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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS CARSON BLAKENEY,

APPELLANT

APPELLATE CASE NO. 2025-001287

ANDERS BRIEF OF APPELLANT

JORDAN WAYBURN
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STATEMENT OF ISSUE ON APPEAL

1. Did the trial court make an unconstitutional comment on the facts by instructing the jury that "an attempt to increase the speed of a vehicle . . . may also be considered as evidence of failure to stop for a blue light"?

STATEMENT OF THE CASE

Appellant Thomas Blakeney was indicted by the Charleston County grand jury in March of 2025 for failing to stop for a blue light, possession of a weapon or ammunition by a person prohibited by law, and unlawful carry of a pistol. Tr. 21:1-4, *. On June 9 and 10, 2025, he went to trial before Judge Jennifer McCoy and a jury. Tr. 1. He was represented by Taylor Currin and Luke Dalton. Tr. 1. Andrew Hulshult and Jordan Norvell represented the state. Tr. 1.

Sergeant Justin Garrison of the North Charleston Police Department testified he was on patrol shortly after midnight on February 10, 2024. Tr. 77:1-78:9. He testified he recognized Appellant driving the car next to him at a traffic light in North Charleston, and he knew Appellant had a suspended driver's license. Tr. 78:12-18. Garrison turned on his blue lights and tried to stop Appellant. Tr. 79:24-90:1. He had an in-car dash camera that recorded the stop. Tr. 80:8-16. The recording was made State's Exhibit 1 and published for the jury.[1] Tr. 81:5-19. Garrison testified he saw "debris" thrown from the car at multiple points. Tr. 100:9-103:24. He also testified Appellant stopped after he drove over "spike strips" and that their top speed was over 90 miles per hour. Tr. 105:18-106:15.

Officers recovered an extremely damaged and rusty handgun from the side of the road approximately near a location where Garrison believed Appellant threw something out of the car. Tr. 110:2-113:25. The handgun had no magazine and was found partially in the ground and mostly covered in grass. Tr. 130:14-131:19, 133:8-9; State's Ex. 11. The parties stipulated Appellant could not lawfully possess a firearm. Tr. 163:14-164:2; State's Ex. 15.

The trial court instructed the jury, in relevant part, as follows:

---

[1] State's Exhibit 1 is on file with this Court.

> The defendant is charged with failing to stop for a blue light. In order to prove this crime, the State must prove beyond a reasonable doubt that the defendant was driving a motor vehicle, that the defendant was driving this motor vehicle on a road, street, or highway of this state[, t]hat the defendant was signaled to stop by a law enforcement vehicle by means of a siren or flights lights[,] and that the defendant did not stop.
>
> . . .
>
> An[] attempt to increase the speed of a vehicle or in some other manner, avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light may also be considered as evidence of failure to stop for a blue light.
>
> However, it is merely an evidentiary fact to be taken into consideration by you along with all the other evidence in the case and to be given the weight that you think it should receive.

Tr. 210:13-211:13.

After an *Allen* charge, the jury found Appellant guilty of failing to stop for a blue light and was unable to reach a verdict on the two firearm charges. Tr. 222:2-224:25, 225:23-226:15. The trial court declared a mistrial on the firearm charges and sentenced Appellant to five years in prison for failing to stop for a blue light. Tr. 226:14-15, 236:21-24.

This appeal follows.

STANDARD OF REVIEW

Whether a given jury charge is an unconstitutional comment on the facts should be reviewed on appeal de novo as a question of law. The question is whether the charge given violates Article V, section 21 of the South Carolina Constitution. That section is a limitation on the judicial authority of this state, and as such its application raises a question of law this Court reviews de novo. *See State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022) (holding constitutional criminal procedure issues are reviewed de novo); *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023) (extending *Frasier* to voluntariness of a confession); *cf. Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021) (interpretation of a statute is reviewed de novo).

ARGUMENT

I. The trial court unconstitutionally commented on the facts of the case by instructing the jury that increasing speed is evidence of failing to stop.

The trial court was not permitted to instruct the jury that an attempt to increase the speed of a vehicle may be evidence of failing to stop for a blue light. It is a direct comment on facts in evidence, tells the jury what to do with those facts, and is wholly unnecessary.

This instruction was error because trial courts are not permitted to comment on the facts to the jury. S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *see, e.g., State v. Brown*, 443 S.C. 196, 199-200, 904 S.E.2d 448, 449-50 (2024) (collecting cases). Simply by stating that some evidence might lead to certain inferences, "the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury." *State v. Stewart*, 433 S.C. 382, 392, 858 S.E.2d 808, 813 (2021) (quoting *State v. Burdette*, 427 S.C. 490, 502-03, 832 S.E.2d 575, 582 (2019)). "Even telling the jury that it is to give evidence . . . only the weight the jury determines it should be given does not remove the taint of the trial court's injection of its commentary upon that evidence." *Burdette*, 427 S.C. at 502-03, 832 S.E.2d at 582; *see also* 16 Corpus Juris, *Criminal Law* § 2313, at 943 (1918).

