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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2025-001241

THE STATE,

Petitioner,

vs.

SAMIR KEVIN SHANK,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMIR KEVIN SHANK,

APPELLANT

APPELLATE CASE NO. 2022-000650

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT #7 (BODY WORN CAMERA)

State of South Carolina)	
)	
County of Greenville)	
The State of South Carolina,)	2021-GS-23-1036;
)	2021-GS-23-1037;
)	2021-GS-23-1038
Plaintiff,)	
)	
v.)	
)	Transcript
Samir Kevin Shank,)	
)	of
Defendant.)	
)	Trial
)	
)	
)	
)	
)	
)	

Date: April 25, 2022

Start Time: 11:53 a.m.

Location: Greenville County Courthouse

 305 E. North St.

 Greenville, SC 29601

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable R. Scott Sprouse

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Also Present: Clerk: Mary Troup

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PROCEEDINGS

THE COURT: All right. Mr. Bailiff, do we have all our jurors?

THE BAILIFF: Yes, sir. We do.

THE COURT: All right. Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: All right. I understand you've spent the morning with Judge Morgan, so, now, you've been sent to another.

So we are ready to select the jury on the first case. Madam Clerk, would you announce the first case?

THE CLERK: Yes, Your Honor. This is the case of 2021-GS-23-1036, "The State vs. Samir Kevin Shank", indicted for failure to stop for a blue light, 1037, for use of a vehicle without permission, and 1038, for assault and battery of a high and aggravated nature.

THE COURT: Thank you. Ladies and gentlemen, as you've heard, this is the case of "The State vs. Samir Kevin Shank." Now, Mr. Shank's been charged with three charges: assault and battery of a high and aggravated nature, failure to stop for a blue light, and

1 use of a vehicle without permission. On these
2 three indictments, Mr. Shank has entered a
3 plea of not guilty.

4 What that does is that places the burden
5 on the State to prove the charges beyond a
6 reasonable doubt. And if you are called to
7 serve as a juror in this case, you will
8 determine whether or not the State has met its
9 burden of proof in the case.

10 Now, ladies and gentlemen, I know you've
11 been asked a number of questions this morning
12 to determine your qualifications and
13 eligibility to serve as jurors, but I'm
14 getting ready to ask you some more questions.
15 This is not to pry into your private lives,
16 but to just ensure that both the State and the
17 Defendant receive a fair and impartial jury to
18 hear the facts -- and hear the evidence in
19 this case and determine the facts.

20 So I -- I know you were -- you were
21 placed under oath earlier, but we're in a
22 different courtroom, and a new case has been
23 called. So, Madam Clerk, would you put the
24 pool under oath, please?

25 THE CLERK: Yes. If you'll please stand and

1 raise your right hand. The proper response is
2 "I will."

3 (WHEREUPON, the jury pool was sworn at
4 approximately 11:56 a.m.)

5 THE CLERK: Thank you. Please be seated.

6 THE COURT: All right. The first order of
7 business, I'd like for the attorneys to
8 introduce themselves and any parties or other
9 persons who will be seated at the table with
10 them during the prosecution and defense of the
11 case.

12 MR. MILLER: Thank you, Your Honor. I'm
13 Andrew Miller with the Thirteenth Circuit
14 Solicitor's Office and sitting with me today
15 is Mr. John Waelde. He's also with the
16 Solicitor's Office. He's helping me out.

17 As for witnesses, we have Officer Andrew
18 Elder, with the Greenville Police Department;
19 Jeffery Burdette, also with the Greenville
20 Police Department; Cameron Steele, also an
21 officer of the Greenville Police Department;
22 and Ms. Sandra Elaine Bullock. That will be
23 it for us today. Thank you.

24 THE COURT: Ms. Diaz?

25 MS. DIAZ: Good morning, everyone. I'm

1 Kaitlin Diaz. I represent the Defendant in
2 this case, Samir Shank. This is our -- this
3 is our micro-counsel, Paul Neely. He's going
4 to be trying this case with me. It's very
5 nice to meet all of you.

6 JURY QUALIFICATIONS

7 THE COURT: Ladies and gentlemen, is any
8 member of the jury pool related by blood or
9 marriage or has a close, personal, or social
10 relationship with one of these attorneys, a
11 witness that has been named, or a party to the
12 case? If so, please stand.

13 THE JURY PANEL: (No response.)

14 THE COURT: There are none. Has any member of
15 the jury pool been represented by one of these
16 attorneys, or have one of these attorneys
17 represent someone against you in court? If
18 so, please stand.

19 THE JURY PANEL: (No response.)

20 THE COURT: There are none. Now, is there any
21 member of the jury pool that has been -- or a
22 member of your immediate family or close
23 personal friend ever been the victim of a
24 violent crime or a crime involving larceny or
25 theft of any kind? If so, please stand.

1 THE JURY PANEL: (No response.)

2 THE COURT: There are none. Is there any
3 member of the jury pool, a member of your
4 immediate family, or close personal friend
5 employed in law enforcement or the Thirteenth
6 Circuit Solicitor's Office? If so, please
7 stand.

8 Yeah. Yes, ma'am? What's your number?

9 MS. JONES: One-oh-eight.

10 THE COURT: One-oh-eight, Ms. Jones?

11 MS. JONES: Uh-huh.

12 THE COURT: And -- and who's employed?

13 MS. JONES: My husband.

14 THE COURT: And what agency?

15 MS. JONES: Sheriff's office, Greenville
16 County Sheriff's Office.

17 THE COURT: Okay. (To Mr. Miller) Is the
18 sheriff's office involved in this case?

19 MR. MILLER: No, sir, Your Honor.

20 THE COURT: Okay. Ma'am, would that knowledge
21 -- with that knowledge do you feel you could
22 be fair and impartial if called to serve?

23 MS. JONES: Yes, sir.

24 THE COURT: All right. Thank you, ma'am. You
25 can be seated.

1 All right. I'll -- I'll stay on this
2 end. Yes, sir? Your -- your number?

3 MR. ALLEN: Number 2.

4 THE COURT: Number 2, Mr. Allen?

5 MR. ALLEN: Yes, sir. My brother-in-law is at
6 the Greenville County Sheriff's Office.

7 THE COURT: And with that knowledge, do you
8 feel you could be fair and impartial if called
9 to serve?

10 MR. ALLEN: Yes, Your Honor.

11 THE COURT: All right. Thank you, sir. You
12 can be seated.

13 Yes, ma'am?

14 MS. STUBER: Two-twenty-one. My daughter is a
15 probation and parole officer.

16 THE COURT: Okay. Hold on. Ms. Stuber?

17 MS. STUBER: Yes.

18 THE COURT: All right. With that knowledge,
19 do you feel you could be fair and impartial if
20 called to serve?

21 MS. STUBER: Yes, sir.

22 THE COURT: All right. Thank you, ma'am. You
23 can be seated.

24 All right. Is there any member of the
25 jury panel, a member of your immediate family,

1 or close personal friend who -- who has worked
2 on the political campaign of the Solicitor or
3 donated money to his campaign? If so, please
4 stand.

5 THE JURY PANEL: (No response.)

6 THE COURT: There are none. Does any member
7 of the jury panel believe that a person who is
8 charged, arrested, and indicted is
9 automatically guilty of the crimes charged?
10 Does any member of the panel believe that?

11 THE JURY PANEL: (No response.)

12 THE COURT: There are none. Does any member
13 of the jury panel believe that a person
14 charged with the crime has to prove his or her
15 own innocence?

16 THE JURY PANEL: (No response.)

17 THE COURT: There are none. Has any -- has
18 any member of the jury panel ever served as a
19 juror in a trial in criminal court before? If
20 so, please stand.

21 THE JURY PANEL: (No response.)

22 THE COURT: There are none. Now, ladies and
23 gentlemen, this incident is alleged to have
24 happened on the 25th day of August 2020, in
25 Greenville County. Does any member of the

1 jury pool have any prior knowledge, from any
2 source, about the facts of this case? If so,
3 please stand.

4 THE JURY PANEL: (No response.)

5 THE COURT: There are none. Does any member
6 of the jury panel know of any other reason why
7 he or she could not be fair and impartial if
8 called to serve as a juror in this case? If
9 so, please stand.

10 THE JURY PANEL: (No response.)

11 THE COURT: There are none. Any further
12 submissions from the State?

13 MR. MILLER: Nothing from the State, Your
14 Honor.

15 THE COURT: Any further submissions from the
16 Defense?

17 MS. DIAZ: Nothing from the Defense, Your
18 Honor.

19 THE COURT: All right. Madam Clerk?

20 THE CLERK: All right.

21 JURY SELECTION

22 THE COURT: When I call your name, if you'll
23 please stand in place, and wait for further
24 instruction.

25 Juror 175, Kristen Patterson -- or

1 Peterson, excuse me.

2 What says the State?

3 MR. MILLER: Please seat the juror.

4 THE CLERK: What says the Defendant?

5 MS. DIAZ: Please seat the juror.

6 THE CLERK: Oh.

7 MS. DIAZ: Yes. Seat the juror. I'm sorry.

8 THE CLERK: (To the Juror) Okay. Please, if
9 you'll bring your things; come have a seat in
10 the jury box. If you'll just come up this way
11 over to the jury box. Thank you.

12 Juror 98, Braylon Hughes.

13 What says the State?

14 MR. MILLER: Please seat the juror.

15 THE CLERK: What says the Defendant?

16 MS. DIAZ: Please seat the juror.

17 THE CLERK: All right. Sir, if you'll please
18 come around; have a seat in the jury box.

19 Juror 100, Edgar Islas-Munoz.

20 What says the State?

21 MR. MILLER: Please seat the juror.

22 THE CLERK: What says the Defendant?

23 MS. DIAZ: Please seat the juror.

24 THE CLERK: All right. Sir, please come have
25 a seat in the jury box.

1 Juror 121, Michael Lancaster.
2 What says the State?
3 MR. MILLER: Please seat the juror.
4 THE CLERK: What says the Defendant?
5 MS. DIAZ: Please seat the juror.
6 THE CLERK: All right. Sir, please come have
7 a seat in the jury box.
8 Juror 94, Brandy Howard.
9 What says the --
10 MR. MILLER: Please seat the juror.
11 THE CLERK: Thank you. What says the
12 Defendant?
13 MS. DIAZ: Please seat the juror.
14 THE CLERK: All right. Ma'am, please bring
15 your things. Have a seat in the jury box.
16 Juror 54, Allen Dill.
17 What says the State?
18 MR. MILLER: Please seat the juror.
19 THE CLERK: What says the Defendant?
20 MS. DIAZ: Please seat the juror.
21 THE CLERK: Sir, please come have a seat in
22 the jury box.
23 Juror 40, Oscar Church.
24 What says the State?
25 MR. MILLER: Please seat the juror.

1 THE CLERK: What says the Defendant?
2 MS. DIAZ: Please seat the juror.
3 THE CLERK: All right. Sir, please have a
4 seat in the jury box.
5 Juror 125, Randall Leathers.
6 What says the State?
7 MR. MILLER: Please seat the juror.
8 THE CLERK: What says the Defendant?
9 MS. DIAZ: Please seat the juror.
10 THE CLERK: Sir, please come have a seat in
11 the jury box.
12 Juror 152, Jordan Morgan.
13 What says the State?
14 MR. MILLER: Please seat the juror.
15 THE CLERK: What says the Defendant?
16 MS. DIAZ: Please strike the juror.
17 THE CLERK: You may be seated. You have been
18 excused from this case.
19 Juror 174, Erick Peterson.
20 What says the State?
21 MR. MILLER: Please seat the juror.
22 THE CLERK: What says the Defendant?
23 MS. DIAZ: Please seat the juror.
24 THE CLERK: Please have a seat in the jury
25 box.

1 Juror 194, Shawn Russell.

2 What says the State?

3 MR. MILLER: Please seat the juror.

4 THE CLERK: What says the Defendant?

5 MS. DIAZ: Please seat the juror.

6 THE CLERK: Sir, please have a seat in the
7 jury box.

8 Juror 75, Elgin Goodwin. Pardon me.

9 What says the State?

10 MR. MILLER: Please seat the juror.

11 MS. DIAZ: Please seat the juror.

12 THE CLERK: Thank you. Sir, please come have
13 a seat in the jury box.

14 Juror 149, Rebecca Miller.

15 What says the State?

16 MR. MILLER: Please seat the juror.

17 THE CLERK: What says the Defendant?

18 MS. DIAZ: Please strike the juror.

19 THE CLERK: You may be seated, ma'am. You've
20 been excused from this case.

21 Juror 46, Daniel Cothran.

22 What says the State?

23 MR. MILLER: Please seat the juror.

24 THE CLERK: What says the Defendant?

25 MS. DIAZ: Please seat the juror.

1 THE CLERK: Sir, please have a seat in the
2 jury box.

3 THE COURT: Need an alternate.

4 THE CLERK: One alternate. All right. Juror
5 176, Thomas Phillips.

6 What says the State?

7 MR. MILLER: Please seat the juror.

8 THE CLERK: What says the Defendant?

9 MS. DIAZ: Please strike the juror.

10 THE CLERK: You may be seated, sir. You've
11 been excused from this case.

12 Juror 143, Jennifer McGaha.

13 What says the State?

14 MR. MILLER: Please seat the juror.

15 THE CLERK: What says the Defendant?

16 MS. DIAZ: Please seat the juror.

17 THE CLERK: All right. Ma'am, please have a
18 seat in the jury box.

19 THE COURT: Are there any motions or
20 exceptions to the selection of the jury from
21 the State?

22 MR. MILLER: Nothing from the State, Your
23 Honor.

24 THE COURT: Are there any motions or
25 exceptions to the selection of the jury from

1 the Defendant?

2 MS. DIAZ: Nothing from the -- the Defense,
3 Your Honor.

4 THE COURT: All right. Madam Clerk, would you
5 swear our jury?

6 THE CLERK: Yes. If you'll please stand in
7 place. The correct response is, "I will."
8 Oh, pardon me. Please raise your right hand.
9 Thank you.

10 (WHEREUPON, the jury was sworn at
11 approximately 12:10 p.m.)

12 THE CLERK: Thank you. Please be seated.

13 THE COURT: Ladies and gentlemen in the
14 remainder of the pool, you will need to go
15 back downstairs to the jury assembly room for
16 further instructions. So thank you for coming
17 this morning.

18 (WHEREUPON, the jury pool was excused at
19 12:11 p.m.)

20 THE COURT: (To the Selected Jury) Okay.
21 Ladies and gentlemen, before we start the
22 trial, I'm going to give you some preliminary
23 instructions. I'm gonna, first, explain our
24 roles in the case.

25 I am the Judge of the law. You will

1 apply the law to the facts of the case as I
2 give it to you. You are the judges of the
3 facts. As the judge of the facts, it will be
4 your duty to evaluate the evidence that is
5 presented. Evidence is the sworn testimony
6 from witnesses and any exhibits that are
7 entered into evidence. You will -- you will
8 only determine the matter of credibility to
9 witnesses and how much weight to give their
10 testimony.

11 Each attorney will have the opportunity
12 to give an opening statement to you. And all
13 -- and that will enable them to outline their
14 positions and tell you what evidence they're
15 going to present to support those claims. The
16 attorneys will also have the opportunity to
17 make closing arguments to you after the
18 testimony has concluded. Keep in mind that
19 the statements of the attorneys are not
20 evidence, but merely tools that they use to
21 help you understand their respective
22 positions.

23 Now, ladies and gentlemen, as I stated
24 before, the State has the burden of proof in
25 this trial. It must prove beyond a reasonable

1 doubt that the Defendant is guilty of the
2 offense charged. If the State fails to meet
3 that burden, then you have a duty to find the
4 Defendant not guilty.

5 On the other hand, if the State does
6 prove a charge beyond a reasonable doubt, then
7 you have a duty to find the Defendant guilty.

8 The Defendant is presumed innocent, and
9 he has no burden of proof in this trial.

10 I'm going to talk to you in greater
11 length about the reasonable doubt, but a
12 preliminary definition is a reasonable doubt
13 is a doubt that would cause a reasonable
14 person to hesitate to act.

15 Now, there are a number of witnesses that
16 have been listed that the State mentioned to
17 you and the Defense mentioned to you when we
18 were asking you questions earlier. I don't
19 think this is going to be an overly long case,
20 but it's not going to be very short, either.
21 It could -- there will be several witnesses.
22 We're gonna try to take breaks as we go along.
23 This is not an endurance contest. So if we
24 haven't reached a stopping point, we haven't
25 taken a break and you get in distress and you

1 need a break, let your bailiff know, and we
2 will do our best to accommodate you.

3 Now, we're getting ready to break for
4 lunch, so I'm going to go ahead and give you
5 these instructions. These are very important.

6 When you leave this room and when you go
7 either in the jury room or you're at lunch and
8 whenever you're outside the courtroom, there
9 are three things that you are strictly
10 prohibited from doing as jurors.

11 The first is independent investigation.
12 In this era of smartphones and Internet access
13 and so forth, it's very easy for someone to
14 attempt to research either the law or the
15 facts of the case. You are strictly
16 prohibited from doing that.

17 I'll, also -- will go ahead and answer
18 this question before I get it. I -- I take
19 the traditional view, I do not allow note
20 taking during a case. Some judges take a more
21 modern approach, and they do allow notes. I
22 do not. And the reason for that is that some
23 folks are good note takers and others are not,
24 and your deliberations at the end should not
25 be a contest between who's the best note

1 taker. Also, the appearance or what we call
2 the "demeanor" of a witness sometimes is an
3 important factor in the case. If your head is
4 buried in a notepad, you might miss something
5 during the trial. So that's -- that's why I
6 take the traditional view. So you're not
7 allowed to take notes.

8 The second thing you're prohibited from
9 doing is discussing this case with third
10 parties. There's a reason that you have that
11 -- that badge that says "Juror." That
12 identifies you as a juror to everyone that
13 comes into contact with you. You see these
14 attorneys? They're gonna -- when you to go
15 lunch -- and go out to lunch, they're gonna go
16 the other direction. They're not trying to be
17 rude to you; they just know they can't have
18 any contact with you. If some third party
19 comes up to you trying to talk about this
20 case, you let the bailiffs know, they will let
21 me know, and I will -- I will tend to that.
22 But do not talk to third parties about this
23 case.

24 The last thing you're prohibited from
25 doing is deliberating amongst yourselves about

1 this case. Deliberation means you talk about
2 the case. When you go back in the jury room,
3 you can talk about anything you want to talk
4 about, except this case. I will instruct you
5 when you may begin your deliberations at the
6 end.

7 Now, ladies and gentlemen, the reason for
8 these rules is that you are to base your
9 decision solely on what's presented in
10 evidence in this courtroom and not outside
11 influences. And you, also, are not to make
12 your decision prematurely. You shouldn't
13 decide this case until all of the evidence is
14 in. That's the reason for these rules.

15 Now, a couple other things and then I'm
16 gonna let you go to lunch. During the course
17 of the trial, there may be objections. One
18 attorney may object to a question or a piece
19 of evidence or some other issue during the --
20 the course of the trial. I will make a ruling
21 on that objection. That should not be
22 interpreted to mean that the Court favors one
23 side or the other.

24 Likewise, there may be times when you are
25 sent to the jury room, and we have to take up

1 a matter of law outside of your presence.
2 That is not to hide things from you. That's
3 just to ensure that each side receives a fair
4 trial in accordance with the law. That's my
5 job as the judge to make sure that it's done
6 in accordance with the law.

7 So, with those instructions, I am going
8 to send you to lunch. I want you back in the
9 jury room at about ten minutes till two.
10 We're gonna start the trial at two.

11 You have one order of business before you
12 come back into the courtroom and that is to
13 elect a foreperson. This will be the
14 presiding juror over your deliberations at the
15 end. This will also be the juror that
16 communicates with the Court. Any
17 communication between the jury and the Court
18 should be in the form of a written note signed
19 by the foreperson.

20 So, ladies and gentlemen, I hope you have
21 a good lunch, and we will see you at two
22 o'clock.

23 (WHEREUPON, the jury was excused at 12:19
24 p.m.)

25 THE COURT: Okay. Is there anything from the

1 State before we go into recess?

2 MR. MILLER: No, Your Honor. I would just --
3 we did share some redacted videos with the
4 Defense. I don't know if they have any
5 objection to -- for two of the officer's
6 bodycams. I don't know if they have any issue
7 with the redacted portions of the video.

8 MS. DIAZ: No objections, Your Honor.

9 THE COURT: Okay. So -- so you have the --
10 you have the video ready to play? It's been
11 redacted?

12 MR. MILLER: Yes, sir, Your Honor. It -- the
13 version on disk is redacted, and we have a
14 full version --

15 THE COURT: Okay.

16 MR. MILLER: -- just in case --

17 THE COURT: Okay. Very good.

18 MR. MILLER: -- something happens, but . . .

19 THE COURT: And, Ms. Diaz, you've seen it?

20 MS. DIAZ: I have seen it, Your Honor.

21 THE COURT: All right. Okay.

22 MS. DIAZ: And we don't have any objection.

23 THE COURT: Are all the other exhibits marked?

24 MR. MILLER: Yes, Your Honor. All the State's
25 exhibits have been premarked.

1 THE COURT: Okay. You -- and you -- well, how
2 many exhibits do we have?

3 MR. MILLER: Your Honor, right now we have, I
4 believe, six photographs and then there are
5 two videos, but potentially a third, but, most
6 likely, two videos.

7 THE COURT: So you have exhibits -- are they
8 one through eight?

9 MR. MILLER: One through eight, yes, Your
10 Honor.

11 THE COURT: State's Exhibits 1 through 8? Ms.
12 Diaz, do you have any objections to State's
13 Exhibit 1 through 8?

14 MS. DIAZ: No, Your Honor.

15 THE COURT: All right. So State's Exhibit 1
16 through 8 will be admitted without objection.

17 (WHEREUPON, State's Exhibit No. 1 through
18 8 was marked into evidence.)

