STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN JABREAL ROBINSON, III,

APPELLANT.

APPELLATE CASE NO. 2024-000994

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in refusing to instruct the jury on the lesser included offense of strong arm robbery, where there was evidence Appellant used a BB gun to commit the robbery, since there was evidence from which the jury could have found Appellant was guilty of the lesser offense?

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. R. 290 – 293. Appellant was tried before the Honorable Carmen Mullen and a jury, from June 3 – 5, 2024. Jacob McFadden represented Appellant. Samantha Molina and Rachel DeAngelis prosecuted the case. R. 1; R. 54; R. 240. Appellant was convicted as indicted. R. 280, ll. 1-13. Appellant was sentenced to serve concurrent terms of imprisonment of twenty-two years for armed robbery and five years for the weapons charge. R. 288, ll. 17-25.

This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). An appellate court is bound by a trial court's factual findings unless they are clearly erroneous. *Id.*, 345 S.C. at 6, 545 S.E.2d at 829. Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. A trial court abuses its discretion when its ruling is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002).

"An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion." *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). Generally, the trial court is required to charge only the current and correct law of South Carolina. *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A charge to the jury is correct if it contains the correct definition of the law when read as a whole. *Id.*

STATEMENT OF FACTS

At approximately 12:30 p.m. on March 19, 2022, Brian Gecy (Complainant) went to the Dale Community Center in Beaufort County to sell a blue PlayStation and three games he had offered for sale on a Facebook "Buy-Sell-Trade" group. R. 75, l. 24 – 76, l. 2; R. 77, ll. 16-24; R. 80, l. 24 – 82, l. 17; R. 84, ll. 11-14; R. 102, ll. 2-8. He was meeting a potential buyer with the Facebook profile name of "Quitbiting Pullup." R. 92, ll. 1-18; R. 103, ll. 15-19. The profile picture on the account was an image of Appellant. R. 115, l. 11 – 117, l. 2.

Complainant got out of his truck at the community center; the suspect came walking up. The suspect took Complainant's PlayStation and put it in a black bookbag. State's Exhibit #2; R. 84, l. 17 – 88, l. 17; R. 102, ll. 8-14. Then, the complainant stated the suspect pulled out what Complainant claimed appeared to be a gun and demanded his watch and phone. Complainant claimed he thought the weapon was a nine millimeter. Complainant stated he "assumed" the weapon was a real gun. Complainant gave the suspect his watch and Samsung phone, but refused a subsequent demand for his wallet. "[H]e asked for the wallet, and for whatever reason I said, *No, you're not getting that*." (emphasis in original). Complainant alleged the suspect threatened to shoot him. R. 88, l. 21 – 89, l. 11; R. 96, ll. 17-19; R. 97, ll. 8-24; R. 92, ll. 19-22. Complainant stated he considered trying to "fight" the suspect and take the gun away from him but "it didn't make sense. The more I got closer to the door, the more I thought I could get into the car and leave." R. 89, l. 17 – 90, l. 11. Complainant got in his truck and drove away. He drove around the block, spotted some people, and borrowed a phone to call 911. State's Exhibit #2; R. 91, ll. 3-16.

Complainant had the suspect's cell phone number as the men had been texting each other to set up the meeting to buy/sell the PlayStation. R. 84, l. 11 – 85, l. 24. Law enforcement later

linked the suspect's phone number to the "Quitbiting Pullup" Facebook account. R. 115, l. 20 – 116, l. 3; R. 173, l. 3 – 174, l. 21; R. 93, ll. 10-16. Complainant provided a suspect description to police, and he gave them screenshots of the text messages and Facebook posts. Complainant was also able to provide serial numbers for the stolen items. R. 91, l. 15 – 93, l. 22; R. 102, ll. 10-17.

Video surveillance equipment from the Community Center captured the robbery on film. State's Exhibit #2 is the video footage. The footage showed a stocky black man point a weapon at Complainant and rob him. R. 75, l. 24 – 77, l. 21; State's Exhibit #2. The day after the robbery, Complainant met with law enforcement to look at a photographic lineup. He identified the photograph of Appellant as the man who robbed him and claimed he was one hundred percent certain. Complainant also identified Appellant in court. R. 93, l. 23 – 96, l. 7.

