



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 19

May 8, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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The South Carolina Court of Appeals

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STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “An appellate court will not reverse the trial judge’s decision regarding jury charges absent an abuse of discretion.” State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). Generally, the trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). A charge to the jury is correct if it contains the correct definition of the law when read as a whole. Id. at 665, 594 S.E.2d at 472-73.

LAW/ANALYSIS

Kinard contends the trial court erred in refusing to charge the jury on the general intent required to convict for ABIK. We disagree.

ABIK is defined as an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. State v. Wilds, 355 S.C. 269, 275, 584 S.E.2d 138, 141 (Ct. App. 2003). Murder is the killing of a person with malice aforethought, either express or implied. Id. With the exception of the death of the victim, each and every element of murder must be proven beyond a reasonable doubt in order for a jury to convict a defendant of ABIK. Id.

“Malice aforethought” is defined as “the requisite mental state for common-law murder” and it utilizes four possible mental states to encompass both specific and general intent to commit the crime. Black’s Law Dictionary 969 (7th ed. 1999). These four possibilities are intent to kill, intent to inflict grievous bodily harm, extremely reckless indifference to the

Whether the circuit court judge erred in not charging the jury on general intent for assault and battery with intent to kill?

This issue is now our sole appellate consideration.

