STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case Tracking No. 2017-002107

The State, Respondent,

vs.

John Ernest Perry, Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The trial court's jury charge was a correct statement of the law which did not alter the requirement the State prove Appellant acted with specific intent in committing attempted murder.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On June 22, 2016, Officer Dalton Taylor and Officer Shaun Bailey were performing night patrol. He witnessed a vehicle make an improper turn without using a turn signal and initiated a traffic stop. Instead of stopping the driver of the vehicle jumped out of the car without putting it in park and fled the scene. Officer Bailey secured the vehicle while Officer Taylor pursued the fleeing suspect, who was determined to be Appellant. (T.62; R.___).

Appellant jumped a fence followed by Officer Taylor. As Appellant ran past Officer Taylor, Appellant reached into his waistband and pulled out an object. (T.62-63; R.___). Officer Taylor heard the racking of a pistol and then saw Appellant's weapon—a black firearm with elongated silver barrel extension. Appellant fired a shot and then leveled the gun at Officer Taylor and fired another shot. Officer Taylor had his service weapon drawn and returned fire, striking Appellant. (T.63; R.___). Officer Taylor indicated when Appellant drew his weapon and fired, Appellant was not far from Officer Taylor, roughly five to seven feet, and the area was well lit. (T.63-64; 83; R.___). Appellant continued to flee as Officer Taylor took cover. (T.63; R.___).

Officer Taylor indicated Appellant fired in close proximity to him—once not directly at Officer Taylor and once straight at him. Based on his observations, Officer Taylor testified it was not an accidental discharge by Appellant. Officer Taylor explained Appellant tried to shoot him to get away. (T.74; R.___). Appellant was later taken into custody at a camper in Fairfield County. (T.167; R.___). The handgun Appellant used to fire at Officer Taylor was also located in the camper. (T.168; R.___).

The case was submitted to the jury after the trial court denied Appellant's motion for a directed verdict and Appellant indicated he would not present a defense. The jury requested

several additional instructions after the trial court provided its charge. Additionally, the jury was given an Allen charge and allowed to go home for the night prior to returning the next morning for further deliberations.[1] The jury found Appellant guilty of attempted murder and, based on prior convictions, the court sentenced Appellant to life without parole.

[1] In his Brief, Appellant notes as significant the fact that during final jury deliberations the solicitor and defense had reached a possible plea agreement. (App. Br. 7). However, the State withdrew the plea after discussions with the elected Solicitor and a determination that the State would accept the verdict of the jury. (T.278; R.___). Appellant fails to note that the record also showed Appellant was offered several plea offers prior to trial, which he refused. (T. 48-52; R.___). Just as Appellant was free to reject the plea offers, the State was free to withdraw the offer prior to it being accepted by the court.

STANDARD OF REVIEW

"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, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "'In reviewing jury charges for error, [the Court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.'" State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013)). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 58.

ARGUMENT

I. The trial court's jury charge was a correct statement of the law which did not alter the requirement the State prove Appellant acted with specific intent in committing attempted murder.

Appellant contends the trial court erred in its jury charge explaining and defining intent to the jury. Appellant maintains the jury charge altered the requirement the State prove Appellant acted with a specific intent to kill and instead required the jury only find a general intent to kill in order for him to be convicted of attempted murder. The jury charge was a complete and correct statement of the law. It properly defined intent and did not alter the requirement the State prove Appellant had a specific intent to kill beyond a reasonable doubt.

A trial court is required to charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 73 (2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. See Rayfield, 369 S.C. at 119, 631 S.E.2d at 251; Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "'A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused.'" State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)).

Attempted murder is set forth in section 16-3-29 (2010): "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied,

commits the offense of attempted murder." Further, the South Carolina Supreme Court recently considered the requisite intent for a charge of attempted murder and concluded that a specific intent to kill was required under the statute. See State v. King, 422 S.C. 47, 64, 810 S.E.2d 18, 27 (2017).

