

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2014-000083

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

MICHAEL E. HYATT,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE	2
ARGUMENT	3
CONCLUSION	8

AUTHORITIES CITED

Cases

State v. Anderson, 322 S.C. 89, 470 S.E.2d 103 (1996)..... 5, 6

State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct. App.1993)..... 6, 7

State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) 7

State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997)..... 5, 7, 8

STATEMENT OF ISSUE ON APPEAL

The trial judge committed no error with respect to the jury charge where he re-charged the jury regarding precisely the matters the jury requested to re-hear.

STATEMENT OF THE CASE

Appellant was indicted in Lancaster County in December 2010 for attempted murder. On January 6-10, 2014, Appellant and his co-defendant were tried before the Honorable Brian M. Gibbons and a jury. The jury found Appellant guilty of the lesser-included offense of assault and battery of a high and aggravated nature, and Judge Gibbons sentenced him to nine years in prison. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge committed no error with respect to the jury charge where he re-charged the jury regarding precisely the matters the jury requested to re-hear.

Relevant Facts

Appellant and his co-defendant (Appellant's son) were charged with attempted murder and tried jointly. At the end of the case, in addition to the standard charges on the burden of proof and the presumption of innocence, the trial judge charged the jury on attempted murder, assault and battery of a high and aggravated nature ("ABHAN"), assault and battery in the first degree, assault and battery in the second degree, and self-defense and defense of others. (R. p. 539-53). After deliberating for a period of time, the jurors sent out a note saying "[w]e need to hear you explain the charges again." (R. p. 554-56; p. 556, lines 12-13). The judge told the attorneys that he could "recharge the entire thing or I can ask them what specifically do you want me to charge you?" (R. p. 556, lines 13-15). Counsel for Appellant's co-defendant stated as follows: "I think we can inquire if there is a specific charge. I'm not saying that you can give whatever they're asking but --." (R. p. 556, lines 19-21). In response, the judge asked whether the attorneys wanted him to send a note back asking if there was a specific charge the jurors needed or whether he should bring the jurors into open court to inquire whether they needed a specific charge. (R. p. 556, lines 22-25). After hearing no preference from the attorneys, the judge stated he would respond on the piece of paper the jurors used, Court's Exhibit # 2. (R. p. 556, line 25 – p. 557, line 1). The judge wrote: "Do you want the entire charge or just a portion? If portion, what charge? Judge Gibbons." (R. p. 557, lines 2-3). There was no objection to this procedure. (R. p. 556-57).

Subsequently, the judge stated he had received a response from the jury. On Court's Exhibit # 2, at the top, someone wrote "Would you re-read the law?" (R. p. 557, lines 6-7). This was scratched out and the word "murder" was written beside it. (R. p. 557, lines 7-8). The word "murder" was then scratched out and "ABHAN" was written in. (R. p. 557, lines 8-10). However, the jury simultaneously sent out a separate note, Court's Exhibit # 3, clarifying its request. Court's Exhibit # 3 stated as follows: "We need the definition of attempted murder, assault and battery of a high and aggravated nature, assault and battery first degree, assault and battery second degree." (R. p. 557, lines 10-15). The judge stated, "[s]o it seems like all they want is for me to charge them the law of the offenses." Appellant's counsel did not object or respond on the record to the judge's comment. (See R. p. 557-58). Following an off-the-record debate regarding whether to provide the jury with a printed version of the charge or give a verbal re-charge, the judge stated that "[i]n response to the Court's Exhibit 3 I'm recharging the things that they requested which is attempted murder, ABHAN, A and B first, A and B second, that's all I'm going to charge, I'm going to do it verbally. They will not get my written charge." (R. p. 558, lines 3-7). The judge stated that "Ya'll's positions are in the record." (R. p. 558, lines 7-8).

Thereafter, the jury was brought into the courtroom and given a re-charge on attempted murder, ABHAN, and assault and battery in the first and second degrees. (R. p. 558-62). After sending the jury back to deliberate, the judge asked whether there were any objections to the charge. (R. p. 562, lines 3-6). At that point, Appellant's counsel stated that he wanted the jury to hear all of the charges they heard in the original jury charge "entirely and completely" to include self-defense. (R. p. 562, lines 9-14).

Counsel for the co-defendant stated he concurred in that objection and also renewed his objection to the exclusion of a charge on assault and battery in the third degree. (R. p. 562, lines 16-18). The judge responded that both positions were “protected” and denied the request to re-charge the entire jury charge, stating that “[the jurors] asked for those four elements and that’s what I gave them.” (R. p. 562, lines 19-21).

Discussion

Appellant contends the trial judge erred by refusing to re-charge self-defense when he re-charged the jury on attempted murder and three lesser-included offenses in response to the jury’s question. This argument is without merit where the trial judge re-charged precisely what the jury asked of him.

In State v. Nichols, the defendant was charged with murder and criminal conspiracy. On appeal, the defendant contended the trial judge erred failing to include self-defense instructions in a re-charge to the jury. Our Supreme Court stated as follows:

After deliberation began, the jury asked the court to clarify the law regarding murder, voluntary manslaughter and conspiracy. The court replayed the court reporter's tape of those portions of the charge, but did not include the self-defense instructions. Appellant's counsel objected to the limited recharge. The court declined to recharge self-defense since the jury did not specifically ask for clarification on the law of self-defense. When a jury requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury's request. We find no error here.

State v. Nichols, 325 S.C. 111, 188-19, 481 S.E.2d 118, 122 (1997) (citations omitted).

In State v. Anderson, a murder case, the judge charged the jury on murder and involuntary manslaughter. State v. Anderson, 322 S.C. 89, 470 S.E.2d 103 (1996). At the defendant’s request, he also gave a King charge regarding resolving reasonable doubt in favor of the lesser-included offense. Id. After the jurors deliberated for about two