Court of Appeals' lengthy discussion of the "skip rule" cases.

The Court of Appeals rejected the above argument, drawing a distinction between the scenario in Bunnell—where the jury was given the option to convict of the charged offense and two lesser offenses, with the trial court giving an erroneous instruction on the lowest crime but the jury finding guilt for the highest charged offense— and the scenario in this case: where the jury did not reject an "intermediate" offense. The Court of Appeals noted the similarity between this case and the "skip rule" cases in the fact that the instruction in question pertained to DV 2nd, a lesser crime than the charged lesser-included DV 1st.

However, the Court of Appeals erred by focusing exclusively on this verdict-based argument rather than a more complete, fact-based analysis whether the instruction contributed to the verdict rendered. In so doing, the Court of Appeals' explanation of the law of prejudice gives the reader the impression that an improper instruction on a lesser-included offense cannot be harmless. This is not consistent with this Court's precedents.

The similarity between this case and the "skip rule" cases warrants attention from this Court. The State respectfully submits that the Court of Appeals' opinion fails to clearly explain the applicable law. This Court should grant certiorari.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should grant certiorari, reverse the Court of Appeals, and affirm Appellant's conviction for DVHAN.

Respectfully submitted,

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