STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court Of General Sessions
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-000994

THE STATE, Respondent,

v.

JONATHAN JABREAL ROBINSON, III, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I. Did the trial court err in refusing to instruct the jury on the lesser included offense of strong arm robbery, where video evidence showed Appellant used an object which looked like a gun to commit the robbery and the defense presented no evidence or testimony showing otherwise?

STATEMENT OF THE CASE

On October 12, 2023, a Beaufort County Grand Jury indicted Appellant Jonathan Robinson, III for armed robbery and possession of a weapon during the commission of a violent crime. Appellant was tried before the Honorable Carmen Mullen and a jury from June 3-5, 2024. Appellant was found guilty as charged. Appellant was sentenced to serve concurrent terms of imprisonment of twenty-two years for armed robbery and five years for possession of a weapon during the commission of a violent crime. Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On March 19, 2022, Brian Gecy (Victim) went to a community center to sell a PlayStation and games, to a person with the username "Quitbiting Pullup," who had responded to Victim's Facebook listing. (R. 69-88). The profile picture on the account of the interested buyer was an image of Appellant. (R. 126).

Victim and Jonathan Robinson, III (Appellant) met at the community center, where their interaction was captured on a community center security camera. (State's Exhibit 2). Victim gave Appellant the PlayStation, which Appellant put in his bookbag before pulling out a gun-shaped object. (State's Exhibit 2 at 12:43-12:44pm). Appellant then talked to Victim with the gun-shaped object at his side before Victim handed Appellant his phone and watch. (State's Exhibit 2 at 12:44-12:44pm). Appellant then pointed the gun-shaped object at Victim, who after another moment of conversation, fled to his truck, jumped inside, and drove away. (State's Exhibit 2 at 12:44:32-12:44:55pm). Appellant then put the gun-shaped object back in his pocket and exited the frame. (State's Exhibit 2 at 12:44:56-12:44:59pm).

Victim testified that he drove around the block and borrowed a phone to call 911. (R. 91). Victim stated he was in possession of Appellant's phone number, which he provided to law enforcement along with a description of Appellant and the serial numbers for the stolen items. (R. 91-93).

Officer Duncan testified that Appellant posted on Facebook photographs of the stolen phone with captions such as Galaxy for sale as well as videos of himself playing on the stolen PlayStation. (R. 186-188). On March 24, 2022, Appellant sold the stolen phone at a Walmart ecoATM kiosk. (R. 217). The kiosk photographed Appellant and Appellant's South Carolina identification card as a routine part of the transaction. (R. 208-215). An ecoATM employee

watched remotely and verified that Appellant's appearance matched the submitted ID card and paid for the phone. (R. 208-221).

On March 25, 2024, police executed search warrants on Appellant's Facebook account and physical address. (R. 128-130). The police recovered a Beeman P17 BB gun from Appellant's room, which was admitted into evidence as State's Exhibit 33. (R. 145). Officer Duncan testified that the BB gun was consistent with the gun Appellant appeared to hold in the surveillance footage. (R. 144-146).

At trial, Victim recalled that when Appellant pulled out the gun he said, "You know what this means?" before demanding Victim's watch and phone. (R. 89). Victim testified that he believed Appellant's weapon was a real gun. (R. 96). Victim testified that he gave Appellant his watch and phone because Appellant *threatened to shoot* if he did not comply, but when Appellant asked for his wallet he refused. (R. 90-91). Victim stated he thought he might have to fight Appellant to get away but opted to flee instead. (R. 89-91). Officer Austin McKenzie of the Beaufort County Sherriff's office, who responded to the 911 call, testified at trial that Victim told him Appellant held him at gunpoint and described the gun as a grey or black pistol. (R. 101-103).

At the conclusion of the State's case, Appellant moved for a directed verdict on the armed robbery and possession of a weapon during a violent crime charge. (R. 227-228). The court denied both motions. (R. 227-228). After that, Appellant rested without presenting any evidence. (R. 231-232). Appellant then requested a jury instruction on the lesser included offense of strong arm robbery. (R. 234). The State argued that there was a representation of a deadly weapon on the surveillance video, which was sufficient to satisfy the statute. (R. 235-236).

Appellant argued that the object captured on video was "ambiguous" and created an issue of whether it "could be reasonably construed as a deadly weapon." (R. 243). In response the State reiterated the surveillance video clearly showed what appeared to be a gun, and that the case at trial was centered around identifying Appellant, not whether the object was a firearm. (R. 244). The Court agreed, finding:

> I don't think, Mr. McFadden, this is a case where it appeared to be something other than – or potentially it could have been something other than what appeared to be a firearm. . . . But I think in this case, and I think the whole purport of the statute is that the gun is used as a threat and it's to get people to do, you know, what they want for fear of being shot, and I think the statute provides for that. . . . I just don't see how the evidence supports this. It's either they believe that it's him, that it's the defendant in this case, and I mean it very clearly appears to be a gun. I don't think anybody could have misrepresented that. It's not like he had a cell phone in his hand, and you know, someone saw what they thought may be a flash of silver or black. It's clearly a gun that's gun-shaped and looks like one. With that said, I'm going to deny your motion. (R. 244-245).

The jury found Appellant guilty as indicted. (R. 280).