19 THE COURT: I do this ahead of times in the
20 case either -- either of you wants to
21 reference those in your opening statement.

22 MR. MILLER: Thank you, Your Honor.

23 MS. DIAZ: Thank you, Your Honor.

24 THE COURT: So those will be deemed admitted.
25 Is there anything further?

1 MR. MILLER: Nothing else from the State, Your
2 Honor.

3 THE COURT: All right. Well, we'll go into
4 recess, and we will see you at two o'clock.

5 MS. DIAZ: Thank you, Your Honor.

6 (Off the record at 12:21 p.m.)

7 (On the record at 2:00 p.m.)

8 THE COURT: All right. Let's go on the
9 record. You are Mr. Goodwin; is that --

10 MR. GOODWIN: Yes, sir.

11 THE COURT: -- correct?

12 MR. GOODWIN: Yes, sir.

13 THE COURT: Now, Mr. Goodwin, the -- the
14 bailiff informed me that you told him that as
15 a result of your business, your business has
16 sold firearms to law enforcement agencies, and
17 that while that you didn't recognize any of
18 the names that you were -- you just wanted to
19 call that to the Court's attention --

20 MR. GOODWIN: Yes, sir.

21 THE COURT: -- that your -- your business had
22 sold firearms to law enforcement agencies.

23 MR. GOODWIN: Yes, sir.

24 THE COURT: With that knowledge, do you feel
25 you can be fair and impartial if you served as

1 a juror?

2 MR. GOODWIN: Yes, sir. I -- I just wanted to
3 make you aware.

4 THE COURT: I -- and I appreciate you for
5 making that -- calling that to my attention.

6 MR. GOODWIN: Yes, sir.

7 THE COURT: So -- but I wanted just to make
8 sure you can be fair and impartial.

9 MR. GOODWIN: Yes, sir.

10 THE COURT: All right. Thank you.

11 Anything from either side?

12 MR. MILLER: Nothing from the State, Your
13 Honor.

14 MS. DIAZ: No, Your Honor.

15 THE COURT: Okay. All right. Are we ready to
16 get started?

17 MR. MILLER: Yes, sir, Your Honor. I would
18 just -- Mr. Waelde was sitting with me. He's
19 now been called to trial upstairs, so Ms.
20 Harrison will be filling in.

21 THE COURT: I saw you called in
22 reinforcements.

23 MS. HARRISON: Yes, sir. I'm Sylvia Harrison.

24 THE COURT: Okay.

25 THE BAILIFF: You ready, Your Honor?

1 THE COURT: Yes, sir. Let's get our jury.

2 (WHEREUPON, the jury came into open court
3 at 2:03 p.m.)

4 THE COURT: Let's make this a Court's exhibit.
5 Juror Number 125 has been elected as
6 foreperson.

7 (WHEREUPON, Elected Foreperson, Randall
8 Leathers, Juror Number 125, was marked
9 for identification as Court's Exhibit No.
10 1.)

11 THE COURT: Mr. Foreman, you'll always sit on
12 the end where you're seated.

13 THE FOREMAN: Okay.

14 THE COURT: Madam Alternate, you'll always sit
15 on that end. The rest of you are free to
16 switch seats, okay?

17 Hope everyone had a good lunch. We are
18 ready to proceed. Is the State ready?

19 MR. MILLER: Yes, Your Honor.

20 THE COURT: Okay. Go ahead.

21 MR. MILLER: Thank you, Your Honor.

22 OPENING STATEMENTS

23 MR. MILLER: Ladies and gentlemen of the jury,
24 my name is Andrew Miller. I work for the
25 Thirteenth Circuit Solicitor's Office, and I

1 represent the State in this case. It's our
2 job as the State to present the evidence that
3 you need to make a determination on the three
4 charges in this case.

5 As the Judge informed you, there are
6 three charges before you. The first, assault
7 and battery of a high and aggravated nature,
8 failure to stop for a blue light, and use of
9 vehicle without permission.

10 The evidence we'll present today --
11 because obviously nothing I say, nothing the
12 Defense attorney may say, as good as it may
13 sound, is gonna come from a couple witnesses.
14 One of which is a Ms. Sandra Bullock. She'll
15 tell you about her vehicle, how she allowed
16 this Defendant to borrow it back on August
17 19th of 2020. It was supposed to be returned
18 the following day; it wasn't. She then
19 reports her vehicle stolen after she can't get
20 in touch with the Defendant to get her car
21 back

22 A few days later, Officer Elder -- you'll
23 hear from him here in just a few minutes --
24 locates this vehicle and tries to make a
25 traffic stop. They end up on a dead-end road.

1 This Defendant, who initially comes to a stop,
2 then puts his vehicle in reverse, going
3 straight at Officer Elder and his vehicle.
4 There's a collision that ensues. Officer
5 Elder's knocked to the ground. You'll
6 actually see all of this on video, and you'll
7 hear from Officer Elder about it from himself.

8 After that, more officers become
9 involved, and you'll see that there -- there's
10 a chase that lasts six/seven minutes all
11 around the Laurens Road area here in
12 Greenville, ending with a crash, whereas the
13 Defendant is found as the driver of the
14 vehicle.

15 All I ask is that you pay good attention
16 through this, and just use your good common
17 sense. Take in all the evidence. I'll be up
18 here at the end to talk about the law, which
19 the Judge will give you, and how it fits to
20 the facts that we'll present here today.

21 And, again, thank you. And I'll speak to
22 you at the end of the evidence.

23 THE COURT: Okay. Ms. Diaz?

24 OPENING STATEMENTS

25 MS. DIAZ: This trial is not about the failure

1 to stop for the blue light. I will tell you
2 right now, Mr. Shank intended to flee from the
3 cops. He intended to do that; he's guilty of
4 that. This trial is about how Mr. Shank did
5 not intend to harm this officer.

6 On August 25th, 2020, as you heard, Mr.
7 Shank was doing something that he shouldn't
8 have been doing. He was fleeing from law
9 enforcement. Again, we tell you that. On
10 this day, he chose to ignore blue lights
11 coming from all the officer vehicles. He
12 chose to ignore the blue lights coming from
13 Officer Elder's vehicle, as well.

14 From that moment, with Officer Elder in
15 tow, Mr. Shank went down a dead-end road and
16 froze. He realized he could not continue to
17 go forward, so he went backwards down the
18 narrow passage of road, on that dead-end, the
19 only space he could come through.

20 Now, unfortunately, and, you know, Mr.
21 Shank had a passenger in his car. That
22 passenger opened up his passenger door. And
23 while this officer was attempting to make this
24 stop, he also had his driver's door open; and
25 had his gun drawn; and he was trying to stop.

1 Which, again, he was fleeing from law
2 enforcement. Now, unfortunately, when that
3 passenger opened their door, that passenger
4 door collided with the officer's open driver's
5 door and the officer's driver's door hit the
6 officer, and he fell to the ground.

7 So to reiterate, there was a passenger
8 that opened the door, not Mr. Shank. He chose
9 to avoid and evade law enforcement. We know
10 that. He's guilty of that. We concede that
11 to you.

12 But at the end of this trial, I'll have
13 you firmly convinced that he did not intend to
14 hurt this officer. He did not assault and
15 batter this officer in the most high and
16 aggravated nature.

17 I ask you keep an open mind in this
18 trial. As you've heard, you will hear from a
19 bunch of witnesses, and I ask that you take
20 what they say and form your own opinion as to
21 what happened that day. And form your opinion
22 on what Mr. Shank's intentions were that day.

23 Again, I told you what he's -- what he
24 did and what his intentions were. He's
25 certainly not guilty of this assault and

1 battery in a high and aggravated nature. At
2 the end of this case, I believe that you'll,
3 also, agree with me in that he had no intent
4 to harm this officer and assault this officer.
5 Thank you.

6 THE COURT: The State call your first witness.

7 MR. MILLER: Yes, Your Honor. I believe we're
8 gonna check in the hallway and see if one
9 witness is here. If she's running behind,
10 we're happy to call Officer Elder out of
11 order.

12 MS. HARRISON: She is ready.

13 MR. MILLER: Okay. She is here.

14 And, Your Honor, the State would call Ms.
15 Sandra Bullock to the stand.

16 THE CLERK: Ms. Bullock, please come forward.
17 If you'll please pause at the end of the bench
18 there? Please place your left hand on the
19 Bible and raise your right hand. You'll face
20 the Judge, please.

21 (WHEREUPON, the witness was sworn.)

22 THE CLERK: Thank you. Please be seated.

23 THE WITNESS: Here?

24 THE CLERK: Yes, please, ma'am.

25 And would you please state your name for

1 the record?

2 THE WITNESS: Sandra L. Bullock.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. MILLER:

6 Q All right. And, Ms. Bullock, where are you from?

7 A Originally?

8 Q Yes, ma'am.

9 A I'm from Iowa, but I've been here since '98. So
10 I'm -- I'm a Greenvillian now.

11 Q Okay. What -- what do you do here in Greenville?

12 A I run a nonprofit called "First Impression of South
13 Carolina." We help people in crisis, COVID
14 assistance, etc.

15 Q And how did you come to meet Mr. Shank?

16 A Met him through a neighbor. I had known him
17 before; I met him through a neighbor. We became
18 close friends, and he was trying to get his life
19 back together. He said he was at Miracle Hill
20 and --

21 Q Okay.

22 A -- I let him (as spoken) to use my car --

23 Q Okay. We'll --

24 A -- to get to and from work.

25 Q -- get to that. Did you loan him the vehicle on

1 August 19th of 2020?

2 A Yes. I believe that was the date.

3 Q Okay. And when was he supposed to have that back
4 to you?

5 A Well, he had been bringing it back every evening,
6 filling it with gas. No problem. And then I
7 think, like, the third night or something, when he
8 didn't come over with my car, I got a little
9 nervous, and then I called and reported it as
10 stolen.

11 Q Okay. Did you try to reach out to him first?

12 A I tried to call him several times, and it just kept
13 going to voicemail.

14 Q Okay. Did you contact anybody else looking for it?

15 A No. Because I didn't know anybody else to contact.

16 Q Okay. Did you ever see your vehicle again?

17 A Well, when I did, the police department called me
18 and said, "I don't think you want your car back,
19 Ms. Bullock."

20 And I said, "Why?"

21 And then they sent me a -- I think, a --

22 Q Okay.

23 A -- picture of -- that it was totaled.

24 Q Okay.

25 MR. MILLER: Your Honor, if I may approach

1 quickly?

2 THE COURT: Yes, sir.

3 Q Ms. Bullock, I'm gonna show you two photos that
4 were marked State's Exhibit 5 and 6. If you could
5 identify those?

6 A Yes. That's my car, and when the police finally
7 called me, they told me where it was and told me I
8 needed to go get my personal possessions out of
9 there; and that's what I did.

10 Q Okay. And how long had this been after you lent
11 him the vehicle?

12 A Maybe three days, four days. I don't think it
13 happened right away after I -- I think I reported
14 it one day, and a couple of days later is when they
15 called and said that they found it.

16 Q Okay.

17 And I'll take these. I don't know if we want
18 to . . .

19 MR. MILLER: (To Ms. Harrison) Do we know how
20 to do this? Or I can just --

21 MS. HARRISON: No. But we'll --

22 MR. MILLER: -- so --

23 MS. HARRISON: -- figure it out.

24 Q And, Ms. Bullock, what condition was your car in
25 when the Defendant borrowed it?

1 A When I finally went to the wrecking lot, it was
2 totaled. The windows were busted. The wheel was
3 bent. The front end was damaged. They said, "You
4 don't want" -- the police said, "You don't want
5 your car back." So there's no way you could do
6 anything with it, so they told me where it was, and
7 I went and got my, you know, registration and
8 different things, some stuff that I had in the
9 trunk.

10 A lot of stuff -- there was so much glass in
11 there, a lot of the stuff I really wasn't able to
12 get out of there for fear that I might cut myself
13 or something.

14 Q Okay. Okay. And where did you loan the Defendant
15 your vehicle?

16 A Excuse me?

17 Q Where was your vehicle when you loaned it to Mr.
18 Shank?

19 A In the -- from my house.

20 Q Okay. And -- and where is -- what county is --

21 A In my --

22 Q -- that in?

23 A -- Calhoun Street and over in the Sterling
24 Community off of Dunbar by St. Francis.

25 Q Okay.

1 A It was just, you know, the breach of trust that,
2 you know, he done so well and never had any
3 problems, and then, all of a sudden, was a harden
4 criminal.

5 MS. DIAZ: Objection, Your Honor. He's not
6 indicted for -- not -- he's not charged with
7 breach of trust.

8 THE COURT: So noted then.

9 (To Mr. Miller) Rephrase your question.

10 Q Okay. I would say -- is that residence where he
11 borrowed the car from, is that in Greenville
12 County?

13 A Yes. Yes. Off of --

14 Q Okay.

15 A -- Dunbar --

16 Q Okay.

17 MR. MILLER: No --

18 A -- on Calhoun Street.

19 MR. MILLER: No further questions from the
20 State. Please answer any --

21 THE COURT: Okay.

22 MR. MILLER: -- the Defense may have.

23 THE WITNESS: Okay.

24 THE COURT: Ms. Diaz?

25 MS. DIAZ: We have no questions for this

1 witness, Your Honor.

2 THE COURT: Thank you, ma'am. You can step
3 down.

4 THE WITNESS: You're welcome. I'm sorry I was
5 late, Judge.

6 (WHEREUPON, the witness was excused.)

7 MR. MILLER: Now, the State would next call
8 Officer Andrew Elder.

9 THE CLERK: Sir, if you'll please come
10 forward. Please place your -- excuse me --
11 pause at the end of the bench. Place your
12 left hand on the Bible and raise your right
13 hand.

14 (WHEREUPON, the witness was sworn.)

15 THE CLERK: Thank you. Please be seated. All
16 right. And would you please state your name
17 for the record?

18 THE WITNESS: Andrew Elder.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. MILLER:

22 Q Okay. And, Mr. Elder, what is your current
23 position with the police department?

24 A I'm currently a detective with the Greenville
25 Police Department.

1 Q And how long have you been a detective?

2 A I've been a -- a detective for almost a year.

3 Q Okay. And what was your --

4 MR. NEELY: Your Honor, can we have the
5 officer speak up --

6 ***MS. HARRISON: Can't hear.

7 MR. NEELY: -- we can't hear him?

8 THE COURT: Is there -- can you pull that
9 microphone a little -- is his microphone on?

10 THE BAILIFF: Yes, sir. I think there's a
11 control on the bench there.

12 THE COURT: Try it now.

13 THE WITNESS: Officer Elder.

14 THE COURT: Okay.

15 MS. DIAZ: Thank you.

16 MR. NEELY: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUES

18 BY MR. MILLER:

19 Q And, Officer -- Detective Elder, how long have you
20 been with the Greenville Police Department?

21 A I've been with the Greenville Police Department for
22 a little over three years.

23 Q Okay. And where were you before that?

24 A I was a police officer for the Gwinnett County
25 Police Department in Georgia for three years.

1 Q Okay. And what are -- what's some of the basic
2 training you've had to go through in your position,
3 just briefly?

4 A In both Georgia and South Carolina, I had to attend
5 the State Academies -- or excuse me -- in South
6 Carolina the State Academy; in Georgia, it was a
7 private academy. But they went over all the basic
8 processes of a patrol officer in conducting traffic
9 stops, writing reports, working accidents, anything
10 that an officer would be taught.

11 Q Okay. Do you recall an incident on August 25th of
12 2020?

13 A I do.

14 Q Okay. And in that date, did you come across the
15 vehicle shown in those photos there?

16 A I did.

17 Q Okay. And where did you first come across that
18 vehicle?

19 A I observed that vehicle on Rebecca Street within
20 the city limits of Greenville, South Carolina, near
21 the intersection of Rebecca and -- Rebecca and
22 Clark Street, excuse me.

23 Q And what drew your attention to that vehicle?

24 A I had been responding to the area of Ackley Road in
25 reference to an automatic license plate reader that

1 notified us that there was a vehicle that had
2 passed by the camera that was, in fact, a stolen
3 vehicle. It was a silver Toyota Corolla, and I
4 responded for that reason.

5 Q What did you do when you first saw that vehicle?

6 A When I saw the vehicle at that intersection, I
7 advised our dispatch that I had observed that
8 vehicle with the tag that was reported for the
9 stolen vehicle. I follow the vehicle until it
10 turned onto Hilton Street, at which point, it
11 accelerated at a high rate of speed. I turned on
12 my emergency equipment for my blue lights and then
13 followed the vehicle all the way to the end of
14 Cowan Court.

15 Q Okay. And before we get any further, where is all
16 of this?

17 A This is in the Nicholtown Community in the city
18 limits of Greenville off Laurens Road.

19 Q Okay. And then, at what point did you activate
20 your blue lights? I know --

21 A Following the vehicle accelerating at a rate of
22 speed on -- while turning left on Hilton Steet, I
23 had to yield to a vehicle that was coming up from
24 Alameda towards Clark Street. And when I observed
25 that, I got onto Hilton Street, activated my blue

1 lights, observed the vehicle turn right onto Cowan
2 Court, and then followed it down Cowan Court.

3 Q Okay. And what kind of street is -- is Cowan
4 Court?

5 A Cowan Court is a dead-end street that leads to a
6 cul-de-sac.

7 Q Okay. And what -- what happened when the vehicle
8 reached that cul-de-sac?

9 A The vehicle came from the left side of the cul-de-
10 sac and camped it (phonetic) in a -- towards the
11 right side of the cul-de-sac. I pulled my vehicle,
12 pointing directly at the vehicle on more so the
13 left side of the street and attempted a felony stop
14 on the vehicle.

15 Q Okay. When you say "attempted a felony stop," what
16 -- what does that mean for us to --

17 A When the vehicle came to a stop and I placed my
18 vehicle and parked, I exited my patrol vehicle,
19 drawing my duty-issued firearm, giving verbal
20 commands to the driver to show me his hands and
21 turn off the vehicle.

22 Q Okay. And where were you standing when all this
23 happened?

24 A I was standing in the doorframe of my patrol
25 vehicle and the driver-side door.

1 Q Okay. And what did you see happen in reaction to
2 your attempting a felony stop?

3 A While doing so, the passenger door swung open. I
4 observed an older black male sitting in the
5 passenger seat with his hands kind of up in the
6 air, looking at me, while giving verbal commands to
7 the driver.

8 Q Okay. And then what happened next?

9 A Following multiple verbal commands given to the
10 driver of the vehicle, I observed the reverse
11 lights activate on the rear of the vehicle, at
12 which point, the vehicle came in my direction while
13 I was standing in my doorway.

14 Q And how quickly did all this -- all of this happen?

15 A Seconds.

16 Q Okay. And then what happened as the Defendant's
17 vehicle -- or that vehicle came towards you?

18 A As the vehicle came towards me, I took a slight
19 step back out of the frame of my door, so I was
20 still in my doorway. I placed my hand out,
21 touching the vehicle while still giving verbal
22 commands to the driver. The passenger door from
23 the suspect's vehicle struck my vehicle -- or my
24 open door, excuse me, throwing me backwards to the
25 ground between the two vehicles.

1 Q Okay. And what were -- what was going through your
2 mind at that point?

3 A A lot. I was -- didn't know, you know, the extent
4 of any injuries that I sustained. I didn't know,
5 at that point, what was going to happen when I was
6 being thrown behind my car.

7 Q Okay. And when you landed on the ground, where
8 were you in relation to your vehicle?

9 A My feet were about at my driver-side door and my
10 head towards the back of my vehicle, right between
11 the two cars.

12 Q And as it was going by, how close -- could you tell
13 how close the Defendant's tires were to you?

14 A I couldn't say specifically, but I had just enough
15 room for me to be laying there.

16 Q Okay. And what happened to your firearm during
17 this incident?

18 A During the incident, his vehicle door struck mine
19 at such a force causing me to get thrown backward
20 that it made the gun come out of my hand and get
21 stuck in the doorframe at the top of the vehicle
22 and shut the door on the gun.

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

25 A The firearm had some scratching on the outside of

1 the slide, and the vehicle itself had a bent door
2 at the top where it meets the frame.

3 Q Okay. I'm going to -- if I may approach -- show
4 you a couple of photos. I'm going to show you --
5 it's been labeled as State's Exhibit 1. Can you
6 tell the jury what that is?

7 A This is my patrol vehicle on that given day. It's
8 the damage that was caused by the suspect vehicle.

9 Q Okay. And State's Exhibit 2, can you just briefly
10 describe that one?

11 A This is a picture that is slightly behind the
12 initial picture, showing the dents that are on the
13 driver-side door and the scraping towards the back.

14 Q Okay. And, also, State's Exhibit 3. Can you
15 identify that one?

16 A This is, also, a picture of my patrol car from the
17 rear showing the damage caused by the suspect's
18 vehicle at the rear.

19 Q Okay. And did you notice any injuries to yourself
20 from this incident?

21 A Following the incident, I did a scan of my body to
22 see if I had any type of injuries. I observed a
23 small scrape on the left side of my knee --

24 Q Okay. I'm showing --

25 A -- or excuse me, on my left knee.

1 Q -- you State's Exhibit 4. Is that a -- what is
2 that?

3 A That is a small scrape on my left knee.

4 Q Okay.

5 MR. MILLER: And, Your Honor, if we may
6 publish these --

7 THE COURT: Yes, sir.

8 MR. MILLER: -- somehow?

9 THE COURT: They are already into evidence.

10 MR. MILLER: On the -- (To Ms. Harrison) Do we
11 know how to turn this on?

12 (Inaudible discussion between Mr. Miller
13 and Ms. Harrison.)

