STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL E. HYATT,

APPELLANT

APPELLATE CASE NO. 2014-000083

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge's failure to instruct the jury on self-defense when the jury sent multiple notes requesting to be re-instructed on various aspects of the jury instructions, including the charges, violate Appellant's state and constitutional rights to due process of law and a jury trial?

STATEMENT OF THE CASE

On December 2, 2010, the Lancaster County grand jury indicted Appellant for attempted murder. R. 401. The state also charged Appellant's son, Aaron Hyatt, with attempted murder concerning the same set of facts and circumstances. On January 6, 2014, the state, represented by Andy Cook, called the cases for trial before the Honorable Brian Gibbons and a jury. Mark Grier represented Appellant, and William Frick represented Aaron. R. 1. The jury found both guilty of the lesser-included offense of assault and battery of a high and aggravated nature. R. 385, line 22 – R. 386, line 10. Judge Gibbons sentenced Appellant to imprisonment for nine years. He sentenced Aaron to imprisonment for four years. R. 397, lines 5 – 10; R. 403.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

Although most of the facts were hotly contested by the parties, some facts were undisputed. At the end of Merle Lane, a short, single-lane, dead-end, dirt road, Kamil Nassrah farmed a plot of land that he leased. R. 21, line 1 – R. 22, line 2. Appellant lived alone on Merle Lane not far from Nassrah's field. R. 216, lines 6-9. On September 16, 2010, Nassrah and his helper, Donnell Melton, were leaving the field after having cut and bailed the hay in the field. R. 24, line 15 – R. 25, line 10. Nassrah led the way in a truck with a trailer full of hay, and Melton followed on a tractor. R. 25, line 14 – R. 26, line 6. Aaron Hyatt pulled onto Merle Lane in the opposite direction of Nassrah and Melton. Due to the narrowness of the road, the parties were unable to move beyond each other. R. 27, lines 14 – 19. The undisputed facts end there, except for two key points: all parties agreed that Kamil Nassrah shot Appellant, and all parties agreed Appellant hit Nassrah with a wooden ax handle. R. 29, line 4 – R. 30, line 22; R. 31, lines 4-15; R. 98, lines 1-2; R. 101, lines 12-16; R. 247, lines 22-25; R. 248, lines 1-21; R. 295, lines 4-16.

According to Appellant, he was working in his yard when Nassrah and Melton stopped in front of his house and began hurling insults and threats at him. Appellant was on the phone with his son, Aaron, when this took place. R. 238, line 6 – R. 239, line 6; R. 240, line 2 – R. 241, line 16. Melton was armed with a big wrench. R. 240, line 23 – R. 241, line -3. Unable to get a rise out of Appellant, Nassrah and Melton left. R. 241, lines 17-19. However, they were not far from Appellant's home when they suddenly stopped in the middle of Merle Lane. R. 241, line 22 – R. 242, line 2.

Aaron Hyatt, who heard the threats made by Nassrah and Melton to his elderly father, got into his truck and raced over to his Appellant's house. R. 288, line 5 – R. 289,

line 17; R. 290, line 3. However, before he reached his Appellant's house, he met Nassrah and Melton on Merle Lane. R. 290, lines 5-13.[1]

According to Appellant, Melton jumped off his tractor and ran forward. Fearing Nassrah and Melton had met Aaron on the road, Appellant jumped into his truck and drove up to Merle Lane. R. 243, lines 3-12. Appellant had been working with a wooden ax handle in his yard; he carried it with him. R. 243, lines 19-25; R. 244, lines 10-14.

When he got to Merle Lane, Appellant saw Nassrah pointing a gun at Aaron. Nassrah shot in Aaron's direction, but missed. R. 244, line 22 – R. 245, line 16. Appellant tried to knock the gun out of Nassrah's hand with the ax handle, but failed. R. 246, line 15 – R. 247, lines 1. When Appellant tried to knock the gun out of Nassrah's hand, he slipped and fell to the ground. Nassrah saw his opportunity and shot Appellant. R. 247, line 9 – R. 248, line 8. Appellant, who had been shot and was struggling to stand, then hit Nassrah in the head with the ax handle. R. 248, lines 9 – 24.