The trial court properly charged the jury on the State's burden of proving Appellant's guilt beyond a reasonable doubt and regarding the underlying offense of attempted murder. The trial court charged the jury, without any objection, regarding the crime of attempted murder by reading the statute and stating: "A person who with intent to kill attempts to kill another person with malice aforethought, either express or implied, commits the offense of attempted murder." (T.261; R.___). This same statement of the elements of attempted murder was given again without objection on a requested recharge. (T.268; R.___). Shortly thereafter, the jury asked the court to define intent and the court offered the following charge:

> Intent. The state of mind accompanying an act, especially a forbidden act. While motive is the inducement to do some act, intent is the mental resolution or determination to do it. When the intent to do an act that violates the law exists motive becomes immaterial.

(T.273; R.___). Appellant raised his concern with the language that "motive becomes immaterial" in the final sentence of the definition before and after the charge was given. The charge as given, however, was a complete and correct statement of the law, especially when read in conjunction with the elements of attempted murder read twice to the jury.

The charges given to the court properly explained the State had the burden to prove beyond a reasonable doubt that Appellant had the intent to kill another person. This, as the Court in King determined, is a specific intent to kill. The trial court's follow-up charge defining intent explained "intent is the mental resolution or determination to do [the forbidden act]." In this

case, the forbidden act was to kill another person. So if someone has the mental resolution or determination to kill another, they clearly have the specific intent to kill another person.

Additionally, Appellant seems to conflate the terms motive and intent, and even goes so far as to assert: "Motive to a reasonable juror equals the defendant's intent to an act." (App. Br. 9). As this Court has explained, motive and intent and not synonymous and the trial court's instruction clearly separated the two based on the definition given. See e.g., State v. Sweat, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004) ("Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence ... of the intent to commit the crime when intent or state of mind is in issue.") (quoting Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000)); see also, State v. Arredondo, 394 P.3d 348, 357 (Wash. 2017) ("Motive and intent are often used interchangeably. They have different meanings. 'Motive' speaks to the 'cause or reason that moves the will,' in other words, what prompted a defendant to take criminal action (e.g., attack a victim). 'Intent' speaks to the 'state of mind with which the act is done,' in other words, what the defendant hopes to accomplish when motivated to take action (e.g., inflict great bodily harm or death).") (internal citations omitted); People v. Hillhouse, 40 P.3d 754, 777 (Cal. 4th 2002) (finding motive and intent are "separate and disparate mental states. The words are not synonyms.").

The trial court's definitely clearly separated the concepts of motive explaining that intent is the state of mind in doing the act, whereas motive is the reason behind doing the act. This is a clearly correct statement of the law. Motive and evidence supporting a motive can assist the jury in determining the intent through circumstantial evidence. However, as our case law makes clear, the motive with which someone operates is not an element the State must prove. See

Sweat, 362 S.C. 117, 124, 606 S.E.2d 508, 512; see also, Hill v. State, 415 S.C. 421, 435, 782 S.E.2d 414, 421 (Ct. App. 2016) (same); State v. Ward, 119 Me. 482, 493, 111 A. 805 (1921) ("[M]otive is only one element in the chain of evidence offered for the purpose of proving the commission of a crime. It is not an essential element. A powerful motive may be found upon all the evidence to be inconsistent with guilt. On the other hand there may be ample proof of guilt without any evidence of motive. It is often impossible to prove motive. If the other evidence is sufficient, motive becomes immaterial.") (emphasis added). As the South Carolina Supreme Court found many years ago: "There is no necessity for confounding the terms 'intent' and 'motive.'" State v. Coleman, 20 S.C. 441, 452 (1884). The Court in Coleman properly recognized that one can establish an intent to act without ever determining the motive behind the act. Id. Once the jury found Appellant acted with a specific intent to kill, Appellant's motive in attempting to kill the officer was immaterial for that determination.

When reading the trial court's jury charges as a whole, they properly charged the relevant and correct law. This case is clearly distinguishable from King and the charge given in that case. The charge as given did not alter the required burden on the State to prove a specific intent to kill by only requiring a general intent to kill. This Court should affirm the trial court's charge and affirm Appellant's conviction for attempted murder and sentence.

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

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 14, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
NOV 14 2018
SC Court of Appeals

Appeal from York County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case Tracking No. 2017-002107

The State, Respondent,

vs.

John Ernest Perry, Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of November, 2018.

ANNE A. MUELLER
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

November 14, 2018

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. John Ernest Perry
Appellate Case Tracking No. 2017-002107

Dear Mr. Dudek:

I am enclosing copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division