STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of General Sessions

The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-001125

THE STATE,

Respondent,

v.

CLEVELAND MAXWELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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The trial court properly did not charge the jury on the lesser-included offense of second-degree assault and battery because, under the evidence presented a jury could not rationally find Appellant guilty of second-degree assault and battery rather than first-degree assault and battery.

STATEMENT OF THE CASE

In March 2024, an Allendale County Grand Jury indicted Appellant Cleveland Maxwell for discharging a firearm into an occupied vehicle, domestic violence of a high and aggravated nature (DVHAN), and attempted murder. Appellant proceeded to a jury trial before the Honorable Carmen T. Mullen on June 17, 2024. The jury found Appellant guilty on the discharge of a firearm and the DVHAN charges. They acquitted him of attempted murder but found him guilty of the lesser included offense of first-degree assault and battery. Appellant was sentenced to ten-year concurrent sentences on all three charges.

This appeal follows.

STATEMENT OF FACTS

Appellant met Ariana Taylor (Victim) through work and then they became involved. (R. 48-49). Ultimately, they had a daughter who was born in August of 2021, Teriana. (R. 50). Victim testified that Appellant regularly helped with their daughter, and she would drop her off at his house before going into work most days. (R. 52-53). She testified that Appellant found out she was seeing someone and started "acting like crazy" and that she was afraid he was going to kill her. (R. 57). Despite being afraid of Appellant, Victim continuously dropped their daughter off with him because she did not have anyone else to watch her while she worked. (R. 57).

Victim testified that she got off work early on the afternoon of September 9, 2022, and called Appellant to pick up their daughter, but Appellant would not answer the phone and when he finally did he acted like he was not home. (R. 56). Victim had her aunt go with her to his home to pick her daughter up and testified that Appellant was upset and stated that "he should do it now." (R. 60). Victim testified that he gave no further elaboration or explanation but that she felt like he was going to do something to her. (R. 61).

The next morning, September 10, 2022, Victim woke up early to give a coworker a ride to work. (R. 61). Victim planned to drop her daughter with her aunt for the day based off of Appellant's actions the previous day. (R. 62). Victim placed her daughter in the car and went back inside after realizing she forgot diapers. (R. 62-63). Victim was getting back into her car when Appellant pulled into the driveway in his black Charger and rolled the window down. (R. 65). Victim testified Appellant stated, "I told you. I told you" and began firing a gun. (R. 67). Victim testified she put the car in reverse and started down the street as fast as she could to get away. (R. 68). Victim stated Appellant fired 6 or 7 times at her car and followed her down the street and

continued to fire. (R. 69-70). Victim's car collided with something in a yard, and she got out of the car and ran leaving her daughter in the car. (R. 70-71). She called 911 at this time. (R. 72). SLED Agent Kristen Truex investigated Victim's car and identified five bullet holes, but she could not determine how many shots were fired. (R. 46).

Appellant requested the trial court charge the jury on ABHAN, assault and battery first, and assault and battery second, all as lesser included offenses of attempted murder. (R. 138-139). When the judge told Appellant that the jury charge "includes lesser-included offense under attempted murder to assault and battery in the first degree. Also, the lesser-included of domestic violence in the first degree. And for the assault and battery high and aggravated nature." (R. 174). Appellant had no objections to the proposed jury charge. (R. 175). The trial judge charged the jury on attempted murder and the lesser-included assault and battery first-degree. (R. 195). Appellant made no objections to the jury charge. (R. 199). The jury acquitted Appellant on the attempted murder charge and convicted him of first-degree assault and battery.

STANDARD OF REVIEW

"In criminal cases an appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). 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). "No instruction should be given by the trial judge, at the request of appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975).

ARGUMENT

The trial court properly did not charge the jury on the lesser-included offense of second-degree assault and battery because, under the evidence presented a jury could not rationally find Appellant guilty of second-degree assault and battery rather than first-degree assault and battery.

Appellant contends that the trial court erred by not charging second-degree assault and battery because moderate bodily injury could have resulted from the alleged conduct. However, this argument is without merit because shooting at a person with a gun is always "likely to produce death or great bodily injury." Accordingly, such conduct constitutes assault and battery first-degree regardless of whether great bodily injury actually occurs.

"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 second-degree is a lesser-included offense of assault and battery in the first-degree, assault and battery of a high and aggravated nature, and attempted murder. S.C. Code Ann. § 16-3-600(D)(1)(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 the defendant to commit solely the lesser offense, the wounds on the victims would have to be categorized as moderate bodily injury instead of great

bodily injury and the defendant would have to show that the act was not accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1)(b).

A great bodily injury is described as an injury that causes a substantial risk of death. S.C. Code Ann. § 16-3-600(A)(1). "A substantial risk of death" does not mean that the injury must result in death. Although South Carolina has not defined substantial risk, Ohio has defined it as "a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur, or that a certain circumstance may exist." State v. Johnson, 119 N.E.3d 914, 923, 2018 -Ohio- 3670 (2018).

Here, Appellant can show that there was no wound that constituted great bodily injury. However, Appellant can not show that the act was not accomplished by means likely to produce death or great bodily injury. Appellant fired multiple times at Victim's car with a gun. Firing a gun at someone is a means highly likely to produce death or great bodily injury.

Firing a deadly weapon at someone is always "likely to cause great bodily injury" and has a "substantial risk of death." Although South Carolina has not clearly ruled on this subject they have made some rulings in the danger of using a firearm. In State v. Locklair, the court held "the 'great risk of danger' aggravator was properly submitted to the jury because there was ample evidence that suggested Locklair put the lives of more than one person in danger in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person." in reference to the Defendant shooting a gun on a public street where there were many people in the vicinity. State v. Locklair, 341 S.C. 352, 367, 535 S.E.2d 420, 427 (2000). The court in State v. Lindsey held that a reasonable person would know that shooting a gun into the confined

space of a car's interior would create a great risk of harm to more than one person. State v. Lindsey, 372 S.C. 185, 195, 642 S.E.2d 557, 562 (2007).

A court in Florida held that "firing a firearm in the air, even as a so called 'warning shot', constitutes as a matter of law the use of deadly force, that is, the use of force likely to cause death or great bodily harm and is not, as urged, the use of force *not* likely to cause death or bodily injury." Miller v. State, 613 So.2d 530, 18 Fla. L. Weekly D377 (1993) (emphasis added). "A firearm is by definition a deadly weapon, which fires projectiles likely to cause death or great bodily harm; whenever it is fired in the vicinity of human beings, as here, there is real danger that the fired projectile may hit someone, even if not aimed at anyone, as such projectiles are quite capable of ricocheting off nearby objects and hitting people in the area." Id. Under Section 16-3-600(B)(1)(b) of the S.C. Code of Laws there is more to the analysis than simply the injuries sustained.

Although the degree of injury did not rise to great bodily injury, this is of no consequence since the means used was likely to produce great bodily injury or death. Firing a gun into a car at someone is likely to cause great bodily injury or death and therefore, the jury could not have found Appellant guilty of only second-degree assault and battery rather than assault and battery first-degree and therefore the trial judge did not err in not charging second-degree assault and battery.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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September 25, 2025

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jordan M. Wayburn, 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 25th day of September, 2025.

Grace Sommer
Legal Assistant

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