Typical of courtroom disputes, the other side had a different story to tell. Nassrah claimed that he saw Appellant in his front yard when Nassrah was leaving the field, but he denied stopping and threatening him. R. 27, lines 5-13. Nassrah further claimed that Aaron blocked his exit when Aaron entered Merle Lane. R. 27, lines 14 – 17; R. 28, lines 14-22. Although Nassrah asked Aaron to move his truck so they could leave, Aaron responded with threats. R. 28, lines 4-13. Nassrah claimed he was suddenly hit in the back of the head, and

[1] Aaron's testimony differed only slightly from Appellant's testimony. According to Aaron, Nassrah got out of his truck and pointed a gun across the truck at Aaron. R. 290, lines 19-22. Aaron attempted to flee, but he was chased by Nassrah and Melton, both of whom had weapons. R. 291, line 11 – R. 294, line 7. Aaron did not remember Nassrah firing a shot at him. R. 294, lines 13-18. However, Aaron vividly recalled Nassrah shooting Appellant and Appellant hitting Nassrah with the stick. R. 295, lines 4-24. He was unwavering on the sequence of events.

when he turned around, he saw Appellant approaching with a large stick. R. 29, lines 1-11; R. 30, lines 17-22. Nassrah claimed he pulled out his gun from his waistband and told Appellant to stop. R. 30, line 23 – R. 31, line 3. According to Nassrah, he shot once into the ground as a warning shot, but when Appellant continued to approach, he shot Appellant. R. 31, lines 4-15.[2]

[2] Earlier that week, Nassrah found himself locked in the field. Although he had bolt cutters and was unable to leave the field, he called the police for help. R. 22, line 5 – R. 23, line 19; R. 147, lines 16-19. Nassrah believed Appellant and his son were responsible for locking him in the field. R. 22, lines 13-18. Appellant and Aaron denied locking Nassrah in the field, and further testified that on that day Nassrah and Melton threatened them. R. 222, lines 20-21; R. 284, line 5 – R. 285, line 24. Appellant and Aaron had asked Nassrah repeatedly to stop speeding on the dirt road. The excessive speed created a considerable amount of dust. Appellant, who suffered from COPD, lived in a home that was very close to the dirt road and had no air conditioning. R. 39, lines 4-11; R. 214, lines 7-20; R. 216, line 22 – R. 217, line 2; R. 218, lines 14-24; R. 221, lines 9-24. Due to the lack of air conditioning, Appellant opened his windows for ventilation. The dust would enter his open windows and aggravate his medical condition. R. 285, line 25 – R. 287, line 17.

ARGUMENT

The trial judge's failure to instruct the jury on self-defense when the jury sent multiple notes requesting to be re-instructed on various aspects of the jury instructions, including the charges, violated Appellant's state and constitutional rights to due process of law and a jury trial.

Relevant facts

At the close of the case, Judge Gibbons charged the jury with the law on attempted murder, and the lesser included offenses of assault and battery of a high and aggravated nature and assault and battery first and second degree. He also charged the jury with the defenses of self-defense and defense of others. R. 366, lines 16 – R. 372, lines 24. During deliberations the jury sent a note stating the following: "We need to hear you explain the charges again." R. 377, lines 12-13; R. 398. Judge Gibbons responded with a written note asking of the jury wanted to hear the entire charge or just a portion. He also asked the jury to specify the portion if they only wanted to hear a portion. R. 378, lines 1-3; R. 398.

The jury responded by asking if the judge would "re-read the law," but this was scratched out. Then, someone "wrote the word murder, then scratched that out, and then wrote the word ABHAN." R. 378, lines 5-10; R. 398. The jury sent a separate note asking for the "definition of attempted murder, assault and battery of a high and aggravated nature, assault and battery first degree, and assault and battery second degree." R. 378, lines 10-15; R. 398.

Thereafter, the trial judge recharged the jury with law of the criminal offenses only, and refused to re-charge on the law of self-defense. Appellant objected to the judge's failure to re-charge the jury on self-defense, but the judge refused based upon the nature of the

jury's request. R. 379, line 10 – R. 383, line 21. Ultimately, the jury found Appellant and his son, Aaron, guilty of the lesser-included offense of assault and battery of a high and aggravated nature. R. 385, line 22 – R. 386, line 10.

