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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable APP. Scott Sprouse, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Petitioner,

vs.

SAMIR KEVIN SHANK,

Respondent.

Opinion No. 2025-UP-114 (S.C. Ct. App. Filed April 2, 2025)
Appellate Case No. 2025-001241

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on April 16, 2025. The Petition for Rehearing was denied by Order filed May 22, 2025.

STATEMENT OF ISSUE ON CERTIORARI

Whether the Court of Appeals erred in finding the trial court erred by refusing to charge the lesser-included offense of third-degree assault and battery.

STATEMENT OF THE CASE

Procedural History

A Greenville County Grand Jury indicted Respondent, Samir Kevin Shank (Shank) of use of vehicle without permission, failure to stop for blue lights, and assault and battery of a high and aggravated nature (ABHAN). Respondent proceeded to a jury trial on April 25, 2022, before the Honorable APP. Scott Sprouse. The jury found Shank guilty as charged, and the trial judge sentenced him to eighteen years on ABHAN, three years on use of a vehicle without permission, and five years for failure to stop for a blue light to be served concurrently.

On appeal, Shank claimed the trial court committed reversible error by denying a requested jury charge on third-degree assault and battery as a lesser included offense of ABHAN based on the fact that the officer's injuries were minimal and there was a lack of intent by Shank to cause great bodily injury.

The Court of Appeals issued an unpublished opinion reversing and remanding Shank's conviction for ABHAN, finding the trial court erred by refusing to charge the jury on the lesser-included offense of third-degree assault and battery. (State v. Shank, Unpublished Op. No. 2025-UP-114 (filed April 2, 2025)). Thereafter the State filed a petition for rehearing with the Court of Appeals on April 16, 2025. The petition for rehearing was denied on May 22, 2025. This Petition for Writ of Certiorari now follows.

Factual Background

Sandra L. Bullock, a friend of Shank who had met him through a neighbor, had been loaning her car to Shank so that he could go to and from work. Shank was to return the car every evening with a full tank of gas. On the evening of August 19, 2020, Shank did not return Bullock's car. After being unable to get in touch with him over the phone or otherwise, Bullock reported the car to police as stolen.¹ (App. 35-36).

On August 25, 2020, Officer Andrew Elder of the Greenville Police Department observed Bullock's silver Toyota Corolla driving within the Greenville city limits after responding to an automated license plate reader in the area that picked up the stolen vehicle. (App. 42:11-43:4). As Elder began to follow the vehicle, it turned onto another street and "accelerated at a high rate of speed." (App. 43:6-11; State's Exhibit 7). A brief pursuit ensued until the Corolla found itself facing a cul-de-sac on the end of a dead-end street. The vehicle came to a stop in the middle of the cul-de-sac just in front of Elder's patrol car and Elder attempted to perform a felony stop on the vehicle. (App. 43:21-44:21; State's Exhibit 7). As Elder stepped out of his vehicle, a passenger can be seen opening the front right door on the Corolla and holding his hands up out of the car. As Elder shouts verbal commands from behind his own driver's door, Shank begins reversing towards the cul-de-sac entrance *and* Elder's vehicle. (App. 44:17-45:15; State's Exhibit 7).

The open passenger door collides with Elder's open door, causing Elder to be knocked to the ground "between the two vehicles" as Shank passes. (App. 45:18-25; State's Exhibit 7). Regarding the relative space between the two cars, Elder stated "I had just enough room for me to be laying there." (App. 46:14-15). Regarding the impact, Elder further stated:

¹ A few days later, police notified her the car was involved in a crash and was totaled. (App. 36:17-38:13).

A. [H]is vehicle door struck mine at such a force causing me to get thrown backward that it made the gun come out of my hand and get stuck in the doorframe at the top of the vehicle and shut the door on the gun.

Q. Okay. And was there any damage to the doorframe or to the firearm?

A. The firearm had some scratching on the outside of the slide, and the vehicle itself had a bent door at the top where it meets the frame.

(App. 46:18-47:2). Fortunately, the only injury that Elder received was a scrape on his left knee.

(App. 47:21-25). As Shank fled the cul-de-sac, another brief pursuit was initiated by other police units until Shank wrecked. (App. 67:17-71:25).