14 DIRECT EXAMINATION CONTINUES

15 BY MR. MILLER:

16 Q Now, Officer Elder, briefly while we were talking,
17 is this the damage to your side -- to the side of
18 your vehicle?

19 A Yes, sir.

20 Q Was any of that there beforehand?

21 A The only damage that was to the vehicle prior to
22 the incident is the silver lining that runs below
23 the window that's connected to the door.

24 Q Okay. Are you referring to, I don't know how to
25 point at it, but just that right there (indicates)?

1 A Yes. That was -- that damage was already present
2 prior to the incident.

3 Q Okay. Is, also, down here (indicates), would (as
4 spoken) this dent from the Defendant -- from this
5 incident?

6 A Yes. That dent would also be from the incident.

7 Q Okay. And on State's Exhibit 2, is this,
8 essentially, the same view?

9 A Yes. That is the same view, just slightly back
10 from -- or a different angle from the same
11 location.

12 Q Okay. And then State's Exhibit 3, what area of
13 your vehicle was that?

14 A That is a rear driver-side area of my vehicle.

15 Q Okay. And that was -- was that there before this
16 incident?

17 A No, sir.

18 Q Okay. Were you able to see what portion of the
19 Defendant's vehicle came into contact with that
20 area of your vehicle?

21 A I was not.

22 Q Okay. And during this incident, when you said you
23 were knocked down, where would you have been in
24 relation to the vehicle here (indicates)? I know
25 it's a not a great view, but . . .

- 1 A If the door was fully extended open, during the
2 beginning of the felony stop, my arms would have
3 been over the corner of the vehicle where the door
4 meets the frame of the vehicle. I would have been
5 possibly a half step to a full step behind that
6 point when he put the car in reverse.
- 7 Q Okay. And then when you were laying -- when you
8 were on the ground, how close would you have been
9 to that area of the vehicle?
- 10 A Relatively close.
- 11 Q Okay. And so I'll show you State's Exhibit 4, the
12 scrape to your knee. Do you -- how do you know
13 that was from this incident?
- 14 A Prior to that day, that scrape did not exist on my
15 knee. Following the incident, when I looked over
16 my body between my arms and my legs that would have
17 been exposed, that scrape was observed on my knee.
- 18 Q Okay. And where all this occurred, on Cowan Court
19 you said, how large is that cul-de-sac?
- 20 A That cul-de-sac was any average cul-de-sac, I would
21 say.
- 22 Q Okay. Was your vehicle blocking the entire thing?
- 23 A No, sir.
- 24 Q During this incident, were you wearing a body-worn
25 camera?

1 A Yes, sir. I was.

2 Q Okay. And have you had a chance to review what we
3 have shown you?

4 A I have.

5 Q And is this a true and accurate depiction of what
6 happened?

7 A Yes, sir.

8 Q Okay.

9 MR. MILLER: Your Honor, permission to publish
10 what has already been admitted as State's
11 Exhibit 7.

12 THE COURT: Okay. Yes, sir.

13 (WHEREUPON, State's Exhibit No. 7 was
14 played in open court.)

15 Q Okay. And, Detective Elder, what happened
16 immediately after this video ended?

17 A After that video ended, the passenger had exited
18 the vehicle after striking my vehicle, and then I
19 had to place him in investigative detention until
20 we could determine he was not involved with the
21 stolen vehicle.

22 Q Okay. And did you determine that the passenger had
23 anything to do with this?

24 A He had explained to us that he was picked up at a
25 gas station, requesting a ride from Mr. Shank and

1 that he only knew him by his nickname and couldn't
2 provide us no other information.

3 Q Okay. Once the Defendant's vehicle started to make
4 contact there, did he make any effort to stop that
5 you noted?

6 A No.

7 Q Okay. Did you make any noise to announce yourself
8 -- that you're -- you were present there?

9 A Other than giving the verbal commands of turn off
10 the vehicle and show me his hands, that's what --

11 Q Okay.

12 A -- was provided.

13 Q Did you, after this, come into contact with the
14 Defendant, at any point?

15 A I did.

16 Q Okay. And in what situation was that?

17 A I -- following Mr. Shank going to the hospital,
18 after his collision, he was transported back to the
19 Detention Center, at which point, I served his
20 warrant --

21 Q Okay.

22 A -- and issued some citations.

23 Q And is that same individual you saw that day
24 sitting in the courtroom today?

25 A Yes, sir.

1 Q And could you briefly identify him by clothing or
2 anything?

3 A Glasses and a white button-down shirt.

4 MR. MILLER: Your Honor, may the record
5 reflect that he -- the witness identified the
6 Defendant.

7 No further questions from the State. (To
8 the witness) Please answer any Defense may
9 have.

10 THE COURT: All right. Ms. Diaz?

11 CROSS-EXAMINATION

12 BY MS. DIAZ:

13 Q Good morning, Detective Elder. So as we discussed
14 earlier -- let me pull this down because I'm a
15 little short. As we discussed earlier, you work
16 with the Greenville County Police Department,
17 correct?

18 A The Greenville Police Department, yes, ma'am.

19 Q The Greenville City Police Department. I'm sorry.
20 And you've been working with them for about three
21 years?

22 A Yes, ma'am.

23 Q And, previously, you had worked three years in
24 Georgia, correct?

25 A Yes, ma'am.

- 1 Q So you've got a lot of training, right?
- 2 A Depends on your definition of a lot.
- 3 Q Generally speaking, you've had a lot of training.
- 4 A Yes, ma'am.
- 5 Q You've gone to two different, I guess, academies,
6 correct?
- 7 A Yes, ma'am.
- 8 Q And those academies -- how many weeks were they?
9 Were they eight-week programs?
- 10 A No, ma'am. The academy in Georgia was about four
11 to five months, getting basic certifications and
12 advanced certifications. When I came to South
13 Carolina, I got to go to a shortened academy based
14 on my prior certification for six weeks.
- 15 Q But you graduated from these academies, correct?
- 16 A Both academies, yes, ma'am.
- 17 Q And you passed all of your exams?
- 18 A Yes, ma'am.
- 19 Q And you have all of your training done and all of
20 that, correct?
- 21 A Yes, ma'am.
- 22 Q And they taught you how to -- we briefly talked
23 about this -- drive your patrol vehicle, correct?
- 24 A Yes, ma'am.
- 25 Q How to maybe de-escalate situations, right?

- 1 A Yes, ma'am.
- 2 Q They -- I'm sure you took a legals course?
- 3 A Yes, ma'am.
- 4 Q Okay. And you learned how to write incident
5 reports?
- 6 A Yes, ma'am.
- 7 Q Written lots of reports, right? Would you say
8 hundreds?
- 9 A Couldn't put an exact number on it, but --
- 10 Q Thousands?
- 11 A -- a few.
- 12 Q Okay. A lot. And those reports are supposed to be
13 thorough, right?
- 14 A Yes, ma'am.
- 15 Q Accurate, correct?
- 16 A Yes, ma'am.
- 17 Q And complete?
- 18 A Yes, ma'am.
- 19 Q And these reports should be done pretty quickly
20 after the incident, correct?
- 21 A Depending on the circumstances of the incident.
- 22 Q But, typically, you want to make sure that it's
23 done quickly, correct, because of -- it's fresh?
- 24 A Depending on the circumstances, yes, ma'am.
- 25 Q In this situation, you did it pretty quickly after,

- 1 right?
- 2 A As far as I can remember.
- 3 Q When everything was fresh?
- 4 A After reviewing the body camera, yes, ma'am.
- 5 Q And so, going back, you spoke about how you were
6 trained on the law, correct?
- 7 A Yes, ma'am.
- 8 Q Okay. And in your legals courses you learned about
9 charges?
- 10 A Yes, ma'am.
- 11 Q And you learned the elements of those charges?
- 12 A Yes, ma'am.
- 13 Q And you learned how to accurately charge a
14 defendant, correct?
- 15 A Yes, ma'am.
- 16 Q Going back to how quickly you tend to do them
17 afterwards, like in this case, you do that because
18 there's a lot of people that rely on these reports,
19 correct?
- 20 A Depending on the circumstances, like --
- 21 Q In this case, the prosecutor relied on the reports,
22 correct?
- 23 A They do normally.
- 24 Q Okay. And defense attorneys usually rely on those
25 reports, and, obviously, you rely on your reports?

- 1 A Yes, ma'am.
- 2 Q I'll take you back, obviously, to August 25th. So
- 3 you follow the car, right?
- 4 A Yes, ma'am.
- 5 Q Okay. And you both turned down Cowan Court?
- 6 A Yes, ma'am.
- 7 Q Okay. And we've already said that was a dead-end
- 8 road, right?
- 9 A It was a cul-de-sac, yes, ma'am.
- 10 Q So the car gets to the end of the road, right, and
- 11 stops the car?
- 12 A Yes, ma'am.
- 13 Q So Mr. Shank stops the vehicle?
- 14 A I don't know if he put it in park, but the vehicle
- 15 did cease motion.
- 16 Q Yes. And the brake lights are on?
- 17 A Yes, ma'am.
- 18 Q So you get out of your patrol vehicle, correct?
- 19 A Yes, ma'am.
- 20 Q Okay. And you're standing next to your vehicle,
- 21 correct?
- 22 A Yes.
- 23 Q So your door is open, and your patrol vehicle is
- 24 here (indicates). So you're standing in between.
- 25 You have your gun drawn --

- 1 A Yes, ma'am.
- 2 Q -- right? Now, there's a passenger in the car,
3 right?
- 4 A Yes, ma'am.
- 5 Q And the passenger is who opened that door, correct?
- 6 A As far as I knew, yes, ma'am.
- 7 Q At that point, Mr. Shank begins to reverse,
8 correct?
- 9 A Yes, ma'am.
- 10 Q His brake lights are on?
- 11 A When he's going in reverse, I don't recall if his
12 brake lights were on, but he was in reverse.
- 13 Q So you saw the video, I mean. I can show you
14 again, but his lights -- his brake lights are on.
15 Now, that opened passenger door makes --
16 right, it makes contact with your open door, right?
- 17 A Yes, ma'am.
- 18 Q It hits the door of your patrol vehicle, right?
- 19 A Yes, ma'am.
- 20 Q And your patrol vehicle hits you, correct?
- 21 A Yes, ma'am.
- 22 Q So your door pushes you backwards, correct?
- 23 A Yes, ma'am.
- 24 Q To the ground, right?
- 25 A Yes, ma'am.

1 Q Now, the car continues to reverse afterwards,
2 right?

3 A Yes, ma'am.

4 Q Okay. It -- and Mr. Shank didn't swerve to hit you
5 after that, right?

6 A When he had passed my vehicle, I was -- he was gone
7 at that point.

8 Q Okay. So he kind of swerved away to get around
9 you, right?

10 A He put it reverse towards my vehicle, yes, ma'am.

11 THE COURT REPORTER: (To the witness) Can you
12 speak up, please?

13 THE WITNESS: Yes, ma'am.

14 THE COURT REPORTER: Thank you.

15 Q So you had a small scrape on your knee, right?

16 A Yes, ma'am.

17 MS. DIAZ: May I approach?

18 THE WITNESS: Yes.

19 THE COURT: Yes, ma'am.

20 Q I'll show you, again, your injury, right?

21 A Yes, ma'am.

22 Q Okay. Now, it's just a little skin, right?

23 A It's a scrape.

24 Q Uh-huh. It's just a little skin. So you couldn't
25 say for sure how you got this injury, correct?

- 1 A I couldn't specifically say if it was from his
2 vehicle, my vehicle, or the concrete -- or the
3 asphalt that was underneath me.
- 4 Q So maybe it came from some part of this incident,
5 correct?
- 6 A It came from this incident, yes, ma'am.
- 7 Q You later cleaned this scrape, right, with an
8 alcohol swab?
- 9 A Yes, ma'am.
- 10 Q And that's how you treated this injury?
- 11 A Yes, ma'am.
- 12 Q You didn't need EMS?
- 13 A No, ma'am.
- 14 Q Now, you're the one, as you said earlier, who
15 charged Mr. Shank, correct?
- 16 A Yes, ma'am.
- 17 Q Okay. You issued the citations?
- 18 A Yes, ma'am. I did.
- 19 Q So you issued him a citation for that failure to
20 stop for the blue light, correct?
- 21 A That was after I had issued one for the hit and run
22 that was voided out.
- 23 Q Well, that was my question.
- 24 A Yes, ma'am.
- 25 Q So you did -- initially you charged Mr. Shank with

- 1 hit and run and property damage, right?
- 2 A With hit and run, yes, ma'am.
- 3 Q We spoke earlier, and you said that you were kind
4 of -- you had exams and things like that on legals
5 courses, right?
- 6 A Yes, ma'am.
- 7 Q And on the elements of charges?
- 8 A Yes, ma'am.
- 9 Q Would you agree that the elements of hit and run
10 with property damage are that someone was driving
11 the vehicle, right?
- 12 A Yes, ma'am.
- 13 Q That vehicle was involved in an accident?
- 14 A Yes, ma'am.
- 15 Q There's -- the result was that there was property
16 damage to the vehicle, correct?
- 17 A There was property damage, yes, ma'am.
- 18 Q And then the last element would be the driver
19 flees?
- 20 A And failure to render aid.
- 21 Q Yes. Okay. So you later voided that citation,
22 correct?
- 23 A Per the recommendation of the Minister of the
24 Court, yes, ma'am.
- 25 Q Per recommendation. You then obtained that warrant

1 for the assault and battery in a high and
2 aggravated nature, right?

3 A I got the warrant for the assault and battery in a
4 high and aggravated, because the judge wasn't in
5 the office at the time of the incident for me to
6 obtain said warrant.

7 Q And someone advised you to charge him with this hit
8 and run, correct? I mean -- I'm sorry -- advised
9 you to charge the assault and battery, correct?

10 A No, ma'am. That was per my annum.

11 Q You just -- I believe you just said that somebody
12 had advised you -- or a supervisor had advised you
13 to void that?

14 A No. The Minister of the Court advised me to void
15 the ticket for hit and run instead, and then issue
16 one for failure to stop for blue lights, second
17 above. There were intentions to obtain a warrant
18 for assault and battery aggravated -- excuse me --
19 high and aggravated was already --

20 Q But --

21 A -- supposed to be done, but the Minister of the
22 Court wasn't in the office at that time to get the
23 warrant.

24 Q So you did not get that until the next day?

25 A I couldn't, no, ma'am.

1 MS. DIAZ: I beg the Court's indulgence.

2 I have no further questions.

3 THE COURT: Any redirect?

4 MR. MILLER: Just very, very briefly, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. MILLER:

8 Q Detective Elder, we keep talking about the scrape.
9 How do you know it wasn't there before this
10 incident?

11 A So that was my second working day out of two days.
12 Being that it was in August, I am somebody that has
13 a very bad problem with sweating. So per my --
14 every day I take a shower. When taking that
15 shower, it's something that I would have observed
16 on my knee prior to starting my shift or coming in
17 for duty.

18 Q Okay. And when was that photo taken?

19 A That photo was taken, not immediately following the
20 incident, but I believe within 30 minutes.

21 Q Okay. Were you still in that cul-de-sac area?

22 A Yes. I was still in the cul-de-sac on Cowan Court.

23 Q Okay. And the dent in the rear of your vehicle,
24 was that caused by the Defendant's door?

25 A Yes. Well, excuse me, I don't know if it was

1 caused from the door or the vehicle itself. At
2 that point in time, I was on the ground. I didn't
3 physically see which part of the vehicle, but it
4 was caused by a part of his vehicle.

5 Q Okay. And where would your body have been in
6 relation to that when -- after you were knocked
7 down?

8 A The closest part of my body that would have been,
9 that would have been my head as the vehicle came
10 back, and I was just in between the two vehicles.

11 Q Okay.

12 MR. MILLER: No further questions from the
13 State.

14 THE COURT: (To Ms. Diaz) Anything further
15 from this witness?

16 MS. DIAZ: Just brief redirect (as spoken),
17 Your Honor.

18 RE CROSS-EXAMINATION

19 BY MS. DIAZ:

20 Q So the Defendant didn't swerve to hit you after the
21 door collision, correct?

22 A Prior to the vehicle striking -- or his door being
23 opened and striking my door, it was just coming
24 straight towards me and my vehicle.

25 Q You testified earlier that -- well, we discussed

1 this, but that you didn't -- that he did not swerve
2 to hit you after the collision with the doors?

3 A So when the doors struck, he was going straight.

4 Q Uh-huh.

5 A I can't say he turned the wheel to strike me.

6 However, I was struck by my door -- by his door.

7 MS. DIAZ: Thank you.

8 THE COURT: Thank you, Officer. You can step
9 down.

10 (WHEREUPON, the witness was excused.)

11 MR. MILLER: And, Your Honor, I'm being told
12 our next witness is en route and should be
13 here in ten minutes at most.

14 THE COURT: All right. We'll go ahead and
15 take a break then.

16 Mr. Bailiff, would you take our jury to
17 the jury room for a short break.

18 (WHEREUPON, the jury was excused at 2:45
19 p.m.)

20 THE COURT: All right. We'll be in
21 recess.

22 (Off the record from 2:46 p.m. until
23 3:04 p.m.)

24 THE COURT: (To the State) We ready?

25 MR. MILLER: Yes, Your Honor. Our next

1 witness is here.

2 THE COURT: (To the Bailiff) All right.

3 Let's get our jury.

4 (WHEREUPON, the jury enters open court at
5 3:06 p.m.)

6 THE COURT: All right. State, call your next
7 witness.

8 MR. MILLER: Your Honor, the State would call
9 Officer Burdette to the stand.

10 THE CLERK: Sir, would you please pause at the
11 end of the bench? Place your left hand on the
12 Bible, and raise your right hand.

13 (WHEREUPON, the witness was sworn.)

14 THE CLERK: Thank you. Please be seated.

15 THE WITNESS: Your Honor.

16 THE CLERK: And would you please state your
17 name for the record?

18 THE WITNESS: Sergeant Jeffery Burdette,
19 Greenville City Police Department.

20 THE CLERK: Thank you, sir.

21 DIRECT EXAMINATION

22 BY MR. MILLER:

23 Q And, Sergeant Burdette, what's your current role at
24 the police department?

25 A My role is a patrol sergeant for the 400 Platoon on

1 operations.

2 Q Okay. And how long have you been in that position?

3 A About a year now.

4 Q Okay. And what did -- what were you doing before
5 then?

6 A I was with the K9 unit for approximately eight
7 years. And then before that, patrol for
8 operations.

9 Q Okay. What is your total time and experience in
10 law enforcement?

11 A Fourteen years.

12 Q Okay. Were you on duty on August 25th, 2020?

13 A Yes, sir.

14 Q Okay. And did you respond to an incident around
15 the Cowan Court area?

16 A Yes, sir. In reference to a stolen vehicle.

17 Q Okay. And what did you first see when you arrived?

18 A When I arrived on that particular street, I saw
19 Officer Elder already, I believe, conducting a
20 felony car stop. I did see the stolen vehicle in
21 motion in reverse coming back towards me. At that
22 time, I did have a recruit in the car, which was
23 Officer Odom. So to make sure he was safe and
24 myself, I backed out of the way, and then the car
25 continued past me; and then I became what we call

1 the "primary unit," the main car behind the stolen
2 vehicle.

3 Q Okay. When you got there, had the stolen vehicle
4 already passed Officer Elder's vehicle?

5 A I believe so.

6 Q So did you see them make contact, or no?

7 A I don't recall them making contact. I recall
8 something Officer Elder stated on the radio that,
9 "He hit me," or some sort of language.

10 Q After the Defendant's vehicle passed you, what did
11 -- what did you do?

12 A I turned around and began, with all the emergency
13 equipment, blue lights and sirens on, and began to
14 pursue the vehicle, which the passenger door was
15 open, so I was under the assumption there was
16 another occupant that likely fell out of the car,
17 as well.

18 Q Okay. And was your vehicle fully marked?

19 A Yes. It was --

20 Q Okay.

21 A -- a 2000, I think, '17 or '18 Explorer.

22 Q And did the Defendant's vehicle, did -- did he stop
23 voluntarily once you got behind him?

24 A No, sir.

25 Q Okay. And what -- what occurred then?

- 1 A A pursuit occurred around the Nicholtown community
2 area, went through multiple streets. I -- I think
3 he did a roundabout at another dead-end. I can't
4 remember -- I can't remember the street. Then we
5 exited the Nicholtown community onto Laurens Road,
6 and then we went behind some businesses on Laurens
7 Road where the new barbecue and brewery spot is on
8 Laurens, the Charleston Place, went behind there.
9 He cut through the parking lot there, which I think
10 was in operation at the time, because I remember a
11 car backing out one of those parking spots, entered
12 back onto Laurens Road. At that time, our K9
13 officer, I think, took primary --
- 14 Q Okay.
- 15 A -- just for the pull over.
- 16 Q And did you ever lose sight contact of the vehicle?
- 17 A No. Not until I became secondary unit, behind our
18 K9, which he was driving a Tahoe, so I couldn't see
19 that.
- 20 Q Okay. And -- but were you able to see what
21 happened to the vehicle when the K9 unit was behind
22 it?
- 23 A Yes. He continued at a high rate of speed until
24 wrecking.
- 25 Q Okay. And where did he wreck?