Discussion

The trial judge erred in refusing to re-charge the jury with the law of self-defense when he re-charged the jury as to the criminal offenses. Appellant readily admits that this Court held that "[w]hen a jury requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury's request." State v. Barksdale, 311 S.C. 210, 216, 428 S.E.2d 498, 502 (Ct. App. 1993). The Supreme Court quoted Barksdale for this proposition in State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996). However, Appellant's case is easily distinguished from Barksdale and Anderson.

In Barksdale, 311 S.C. at 212, 428 S.E.2d at 499, the defendant and others were involved in an altercation at a nightclub. Several individuals were injured as a result of the fight and one man died. Id. at 213, 428 S.E.2d at 500. The defendants were charged with two counts of lynching. Id. at 211, 428 S.E.2d at 499. All were found not guilty of one count, but two of the defendants were found guilty of one count of first degree lynching. Id. at 212, 428 S.E.2d at 499. The jury requested to be recharged on the definitions of first degree lynching and self-defense. Id. at 216, 428 S.E.2d at 502. After the judge re-charged the jury on lynching and self-defense, the judge asked the jury if it needed to be read the definition of a mob. The jury replied in the negative. Thus, the judge refused to re-charge the jury on the definition of a mob. Id. This Court found no error in the limitation because "it is sufficient for the court to charge only those matters necessary to answer the jury's request." Id.

In Anderson, the defendant was charged with the murder of his girlfriend. 322 S.C. at 90, 470 S.E.2d at 104. At the conclusion of the evidence, the judge instructed the jury on murder and involuntary manslaughter. He also instructed the jury that if they had any reasonable doubt as to whether the unlawful killing was murder or manslaughter, they had to convict the defendant of the lesser offense of manslaughter pursuant to State v. King, 158 S.C. 251, 155 S.E. 409 (1930). The jury asked to be recharged on the definitions of murder, malice, and involuntary manslaughter. The judge limited his re-charge to those three items and refused Anderson's request for the King charge. Id. at 91, 470 S.E.2d at 104.

The South Carolina Supreme Court affirmed the trial judge's limitation because the jury's question was limited to those three items. Due to the jury placing the limitation on the re-charge, the judge was not required to re-instruct on any additional matters. Id. at 94, 470 S.E.2d at 106.

Here, the trial judge's limited re-charge was not sufficient due to nature of the jury's notes requesting to be re-charged and the nature of the affirmative defenses. Although the jury's final note requested only the definitions of attempted murder, assault and battery of a high and aggravated nature, assault and battery first degree and assault and battery second degree, the jury had previously requested an explanation of charges and then requested that the judge re-read the law. The note showed the jury's confusion regarding the matter in light of the numerous items scratched out and the multitude of notes. This confusion could have been remedied by a proper re-charge on the criminal offenses and the affirmative defenses.

The jury's note in the present case was not the clear cut limited request for a re-charge as made in Anderson or the direct question-and-answer between the judge and the

jury in Barksdale. Further, the re-charge in Anderson covered the greater offense and the lesser-included offense. The only language that was requested by the defense and not given to the jury in the re-charge was how to resolve any doubt concerning the two offenses. In Barksdale, the jury responded negatively to the judge's direct question about being re-charged on the definition of a mob. However, in the present case, the re-charge failed to inform the jury of the affirmative defenses, which the state had the duty to disprove beyond a reasonable doubt. Essentially, self-defense and defense of others become elements of the criminal offenses when the burden is placed on the state to disprove them beyond a reasonable doubt.

The facts of this case were hotly disputed by the parties and the entire case boiled down to a credibility contest among the only four witnesses to the confrontation. The jury was asked to decide whether Appellant was guilty of a crime or whether he acted in self-defense or defense of others. The burden placed on the state to disprove his defenses placed the elements of those defenses squarely within the elements of the offenses, even if they would be considered negative elements. Thus, the trial judge's limitation during the re-charge inhibited the jury's ability to consider the defenses.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction for assault and battery of a high and aggravated nature and remand this matter for a new trial.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

This 16th day of December, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

December 16, 2014

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe Bigelow, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of December, 2014.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of December, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022 .