After the State rested their case, Defense Counsel moved for a directed verdict as to the ABHAN charge and, in the alternative, for a charge to the jury on third-degree assault and battery as a lesser-included offense of ABHAN. Defense Counsel emphasized the non-serious nature of the injury while the State rebutted by emphasizing the use of a vehicle and how close the vehicle was to running over Elder. (App. 83:6-86:3). The Court denied the directed verdict motion on the grounds that there was “evidence to support his particular offense.” (App. 87:11-19). When the defense rested, Defense Counsel reraised the motion for the requested jury charge, arguing again based on the “nature of the injury.” (App. 92:14-93:18). The State countered—and the Court noted—by emphasizing that they were seeking ABHAN under the second prong of the statute, the means used was likely to produce great bodily injury (GBI) or death, rather than an injury *causing* GBI or death itself. (App. 93:19-94:14). The Court subsequently denied the charge, stating:

Based on the testimony in the case, [. . .] the State is proceeding on the -- the second part of the statute that they’re alleging that this was accomplished by means likely to produce death or great bodily injury, the State is *not* proceeding on the injury itself. So I believe that this is an either/or App. [. . .] So I’m going to deny that request, but your objection is noted for the record.

(App. 94:22-95:9) (emphasis added).

During closing arguments, the State emphasized how close Elder was to getting seriously injured and that, despite the minor scrape, Shank should still be convicted of ABHAN based on the “means likely to produce [GBI] or death” prong. (App. 100:5-102:14). Defense Counsel responded in their closing arguments by minimizing the proximity to serious injury that Elder was in and suggesting that Shank merely “misjudge[d] that door.” (App. 105:15-106:17). After the jury was charged, defense counsel again moved for the requested charge but was denied for the same reasons as before. (App. 127:12-128:2).

ARGUMENT

The Court of Appeals reversed and remanded Shank's conviction for ABHAN finding the trial court erred by refusing to charge the jury on the lesser-included offense of third-degree assault and battery. The State respectfully disagrees with the conclusion of the Court of Appeals and asks this Court to grant the State's Petition for a Writ of Certiorari because the trial court did not err in refusing to charge the jury on the lesser included offense of third-degree assault and battery since a jury could not have found Shank guilty of third-degree assault and battery and not the greater offense of ABHAN, based on the evidence presented.

I. The Court of Appeals erred in holding that the trial court erred by refusing to charge the jury on the lesser-included offense of third-degree assault and battery.

Section 16-3-600 of the Code of Laws of South Carolina provides;

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) Great bodily injury to another person results; or

(b) The act is accomplished by means likely to produce death or great bodily injury.

(E)(1) A person commits the offense assault and battery in the third-degree if the person unlawfully injures another person or offers or attempts to injure another person with the present ability to do so.

(E)(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

S.C. Code Ann. § 16-3-600 (Supp. 2019).

“The degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees.” State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) (citing S.C. Code

Ann § 16-3-600). Assault and battery in the third-degree is a lesser-included offense of attempted murder, assault and battery of a high and aggravated nature, assault and battery in the first-degree, and assault and battery in the second-degree. S.C. Code Ann §16-3-600(D)(3).

“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. “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. In order for Shank to commit solely the lesser offense, there would have to be some evidence from which a rational factfinder could conclude that the act was not accomplished by means likely to produce death or great bodily injury and no such evidence existed.

In this case, Shank hit an officer with a car. Hitting someone with a car is a means highly likely to produce death or great bodily injury. First, there is no dispute that Shank was attempting to evade law enforcement. Defense counsel had conceded that from the outset as to the failure to stop for blue lights charge specifically. (App. 32, 104). In the moment the injury occurred, Shank was ignoring Elder’s commands to stop the vehicle and instead reversed straight back in an attempt to flee, knocking Elder over in the process. Although the degree of injury did not rise to great bodily injury, this is of no consequence since ABHAN does not require a serious injury nor does it evaluate the degree of injury so long as the means used was likely to produce great bodily injury or death. Defense counsel never argued that hitting someone with a car is not a means likely to create great bodily injury, only that the injury only occurred because the passenger door was open not because Shank was targeting the officer. Hitting someone with a car is likely to cause great

bodily injury or death and therefore, the jury could not have found Shank guilty of only third-degree assault and battery rather than ABHAN. Therefore, the Court of Appeals erred in finding that the trial judge erred refusing to charge third-degree assault and battery.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests this Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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