- 1 A I don't know the particular street. It's right
2 before, basically, the entrance. If you take this
3 particular road that goes to Cleveland Park, right
4 there it flipped --
- 5 Q Okay.
- 6 A -- a couple of times.
- 7 Q After it wrecked, did you make contact with the
8 driver of the vehicle?
- 9 A Initially myself, K9 Officer Newman, and a bunch of
10 the other officers just get it done, as far as the
11 car stopped. Again, I deployed my patrol rifle at
12 that time and began to give verbal commands to the
13 driver, in which there was no movement, so we just
14 had to what we had until it was safe.
- 15 Q. Okay. Was the driver still in the vehicle?
- 16 A Yes, sir.
- 17 Q Okay. Did you see -- visually see yourself (as
18 spoken), the driver in the vehicle?
- 19 A As -- can you explain?
- 20 Q Did you walk up to the vehicle and see the driver
21 at any point?
- 22 A Yes. Yeah.
- 23 Q. Okay.
- 24 A He was sitting behind the -- the driver --
- 25 Q And do you see that individual in the courtroom

1 today?

2 A Yes. It's that gentleman right there (indicates).

3 Q Okay. Could you identify him with some form of
4 clothing or anything?

5 A The black male in the white shirt.

6 MR. MILLER: Okay. Your Honor, may the record
7 reflect the witness identified the Defendant.

8 Your Honor, may I approach quickly?

9 THE COURT: Yes, sir.

10 Q And, Sergeant Burdette, was your body-worn camera
11 active during that time?

12 A Yes, sir.

13 Q And you've had a chance to review this video?

14 A Yes, sir.

15 Q Is it a true and accurate depiction of what
16 happened?

17 A Absolutely.

18 MR. MILLER: Your Honor, at this point, the
19 State would ask for permission to publish.

20 THE COURT: What number is this?

21 MR. MILLER: This is State's Exhibit 8.

22 THE COURT: This is already into evidence.

23 Okay.

24 (WHEREUPON, the video, State's Exhibit
25 No. 8 was published.)

1 (Video played.)

2 Q Sergeant Burdette, what happened to your camera
3 there at the end?

4 A When I picked up -- I wear a collar-mount, so it
5 sticks out like this (indicates). So when I picked
6 the stop sign up and threw it, it knocked off, and
7 it was swinging on my back.

8 Q Okay. Was the Defendant able to get out of the
9 vehicle on his own?

10 A I don't believe so.

11 Q Okay. Was he taken by EMS or --

12 A Yes.

13 Q Okay. All of the incidents on this video, did that
14 all occur in Greenville County?

15 A Yes. Within the city limits.

16 MR. MILLER: (To the Court) I have no further
17 questions. (To the witness) Please answer
18 any the Defense may have.

19 THE WITNESS: Thank you.

20 THE COURT: Ms. Diaz?

21 CROSS-EXAMINATION

22 BY MS. DIAZ:

23 Q I want to get it right. You said you were a
24 sergeant now?

25 A I am.

- 1 Q Okay.
- 2 A Yes, ma'am.
- 3 Q I had a moment.
- 4 Okay. Sergeant Burdette, you've been in law
5 enforcement you said for about 14 years?
- 6 A Yes, ma'am.
- 7 Q Okay. You work for the City of Greenville Police
8 Department, correct?
- 9 A Yes, ma'am.
- 10 Q You've had a lot of training, right?
- 11 A Yes, ma'am.
- 12 Q You've went to the police academy?
- 13 A Yes, ma'am.
- 14 Q Just the South Carolina Police Academy, correct?
- 15 A Yes, ma'am.
- 16 Q Okay. And how long was that program?
- 17 A At the time I went, it was nine weeks.
- 18 Q Okay. And you graduated?
- 19 A Yes, ma'am.
- 20 Q And you passed all your exams?
- 21 A Yes, ma'am.
- 22 Q And they taught you things like I -- you spoke
23 earlier about how to drive your vehicle, correct?
- 24 A Yes, ma'am.
- 25 Q Okay. How to de-escalate situations?

- 1 A Yes, ma'am.
- 2 Q How to -- you took a legals course, I'm sure?
- 3 A Yes, ma'am.
- 4 Q Okay. And you learned how to charge defendants,
5 correct?
- 6 A Yes, ma'am.
- 7 Q Written lots of reports in your time; have you not?
- 8 A Yes, ma'am.
- 9 Q Would you say hundreds?
- 10 A There's not a number to count.
- 11 Q I was going to say thousands --
- 12 A Yeah.
- 13 Q -- ballpark? Okay. And these reports are always
14 supposed to be, you know, pretty accurate, right?
- 15 A Yes, ma'am.
- 16 Q So accurate, right?
- 17 A Yes, ma'am.
- 18 Q Thorough?
- 19 A Yes, ma'am.
- 20 Q And complete?
- 21 A Yes, ma'am.
- 22 Q And they should be done pretty quickly, right?
- 23 A Depending on the case, yes, ma'am.
- 24 Q In most circumstances?
- 25 A Yes, ma'am.

- 1 Q You want to make sure it's fresh in your mind while
2 you're writing these reports?
- 3 A Yes, ma'am.
- 4 Q And it's fresh because people rely on them,
5 correct?
- 6 A Yes, ma'am.
- 7 Q Okay. People like the prosecution, right?
- 8 A Uh-huh.
- 9 Q Myself? You?
- 10 A Of course.
- 11 Q Okay. And these are all typically supposed to be
12 thorough, right?
- 13 A Yes, ma'am.
- 14 Q Accurate and complete?
- 15 A Yes, ma'am.
- 16 Q And did you do this in this case?
- 17 A (No response.)
- 18 Q Did you pretty soon after write the report in this
19 case?
- 20 A Yes, ma'am. I mean, roughly --
- 21 Q So everything was still fresh?
- 22 A Yes, ma'am.
- 23 Q Pretty accurate?
- 24 A Within that -- within that patrol hour, yes, ma'am.
- 25 Q And you said you took a legals course, right?

1 A Yes, ma'am.

2 Q And you learned how to charge officers -- I mean --

3 excuse me -- charge --

4 A I -- I'll charge officers too. The --

5 Q Yes. Yes. There you go.

6 A Yes, ma'am.

7 Q But you were trained how to, I guess, properly

8 charge any suspect?

9 A Yes, ma'am.

10 Q Okay. The Defendant in this case was driving

11 pretty erratically, right?

12 A Absolutely.

13 Q Okay. And, at some point in this, it appears that

14 the suspect might actually hit your vehicle, right?

15 A Yes, ma'am.

16 Q Okay. And you swerved out of the way, right?

17 A Correct.

18 Q Okay. Because it appeared like you --

19 A Well, I backed out of the way, yes, ma'am.

20 Q But he was going to hit you, is --

21 A Yes, ma'am.

22 Q -- what you're --

23 A That's what I --

24 Q -- you thought?

25 A -- I thought was going to happen.

- 1 Q Because he wasn't getting out of your way, right?
- 2 A Correct.
- 3 Q Okay. You saw the Defendant hit another patrol
4 vehicle, right? Not Officer Elder's?
- 5 A No.
- 6 Q Okay. So not his patrol vehicle, correct --
- 7 A Correct.
- 8 Q -- Officer Elder?
- 9 But you watched him hit another patrol
10 vehicle?
- 11 A Correct.
- 12 Q A secondary patrol vehicle?
- 13 And no one charged the Defendant with assault
14 and battery, high and aggravated, for hitting that
15 patrol vehicle, correct?
- 16 A I'm not aware.
- 17 Q Okay. You didn't charge him with anything,
18 correct?
- 19 A No, ma'am.
- 20 Q Okay. It's your understanding that there are --
21 that no one charged this Defendant with assault and
22 battery, or any charges, for hitting that other
23 patrol vehicle?
- 24 A I'm not aware of what any other officers did, no,
25 ma'am.

1 MS. DIAZ: (To the Court) No further
2 questions.

3 THE COURT: Any redirect?

4 MR. MILLER: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. MILLER:

7 Q Sergeant Burdette, was -- there was some -- was
8 there someone else in the vehicle with you that
9 day?

10 A Yes. At the time there was a training officer,
11 Officer Baker Odom.

12 Q Okay. And did that factor into your decision to
13 kind of back away then?

14 A Yes. Because they would have struck the passenger
15 door, which Officer Odom was sitting in --

16 Q Okay.

17 A -- in the passenger seat.

18 MR. MILLER: No further questions, Your Honor.

19 THE COURT: Okay. (To the State and Ms. Diaz)
20 Anything further from this witness? (To the
21 witness) Thank you, Officer.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You can step down.

24 (WHEREUPON, the witness stepped down.)

25 MR. MILLER: Your Honor, if the Defense has

1 any objection, can he be excused?

2 THE COURT: (To Ms. Diaz) Any objection to
3 this witness being excused?

4 MS. DIAZ: No, Your Honor.

5 THE COURT: Thank you, Officer. You are
6 excused.

7 THE WITNESS: Thank you, Your Honor.

8 (WHEREUPON, the witness was excused.)

9 MR. MILLER: Your Honor, at this point, the
10 State would rest.

11 THE COURT: Okay. All right. Mr. Bailiff,
12 would you take our jury to the jury room,
13 please?

14 (WHEREUPON, the jury was excused at 3:25
15 p.m.)

16 THE COURT: All right. (To all Counsels) The
17 State has rested. Are there any motions?

18 MR. NEELY: Judge, at this time, the Defense
19 is going to move for a directed verdict as to
20 the assault and battery of a high and
21 aggravated charge. And if I may approach,
22 Your Honor?

23 THE COURT: Yes, sir. All right. Thank you.
24 Yes, sir?

25 MR. NEELY: Thank you, Your Honor. If it

1 please the Court. Your Honor, the evidence
2 that the State has put before the Court
3 indicates that the intention of Mr. Shank on
4 August 25th of 2020, was to evade law
5 enforcement.

6 As soon as Officer Elder's blue lights
7 were turned on, Mr. Shank increased his rate
8 of speed and drove erratically for a period
9 of, I believe, the -- the State said in their
10 opening, six to seven minutes. That included
11 going down Cowan Court, which is a cul-de-sac,
12 where Mr. Shank did stop for a brief period,
13 while the passenger door was open.

14 What happened and what we see on the
15 video -- so what is in evidence before the
16 Court -- is the Defendant backed that car up
17 in reverse, go to the left of the officer's
18 patrol vehicle, misjudged the door, and his
19 door made contact with the door of the police
20 officer.

21 That officer testified that he was laying
22 on the ground. He also testified that at no
23 point did Mr. Shank swerve to try and cause
24 injury to him. He also testified to the Court
25 that the injury was caused by him being

1 knocked back by his patrol vehicle door when
2 the passenger door, opened by the passenger,
3 was opened.

4 We also have testimony that there were
5 two other patrol vehicles on that road, on
6 Cowan Court, that the Defendant did not
7 strike.

8 Officer Burdette just testified to the
9 Court, the last witness for the State, that it
10 appeared that the Defendant was driving
11 towards him, and he was able to get out of the
12 way. He also testified that the Defendant
13 struck a different patrol vehicle on that day,
14 and he was not charged with assault and
15 battery of a high and aggravated nature for
16 that instance.

17 And the last thing we see on the video is
18 the Defendant striking a stop sign and
19 crashing his car.

20 All of the State's evidence tends to
21 indicate that what Mr. Shank was intending --
22 intending to do, what his criminal intent was,
23 what his mens rea was on the date of August
24 25th, was to evade law enforcement and to not
25 stop for the blue lights. That's what his

1 criminal intent was on that day.

2 The case that I just handed up to the
3 Court is "State v. Bryant," which is a
4 transferred intent case where a -- where the
5 defendant, Bryant, was resisting arrest, and
6 during the tussle while resisting, slammed the
7 police officer into the hood of a patrol car,
8 and they also charged Mr. Bryant with
9 malicious injury to property.

10 And the Court said that he did not have
11 the requisite mens rea for the malicious
12 injury charge, and the verdict should have
13 been directed in his favor, because his intent
14 at that time was to resist arrest.

15 Same thing in this case, Your Honor. All
16 of the evidence tends to indicate that what
17 Mr. Shank was doing on the date of August 25th
18 was avoiding law enforcement. And the State
19 does not get to transfer that intent to the
20 assault and battery of a high and aggravated
21 nature. And they have put no -- put forward
22 no evidence to this Court of his intent to
23 actually injure -- to actually injure the
24 officer on that day.

25 In the alternative, if the Court

1 disagrees with me on that argument, I also
2 think the Court should direct a verdict as far
3 as the high and aggravated nature charge goes
4 and send back an assault and battery, third
5 degree, to the jury.

6 Assault and battery of a high and
7 aggravated nature requires great bodily
8 injury, which is an injury which -- which
9 causes substantial risk of death or causes
10 serious permanent disfigurement or protracted
11 loss or impairment of the function of a bodily
12 member or organ.

13 The testimony that's before the Court is
14 the injury to this police officer was a
15 scraped knee that was treated with an alcohol
16 swab. This injury doesn't even rise to the
17 level of a -- of an assault and battery in the
18 second degree, which would require moderate
19 bodily injury. This is an injury that in any
20 other circumstance would rise to an assault
21 and battery in the third degree.

22 I haven't heard from the State yet, but
23 it's my anticipation that they're going to
24 say, "Well, we're coming under the part of the
25 statute that says . . ." Or "in a manner that

1 could have caused that."

2 We're not in imagination land. We don't
3 have to -- to use our imagination as to what
4 could have happened, because we actually know
5 that injury that Officer Elder suffered on
6 that day. And if we were going to always use
7 our imagination and say, "Well, this could
8 have happened, or this could have happened,"
9 then the legislature could have gotten rid of
10 assault and battery, third, could have gotten
11 rid of assault and battery, second, and could
12 have gotten rid of assault and battery in the
13 first degree, and everything would be an
14 assault and battery of a high and aggravated
15 nature, because anytime somebody takes a swing
16 at another person, death or serious bodily
17 injury could occur.

18 But the legislature put in the statute
19 the provisions about the injuries that did
20 occur. And the evidence before the Court is
21 that this is a scraped knee treated with an
22 alcohol swab.

23 So our first argument for directed
24 verdict, Judge, is that the criminal intent,
25 the mens rea that Mr. Shank had on the day

1 that this happened, was to flee law
2 enforcement, and that he did not possess the
3 requisite mens rea for an assault and battery
4 charge of any degree.

5 And if the Court disagrees, in the
6 alternative, we believe that the correct
7 charge to go back to the jury is an assault
8 and battery in the third degrees.

9 Thank you, Your Honor.

10 THE COURT: (To Mr. Neely) Thank you. The
11 State's response?

12 MR. MILLER: Yes, Your Honor. As to the
13 assault and battery of a high and aggravated
14 nature, I think it's clear that there is in
15 evidence that there was an injury. Also, a
16 vehicle was used; this officer was knocked
17 down. He testified to how close his vehicle
18 was to running over him, how much worse this
19 could have been. There is also the damage to
20 the rear of his vehicle, where it continued
21 all the way down. And he's in this small
22 space and able to touch the car and also
23 knocked down by it.

24 So you have an injury. And I think it's
25 clearly a question for the jury whether this

1 is accomplished by means that could cause
2 death or grave bodily injury. I think that's
3 clearly a question for the jury here.

4 As to the intent, I would say his intent
5 is to get away. If he had the intent to hit
6 Officer Elder with his vehicle, that would
7 make this an attempted murder. That's a
8 specific intent crime. He -- this -- he just
9 has to have the intent to drive the vehicle in
10 that direction, whatever his purpose is, and
11 make contact, which he clearly did. He does
12 not have to intend the consequence of his
13 action, but he has to intend that action.

14 Your Honor, and based on that, I believe
15 there is ample evidence to support the assault
16 and battery of a high and aggravated.

17 THE COURT: Well, I -- Counsel, as -- as each
18 of you know, in determining a motion for
19 directed verdict, the Court is concerned only
20 with the existence of evidence, not the
21 weight. And I also have to consider the
22 evidence, or lack thereof, in a light most
23 favorable to the State in a motion for
24 directed verdict.

25 So in this particular case, I find the

1 State has produced evidence to support the
2 charge. And -- and I would call your
3 attention to Subsection B, "The act is
4 accomplished by means likely to produce death
5 or great bodily injury."

6 The -- the actual injury is not all that
7 the statute entails. It -- the legislature
8 used the word -- the words "likely to
9 produce." So that's a question of fact.
10 That's a -- that's a jury question.

11 And, Mr. Neely, I believe the -- the bulk
12 of your arguments go toward the weight of the
13 evidence rather than the existence of the
14 evidence. So I'm going to deny the
15 Defendant's motion for a directed verdict at
16 this time.

17 And I also would find that -- I would
18 find that there is evidence to support his
19 particular offense, but I appreciate the case
20 that you handed up and -- and your arguments,
21 so . . .

22 MR. NEELY: Thank you, Your Honor.

23 MR. MILLER: Thank you, Your Honor.

24 THE COURT: All right. Let me do this --
25 okay. All right. Ms. Diaz and Mr. Neely,

1 would you have your client stand?

2 MR. NEELY: And, Your Honor, I believe you're
3 about to ask him about his Fifth Amendment
4 rights. If we can have about five minutes to
5 review that thoroughly with him. We've had
6 the conversation, but I don't believe we've
7 reached a --

8 THE COURT: Okay. Let -- let me explain the
9 right, and then I'm going to let you go off
10 the record and talk to him --

11 MR. NEELY: Thank you, Your Honor.

12 THE COURT: -- about it.

13 So, Mr. Shank -- Madam Clerk, would you
14 put Mr. Shank under oath?

15 THE CLERK: Sir, please raise your right hand.

16 (WHEREUPON, the Defendant was sworn.)

17 THE COURT: Mr. Shank, at this time I'm going
18 to explain to you some of your rights. If you
19 do not understand anything that I say, please
20 let me know, and I will explain it in more
21 detail. If you answer the question, I will
22 assume that you understood the question. Do
23 you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: We've reached the stage in the

1 trial where you may present your defense. You
2 have the right to claim the protections given
3 to you by the Fifth Amendment to the
4 Constitution of the United States.

5 This amendment states in part, "No person
6 shall be compelled in any criminal case to be
7 a witness against himself." That means you
8 cannot be required to testify in this case.
9 On the other hand, you have the right to
10 testify on your own behalf, should you choose
11 to do so. However, no one can make you
12 testify. This is a personal right, and no one
13 can waive this right except you.

14 If you decide to testify, you will be
15 subject to the same rules that govern other
16 witnesses, and you may be examined and cross-
17 examined on any relevant issue in this case.

18 In addition, if you have any convictions
19 involving dishonesty or false statement or for
20 crimes punishable by imprisonment for more
21 than one year, and this Court determines that
22 the probative value of admitting this evidence
23 outweighs its prejudicial effect to you, the
24 solicitor will be able to introduce your
25 record to attack your credibility.

1 If you decide to testify, this decision
2 on your part must be freely, voluntarily, and
3 intelligently made, with the knowledge of the
4 protections given to you by the Fifth
5 Amendment and the consequences of your
6 decision to testify.

7 If you decide not to testify, I will
8 instruct the jurors that they cannot give the
9 fact that you did not testify any
10 consideration, whatsoever, and that there is
11 to be absolutely no prejudice to you because
12 you did not testify.

13 It is left entirely up to you whether or
14 not to testify. You may talk to your
15 attorneys, your family, friends, or anyone
16 else, but the final decision will be left
17 entirely up to you.

18 Do you understand what I've explained to
19 you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Well, so I'll -- what I'm
22 going to do is I'm going to let you go off the
23 record for a minute so you can discuss this
24 with your attorneys, and then you can inform
25 me of your decision.

1 MR. NEELY: Thank you, Your Honor.

2 (Off the record from 3:38 p.m. until
3 3:42 p.m.)

4 THE COURT: Mr. Shanks, have you had enough
5 time to discuss this with your attorneys?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: I choose not to.

9 THE COURT: Okay. Anything for the record,
10 Ms. Diaz or Mr. Neely?

11 MR. NEELY: No, Your Honor.

12 MS. DIAZ: No, Your Honor.

13 THE COURT: Does the Defense have any
14 witnesses that they're gonna call?

15 MR. NEELY: We rest, Your Honor.

16 MS. DIAZ: Yes.

17 THE COURT: Well, I'll let you rest on the
18 record. Before -- now, let's talk about --
19 Mr. Shank, you -- you can be seated.

20 Let's talk about charges. I have
21 standard -- standard charges. I'll just go
22 over them -- just go over them with you. I
23 have charge on responsibility of the -- the
24 judge and jury. I have charge on reasonable
25 doubt, direct and circumstantial evidence,

1 presumption of innocence, credibility of
2 witnesses. I've got a charge on the failure
3 of the Defendant to testify, charge of arrest
4 and indictment not being evidence in the case,
5 and then we have the case-specific statutes.
6 Assault and battery of a high and aggravated
7 nature, which is covered under the statute in
8 which you're under, also, the failure to stop
9 for a blue light, and failure to -- the
10 possession of -- the use of vehicle without
11 permission.

12 So are there other case-specific charges
13 that -- that either side would request?

14 MR. NEELY: The Defense would request the
15 charge on assault and battery in the third
16 degree based on the testimony of the specific
17 injury, Your Honor.

18 THE COURT: Or a lesser included offense?

19 MR. NEELY: Lesser included, yes, sir.

20 THE COURT: Okay. All right. Any charges
21 requested by the State? Anything for the
22 record by the State?

23 MR. MILLER: There are no charges requested by
24 the State, just the indictments, Your Honor.

25 THE COURT: Okay. All right. Does the State

1 want to be heard on the issue of a lesser
2 included offense?

3 MR. MILLER: Your Honor, I -- the State would
4 object to a lesser included. I believe the
5 evidence supports sort of this or,
6 essentially, or nothing. There -- in the
7 testimony, there is an injury, and we submit
8 by all the evidence it goes towards that
9 rather than the offer of attempt to injure.

10 MR. NEELY: Again, Judge, the evidence is that
11 if there is an offer of attempt to injure,
12 that injury is a scraped knee, treated by an
13 alcohol -- or by an alcohol swab.