A few days after the robbery, Appellant sold the complainant's stolen phone, which was traceable by its serial number, at an "ecoATM" kiosk at Walmart. The kiosk photographed the seller and photographed the seller's South Carolina identification card, which was Appellant's. An "ecoATM" employee watching remotely had to verify the appearance of the seller matched the picture on the identification card. Appellant received $145 for the phone. R. 198, l. 25 – 200, l. 25; R. 206, l. 21 – 221, l. 15. The State also introduced incriminating Facebook records. R. 168, l. 19 – 198, l. 10.

A BB gun was found in Appellant's bedroom during the execution of a search warrant. R. 129, ll. 6-8; R. 144, ll. 9-22; R. 139, ll. 5-19; R. 142, ll. 18-24. The BB gun was a "Beeman P17 BB gun," and it was admitted at trial as State's Exhibit #33. Officer Duncan testified the BB gun was "consistent with" the weapon visible in the surveillance video. R. 143, ll. 4-5; R. 144, l. 13 – 145, l. 10; R. 146, ll. 13-25; R. 203, l. 23 – 205, l. 5.

Appellant requested a jury instruction on the lesser included offense of strong arm robbery. R. 234, ll. 2-6. The solicitor opposed the charge. R. 235, ll. 9-22. The court stated that a BB gun still "fits armed robbery," and the jury would have to "ignore" the charge on armed robbery in order to find Appellant guilty of the lesser offense. R. 234, l. 9 – 235, l. 8. The court broke for the night. R. 238, ll. 4-7. The next morning, the charge conference continued. Appellant repeated his request for an instruction on strong arm robbery, arguing that "the trial court should charge on a lesser included if there's any evidence in which it would be inferred that the lesser rather than the greater offense was committed." R. 242, l. 19 – 243, l. 7. Defense counsel argued it was an "issue of fact" for the jury whether the "ambiguous" weapon on the surveillance video "could constitute a deadly weapon" or "could be reasonably construed as a deadly weapon," he and noted that the State admitted a BB gun into evidence. R. 243, ll. 7-19.

The State again opposed the requested charge, stating "the issue in this case is not whether or not a gun was used, but who is the one robbing the victim." The State also argued that "including a strong arm would ask the jury to ignore portions of what you will charge them on the law for armed robbery[.]" R. 243, l. 22 – 244, l. 7. The trial court ruled that it would not charge on the lesser offense of strong arm robbery. The trial court ruled:

> Okay. 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. If it were some type of I don't know -- a home model or something, you know, odd or different. The only thing I'm thinking of, let's throw it out there, it looks like a potato gun, or something along those lines, that maybe could be very odd and very different, although it still is made to eject projectiles, so I guess you could arguably say one is. 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. You know, I actually thought about the facts in this case, if he hadn't the gun, the chances are the victim wouldn't have turned over his watch and his cell phone. I don't know if he would have just walked

> away from the PlayStation since he had already given it to him. I think it was the fear of being shot, which helps for -- certainly the armed robbery which is part of the possession of a weapon during the commission of a violent crime charge, so 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, l. 8 – 245, l. 20.

ARGUMENT

The court erred in refusing to instruct the jury on the lesser included offense of strong arm robbery, where there was evidence Appellant used a BB gun to commit the robbery, since there was evidence from which the jury could have found Appellant was guilty of the lesser offense.

Armed robbery is defined as follows: "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, is guilty of a felony[.]" S.C. Code Ann. § 16-11-330(A).

In contrast: "Strong arm robbery is defined 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." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996) (quotations omitted). Common law robbery and "strong arm" robbery are synonymous terms for a common law offense whose penalty is provided for by statute. *E.g.*, *Greene v. State*, 440 S.C. 165, 172 n. 5, 889 S.E.2d 636, 640 n. 5 (Ct. App. 2023). *See also* § 16-11-325 (providing penalty for common law robbery). Strong arm robbery is a lesser included offense of armed robbery. "Armed robbery includes all the elements of strong arm robbery." *State v. Muldrow*, 348 S.C. 264, 269, 559 S.E.2d 847, 850 (2002).

"Whether an instrument qualifies as a deadly weapon is a jury question." *State v. Gourdine*, 322 S.C. at 398, 472 S.E.2d at 241. *See also State v. Heck*, 304 S.C. 345, 346, 404 S.E.2d 514, 515 (Ct. App. 1991) ("We agree with the trial judge that a BB gun is capable of producing great bodily harm. Therefore, the question of whether or not the instrument used in commission of the robbery qualified the incident as armed robbery was properly submitted as a factual determination

for the jury[.]"). In *Gourdine*, the defendant was convicted of accessory before the fact of armed robbery of a McDonald's restaurant. His codefendants testified for the State at trial that the weapons used were all BB guns or toy/water guns. The restaurant manager testified she thought the guns were "fake." The trial court denied Gourdine's request for a charge on the lesser offense of accessory before the fact of strong arm robbery. *Gourdine*, 322 S.C. at 397-99, 472 S.E.2d at 241. After observing that whether an instrument qualifies as a deadly weapon is a jury question, the South Carolina Supreme Court held the failure to charge on the lesser offense was reversible error, since there was evidence from which the jury could have found Gourdine was guilty of the lesser offense. *Id.*, 322 S.C. at 398-99, 472 S.E.2d at 241.