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

ARGUMENT

I. The court did not err in refusing to instruct the jury on the lesser included offense of strong arm robbery because there was evidence Appellant used an object which looked like a gun to commit the robbery and the defense presented no evidence showing otherwise.

The court did not abuse its discretion in refusing to instruct the jury on the lesser included offense of strong arm robbery because the statute only requires representation of a deadly weapon or a reasonable belief that the object used was deadly. The court properly noted that video evidence established the weapon used looked like a deadly weapon and Victim believed it to be so. Accordingly, the trial court did not err in refusing to instruct the jury on the lesser included offense because no evidence was introduced showing the jury could have found Appellant guilty of only strong arm robbery.

A person is guilty of armed robbery when "a person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon." S.C. Code Ann. § 16-11-330.

"Strong arm robbery" is defined under common law as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014) (Konduros, J., concurring.); State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996).

The purpose of a trial judge's jury instructions should be to enlighten the jury and aid it in arriving at a correct verdict. State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016). The evidence in a case determines the law which must be charged and each charge must be reviewed

in the light of the evidence. State v. Gates, 269 S.C. 557, 561, 238 S.E.2d 680, 681 (1977). A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues. State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007).

A lesser-included offense instruction is required only when the evidence warrants such an instruction. State v. Mitchell, 362 S.C. 289, 608 S.E.2d 140, 143 (Ct. App. 2005); State v. Coleman, 342 S.C. 172, 536 S.E.2d 387, 389 (Ct. App. 2000). "The law to be charged is determined by the evidence presented at trial." State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense. See State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278, 285 (Ct. App. 1999). The trial judge should refuse to charge the lesser-included offense when there has been no evidence tending to show the defendant may have committed solely the lesser offense. State v. Tucker, 324 S.C.155, 478 S.E.2d 260 (1996); State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) ("[O]ur cases consistently hold that a request to charge a lesser included offense is properly refused only when there is no evidence the defendant committed the lesser rather than the greater offense."); Tyndall, 518 S.E.2d at 285 (holding "a lesser included offense instruction is required only when the evidence warrants such an instruction, and it is not error to refuse to charge the lesser included offense, unless there is evidence tending to show the defendant was guilty only of the lesser offense"). "[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. Burkhard, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense. See State v. Funchess, 267 S.C. 427, 229 S.E.2d 331, 332 (1976) ("the presence of evidence to sustain the crime of a lesser degree determines whether it should be submitted to the jury and the 'mere contention that the jury might accept the State's evidence in part and might reject it in part will not suffice"); see also State v. Foxworth, 269 S.C. 496, 238 S.E.2d 172, 173 (1977) (possibility that the jury might have disbelieved the State's evidence as to the circumstances of aggravation in ABHAN trial, and on the remaining evidence found defendant guilty of the lesser offense of simple assault and battery, did not entitle him to have the lesser offense submitted to the jury where all the evidence admitted at trial pointed to the defendant's guilt of assault and battery of a high and aggravated nature). "If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense." State v. Gilmore, 396 S.C. 72, 76–77, 719 S.E.2d 688, 690 (Ct. App. 2011) (citing Dempsey v. State, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005)). "[O]ur cases consistently hold that a request to charge a lesser included offense is properly refused only when there is no evidence the defendant committed the lesser rather than the greater offense." Casey v. State, 305 S.C. 445, 47, 409 S.E.2d 391, 392 (1991).

In Gourdine, the South Carolina Supreme Court held that a defendant charged with accessory to armed robbery was entitled to an instruction on the lesser offense of accessory to strong arm robbery when at trial three different witnesses offered oppositional testimony that either a BB gun, water gun, toy gun, or fake gun was used in the robbery. State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). The manager testified that she believed the guns were "fake."

Id. The trial court denied Gourdine's request for a charge on the lesser offense, but our Supreme Court found the charge was warranted since there was sufficient evidence to support a conviction of the lesser offense. Id. Importantly, the manager testified that the guns appeared to be fake. Additionally, and most significantly, at that time the armed robbery statute had not yet been amended to include "representations" or deadly weapons. Id. at 398-99. The statute has since been amended the statute to provide that a "representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon" was sufficient to support a conviction for armed robbery. S.C. Code Ann. §16-11-330(A).

The case at bar presents a factual and legal distinction from the question presented in Gourdine. First, the statute was amended to include the representation language discussed above. Next, video evidence showed that an individual used an object that clearly appeared to be a gun to perpetrate a robbery at the community center; and the perpetrator threatened to shoot the Victim if he did not comply. Testimony from the Victim further established that he believed the weapon to be deadly. Additionally, no evidence was presented indicating that Appellant was only guilty of strong-armed robbery.

Considered holistically, the State produced evidence to support a charge of armed robbery and no evidence was introduced from which the jury could have found Appellant was guilty of the lesser charge of strong arm robbery and not armed robbery. Accordingly, the court did not abuse its discretion in refusing to charge the jury with the lesser included offense. See Abney, 408 S.C. 46, 757 S.E.2d 546. ("[T]he trial court should refuse to charge on a lesser included offense when there is no evidence that the defendant committed the lesser rather than the greater offense."). This Court should affirm

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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October 20, 2025

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Joanna K. Delany, 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 20th day of October, 2025.

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