14 Again, so the question for the jury is:
15 Does that level rise to an A&B, third, or an
16 ABHAN? But I do think the lesser included is
17 appropriate in this case based on the nature
18 of the injury.

19 THE COURT: But, now, the State is proceeding
20 under the second prong of ABHAN, which the
21 means use was likely to produce.

22 MR. NEELY: Well, Your Honor, the indictment
23 that was handed up had -- they -- and this is
24 the problem with our notice with -- with the
25 way we do indictments in this state, is that

1 they have indicted him for the entire assault
2 and battery of a high and aggravated nature of
3 the statute, which includes injuries specific
4 -- which includes Subsection A, which is the
5 injury-specific provision. And if we're going
6 off of that, which is what we're on notice for
7 trial of, an assault and battery, third, is
8 appropriate, because the testimony before the
9 court is a scraped knee treated with an
10 alcohol wipe.

11 THE COURT: Well, the indictment uses -- it
12 quotes a statute, "or the act was accomplished
13 by means likely to produce death or great
14 bodily injury."

15 MR. NEELY: I -- I agree, these are the order,
16 Your Honor, but they've done the entire
17 statute. They -- they didn't pick a horse and
18 ride it all the way to the finish line; they
19 kind of done both. And so, because they've
20 done both, I do believe that the A&B, third,
21 is appropriate.

22 THE COURT: Based on the testimony in the
23 case, and the State is producing -- is -- the
24 State is proceeding on the -- the second part
25 of the statute that they're alleging that this

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4:02 p.m.)

THE COURT: Okay. All right. Let's get our -- let's get our jury. And I'll let y'all formally rest on the record when the jury comes in.

MS. DIAZ: Okay. Thank you, Your Honor.

MR. NEELY: Your Honor, are we going to send the jury back out to renew directive verdict? Or -- or do you want me to do it as part of --

THE COURT: You can just renew -- just say -- just renew your motion for the record without -- there's no need to go in any more detail than that.

MR. NEELY: Thank you, Your Honor.

THE COURT: That'll protect you on the record.

(WHEREUPON, the jury came into open court at 4:04 p.m.)

THE COURT: Ladies and gentlemen, the State has rested.

MR. NEELY: Thank you, Your Honor. May it please the Court. Your Honor, at this time, the Defense rests. We renew our previous directive verdict motion.

THE COURT: And the Court's ruling would be the same.

1 MR. NEELY: Thank you, Your Honor.

2 THE COURT: Noted for the record.

3 So, ladies and gentlemen, the Defense has
4 rested, as well. That ends the evidentiary
5 stage of this trial. Next stage will be
6 closing arguments by the attorneys.

7 So is the State ready to proceed?

8 MR. MILLER: Yes, Your Honor. Thank you, Your
9 Honor.

10 CLOSING ARGUMENTS

11 MR. MILLER: Ladies and gentlemen of the jury,
12 that is -- that's everything. That's all the
13 evidence you'll see in this case here today.

14 And as I told you at the beginning, I'm
15 gonna come up here at the end and talk about
16 how those facts we presented fit the law at
17 issue.

18 Before we get into that, you will hear a
19 little bit in a minute about reasonable doubt
20 and what that means. Beyond a reasonable
21 doubt does not mean the absolute certainty.
22 It means the evidence leaves you firmly
23 convinced, or as a reasonable person, you
24 would hesitate to act. It's not a
25 mathematical certainty. It's, if you look at

1 this, you see it, you know what it is.

2 So to get into the laws today, there are
3 three charges before you to consider, and I
4 won't -- I won't harp on two of them too, too
5 long.

6 The first is the use of vehicle without
7 permission. As the Judge will read to you in
8 a minute, that means it's unlawful for a
9 person to take, use, or drive a vehicle
10 without the consent of the owner, and with the
11 intent to deprive the owner temporarily or
12 otherwise of the vehicle.

13 So what does that mean here? You heard
14 from Ms. Bullock. She told you that she let
15 the Defendant borrow her vehicle on August
16 19th, 2020, with the understanding it was
17 going to be returned the following day. It
18 wasn't returned. She couldn't get in touch
19 with him, couldn't get it back. Called around
20 and then eventually had to report it stolen.

21 Now, as the indictment you'll see alleges
22 that on August 25th this Defendant drove that
23 vehicle without Ms. Bullock's permission, and,
24 thereby, depriving her of the vehicle. It's
25 as simple as that. It's -- it's not overly

1 complicated on that one.

2 Now, failure to stop for a blue light.
3 It's the second charge, and as you might
4 think, it's almost exactly as -- how it
5 sounds. That is if you are signaled to stop
6 by a law enforcement officer using blue lights
7 or sirens and you fail to do so.

8 As you've seen in the videos and heard
9 from the testimony, I believe it's pretty
10 clear and I would say that the evidence proves
11 beyond a reasonable doubt that he knew the
12 officers were behind him, and he failed to
13 stop the vehicle.

14 That charge is also as simple as it
15 sounds. One thing you don't have to leave
16 behind when you come in here to serve as
17 jurors is your good common sense. That plays
18 into reasonable doubt. That is, if you look
19 at it, you see what it is.

20 Now, the final charge, it'll be a little
21 more contentious, and what I want to focus on
22 here a little bit. That's assault and battery
23 of a high and aggravated nature. Now, the
24 Judge will tell you in a minute what exactly
25 that means, but I was gonna put this here, so

1 maybe you can follow along. So we'll do it
2 kind of like we're back in school here.

3 (Mr. Miller shows South Carolina Code on
4 a projector.)

5 Under the South Carolina Code, "A person
6 commits assault and battery of a high and
7 aggravated nature or unlawfully injures
8 another person and either great bodily injury
9 results or the act is produced by means likely
10 to produce great bodily injury."

11 Now, I'll submit to you first, is an
12 injury. The statute does not say what degree
13 of injury. There just has to be an injury of
14 any kind. Ladies and gentlemen, I know they
15 look minor, but this is a photo of an injury
16 that happened right here, right on that video
17 you just saw. There's your injury.

18 Then, "by means likely to produce great
19 bodily injury or death." Now, what that means
20 is also defined in the statute. "Great bodily
21 injury" is one that causes substantial risk of
22 death or which causes serious, permanent
23 disfigurement or protracted loss of the
24 function of a bodily member or organ.

25 Now, Officer Elder -- and you can see it

1 on this video that he is standing right there
2 in the doorway of his car when this -- when
3 the Defendant's vehicle -- or Ms. Bullock's
4 vehicle, driven by the Defendant, comes right
5 at him. He takes a step back and then he is
6 hit. It's hard to tell exactly, hit by a
7 door, hit by his door, or that door, but he's
8 knocked to the ground. His firearm service
9 weapon is caught in between the doorframe
10 there and actually slams shut, and you can see
11 where it actually kind of damaged the
12 doorframe up there. It had such force.

13 I submit to you that if his hand was mere
14 centimeters further, he would have probably
15 lost the use of some of his fingers. But,
16 clearly, he was knocked to the ground. He
17 testified that his feet were right outside the
18 open door and his head was towards the back
19 quarter panel.

20 As he went by, part of that -- part of
21 the Defendant's vehicle made contact with that
22 rear quarter panel.

23 I submit to you it is sheer luck that
24 Officer Elder's upper body, arm, even his head
25 was not either right there where that dent

1 occurred, or right down here below this image
2 where the tires would have gone. Sheer
3 absolute luck that he left out of here with
4 only a scrape.

5 When you take a look at that video and
6 tell me -- there's -- there's not much of any
7 room there. Millimeters to either side, we
8 would have been dealing with, unfortunately,
9 great bodily injury or death. Thank goodness
10 Officer Elder can walk in here on his own and
11 has two working arms, but that is sheer luck.
12 That's what that means when it means -- says,
13 "Likely to cause substantial bodily injury or
14 death."

15 Now, you'll probably hear a little bit
16 about intent. Did he have the intent to hit
17 Officer Elder or just the intent to get away.
18 Now, I submit to you that for assault and
19 battery of a high and aggravated nature, he
20 does not have to intend to actually hit the
21 officer. He has to intend the act that causes
22 the injury. He had to intentionally put
23 that car in reverse and intentionally hit the
24 gas pedal. That's it. That's the intent. He
25 knows the officer is right behind him. He

1 knows that the officer is out of his vehicle,
2 yelling at them to get out. The passenger is
3 starting to follow the officer's directions.
4 He still puts it in reverse; he still hits the
5 gas pedal. There is your intent. There's an
6 intentional act, this officer was injured, and
7 it was by means likely to produce great bodily
8 injury.

9 Now, I encourage you to take a good look
10 at all of the evidence. If you want to watch
11 any of the videos, again, they have been
12 submitted into evidence.

13 And I'll leave you with one thing: If he
14 did have the intent to get away, I submit to
15 you, this Defendant didn't care what was in
16 the way. He didn't care that Officer Elder's
17 vehicle was in the way. He didn't care that
18 Officer Elder was in the way. He had the
19 intent to drive through whatever was in his
20 way. And that is all the intent you need for
21 assault and battery of a high and aggravated
22 nature.

23 I want to thank you so much for your
24 attention this afternoon, your patience with
25 us. Hopefully, we were able to get through

1 this efficiently while still giving you all
2 the information you needed. And I ask you to
3 come back with a verdict of guilty on all
4 three charges. Thank you.

5 THE COURT: Ms. Diaz?

6 CLOSING ARGUMENTS

7 MS. DIAZ: Avoiding, evading accident.
8 Avoiding, evading accident. None of those
9 things equal assault and battery of a high and
10 aggravated nature.

11 I told you in the beginning that this
12 trial was not about failure to stop for a blue
13 light, and it was not about the vehicle
14 charge. It was about the assault and battery.
15 It was about how my client did not have the
16 intent to hurt this officer in this case.

17 We talked about -- and you heard
18 testimony that the Defendant was driving
19 recklessly. Again, I told you that in the
20 beginning. And we also told you in the
21 beginning that his intent was to get away from
22 the -- from the officers. You've heard
23 testimony today that there were several
24 officers involved -- or several patrol
25 vehicles all got involved. All of these

1 patrol vehicles had their blue lights on.

2 You heard testimony today that none of --
3 or that the Defendant did not stop for any of
4 these blue lights. He failed to stop for the
5 blue lights.

6 Now, I want to talk about the actual
7 incident itself. You heard testimony and we
8 talked about having you watch the video that
9 showed that the passenger is the one who
10 opened the door. The passenger that Mr. Shank
11 had -- didn't know from Adam. He just, you
12 know, picked him up and was giving him a ride.
13 But the passenger is the one who opened the
14 door.

15 You also will see in the video -- or you
16 saw in the video that the Defendant tried to
17 swerve away from that situation. In the
18 beginning, I told you that it was a very
19 narrow road. It was a one-way -- or, I mean,
20 excuse me -- it was a dead-end road. He
21 couldn't go forward, so he went back. So he
22 swerved to get out of the way of Officer
23 Elder, unfortunately, he misjudged that door.
24 Again, he wasn't the one who opened the door.
25 He was avoiding Officer Elder, and he was

1 avoiding all of the other officers. He was
2 evading patrol vehicles.

3 And when you go back in the jury room, I
4 want you to watch that video closely of this
5 incident and see that you can see -- or -- and
6 look and see that you can -- that the
7 Defendant is swerving away from Officer Elder
8 in that moment. You can see that Officer
9 Elder, yes, touches the vehicle, and then you
10 can see the butt of that car swerving away
11 towards -- not towards the officer, but away
12 from the officer.

13 The Defendant doesn't come directly at
14 the officer as the State would have you
15 believe. He's not straight -- backed straight
16 into him. He is trying to go around him, and,
17 again, he misjudges that door.

18 The second video that you saw today --
19 there was two that you saw from Officer
20 Burdette -- kind of proves what I'm telling
21 you today. It does prove what I'm telling you
22 today, that Mr. Shank had every intention of
23 avoiding law enforcement, evading law
24 enforcement, and there was an accident that
25 happened. That -- you can see all of that in

1 the video. He is driving past all those
2 officers. He ends up in a crash to -- with no
3 other -- no one involved, just himself because
4 he is trying so desperately to avoid and evade
5 these officers.

6 Now, back to the injury, Officer Elder
7 did not need EMS. He did not need emergency
8 medical services to treat his wound, his
9 injury. He did not need to go the hospital;
10 he actually continued on his duty for the day.
11 So this injury obviously did not affect him to
12 the point where he could not continue to work
13 for the day. It was a scraped knee. Right
14 here (indicates). Kids get scraped knees.
15 Kids fall on the playground and get scraped
16 knees. I've got a million. It's just a
17 little skin, and it was cured by an alcohol
18 wipe. I had alcohol wipes in my purse during
19 COVID.

20 He had no intention of hitting this
21 officer. The door hit the door, yes, but that
22 not his intention. His intention from the
23 beginning was to get away from the law
24 enforcement. We believe that -- I mean,
25 everything you've seen today, all the

1 testimony says that.

2 You also heard testimony, with Officer
3 Elder, about how he originally -- or what he
4 originally charged this defendant with. You
5 heard that he originally charged him with hit
6 and run and property damage. I'm going to go
7 through those elements with you, again, that
8 we talked about earlier.

9 Okay. Either way, those elements are
10 that there was somebody driving a vehicle.
11 That vehicle hit another vehicle and there was
12 property damage and that person continued to
13 flee, right? Hit and run and property damage.
14 That was what he originally charged him with,
15 not assault and battery of a high and
16 aggravated nature. He swerved out of the way,
17 from not only Officer Elder, but he also
18 swerved out of the way of Officer Burdette,
19 did not hit Officer Burdette's car. You heard
20 testimony, too, that he hit another patrol
21 vehicle, right? Neither Officer Burdette, nor
22 that other officer, whose patrol vehicle was
23 hit, charged this Defendant with assault and
24 battery of a high and aggravated nature.
25 Three officers. Two vehicles hit. Only one

1 of them charges him with assault and battery,
2 even though he's hit the other one?

3 We -- you heard the Solicitor talk about
4 the burden of proof, correct? So, in this
5 case, it is guilt beyond a reasonable doubt.
6 That's the highest burden of proof we have.
7 Civil, it's a lesser verdict, but we are in
8 criminal, and that means that he needs to be
9 found -- or the State needed to have proved to
10 you that this Defendant is guilty beyond a
11 reasonable doubt that he assaulted and
12 battered this officer in a high and aggravated
13 nature. That's not a there's a chance of
14 guilt or there's -- maybe he's guilty. That
15 means that if there is a chance or a maybe in
16 your head, you can't find him guilty of that,
17 because you'd have to find him guilty beyond a
18 reasonable doubt. You will decide that;
19 that's your job, the highest level of burden
20 that we have in this country.

21 I also -- I know I touched on it, but I
22 want to clarify that it was up to the
23 prosecution to prove to you that this
24 Defendant was guilty. It was not us -- up to
25 us to prove to you that he was innocent. And

1 I submit to you today that they did not put
2 evidence -- enough evidence into this case --
3 or evidence into this case or testimony in
4 this case that proves that beyond a reason
5 doubt, he assault -- meant to assault and
6 batter this officer in a most high and
7 aggravated nature.

8 We're here. We are not living in
9 imagination land. You see the injury; you see
10 it. I mean, there's not a, "Oh. I wonder
11 what the injury was?" This is the injury, a
12 scraped knee. Just a little skin.

13 The Prosecutor talked about how he's
14 lucky and he's lucky and there's -- it's his
15 own luck that he didn't hurt this officer more
16 than a scraped knee. This isn't luck. It's
17 because his intention was not to hurt this
18 officer. His intention, the whole time, as
19 I've said from the beginning, was to avoid and
20 evade law enforcement.

21 I want to go back to the charges really
22 quick. You heard testimony today that --
23 again, that Officer Elder originally issued a
24 citation for hit and run, property damage.
25 And you've heard testimony today there was

1 actually -- he was basically peer-pressured
2 into that assault and battery charge. He
3 originally charged him with a hit and run and
4 then voided that one and said, "You know what,
5 after talking to the other officers, here,
6 we'll do this."

7 All of this is to say that from the
8 beginning, like I've said a million times,
9 this is not about the failure to stop. This
10 is not about the vehicle charge. This is
11 about the assault and battery. And they --
12 the prosecution -- (To Mr. Neely) can I see
13 that?

14 The prosecution showed you guys earlier,
15 which you will get back there, the statute for
16 assault and battery in a high and aggravated
17 nature. They talk about great bodily injury
18 to another person results, or -- and there's
19 an "or." And in this "or" is the act is
20 accomplished by means likely to produce death
21 or great bodily injury. This is not great
22 bodily injury. This is not moderate injury.
23 This is a scraped knee. Again, children get
24 scraped knees.

25 Today, I'm asking you to find that

1 this -- or to find that this Defendant is not
2 guilty of this assault and battery in a high
3 and aggravated nature. He did not have the
4 intent -- he never had the intent to assault
5 and batter this officer in this way. I told
6 you from the beginning what his intentions
7 were. You heard testimony today about his
8 intentions. Never was his intention to hurt
9 this officer. Could have, yes. He would --
10 you know, could have, would have, but guess
11 what, he didn't. He didn't break -- or injure
12 this officer in a high and aggravated nature.
13 He ended up with a scraped knee that was
14 cleaned by an alcohol swab.

15 Again, we ask you to think about
16 everything that you've heard today, to rewatch
17 those videos. Watch the trajectory of the
18 cars. Watch that he is swerving away from
19 these officers in both of those videos. Think
20 about the testimony and think about everything
21 that we -- that has come out today and form
22 your own opinion. But we are asking you today
23 to not find -- or to find the Defendant not
24 guilty of that assault and battery of a high
25 and aggravated nature, because he never had

1 the required intent to do so, to injure that
2 officer.

3 Thank you, guys, very much for your time.

4 JURY CHARGE

5 THE COURT: Ladies and gentlemen, we have come
6 to the point in the trial where I instruct you
7 on the law. My instructions will be somewhat
8 lengthy; they'll be in three parts.

9 First, instructions that define and
10 control the jury's duties to general rules.
11 The second, the instructions that state the
12 rules of law that you must apply; what the
13 State must prove to make its case. And
14 lastly, some rules for your deliberations.

15 The general rules begin with your duties
16 as jurors. It is your duty to find the facts
17 from all of the evidence in the case. To
18 those facts, you must apply the law as I give
19 it to you. You shall not be concerned with
20 what the law should be, but what it is. And
21 you must not be influenced by any personal
22 likes or dislikes, opinions, prejudices, or
23 undue sympathy. That means that you must
24 decide the case solely on the evidence before
25 you in accordance with the law. The very

1 thing you took an oath promising to do at the
2 beginning of the trial.

3 It is your responsibility and yours alone
4 to determine the facts of this case. I would,
5 therefore, charge you that if, during the
6 course of this trial or during this charge you
7 have been given or left with the impression or
8 feeling that I have a personal feeling about
9 the facts of the case or that I favor one side
10 or the other, I would specifically instruct
11 you to disregard that impression. Under our
12 Constitution, I am not allowed to have an
13 opinion about the facts of the case.

14 You should not be influenced by any
15 objections or the Court's ruling on them. You
16 and you alone are the judges of the facts.
17 You determine the facts by evaluating or
18 weighing the evidence that you have heard
19 during the trial.

20 What is evidence? Evidence is the sworn
21 testimony from the witnesses and any exhibits
22 that were entered into evidence. The
23 statements by the attorneys are not evidence.
24 What they have said in opening statements,
25 closing arguments, and at other times is

1 intended to help you interpret the evidence,
2 but it is not evidence.

3 There are two types of evidence which are
4 generally presented during a trial: direct
5 evidence and circumstantial evidence. Direct
6 evidence directly proves the existence of a
7 fact and does not require deduction.
8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the
10 existence of a fact. Crimes may be proven by
11 circumstantial evidence.

12 The law makes no distinction between the
13 weight or value to be given to either direct
14 or circumstantial evidence. However, to the
15 extent the State relies on circumstantial
16 evidence, all the circumstances must be
17 consistent with each other, and when taken
18 together point conclusively to the guilt of
19 the accused beyond a reasonable doubt. If the
20 circumstances merely portray the Defendant's
21 behavior as suspicious, then the proof has
22 failed.

23 The State has the burden of proving the
24 Defendant guilty beyond a reasonable doubt.
25 The burden rests with the State regardless of

1 whether the State relies on direct evidence,
2 circumstantial evidence, or some combination
3 of the two.

4 As the judges of the facts, you are the
5 sole judges of the credibility, that is the
6 believability of the witnesses who have
7 testified in the case. In determining their
8 credibility, you may take into consideration
9 many things, such as: the appearance and
10 manner of the witness on the stand, sometimes
11 referred to as the demeanor of the witness.
12 Was the witness able to see, hear, or know the
13 things about which the witness testified? How
14 well was the witness able to recall and
15 describe those things? Did the witness have a
16 cause or reason to be biased and prejudice in
17 favor of the testimony he or she gave? How
18 reasonable was the witness's testimony
19 considered in the light of all the evidence in
20 the case? Was the witness's testimony
21 contradicted by what the witness has said or
22 done at another time or by the testimony of
23 other witnesses or by other evidence?

24 These are some of the factors that you
25 may consider in deciding whether to believe

1 testimony.

2 As jurors, you have the right to believe
3 all of the testimony of a witness or none of
4 the testimony of a witness. You have the
5 right to believe a portion of the testimony of
6 a witness and discard the rest. You may
7 believe the testimony of one witness over the
8 many or the many over the one. Most
9 certainly, you do not determine the matter of
10 credibility or the believe ability by simply
11 counting up the number of witnesses who may
12 have testified on behalf of the parties.