Gourdine was tried under an earlier version of the armed robbery statute which stated that armed robbery is "the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon . . ." S.C. Code Ann. § 16-11-330 (Supp. 1995). The General Assembly subsequently amended the statute, which, as discussed *supra*, now provides that a "representation of a deadly weapon or any object which [a witness] reasonably believed to be a deadly weapon," can support a conviction for armed robbery. The amendment "ensure[d] that the use of an object which is in fact not a deadly weapon will support a conviction for armed robbery . . . [However,] the State must still show evidence corroborating the allegation of being armed, *i.e.*, the use of a physical representation of a deadly weapon, to establish armed robbery." *State v. Muldrow*, 348 S.C. at 269, 559 S.E.2d at 850.

The court must charge the jury on the applicable law. S.C. CONST. art. V, § 21. "The law to be charged to the jury is determined by the evidence presented at trial." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "If there is any evidence to support a jury charge, the trial judge should grant the request." *State v. Brown*, 362 S.C 258, 262, 607 S.E.2d 93, 95 (Ct. App.

2004). "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989).

"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, 719 S.E.2d 688, 690 (Ct. App. 2011). "The trial judge is to charge the jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. at 398, 472 S.E.2d at 241. "[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, 447, 409 S.E.2d 391, 392 (1991). *See also State v. Goldenbaum*, 294 S.C. 455, 457, 365 S.E.2d 731, 732 (1988) (trial court properly refused to charge the jury on second and third-degree burglary where there was no evidence "from which the jury could infer that appellant committed second or third rather than first degree burglary"). "In determining whether the evidence requires a charge on a lesser-included offense, the Supreme Court must view the facts in the light most favorable to the defendant." *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014).

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). "A jury charge is correct if, when the charge is read as a whole,

it contains the correct definition and adequately covers the law." *Id.*, 353 S.C. at 318, 577 S.E.2d at 464. "[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. Burkhart*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." *Id*. at 263, 565 S.E.2d at 304.

In this case, there was evidence to support an instruction on the lesser offense. Amendments to the armed robbery statute ensured that a case involving a BB gun would get past the directed verdict stage in an armed robbery trial, but it was still a question of fact for the jury whether the BB gun was "a representation of a deadly weapon" or whether the complainant "reasonably believed [it] to be a deadly weapon." The weapon that was recovered from Appellant's bedroom was a BB gun, which Officer Duncan testified was consistent with the weapon depicted in the surveillance footage. The complainant admitted he did not hand over his wallet even though the "gun" was being pointed at him when his wallet was demanded. Complainant stated he considered fighting the suspect but realized he could just drive away. This was all evidence which would support a verdict of strong arm robbery. "Whether an instrument qualifies as a deadly weapon is a jury question." *Gourdine*, 322 S.C. at 398, 472 S.E.2d at 241. In the light most favorable to Appellant, the court erred when it failed to instruct the jury on strong arm robbery. *E.g.*, *State v. Gourdine*, 322 S.C. at 398, 472 S.E.2d at 241 (jury must be charged on a lesser offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed); *State v. Sams*, 410 S.C. at 308, 764 S.E.2d at 513 (appellate courts must view the facts in the light most favorable to the defendant when determining whether the evidence required a charge on a lesser-included offense).

Appellant was prejudiced because the jury instructions did not afford the proper test for determining the issues. *E.g.*, *State v. Burkhart*, 350 S.C. at 263, 565 S.E.2d at 304 (defendant is prejudiced where the instructions given do not afford the proper test for determining the issues). *See also Abney v. State*, 408 S.C. 41, 53, 757 S.E.2d 544, 550 (Ct. App. 2014) (Few, J., dissenting) ("[C]ounsel's decision not to request a charge on strong armed robbery was ineffective . . . Further, counsel's deficient performance prejudiced Abney because it deprived him of the chance to avoid being convicted of armed robbery.").

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of October, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 22, 2025.

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