

RECEIVED

Apr 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case Tracking No. 2022-000650
Opinion No. 2025-UP-114

State of South Carolina,

Respondent,

vs.

Samir Kevin Shank,

Appellant.

PETITION FOR REHEARING

On April 2, 2025, this Court in an unpublished opinion State v. Shank, Op. No. 2025-UP-114 (S.C. Ct. App. filed April 2, 2025), reversed Appellant’s conviction for assault and battery of a high and aggravated nature, holding the trial court erred by refusing to charge the jury on the lesser-included offense of third-degree assault and battery.

In the opinion this Court stated: “We hold the trial court erred in refusing to charge the lesser-included offense of third-degree assault and battery because the evidence presented at trial supported the charge.” When reviewing a trial judge’s jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). Further, “[t]o warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (citing State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000)). “Failure to give requested jury instructions is not

prejudicial error where the instructions given afford the proper test for determining the issues.” State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

“The [circuit court] is to charge the jury on a lesser included offense if there is any evidence from which the jury could infer that the lesser, **rather than** the greater, offense was committed.” Id. (emphasis added). “To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty **only** of the lesser offense.” State v. Geiger, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (2006) (emphasis added). “The trial court should refuse to charge the lesser included offense where there has been no evidence tending to show the defendant may have committed solely the lesser offense.” Id. Here, in order for the defendant to be guilty solely the lesser offense, there would have to be evidence from which a reasonable factfinder could conclude the victim did not suffer great bodily injury and the defendant’s act was not accomplished by means likely to produce death or great bodily injury. SC Code §16-3-600(B)(1)(b). However, Appellant cannot not show that the act was not accomplished by means likely to produce death or great bodily injury because Appellant hit the officer with his car, an act highly likely to produce death or great bodily injury.

The jury could not have found Appellant guilty of only third-degree assault and battery rather than ABHAN and therefore the trial judge did not err in refusing to charge third-degree assault and battery. Therefore, pursuant to Rule 221(a), SCACR, this Court should grant the State’s petition for rehearing and affirm Appellant’s conviction because the trial court did not abuse its discretion in instructing the jury on voluntary manslaughter.

CONCLUSION


For all the foregoing reasons coupled with the reasons articulated in the State’s brief and during oral argument before this Court, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming the decision of the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
for Ambree M. Muller
S.C. Bar No. 104213
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 16, 2025

RECEIVED

Apr 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable R. Scott Sprouse Circuit Court Judge
Appellate Case Tracking No. 2022-000650
Opinion No. 2025-UP-114

State of South Carolina,

Respondent,

vs.

Samir Kevin Shank,

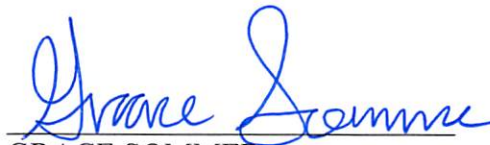
Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Petition for Rehearing on Jessica M. Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 16th day of April, 2025.



GRACE SOMMER
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727