13 What is a reasonable doubt in the law? A
14 reasonable doubt is the kind of doubt that
15 would cause a reasonable person to hesitate to
16 act. Some of you may have served as jurors in
17 civil cases where you were told that it is
18 only necessary to prove that a fact is more
19 likely true than not true, such as by the
20 greater weight or preponderance of the
21 evidence.

22 In criminal cases, the State's proof must
23 be more powerful than that. It must be beyond
24 a reasonable doubt. Proof beyond a reasonable
25 is proof that leaves you firmly convinced of

1 the defendant's guilt. There are very few
2 things in this world that we know with
3 absolute certainty, and in criminal cases, the
4 law does not require proof that overcomes
5 every possible doubt.

6 If, based on your consideration of the
7 evidence you are firmly convinced that the
8 defendant is guilty of the crime charged, you
9 must find the defendant guilty. If on the
10 other hand, you think that there is a real
11 possibility that the defendant is not guilty,
12 you must give the defendant the benefit of the
13 doubt and find him not guilty.

14 A reasonable doubt may arise from the
15 evidence or from a lack of evidence. The
16 defendant is entitled to every reasonable
17 doubt that may arise in the case. If upon any
18 issue of fact essential to a conviction and a
19 verdict of guilty of an offense, if you have
20 any reasonable doubt as to how that issue
21 should be resolved, it is your duty to resolve
22 that doubt in favor of the defendant.

23 Suspicion, however strong, is not enough
24 to sustain a conviction. The evidence
25 presented by the State must be substantial

1 evidence that tends to prove the guilt of the
2 defendant beyond a reasonable doubt.

3 The defendant has pled not guilty to
4 these indictments and that plea puts the
5 burden on the State to prove the defendant
6 guilty. A person charged with committing a
7 criminal offense is never required to prove
8 himself innocent. I charge you that it is an
9 important rule of the law that a defendant in
10 a criminal trial, no matter what the
11 seriousness of the charge may be, will always
12 be presumed to be innocent of the crime for
13 which the indictment was issued, unless guilt
14 has been proven by evidence satisfying you of
15 that guilt beyond a reasonable doubt.

16 The presumption of innocence does not end
17 when you begin your deliberations, but it
18 accompanies the defendant throughout the trial
19 until you reach a verdict of guilt based on
20 evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is like a
23 robe of righteousness placed about the
24 shoulders of the defendant which remains with
25 the defendant until it has been stripped from

1 the defendant by evidence satisfying you of
2 the defendant's guilt beyond a reasonable
3 doubt.

4 The presumption of innocence is not a
5 mere legal theory. It is not just a legal
6 phrase. It is a substantial right to which
7 every defendant is entitled, unless you the
8 jury are satisfied from the evidence of the
9 defendant's guilt beyond a reasonable doubt.

10 In order to establish criminal liability,
11 criminal intent is required. For example, the
12 mental state required to be proven by the
13 State for a particular crime may be purpose
14 intent, knowledge or recklessness, or criminal
15 negligence. Criminal intent must be proven by
16 the State beyond a reasonable doubt. Criminal
17 intent is always a matter that must be
18 determined by the jury from the circumstances
19 surrounding the situation. There is no way to
20 prove intent to a mathematical certainty.
21 There's no way medical science can dissect a
22 person's brain and determine what that person
23 had in mind, so the law says that criminal
24 intent can be inferred from the circumstances
25 shown to have existed. This is how you make a

1 determination of whether or not the element
2 requiring intent was present.

3 It is not necessary to establish intent
4 by direct and positive evidence, but intent
5 may be established by inference in the same
6 way as any other fact by taking into
7 consideration the acts of the parties and all
8 the facts and circumstances of the case.

9 Criminal intent is a mental state, a
10 conscious wrongdoing. It is up to you to
11 determine what the defendant intended to do,
12 based on the circumstances shown to have
13 existed.

14 I instruct you and emphasize that the
15 fact that the defendant did not testify is not
16 a factor to be considered by you in any way in
17 your deliberation and in your consideration on
18 the question of guilt or innocence of the
19 defendant. It must not be considered by you
20 in any manner, whatsoever.

21 A defendant has the constitutional right
22 to remain silent, and the assertion of this
23 right must not be considered by you in your
24 deliberations. I repeat, under your oath, you
25 are to draw no conclusion, whatsoever, from

1 the fact that the defendant in this case did
2 not testify. The fact that this defendant did
3 not testify, should not even be discussed in
4 the jury room. The burden of proof, as I have
5 stated to you, is on the State. The defendant
6 is not required to prove his innocence. The
7 burden of proof remains on the State to prove
8 guilt beyond a reasonable doubt.

9 The indictments charge the Defendant with
10 assault and battery of a high and aggravated
11 nature, failure to stop for a blue light, and
12 failure -- and use of vehicle without
13 permission.

14 I remind you that the fact that the
15 defendant was arrested, charged, and indicted,
16 in this case is not evidence in this case and
17 cannot be considered by you as evidence of
18 guilt in this case nor does it create any
19 presumption or inference of guilt. These
20 documents are simply the formal written
21 instruments which contain the charges made
22 against the defendant. They are the formal
23 documents by which the case is brought to
24 court.

25 The defendant is charged with assault and

1 battery of a high and aggravated nature. The
2 State must prove beyond a reasonable doubt
3 that the defendant unlawfully injured another
4 person and great bodily injury to another
5 person resulted, or the act was accomplished
6 by means likely to produce death or great
7 bodily injury.

8 Great bodily injury is defined as bodily
9 injury which causes a substantial risk of
10 death or which causes serious permanent
11 disfigurement or protracted loss or impairment
12 of the function of a bodily member or organ.

13 The defendant is also charged of -- with
14 failure to stop a motor vehicle when signaled
15 by law enforcement officer, commonly known as
16 failure to stop for a blue light. The State
17 must prove beyond a reasonable doubt that the
18 defendant failed to stop when signaled by law
19 enforcement vehicle by means of a siren or
20 flashing light. An attempt to increase the
21 speed of a vehicle or any other matter avoid
22 pursuing law enforcement vehicle when signaled
23 by a siren or flashing light is prima facie
24 evidence of a violation of this section.

25 Okay. Failure to see the flashing light

1 or hear the siren does not excuse a failure to
2 stop when the distance between the vehicles
3 and other road conditions are such that it
4 would be reasonable for a driver to hear or
5 see the signals from the law enforcement
6 vehicle. That -- that's how that offense is
7 defined.

8 Finally, ladies and gentlemen, the -- the
9 defendant is charge with use of vehicle
10 without permission. The State must prove
11 beyond a reasonable doubt the following: It
12 is unlawful for a person not entitled to a
13 possession of a vehicle to take, use, or drive
14 a vehicle without the consent of the owner and
15 with the intent to deprive him temporarily or
16 otherwise of the vehicle or its possession.
17 So that's how that one is defined.

18 The State must prove each charge beyond a
19 reasonable doubt and all the elements of each
20 charge beyond a reasonable doubt.

21 Ladies and gentlemen, we're almost to the
22 point where I send you to the jury room. This
23 has been a long instruction on the law, but I
24 want to leave you with some final thoughts.
25 You were chosen as jurors in this case,

1 because both sides believed that you could be
2 fair and impartial in deciding this case. I
3 instruct you to make use of your life
4 experiences, your good common sense, and your
5 sense of logic and reason in evaluating the
6 evidence in this case.

7 You are not partisans or advocates for
8 either side. You have no friends to reward,
9 nor any enemies to punish. You are the judges
10 of the facts. Your sole interest is to
11 determine whether the State has proven beyond
12 a reasonable doubt that the defendant is
13 guilty of the offenses charged.

14 Be courteous with one another. Listen to
15 the views of your fellow jurors. Take the
16 amount of time necessary for you to thoroughly
17 evaluate the evidence. This case is important
18 to both sides, as this is their day in court.

19 So, Mr. Foreman, I'm gonna go over the --
20 the verdict form with you. It's a two-page
21 verdict form. And it says, "We the jury
22 unanimously find on the Indictment Number
23 2020-GS-23-1038, that the Defendant, Samir
24 Kevin Shank, is," and then it gives you two
25 options, "not guilty or guilty of assault and

1 battery of a high and aggravated nature."
2 When you have reached a verdict on that
3 charge, you will check the appropriate box.

4 The second one, "We the jury unanimously
5 find on Indictment Number 2020-GS-23-1037,
6 that the Defendant, Samir Kevin Shank, is,"
7 again, it gives you the same two options, "not
8 guilty or guilty of use of vehicle without
9 permission."

10 And then the second page, "We the jury
11 unanimously find on the Indictment Number
12 2020-GS-23-1036, that the Defendant, Samir
13 Kevin Shank, is," the same choices, "not
14 guilty or guilty of failure to stop for a blue
15 light."

16 As stated on the sheet, and I'll
17 reiterate, your verdict must be unanimous. So
18 once you have reached a unanimous verdict on
19 all three charges, whatever that verdict may
20 be, you will check the appropriate box, and,
21 Mr. Foreman, you will sign above your name on
22 the second page and date it. And you'll knock
23 on the door, and let the bailiff know you have
24 reached a verdict.

25 Now, I'm gonna send you to the jury room.

1 Do not begin your deliberations until I send
2 the verdict form and the exhibits back to the
3 jury room.

4 So, Mr. Bailiff, would you take our jury
5 to the jury room?

6 (WHEREUPON, the jury was excused at 4:39
7 p.m.)

8 THE COURT: Okay. Any exceptions from the
9 State?

10 MR. MILLER: Nothing from the State, Your
11 Honor.

12 THE COURT: Any exceptions from the Defense?

13 MR. NEELY: Yes, sir, Your Honor. I'm going
14 to renew my objection to the -- to our request
15 for the lesser included. And I understand the
16 Court's previous ruling, but what was charged
17 to the jury was the entire statute on the
18 assault and battery of a high and aggravated
19 nature, Subsection A and Subsection B. So I'm
20 going to renew my objection and my request.

21 THE COURT: The request for assault -- the
22 lesser included?

23 MR. NEELY: Yes, sir, Your Honor.

24 THE COURT: Okay. All right. Yes, sir.
25 Noted for the record, and that would be

1 denied.

2 MR. NEELY: Thank you, Your Honor.

3 THE COURT: Okay. All right. Let me have
4 both attorneys go forward -- or both defense
5 attorneys can if they want to, go forward,
6 count all the exhibits. Make sure all the
7 exhibits are there before we send them back to
8 the jury.

9 We got all our exhibits?

10 MR. NEELY: Yes, Your Honor. All exhibits are
11 there.

12 THE COURT: Okay. Here is the verdict form.
13 All right. Give that -- Mr. Bailiff, take the
14 verdict form and the exhibits back to the jury
15 room. Tell the jury -- the foreman that they
16 may begin their deliberations. Bring the
17 alternate back out here.

18 (WHEREUPON, alternate juror came into
19 open court at 4:43 p.m.)

20 THE COURT: Madam Alternate, you have made it
21 to the end, and all your fellow jurors made it
22 to the end. This wasn't a long trial, so your
23 service is finished for this trial. You're
24 welcome to stay if you're curious and want to
25 see how it turns out. If you need to leave,

1 you're free to do that, as well.

2 MS. MCGAHA: Thank you. I've invested my day.

3 I want to see what happens.

4 THE COURT: Okay. Well, you can.

5 MS. MCGAHA: Just tell me --

6 THE BAILIFF: Ma'am?

7 MS. MCGAHA: Just tell me where to go.

8 THE COURT: All right. So we'll -- we'll go
9 into recess. I want to thank Counsel for both
10 sides and very professional manner that --
11 that each of you've handled the case.

12 MS. DIAZ: Thank you, Your Honor.

13 MR. NEELY: Thank you, Your Honor.

14 (Off the record from 4:44 p.m. until
15 5:19 p.m.)

16 THE COURT: Let's go on the record. We've got
17 a question from the foreman. They want me to
18 read them the law again concerning high and
19 aggravated assault. So I'm going to have them
20 come back in here, and I'm going to read them
21 that statute again. Let's get our jury.

22 THE COURT REPORTER: Your Honor, would you
23 like me to go ahead and mark that, or no?

24 THE COURT: Oh, yeah.

25 THE COURT REPORTER: Okay.

1 THE COURT: Make a Court's exhibit out of it.

2 (WHEREUPON, jury question Number 2
3 regarding high and aggravated assault, it
4 is marked for identification as Court's
5 Exhibit No. 2.)

6 (WHEREUPON, the jury enters open court at
7 5:20 p.m.)

8 THE COURT: All right. Mr. Foreman, I am in
9 receipt of your note in which you requested
10 from -- the definition of the assault and
11 battery of a high and aggravated nature,
12 again.

13 MR. FOREMAN: Okay.

14 THE COURT: So I'm going to read you the
15 statute --

16 MR. FOREMAN: Thank you.

17 THE COURT: -- again. A person commits the
18 offense of assault and battery of a high and
19 aggravated nature if the person unlawfully
20 injures another person and great bodily injury
21 to another person results, or the act is
22 accomplished by means likely to produce death
23 or great bodily injury. Great bodily injury
24 means bodily injury which causes a substantial
25 risk of death or which causes serious,

1 permanent disfigurement or protracted loss or
2 impairment of the function of a bodily member
3 or organ. Those are the definitions and
4 elements of the offense. So, Mr. Foreman,
5 with that, I'm going to send you back to the
6 jury room and you may resume your
7 deliberations.

8 THE FOREMAN: Thank you.

9 THE COURT: All right.

10 (WHEREUPON, the jury was excused at
11 5:22 p.m.)

12 THE COURT: Anything from the State before we
13 go back into recess?

14 MR. MILLER: Nothing from the State, Your
15 Honor.

16 THE COURT: Anything from the Defense before
17 we go back into recess?

18 MS. DIAZ: Nothing from Defense, Your Honor.

19 THE COURT: Okay. We'll go back into recess.

20 (Off the record from 5:22 p.m. until
21 5:29 p.m.)

22 VERDICT

23 THE COURT: All right. Mr. Bailiff, do we
24 have a verdict?

25 THE BAILIFF: Yes, sir.

1 THE COURT: All right. Anything for me to
2 decide before we bring our jury back in?

3 MR. MILLER: Nothing from the State, Your
4 Honor.

5 MS. DIAZ: Nothing from the Defense, Your
6 Honor.

7 THE COURT: All right. Let's get our jury.

8 (WHEREUPON, the jury enters open court at
9 5:30 p.m.)

10 THE COURT: Mr. Foreman, has the jury reached
11 a verdict?

12 MR. FOREMAN: Yes, sir. We have.

13 THE COURT: All right. Would you hand that to
14 the bailiff, please, sir?

15 MR. FOREMAN: (Complies.)

16 THE COURT: Clerk, would you publish the
17 verdict?

18 THE CLERK: Your Honor, in the case of the
19 "State of South Carolina vs. Samir Kevin
20 Shank," Indictment 2021-GS-23-1038, we the
21 jury unanimously find on Indictment 2021-GS-
22 23-1038 that the defendant, Samir Kevin Shank,
23 is guilty of assault and battery of a high and
24 aggravated nature.

25 We the jury unanimously find the -- on

1 Indictment 2021-GS-23-1037, that the
2 defendant, Samir Kevin Shank, is guilty of the
3 use of a vehicle without permission.

4 We the jury unanimously find the - on
5 Indictment 2021-GS-23-1036, that the
6 defendant, Samir Kevin Shank, is guilty of
7 failure to stop for a blue light. This is
8 signed by our foreperson.

9 Ladies and gentlemen, if you agree this
10 is the verdict -- these are the verdicts you
11 reached in your deliberation room, would you
12 please raise your right hand?

13 THE JURY: (Complied.)

14 THE CLERK: I thank you.

15 THE COURT: All right. Anything from the
16 State before I release the jury?

17 MR. MILLER: Nothing from the State, Your
18 Honor.

19 THE COURT: Anything from the Defense before I
20 release the --

21 MR. NEELY: Well, poll the jury, please, Your
22 Honor.

23 MS. DIAZ: Yes.

24 THE COURT: Madam Clerk, would you poll the
25 jury?

1 THE COURT: All right. The verdict that was
2 just published was the verdict you reached in
3 your jury room. I ask you: Was it your
4 verdict then, and is it your verdict now?
5 When I call your name, please answer yes or
6 no.

7 Randall Leathers?

8 MR. LEATHERS: Yes.

9 THE CLERK: Kristen Peterson?

10 MS. PETERSON: Yes.

11 THE CLERK: Braylon Hughes?

12 MR. HUGHES: Yes.

13 THE CLERK: Edgar Islas-Munoz?

14 MR. ISLAS-MUNOZ: Yes.

15 THE CLERK: Michael Lancaster?

16 MR. LANCASTER: Yes.

17 THE CLERK: Brandy Howard?

18 MS. HOWARD: Yes.

19 THE CLERK: Allen Dill?

20 MR. DILL: Yes.

21 THE CLERK: Oscar Church?

22 MR. CHURCH: Yes.

23 THE CLERK: Erick Peterson?

24 MR. PETERSON: Yes.

25 THE CLERK: Shawn Russell?

1 MR. RUSSELL: Yes.

2 THE CLERK: Elgin Goodwin?

3 MR. GOODWIN: Yes.

4 THE CLERK: Daniel Cothran?

5 MR. COTHRAN: Yes.

6 THE CLERK: Thank you.

7 THE COURT: Anything further?

8 MR. NEELY: Nothing, Your Honor.

9 MS. DIAZ: Nothing, Your Honor.

10 THE COURT: Ladies and gentlemen, thank you
11 for your service in this case. This is just
12 Monday, so we've got the rest of the week. We
13 will -- (To the Clerk) what time did she say
14 she was having them tomorrow?

15 THE CLERK: Didn't she say 12?

16 THE COURT: Noon? Noon?

17 THE CLERK: Call at noon.

18 THE COURT: To call at noon or come in at
19 noon?

20 THE BAILIFF: Call.

21 THE CLERK: Call at noon.

22 THE COURT: Call at noon. All right. Call
23 the answering machine that the clerk has for
24 information. The number has been provided to
25 you. Call that noon, tomorrow. A message

1 will be on there with further instructions for
2 tomorrow afternoon, okay? But you're subject
3 to being called the rest of the week, so --
4 but there will be some instructions on there
5 at noon, tomorrow. Okay. Thank you. Y'all
6 are dismissed.

7 (WHEREUPON, the jury was excused at 5:33
8 p.m.)

9 THE COURT: Okay. The State ready to proceed?

10 MR. MILLER: Yes, Your Honor. We just have a
11 -- sheets to sign.

12 THE COURT: Ms. Diaz, let me get your client
13 to sign these sentencing sheets?

14 MS. DIAZ: (Complies.)

15 SENTENCING

16 THE COURT: Okay. Parties, come forward. Are
17 we ready to proceed?

18 THE BAILIFF: Sir, if you'll step up to the
19 podium.

20 THE COURT: I have heard the evidence in the
21 case. Let me hear prior record, if any, of
22 the defendant, and then anything else the
23 State would like to present, and then I'm
24 going to turn it over to Mr. Neely.

25 MR. MILLER: Yes, Your Honor. We would -- the

1 State would just offer up -- and I've shown
2 these to Ms. Diaz, certified convictions on
3 Indictments 2018-GS-23-3164 from 2018 and
4 2017-GS-23-0081 from 2017 to -- for the
5 failure to stop for a blue light, and prior
6 conviction is certified, Your Honor.

7 THE COURT: Okay. Okay.

8 MR. MILLER: And, additionally, Your Honor,
9 the defendant does have a record beyond that
10 starting in South Carolina in 1998, common law
11 robbery; 2006, failure to stop and
12 trespassing; 2007, possession of a controlled
13 substance and shoplifting; 2010, assault and
14 battery high and aggravated; 2011,
15 shoplifting; 2012, giving false information;
16 2014, two shopliftings; 2015, shoplifting;
17 2017, giving false information, three
18 shopliftings, possession of stolen vehicle,
19 failure to stop for a blue light, resisting
20 arrest, assault and battery, third, and
21 malicious injury to real property; in 2019,
22 failure to stop for a blue light, grand
23 larceny, shoplifting, burglary, second,
24 violent; then out of New Jersey, in 1985,
25 receiving stolen goods, escape; 1986,

1 possession of marijuana; '87, larceny; '88,
2 assault and common law robbery; 1994,
3 resisting or alluding, receiving stolen goods,
4 shoplifting; and in Georgia, 2004,
5 shoplifting; 2005, possession of a controlled
6 substance, shoplifting; 2011, driving under
7 suspension. Your Honor, he has 380 days of
8 credit.

9 THE COURT: Anything further from the State?

10 MR. MILLER: No, Your Honor. I believe that
11 Officer Elder is obviously present and
12 testified, but I don't think, we believe, he
13 wishes to be heard any further.

14 THE COURT: All right. Thank you. Mr. Neely?

15 MR. NEELY: Thank you, Your Honor. May it
16 please the Court.

17 Your Honor, as indicated at the bench
18 before we started this trial, Mr. Shank was
19 willing, pretrial, to enter a plea to the
20 failure to stop and to the unlawful use of a
21 vehicle. We did go to trial, because I
22 believe that the issue was solely about what
23 his intent was on that day, and I -- even
24 though the jury returned a guilty verdict on
25 the assault and battery of a high and

1 aggravated nature, I still maintain that his
2 intention that day was to avoid law
3 enforcement; and it wasn't to harm Officer
4 Elder or any other officer. We are very
5 fortunate that the scraped knee was the result
6 that day and -- and nothing more serious. And
7 -- and I do believe that it was -- it was a
8 very close call.