Here, the jury needed no instruction that an "attempt to increase the speed of a vehicle . . . may also be considered as evidence of failure to stop for a blue light." Tr. 211:5-9. Of course it can—that is what those words mean. There was no need to suggest this possible inference: "Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt." *State v. Cheeks*, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013); *see also Burdette*, 427 S.C. at 503, 832 S.E.2d at 583 ("It is axiomatic that some matters

appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.'" (quoting *State v. Belcher*, 385 S.C. 597, 612 n.9, 685 S.E.2d 802, 810 n.9 (2009))). The jury was charged with the essential elements of the crime: "that the defendant was driving a motor vehicle, that the defendant was driving this motor vehicle on a road, street, or highway of this state[, t]hat the defendant was signaled to stop by a law enforcement vehicle by means or a siren or flashing lights[,] and that the defendant did not stop." Tr. 210:14-20. Instructing the jury that increasing speed is "an evidentiary fact to be taken into consideration" served no purpose but to emphasize that fact to the jury. Tr. 211:10-11; *see Stewart*, 433 S.C. at 392, 858 S.E.2d at 813. It was therefore an improper comment on the facts and should not have been charged. *See Cheeks*, 401 S.C. at 328, 737 S.E.2d at 484 ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

Blakeney recognizes there was no objection to the charge below. Tr. 182:5-14, 214:4-24. However, a complaint about the "constitutional prohibition as to a charge on the facts" need not be argued below to be raised on appeal. *State v. Orr*, 128 S.C. 279, 122 S.E. 771, 771 (1924).[2]

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[2] The Court in *Orr* considered an appeal challenging the trial court's instruction without objection. It reversed, holding:

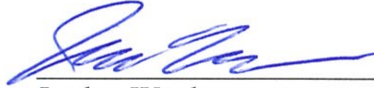
> It is said, however, that, if his honor misstated the issues, it was the duty of the defendant to call the attention of the court to it, and, not having done so, he cannot now complain. That is a rule of court and must give way to the constitutional prohibition as to a charge on the facts. This assignment of error must be sustained.

128 S.C. 279, 122 S.E. at 771. Therefore, objections to a charge on the facts need not be raised below to be argued on appeal.

Admittedly, this rule has not been utilized since *Orr*. However, in virtually all recent comment-on-the-facts cases, the issue has been preserved so the *Orr* rule was unnecessary. *See State v. Brown*, 443 S.C. 196, 198, 904 S.E.2d 448, 449 (2024); *State v. Stewart*, 433 S.C. 382, 386, 858 S.E.2d 808, 810 (2021); *State v. Smith*, 430 S.C. 226, 229, 845 S.E.2d 495, 496 (2020);

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse his conviction.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2026.

State v. Burdette, 427 S.C. 490, 493, 832 S.E.2d 575, 577 (2019); *Pantovich v. State*, 427 S.C. 555, 832 S.E.2d 596 (2019); *State v. Stukes*, 416 S.C. 493, 497, 787 S.E.2d 480, 482 (2016); *State v. Witherspoon*, 418 S.C. 641, 642, 795 S.E.2d 685, 686 (2016); *State v. Cheeks*, 401 S.C. 322, 327, 737 S.E.2d 480, 483 (2013); *State v. Belcher*, 385 S.C. 597, 601, 685 S.E.2d 802, 804 (2009); *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), *overruled in unrelated part by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009); *State v. Roof*, 298 S.C. 351, 353, 380 S.E.2d 828, 829 (1989); *State v. Grant*, 275 S.C. 404, 406, 272 S.E.2d 169, 170 (1980); *State v. Franks*, 432 S.C. 58, 80, 849 S.E.2d 580, 592 (Ct. App. 2020); *State v. Owens*, 427 S.C. 325, 329, 831 S.E.2d 126, 128 (Ct. App. 2019), *aff'd*, 433 S.C. 482, 860 S.E.2d 357 (2021); *State v. Brooks*, 428 S.C. 618, 626, 837 S.E.2d 236, 240 (Ct. App. 2019); *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010).

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Blakeney states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Jennifer B. Mccoy, which was held on June 9-10, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Thomas Blakeney.

Respectfully Submitted,

Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2026.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment # 2025-GS-10-01378, verdict form, and sentencing sheet
(2) Entire trial transcript
(3) Court's Exhibits 1–3
(4) State's Exhibits 1, 11, 15
(5) Post-trial motion to reconsider sentence and state's response in opposition
(6) Order denying motion to reconsider sentence dated June 18, 2025

I certify that this designation contains no matter which is irrelevant to this appeal.

Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

This 8th day of January, 2026.

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

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

Jordan Wayburn
Appellate Defender

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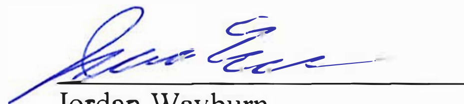
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Thomas Blakeney, #303735, at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 8th day of January, 2026.



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