

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge

RECEIVED

MAY 07 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRAXTON LAVON HARE,

APPELLANT

APPELLATE CASE NO 2017-001567

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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

Whether the trial court erred in failing to give a correct jury charge for attempted murder on the specific intent to kill?

STATEMENT OF THE CASE

Appellant was indicted for attempted murder and failure to stop. He was convicted of assault and battery of a high and aggravated nature and failure to stop after a jury trial held before the Honorable Edward W. Miller on July 12-13, 2017, in Greenville County. Respective sentences of twenty (20) years and three (3) years were imposed. Ernest Hamilton, Esq. was defense counsel. Mark Moyer, Esq. and Brann Fowler, Esq. were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in failing to give a correct jury charge on attempted murder that did not include the specific intent to kill.

Appellant was tried for attempted murder after shooting at the victim's car with the victim inside of the car. The pertinent part of the court's charge on attempted murder is as follows:

Now, the Defendant is charged with attempted murder. In order to prove this crime, the State must prove the Defendant attempted to kill another person with malice aforethought, either expressed or implied. And malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Now, malice aforethought does not require that malice exists for any particular length of time before the act is committed. But malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of a previous evil intent and the act.

(R. p. 383, line 18-p. 384, line 7)

Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered by you, the jury, in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the Defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

(R. p. 385, line 17-p. 386, line 5)

Defense counsel objected to the charge because the trial court failed to mention a “specific intent” to kill as required by the statute.¹ The trial court noted the exception. (R. p. 390, lines 13-18).

The trial court’s ruling in this case was in error. In State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) the Court held that specific intent to kill was an element of attempted murder and the jury should be instructed accordingly. The Court also advised that implied malice should not be changed.²

¹S.C. code § 16-3-29.

²The trial court in this case did erroneously instruct the jury on implied malice. (R. p. 384, line 8-p. 385, line 16).

CONCLUSION

Appellant's convictions should be reversed.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of May, 2018.

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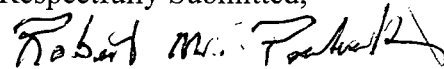
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Braxton Lavon Hare 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 Edward W. Miller, which was held on July 12 - 13, 2017, 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 Braxton Lavon Hare.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 7th day of May, 2018.

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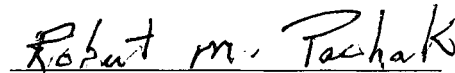
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Trial Transcript dated July 12-13, 2017.

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

May 7, 2018



Robert M. Pachak
Appellate Defender

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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."

May 7, 2018.

Robert M. Pachak

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