9 Your Honor, I know the thing that the
10 Court is going to take the most consideration
11 of is that rap sheet that goes back to 1985.
12 In talking to Samir and in representing him,
13 what I've come to realize about him and what
14 has happened, this is a man that has suffered
15 from schizophrenia for the last 30 years,
16 since the -- since the better part of his 20s.
17 And he's got a record that matches that,
18 because we've done a terrible job in this
19 state and in this country of understanding
20 mental illness and dealing with mental
21 illness.

22 And part of that lack of understanding is
23 him not getting the treatment that he needed.
24 And so what happens -- and it's not just with
25 Samir; it's with all of the clients that come

1 through my office -- is they seek to quiet the
2 noise in their head with drug use, which then
3 exacerbates that effect and then we run them
4 through the criminal justice system because we
5 don't get him that help and we put him in the
6 Department of Corrections and we do this cycle
7 time and time and time again until what you
8 have is a 56-year-old man standing before the
9 Court, because he wasn't on the medicine that
10 he needed; and he wasn't getting the help that
11 he needed.

12 He's in custody today, Your Honor,
13 because he's in on a bench warrant. He'd
14 actually posted bond on these charges and he
15 had connected at the jail with mental health
16 services for the first time in his life and he
17 was going to New Horizon, which is a mental
18 health facility here in Greenville County; and
19 he is actually on the proper medications.

20 And for the first time in his life -- in
21 his adult life, he was holding down a steady
22 job, doing construction. And the reason he's
23 in on the bench warrant is he appeared on a
24 trial docket earlier this year and he was at a
25 job site and he was so excited about that job

1 that he did something he shouldn't have done
2 which was avoid court. And so, a bench
3 warrant was issued, and he got picked up.

4 But for the better part of a year, for
5 the first time in his adult life, he was
6 receiving mental health treatment; and he was
7 going to work; and he was being a productive
8 member of society. So I know the Court is
9 going to look unfavorably on that lengthy
10 record, but it's of the result of mental
11 health issues. And what we're seeing on those
12 videos on that -- on that long chase is a
13 result of mental health issues. And so, I
14 would ask the Court to consider that.

15 And now he's spent over a year in custody
16 already, between the -- before he bonded out
17 and being picked up on the bench warrant, so
18 he already has a year of credit. He's
19 receiving mental health treatment. He's on
20 his meds. We're able to have actual rational
21 conversations with him while he's been in
22 custody, so he is -- he is able and capable to
23 do the things that we want him to do to be a
24 productive member of society.

25 He's 56 years old. Any significant

1 sentencing is effectively going to amount to a
2 life sentence in our department of
3 corrections, and so I'd ask the Court not to
4 sentence him to that. What I would ask the
5 Court to do -- the Court has in its -- in its
6 discretion the ability to hang a bunch of time
7 over his head and see if he can continue to be
8 a productive member of society, and that's
9 what I would ask the Court to do today, Your
10 Honor.

11 THE COURT: Thank you, Mr. Neely. Mr. Shank,
12 is there anything you'd like to say?

13 THE DEFENDANT: I'm -- I'm drunk, sir. I -- I
14 apologize to the Court. I didn't think this
15 was going to happen, sir. Like he said, I've
16 actually been receiving mental health before
17 this happened in 2020 when I came home from --
18 most of my charges is a result from a drug
19 addiction.

20 When I came home June of 2020 and went to
21 mental health, had my paperwork, they wasn't
22 serving people at that particular time,
23 because the State was going through a big
24 case. And there was an issue of medication,
25 so for a lot of years, I've been in denial.

1 But this is the first time in 20 years I've
2 been clean on the street for one whole year.

3 I just reconnected back with my family.
4 I hadn't seen my mother in 20 years. My
5 father is on hospice, right now. I lost my
6 son. This is the first time in 20 years I've
7 been clean for a year. And one day was big
8 for me. But my life had changed in a year.

9 And, actually, when I made bond and was
10 out on bond, I came to every hearing. And
11 then my -- my attorney, she told me she --
12 because she -- I came back-to-back, back-to-
13 back, back-to-back. She said, "Well, go back
14 to work and you'll hear from me." And every
15 time she called me -- and then one -- about
16 eight days later, she called me and I was an
17 hour and a half away. I was in Charlotte on
18 my job. She called me at two o'clock, and she
19 said to tell you -- she said, "Be at court at
20 three o'clock." There was no way I could've
21 got there at three o'clock because the gate
22 didn't close until four o'clock. And I was in
23 Charlotte. And I came to every hearing --
24 every hearing I had -- every hearing I came to
25 it, every one (verbatim.)

1 MR. NEELY: Tell him about your good job.

2 THE DEFENDANT: I had a good job. First time
3 in my life -- that was the first time in my
4 life I've been clean for over a year. First
5 time in 25 years. I hadn't seen my family
6 since I've been in the south. I've been stuck
7 down here.

8 I didn't intentionally -- the -- and the
9 day that that happened to Ms. Bullock's car,
10 that was the first time I took a drink. The
11 first one I got in trouble; took a drink, got
12 in trouble, that right there. I was doing
13 good, man. I was doing good.

14 I raised up my own nonprofit. Man, I was
15 -- I was affiliated at church. You know, I do
16 recitals and things. Everything was going so
17 good for me, man. It's a nightmare now.
18 Please show some mercy. Please have mercy on
19 me, sir. Please.

20 THE COURT: Thank you, Mr. Shank.

21 MS. MILLER: Your Honor, I know it's not an
22 issue today, but he does have one additional
23 pending failure to stop for a blue light that
24 was charged on April 2nd, 2021.

25 THE COURT: Okay.

1 MR. MILLER: But that's not an --

2 THE COURT: So -- but that -- that's not
3 before the Court --

4 MR. MILLER: -- but that's not an issue today.

5 THE COURT: -- today? Okay.

6 THE DEFENDANT: (To the Court) Can I say
7 something else, please?

8 THE COURT: Yes, sir.

9 THE DEFENDANT: Your Honor, please could you
10 just give me a chance, please. It's not like
11 I'm getting away with anything, because if I
12 don't -- you know, I -- put probation on me.
13 If I -- if I do something I'm coming back, and
14 I'm not coming back.

15 I've made my mind up then that I was
16 never ever get -- when I got on that
17 medication, that Geodon, it just done
18 something for me. It was different. All my
19 life, I never thought I needed it. My -- my
20 father been in mental health for 45 years of
21 his life, but I didn't think it worked out for
22 him, and I didn't think I needed it. I didn't
23 think it. I didn't think it. I just thought
24 that it was just everybody had their own way
25 of the way they thought things. And I was in

1 denial, you know. As long as I could put on
2 some clothes and look good, I just thought I
3 was in denial.

4 I didn't -- you know, by the time I went
5 to mental health a few times, they told me,
6 "There ain't nothing wrong with you," by the
7 way I was dressed. And I -- it took me a long
8 time to accept the fact that -- but the
9 medication -- and the Geodon they got me on
10 now, it -- I'm smooth.

11 And it's every since (as spoken) I've
12 been on the Geodon, I have not committed -
13 this is the first time I ever I've been on
14 bond and didn't commit a new trial -- crime
15 for shoplifting or something because of drugs
16 or something. I've been on -- put on bond.
17 All this -- you know, this is the first time,
18 I ever came back with no new charges.

19 I was working, everything in the church,
20 and I'm still involved with Ms. Sandra and her
21 ministry, First Impressions. And then that --
22 she said, "Well, you just messed up." She --
23 yeah. But, yeah, ever since I've been back on
24 the meds and I got introduced to New Horizons,
25 through her nonprofit organization, they

1 hooked me up at the -- and every since then,
2 I've been doing great/swell.

3 Not even for a traffic -- one small
4 incident where I have went (as spoken) to a
5 restaurant -- me and a young lady went to a
6 restaurant, and I left my wallet in the car.
7 And we parked across the street. They
8 wouldn't let me go across the street, but we
9 end up paying for it anyway. That's -- other
10 than that I hadn't been in no trouble at all.
11 This is the first time ever in my life in 20
12 years I've been cleaned for a year, in 25
13 years. I've never been clean. Never, ever,
14 ever. And my life changed.

15 I finally got in touch with some of my
16 family members in New Jersey and stuff, my
17 great nieces and nephews. And the -- the plan
18 was that I was gonna get out, you know what
19 I'm saying. I was going to be on the first
20 thing smoking back -- I hadn't seen my mom in
21 25 years. She's -- hadn't seen my mother in
22 25 years.

23 Man, I've been doing good, Your Honor.
24 Man, I've been doing good. If you could put
25 some probation over my head, man, I'm telling

1 you, Your Honor, I will complete it, man. I'm
2 serious, man. I need help.

3 I'm a -- I got arrested -- in -- in New
4 Jersey when I was graduating from high school
5 in 1984. A guy graduated before me in 1985, a
6 guy I knew. He became a police officer in New
7 Jersey, and 1995 was his first year on the
8 force. Okay. When I graduated -- no.
9 Ninety-three -- '93 -- eight -- 1983 was his
10 first year on the force. I graduated in '84,
11 but I had his girlfriend, and so he came to
12 the graduation party; and he arrested me. He
13 arrested me. When he arrested me, everybody
14 was, "No," and they helped me out of the car.
15 Well, New Jersey charged me with aiding and
16 abetting, and I got two years probation.

17 And then years later, when I got in
18 trouble in New Jersey, I, actually, got in
19 half-way houses, worked with these -- but,
20 anyway, 20 years to come down here, they took
21 as an escape. They always send me to -- I can
22 open my shirt, man, I got 30 stitches the last
23 time I was in. They always send me around --
24 well, that one I had small charges, but I got
25 30 stiches here (indicates.) I got 14 here

1 (indicates) on a different occasion. Man,
2 because I can't take them young boys in them
3 gangs, man. Please put some probation over my
4 head. I will finish it. I will make it.

5 My life has changed since I got that
6 Geodon. That's been a miracle worker for me,
7 Geodon medicine. I wish I had known that all
8 my life. I didn't know. I did not know.
9 Geodon has helped me. I haven't committed one
10 crime since I've been on Geodon. It's been a
11 year now.

12 THE COURT: Thank you, Mr. Shank.

13 Well . . .

14 THE DEFENDANT: Please, Your Honor.

15 THE COURT: The best thing that I heard today,
16 and the only good thing that came out of this
17 affair, was that nobody got killed. That's --
18 that's the only good thing. And, Mr. Shank,
19 you are extremely fortunate that that officer
20 was not a foot one way or the other.

21 THE DEFENDANT: Lastly, I seen Mr. Elder the
22 last time we went to court together. I said,
23 "Mr. Elder, I pray to God and I'm glad you" --

24 THE COURT: Yeah.

25 THE DEFENDANT: -- "wasn't hurt." And he

1 shook my hand in -- in municipal court on the
2 municipal accident --

3 THE COURT: Okay.

4 THE DEFENDANT: -- for these charges.

5 THE COURT: But --

6 THE DEFENDANT: I pray -- that's the main
7 thing I prayed that he was not hurt.

8 THE COURT: Well, he -- you -- you're very
9 fortunate that -- that he was not killed or
10 maimed or a tire go over his head. There --
11 there was -- there's all kinds of -- all kinds
12 of terrible possibilities from the action that
13 you took.

14 And I also watched the video, like
15 everyone else in the courtroom, and was
16 appalled at you driving a high rate of speed
17 through residential areas, main commercial
18 thoroughfares, running stop signs in the midst
19 of traffic. You're fortunate that someone
20 else wasn't killed.

21 THE DEFENDANT: I was off my meds, Your Honor,
22 and with that liquor --

23 THE COURT: All right. Mister -- Mr. Shank,
24 I've heard from you. I've heard from you.

25 And that's the only good thing is that no one

1 was killed in this -- this really, really sad
2 affair. So -- and your record is not good.

3 THE DEFENDANT: No.

4 THE COURT: You got identical offenses,
5 multistate offenses. So this is going to be
6 the sentence of the Court.

7 THE DEFENDANT: Please help me, Your Honor.

8 THE COURT: This is the sentence of the Court:
9 2021-GS-23-1038, the defendant will be
10 confined to the Department of Corrections for
11 a term of 18 years.

12 THE DEFENDANT: Eighteen years? Oh, Lord.

13 THE COURT: And the --

14 THE DEFENDANT: No, Jesus, no.

15 THE COURT: And 2021 --

16 MR. NEELY: Settle down (phonetic).

17 THE DEFENDANT: No, Lord, no. Lord, no. No,
18 Lord, please. Jesus, no.

19 THE COURT: 2021-GS-23-1036 --

20 THE DEFENDANT: No.

21 THE COURT: -- it will be five years
22 concurrent.

23 THE DEFENDANT: No, Lord, no, no, no, no.
24 Lord, no.

25 THE COURT: 21 -- 20 -- 2021-GS-23- --

1 MR. NEELY: Calm down. Calm down.

2 THE DEFENDANT: No. Jesus, no, no, no. No.

3 MR. NEELY: Come on. Come on. Stand up.

4 DEPUTY 1: Stand up.

5 DEPUTY 2: Stand up and listen to You Honor.

6 You've got to stand up.

7 THE DEFENDANT: No, Lord, no.

8 THE COURT: -- will be a three-year sentence,

9 concurrent. 380 days. And I -- I have

10 checked mental-health counseling while in the

11 Department of Corrections. Good luck to you.

12 MR. NEELY: Thank you, Your Honor.

13 DEPUTY 1: Walk please.

14 THE COURT: Close the record. Okay.

15 THE COURT REPORTER: I'm sorry, Your Honor. I

16 could not get this. So was it 18 years --

17 THE COURT: Eighteen years, five years

18 concurrent, and three years concurrent.

19 THE COURT REPORTER: Thank you. I'm sorry.

20 THE COURT: All right.

21 (Whereupon the within trial was

22 concluded at 5:58 p.m.)

23 (*This transcript may contain quoted material.

24 Such material is reproduced as read or quoted

25 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina on April 25th, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

Amber J. Payne, CVR

Date: 7/15/2022
Notary public for South Carolina
My commission expires August 12, 2029

TBB 4-6-21

WITNESSES

Andrew Elder

Greenville Police Dept.

8/26/2020

ARREST WARRANT NUMBER
20201090093432

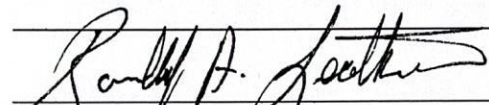
ACTION OF GRAND JURY
TRUE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty


Foreperson of Petit Jury
Date: 4-25-2022

DOCKET NO. 2021-GS-23-
APM

The State of South Carolina

County of Greenville

001036

COURT OF GENERAL SESSIONS

April TERM 2021

THE STATE

vs.

SAMIR KEVIN SHANK

Indictment for

2396

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750

ENTERED AC - 

FILED

MAR - 3 2021

Clerk of Court
Greenville County

App'x 154

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

At a Court of General Sessions, convened on **APR 06 2021** the Grand Jurors of Greenville
County present upon their oath:

That Samir Kevin Shank did in Greenville County, on or about the 25th day of August, 2020, willfully,
knowingly, and unlawfully commit the offense of failure to stop for a law enforcement vehicle in that the said
defendant while driving on a road, street or highway of the State did intentionally fail to stop when signaled to do
so by a law enforcement vehicle using blue lights and/or siren. This is in violation of §56-5-750 of the South
Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR BAR # 102782

TBB 4-6-21

DOCKET NO. 2021-GS-23-
APM

001037

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2021

THE STATE

vs.

SAMIR KEVIN SHANK

WITNESSES

Greenville Police Dept.

Bobby Bosko

8/26/2020

ARREST WARRANT NUMBER

2020A2320602599

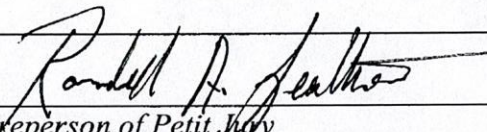
ACTION OF GRAND JURY
TRUE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty


Foreperson of Petit Jury

Date: 4-25-2022

Indictment for

0756

USE OF VEHICLE WITHOUT PERMISSION

VIOLATION § 16-21-0060(A)

ENTERED ACCT

GW

FILED

MAR - 3 2021

Clerk of Court
Greenville County

App'x 156

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
USE OF VEHICLE WITHOUT PERMISSION

APR 06 2021

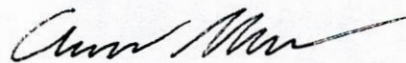
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That Samir Kevin Shank did in Greenville County, on or about the 20th day of August, 2020, without the consent of the owner, take, use, or drive a vehicle, to wit: a 2019 Toyota Corolla belonging to Sandra Bullock, with intent to deprive the owner of the vehicle. This is in violation of §16-21-0060(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

BAR # 102782

TBB 4-6-21

DOCKET NO. 2021-GS-23-
APM 001038

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2021

THE STATE

vs.

SAMIR KEVIN SHANK

ARREST WARRANT NUMBER
2020A2320602654

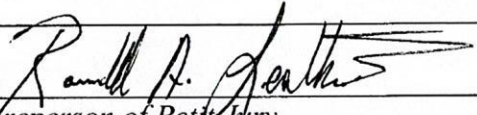
ACTION OF GRAND JURY
TRUE BILL


FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty


Foreperson of Petit Jury

Date: 4-25-2022

Indictment for

3411

ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE

VIOLATION § 16-03-0600

ENTERED ACCT

GN

FILED

MAR - 3 2021

Clerk of Court
Greenville County

App'x 158

158

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE)
 VS.)
Samir Kevin Shank)
 AKA:)
 Race: BLACK Sex: M Age: 56)
 DOB: [REDACTED] SS# [REDACTED])
 Address: Sametta Circle)
 City, State, Zip: Greenville, SC 29611)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2301036
 A/W#: 20201090093432
 Date of Offense: 8/25/2020
 S.C. Code § : 56-05-0750(B)(2)
 CDR Code #: 2396

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Traffic / Failure To Stop For A Blue Light 2nd or Sub.

in violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Andrew Miller 102782 SC Bar# Samir Shank Defendant Kaitlin A Diaz 104432 SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 5 days/months/years/Time Served Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment
 of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
300 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Samir Kevin Shank INDICTMENT/CASE#: 2021GS2301036

SPECIAL CONDITIONS: A/W#: 20201090093432

PTUP after _____ months/years
And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol testing
- Attend Voc. Rehab. or Job Corp
- No Contact with _____
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning : _____

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____		\$ _____
§14-1-206 (Assessments 107.5 %)		\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.00</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ <u>103.00</u>

Clerk of Court/ Deputy Clerk: Paul B. Wilkerson
Court Reporter: A. Payne

Presiding Judge: [Signature]
Judge Code: 2752
Sentence Date: 4-25-22

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE)
 VS.)
Samir Kevin Shank)
 AKA:)
 Race: BLACK Sex: M Age: 56)
 DOB: [REDACTED] SS# [REDACTED])
 Address: West Washington St.)
 City, State, Zip: Greenville, SC 29601)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2301037
 A/W#: 2020A2320602599
 Date of Offense: 8/20/2020
 S.C. Code § : 16-21-0060(A)
 CDR Code #: 0756

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Vehicle, Using Vehicle Without Consent

in violation of § 16-21-0060(A) of the S.C. Code of Laws, bearing CDR Code # 0756

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Andrew Miller 102782 Samir Shank 104432
 Miller, Andrew SC Bar# Defendant DIAZ, KAITLIN A SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 3 days/months/years/Time Served Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment
 of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run
 CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
380 (6) days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Samir Kevin Shank INDICTMENT/CASE#: 2021GS2301037

SPECIAL CONDITIONS: A/W#: 2020A2320602599

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol testing
- Attend Voc. Rehab. or Job Corp
- No Contact with _____
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning : _____

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$	_____
§14-1-206 (Assessments 107.5 %)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ 3.75
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL		\$ 128.75

Clerk of Court/ Deputy Clerk: Paul B. Wickensen
Court Reporter: A. Payne

Presiding Judge: [Signature]
Judge Code: 2752
Sentence Date: 4-25-22

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE)
 VS.)
Samir Kevin Shank)
 AKA:)
 Race: BLACK Sex: M Age: 56)
 DOB: [REDACTED] SS# [REDACTED])
 Address: Sametta Circle)
 City, State, Zip: Greenville, SC 29611)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2301038
 A/W#: 2020A2320602654
 Date of Offense: 8/25/2020
 S.C. Code § : 16-03-0600(B)(1)
 CDR Code #: 3411

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Assault/Assault and Battery of a High and Aggravated Nature
 in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

[Signature] 102782 Samir Shank 104432
 Miller, Andrew SC Bar# Defendant DIAZ, KAITLIN A SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 18 days/months/years/Time Served Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment
 of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run
 CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
380 days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65
 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Samir Kevin Shank INDICTMENT/CASE#: 2021GS2301038

SPECIAL CONDITIONS: A/W#: 2020A2320602654

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol testing
- Attend Voc. Rehab. or Job Corp
- No Contact with _____
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning : _____

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____		\$ _____
§14-1-206 (Assessments 107.5 %)		\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
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<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ <u>128.75</u>

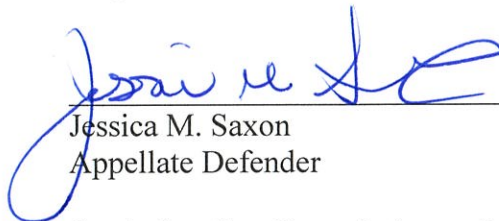
Clerk of Court/ Deputy Clerk: Paul B. Wickensemin
Court Reporter: A. Payne

Presiding Judge: [Signature]
Judge Code: 2752
Sentence Date: 4-25-22

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 11th day of August, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

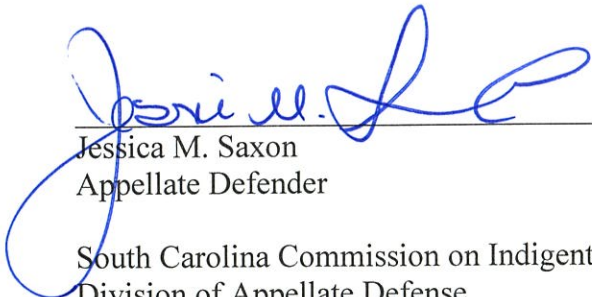
SAMIR KEVIN SHANK,

APPELLANT

APPELLATE CASE NO. 2022-000650

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of August, 2023.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMIR KEVIN SHANK,

APPELLANT

APPELLATE CASE NO. 2022-000650

FINAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court commit reversible error when it refused to charge the jury on the lesser included offense of assault and battery third degree where the evidence in the record was such that the jury could have found Appellant guilty of the lesser included offense instead of the crime charged?

STATEMENT OF THE CASE

Appellant was indicted during the April 2021 term of the Greenville County grand jury for one count of failure to stop for a blue light, one count of use of a vehicle without permission, and one count of assault and battery of a high and aggravated nature¹ (ABHAN). R. 154-159. The State, represented by Andrew Miller, Sylvia Harrison, and John Waelde called the case to trial on April 25, 2022, before the Honorable R. Scott Sprouse and a jury. Appellant was represented by Paul Neely and Kaitlyn Diaz. R. 1-2.

After a one-day trial, Appellant was found guilty as indicted. R. 132-133. Judge Sprouse sentenced Appellant to concurrent terms of imprisonment for eighteen years on ABHAN, three years on use of vehicle without permission, and five years on the failure to stop for a blue light, with credit for 380 days' time served. R. 151, 1. 8 - R. 152, 1. 9; R. 160 – R. 165.

This appeal follows.

¹ On appeal, Appellant does not challenge his convictions and sentencing on the failure to stop for blue lights charge and the use of a vehicle without a permission charge.

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review only errors of law.” State v. Sams, 410 S.C. 303, 307, 764 S.E.2d 511, 513 (2014); see also State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). “The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.” State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007). “[I]n the context of a trial court's decision not to charge a requested lesser-included offense, we review the trial court's decision de novo. We must reverse and remand for a new trial if the evidence in the record is such that the jury could have found the defendant guilty of the lesser offense instead of the crime charged.” State v. Gilmore, 396 S.C. 72, 77, 719 S.E.2d 688, 690–91 (Ct. App. 2011).

ARGUMENT

The trial court commit reversible error when it refused to charge the jury on the lesser included offense of assault and battery third degree where the evidence in the record was such that the jury could have found Appellant guilty of the lesser included offense instead of the crime charged.

Relevant Facts

Sandra L. Bullock met Appellant through a neighbor, and the two became close friends. Appellant was working on getting his life back together. Bullock had been loaning her car to Appellant so that he could get to and from work. Appellant was supposed to return the car to her every evening with a full tank of gas. R. 35, l. 15 - R. 36, l. 6. On August 19, 2020, Bullock loaned Appellant her car, but he did not return it that evening. After a few days had passed, Bullock reported the car stolen. R. 36, ll. 1-10.

On August 25, 2020, an automated license plate reader notified law enforcement of a stolen vehicle, a silver Toyota Corolla, in the vicinity of Ackley Road in Greenville County. Officer Andrew Elder with the Greenville Police Department responded to the notification from the license plate reader in his marked patrol car. R. 42, l. 11- R. 43, l. 4. Elder was wearing a body-worn camera² that captured his encounter with the stolen vehicle. R. 50, l. 24 - R. 51, l. 14.

While in route to the location of the automated license plate reader, Elder observed the vehicle in question at the intersection of Rebecca Street and Clark Street. R. 42, ll. 19-22. Elder pulled behind the stolen vehicle and turned on his blue lights, however the driver of the vehicle did not stop. State's Ex. 7 at 2:57. A brief pursuit ended on a dead-end street where Elder

² This footage was entered at trial as State's Exhibit 7. A copy of this exhibit is on file with this Court.

attempted to perform a felony stop on the occupants of the vehicle. State's Ex. 7 at 3:55. In the video, the brake lights of the stolen vehicle are illuminated while Elder is standing behind his open driver-side door with his service weapon drawn issuing commands. The passenger in the stolen vehicle is seen opening the passenger side door and holding up his hands. State's Ex. 7 at 3:57. Elder continued to issue commands from behind his patrol vehicle's open driver-side door. The driver of the stolen vehicle begins to reverse out of the dead-end street with the passenger door still open. State's Ex. 7 at 3:58-4:02. The stolen vehicle travels straight back at a slow speed, with its brake lights illuminated. As the stolen vehicle passes Elder, the open passenger door strikes the open driver-side door of Elder's patrol vehicle which in turn strikes Elder knocking him to the ground. The video shows that the brake lights of the stolen vehicle remained illuminated through the incident. State's Ex. 7 at 4:02-4:05. The passenger is seen exiting the stolen vehicle as Elder's falls to the ground, just after the impact occurs. State's Ex. 7 at 4:07-4:08. R. 43, l. 5 - R. 45, l. 25; R. 51, ll. 15-21; R. 64, l. 25-R. 65, l. 5.

The impact of the collision dislodged Elder's service weapon from his hands. The weapon became closed in the door of the patrol vehicle which caused a dent in the door frame. The driver-side door of the patrol vehicle was dented, and there was some damage to the rear driver-side area of the patrol vehicle from the collision. Elder received a small scrape on his left knee which he treated with an alcohol swab. R. 46, l. 16-R. 49, l. 14; R. 60, ll. 7-13; R. 63, l. 23-R. 64, l. 4. Other officers with the Greenville Police Department continued the pursuit of the stolen vehicle. The entire pursuit lasted between six and seven minutes. The stolen vehicle continued to flee until it was involved in a single-car accident where it rolled numerous times, totaling the vehicle. The driver of the stolen vehicle was identified as Appellant, Samir Shank. R. 67, l. 12-R. 71, l. 7.

The focus of the trial was the ABHAN charge. During opening statements, defense Counsel Diaz conceded that Appellant was guilty of failure to stop for a blue light. She emphasized to the jury that Appellant's sole intent that day was to evade law enforcement, and that the collision occurred not because Appellant sought to injure Elder but because the passenger in the vehicle opened his door as Appellant tried to flee. R. 31-33.

The State's main witness at trial was Officer Elder. He testified to the events as they were depicted on his body-worn camera. Elder testified he was close enough to touch the stolen vehicle as it passed him and that after he had been knocked down his head was towards the back of his vehicle between the two cars. R. 45, ll. 18-22; R. 46, ll. 9-15. On cross examination, Elder admitted that the passenger, not Appellant, opened the door that ultimately hit his open vehicle door. R. 58, ll. 2-6. When questioned if Appellant swerved to get around him, Elder responded that "he put it reverse towards my vehicle, yes, ma'am." R. 59, ll. 8-10. On recross-examination, Elder conceded that when the doors struck each other Appellant was reversing straight back. He further testified "I can't say he [Appellant] turned the wheel to strike me. However, I was struck by my door -- by his door." R. 65, ll. 1-6.

Counsel Neely requested that the trial court charge the jury on the lesser included offense of assault and battery third degree. He argued that the testimony about the specific injury that Elder incurred, a scraped knee, supported a charge on the lesser included offense. R. 92, ll. 14-19. The State objected to the lesser included offense being charged to the jury, arguing that while there was an injury, the evidence it had presented went toward whether there was an offer or attempt to commit a great bodily injury. R. 93, ll. 3-9. The trial court noted that the State was proceeding under the second prong from the ABHAN statute, the "means likely to produce" portion. R. 93, ll. 19-21. Counsel Neely highlighted that the ABHAN indictment in Appellant's case included

both subsection A, the injury specific provision, and subsection B, the “means likely to produce” provision. He argued “ [t]hey [the State] didn’t pick a horse and ride it all the way to the finish line; they kind of done both. And so, because they’ve done both, I do believe that the A&B third is appropriate.” R. 93, l. 22-R. 94, l. 21. The trial court ruled,

Based on the testimony in the case, and the State is producing – is – **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. This is going to be a question of – of whether the State has proven beyond a reasonable doubt of criminal intent in – in the matter.** So, I’m going to deny that request, but your objection is noted for the record.

R. 94, l. 22-R. 95, l. 9 (emphasis added).

Both parties spent most of their closing arguments discussing the ABHAN charge. The State placed the entire ABHAN statute on a projector for the jury to view during its closing argument. R. 100, ll. 3-10. The State argued that it was unclear what hit Elder and knocked him to the ground – his door or the door of the stolen vehicle – despite the testimony from Elder that he was struck by his door. It further argued that it was “sheer luck” that Elder did not lose the use of his fingers and that his head and upper body avoided devastating injury in the collision. The State contended that Appellant did not have to intend to harm Elder that day, that he only had to intend the act that caused the injury, that of reversing the car. R. 101-103.

In closing argument, Counsel Diaz reiterated that the case was not about the failure to stop for blue lights charge or the use of a vehicle without permission charge. R. 104, ll. 11-14. She conceded that Appellant was guilty of those charges and focused on the fact that Appellant’s goal that day was to flee law enforcement. She noted that Appellant had attempted to swerve around Elder but misjudged the open passenger door. She emphasized that Appellant lacked the intent to harm Elder. R. 104-106. She further argued that the injury received, a scraped knee, was minor

and common, and that the jury did not have to imagine what injuries could have occurred because it knew what injury had occurred. R. 107, ll. 6-19; R. 110, ll. 1-12. She argued it was not luck that spared Elder further injury but the fact that Appellant did not intend to harm him. R. 110, ll. 13-20.

During the jury charge, the trial court charged the entire ABHAN statute as well as the definition of “great bodily injury.” R. 122, l. 25 - R. 123, l. 12. After the jury was excused, Counsel Neely renewed the objection and request to charge the lesser included offense, emphasizing to the court that it had charged the jury on both subsections of ABHAN. R. 127, ll. 13-20. The trial court noted Counsel Neely’s renewal for the record but again denied the request to charge the lesser included offense. R. 127, l. 21 - R. 128, l. 2. Approximately thirty-five minutes into deliberations, the jury sent out a note requesting that the court define ABHAN again. The court, for a second time, charged the jury with the entire ABHAN statute and the definition of “great bodily injury.” R. 130, l. 8-R. 131, l. 7. A short time later the jury returned with the verdicts finding Appellant guilty as indicted. R. 131, l. 20-R. 133, l. 8.

Discussion

The trial court committed reversible error when it declined to charge the jury on the lesser included offense of assault and battery third degree. The trial court did not apply the well settled law that the evidence submitted at trial determines the law to be charged to the jury. Instead, the trial court determined that it would not charge the lesser included offense because the State was proceeding under the second portion of the ABHAN statute, that the injury was accomplished by means likely to produce death or great bodily injury, and not on the injury actually incurred by Elder. This was an error of law.

“[T]he purpose of jury instructions is to enlighten the jury as to what law is applicable to a certain state of facts in order that a just, fair[,] and proper verdict can be reached.” State v. Peer, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). “The trial court is required to charge only the current and correct law of South Carolina.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). “The **evidence presented at trial determines the law to be charged** to the jury.” State v. Gilliland, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012) (emphasis added).

“The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense.” State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (Ct. App. 2014); see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). “In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant.” Id. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). “The charge request is properly rejected when there is **no evidence** tending to show the defendant was guilty of the lesser offense.” Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994)) (emphasis added).

Assault and battery third degree is a statutorily defined lesser included offense of ABHAN. S.C. Code Ann. § 16-3-600 defines the various degrees of assault and battery charges in South Carolina. Section (B)(1) states “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.” Section (E)(1) states “A person commits the offense of 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.” Section (E)(3) states “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.”

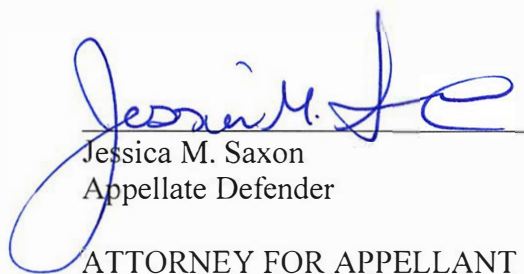
The evidence in the case supported a charge on the lesser included offense of assault and battery third degree. The video of the incident showed that Appellant did not back the car at or towards Elders but backed the vehicle straight back. The collision that injured Elder only occurred because of the open passenger door colliding with Elder’s open driver door which knocked Elder down, not because Appellant was targeting Elder with the stolen vehicle. Had one of the two open vehicle doors been closed, an impact would not have occurred, and Elder’s would not have sustained any injury. Further, the evidence showed that the actual injury Elder’s suffered was extremely minor, a scraped knee. Stated plainly, there was evidence from which the jury could have inferred that Appellant did not intend to injure Elder by means likely to produce death or great bodily injury but merely caused an unlawful minor injury to Elder.

Additionally, the trial court based its ruling on improper considerations. The appellate courts of this state have repeatedly made it clear that the law to be charged to the jury is based on the evidence presented at trial. The theory of the State’s case has absolutely no bearing on what law is charged to the jury. That the State was arguing that the injury occurred by means likely to produce great bodily injury or death would not preclude the jury from finding that Appellant was only guilty of assault and battery third degree based on the evidence adduced at trial.

That the jury could have found Appellant guilty of the lesser included offense is further supported by the fact that the jury requested to be recharged on the law of ABHAN. It is apparent that jury grappled with applying the law that it had been given with the facts it had determined to be true. Considering the record in the light most favorable to Appellant, with such a minor injury and the video from the incident clearly showing Appellant did not drive at Elder, it is logical to conclude the jury could have found Appellant guilty of the lesser included offense if the court had instructed the jury on the law of assault and battery third degree.

CONCLUSION

Based on the forgoing argument, Appellant respectfully requests that this Court reverse his conviction for assault and battery of a high and aggravated nature and remand his case to the Court of General Sessions of Greenville County for a new trial.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 31st day of August, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

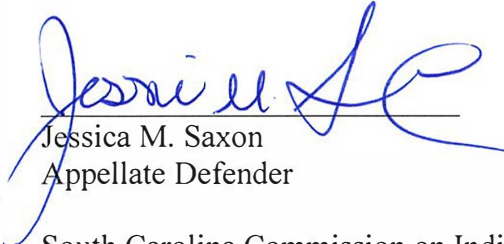
SAMIR KEVIN SHANK,

APPELLANT

APPELLATE CASE NO. 2022-000650

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 31st day of August, 2023.



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Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2022-000650

THE STATE,

Respondent,

v.

SAMIR KEVIN SHANK,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly refused to charge the jury on the lesser-included offense of third-degree assault and battery because a jury could not find Appellant guilty of third-degree assault and battery rather than assault and battery of a high and aggravated nature.

STATEMENT OF THE CASE

In April 2021, a Greenville County Grand Jury indicted Appellant Samir Kevin Shank of use of vehicle without permission, failure to stop for blue lights, and assault and battery of a high and aggravated nature (ABHAN). Appellant proceeded to a jury trial before the Honorable R. Scott Sprouse on April 25, 2022. Appellant was represented by Paul Neely, Esq. and Kaitlyn Diaz, Esq. The jury found Appellant guilty as charged. Appellant was sentenced 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. Appellant received credit for 380 days' time served.

This appeal follows.

STATEMENT OF FACTS

Sandra L. Bullock, a friend of Appellant who had met him through a neighbor, had been loaning her car to Appellant so that he could go to and from work. Appellant was to return the car every evening with a full tank of gas. On the evening of August 19, 2020, Appellant 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 (R. 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. (R. 42:11-43:4). As Elder began to follow the vehicle, it turned onto another street and "accelerated at a high rate of speed." (R. 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. (R. 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, Appellant begins reversing towards the cul-de-sac entrance *and* Elder's vehicle. (R. 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 Appellant passes. (R. 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." (R. 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. (R. 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.

(R. 46:18-47:2). Fortunately, the only injury that Elder received was a scrape on his left knee. (R. 47:21-25). As Appellant fled the cul-de-sac, another brief pursuit was initiated by other police units until Appellant wrecked. (R. 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 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. (R. 83:6-86:3). The Court denied the directed verdict motion on the grounds that there was “evidence to support his particular offense.” (R. 87:11-19). When Defense rested, Counsel reraised the motion for the requested jury charge, arguing again based on the “nature of the injury.” (R. 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. (R. 93:19-94:14). The Court subsequently denied the charge, stating:

Based on the testimony in the case, [. . .] the State is proceeding on the second part of the statute that they’re alleging 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. [. . .] So I’m going to deny that request, but your objection is noted for the record.

(R. 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, Appellant should still be convicted of ABHAN based on the “means likely to produce [GBI] or death” prong. (R. 100:5-102:14). Defense responded in their closing arguments by minimizing the proximity to serious injury that Elder was in and suggesting that Appellant merely “misjudge[d] that door.” (R. 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. (R. 127:12-128:2).

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 refused to charge the jury on the lesser included offense of third-degree assault and battery because a jury could not find Appellant guilty of third-degree assault and battery rather than assault and battery of a high and aggravated nature.

Appellant contends that 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 Elder's injury was minimal and a seeming lack of intent of Appellant to cause GBI. Appellant argues that if the jury were charged on third-degree assault and battery, he could have been convicted of that instead of ABHAN and thus would have received a reduced sentence. Additionally, Appellant argues that he was prejudiced by the trial court's error. However, these arguments are without merit.

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 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. SC Code §16-3-600(B)(1)(b). Here Appellant can show that the wound on the victim was moderate bodily injury. However, Appellant can not show that the act was not accomplished by means likely to produce death or great bodily injury.

In this case, Appellant hit an officer with his car. Hitting someone with a car is a means highly likely to produce death or great bodily injury. First, there is no dispute that Appellant 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. (R. 32, 104). In the moment the injury occurred, Appellant 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. Hitting someone with a car is likely to cause great bodily injury or death and therefore, 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.

CONCLUSION

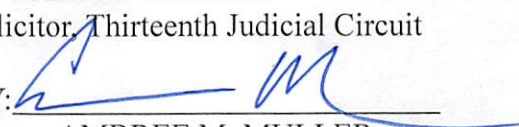
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: 

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ATTORNEYS FOR RESPONDENT

August 25, 2023

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2022-000650

THE STATE,

Respondent,

v.

SAMIR KEVIN SHANK,

Appellant.

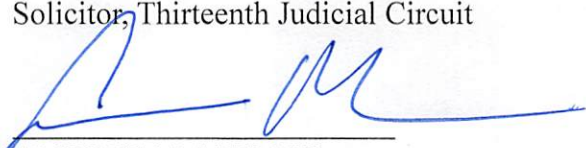
CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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.”

ALAN WILSON
Attorney General

AMBREE MULLER
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit



AMBREE M. MULLER
Bar # 104213

ATTORNEYS FOR RESPONDENT

August 25, 2023

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2022-000650

THE STATE,

Respondent,

v.

SAMIR KEVIN SHANK,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent and Certificate of Counsel 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 25th day of August, 2023.



Grace Sommer
Legal Assistant

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Samir Kevin Shank, Appellant.

Appellate Case No. 2022-000650

Appeal From Greenville County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2025-UP-114
Submitted March 1, 2025 – Filed April 2, 2025

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Appellate Defender Jessica M. Saxon, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Ambree Michele Muller, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

PER CURIAM: Samir Kevin Shank was convicted of assault and battery of a high and aggravated nature (ABHAN), failure to stop for a blue light, and use of

vehicle without permission. Shank appeals his conviction for ABHAN and sentence of eighteen years' imprisonment.¹ On appeal, Shank argues the trial court erred by refusing to charge the jury on the lesser-included offense of third-degree assault and battery. We reverse Shank's conviction for ABHAN and remand pursuant to Rule 220(b), SCACR.

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. *See State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019) ("In reviewing jury charges for error, we examine the trial court's charge as a whole in light of the evidence and issues presented at trial."); *State v. Rogers*, 275 S.C. 485, 486, 272 S.E.2d 792, 792 (1980) ("The law to be charged must be determined from the evidence presented."); *State v. Mathis*, 287 S.C. 589, 594, 340 S.E.2d 538, 541 (1986) ("A trial [court] is required to charge the jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser, rather than the greater offense."); *Williams*, 427 S.C. at 156, 829 S.E.2d at 706 ("In determining whether the evidence requires a charge on a lesser-included offense, we view the facts in the light most favorable to the defendant."); *State v. Weaver*, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975) ("No instruction should be given by the trial [court], at the request of the appellant, which tenders an issue which is not presented or supported by the evidence."); S.C. Code Ann. § 16-3-600(E)(1) (2015) (stating a person commits third-degree assault and battery "if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so"); S.C. Code Ann. § 16-3-600(B)(1) (2015) ("A person commits the offense of [ABHAN] 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."); S.C. Code Ann. § 16-3-600(A)(1) (2015) ("'Great bodily injury' means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ."). Further, the refusal to charge the lesser-included offense contributed to the verdict and, therefore, was not harmless. *See State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we

¹ On appeal, Shank did not challenge his convictions of failure to stop for a blue light and use of vehicle without permission. Thus, we affirm his convictions for failure to stop for a blue light and use of a vehicle without permission.

must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998)); *id.* ("In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." (quoting *Kerr*, 330 S.C. at 145, 498 S.E.2d at 218)).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.²

WILLIAMS, C.J., and GEATHERS and TURNER, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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,

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ATTORNEYS FOR RESPONDENT

April 16, 2025

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.



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Legal Assistant

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The South Carolina Court of Appeals

The State, Respondent,

v.


Samir Kevin Shank, Appellant.


Appellate Case No. 2022-000650

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Jessica M Saxon, Esquire
Ambree Michele Muller, Esquire
William Walter Wilkins, III, Esquire
The Honorable R. Scott Sprouse

FILED
May 22 2025
