

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080681-CA
v.)	
)	F I L E D
Larry Lewis Hutchings,)	(November 13, 2009)
)	
Defendant and Appellant.)	2009 UT App 330

Third District, Salt Lake Department, 061902496
The Honorable Dennis M. Fuchs

Attorneys: Ronald Fujino, Salt Lake City, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,
for Appellee

Before Judges Bench, Thorne, and McHugh.

McHUGH, Judge:

Larry Lewis Hutchings appeals his convictions for aggravated assault and criminal mischief. Hutchings raises multiple issues on appeal, challenging his convictions. With respect to all but one of those issues, Hutchings's lawyer has filed an Anders brief, and Hutchings has filed a memorandum to supplement counsel's brief. See generally Anders v. California, 386 U.S. 738 (1967) (describing the procedures that appointed counsel must follow when he believes his client's claims on appeal are frivolous); State v. Clayton, 639 P.2d 168, 169-70 (Utah 1981) (adopting Anders requirements "as an expression of the requirements of due process of law" under the Utah Constitution). Because our independent review convinces us that the issues identified by Hutchings's counsel in the Anders brief (the Anders issues) are indeed frivolous, see generally State v. Romano, 29 Utah 2d 237, 507 P.2d 1025, 1025 (1973) (defining "frivolous" as "having no basis in fact or law"), we do not consider those issues further. See Clayton, 639 P.2d at 170 (holding that an appellate court may grant a withdrawal and affirm a conviction if it unanimously determines that an appeal is wholly frivolous).

Apart from the Anders issues, appellate counsel argues that the trial court incorrectly instructed the jury on the culpable mental state required for aggravated assault and the definition of "intentional."¹ "Whether a jury instruction correctly states the law presents a question of law which we review for correctness." State v. Miller, 2008 UT 61, ¶ 13, 193 P.3d 92.

The jury instruction on aggravated assault provided,

Before you can convict . . . HUTCHINGS
. . . of Aggravated Assault, . . . you must
find from all of the evidence and beyond a
reasonable doubt, each and every one of the
following elements of that offense:

1. That on or about April 6, 2006, in
Salt Lake County, Utah, . . . HUTCHINGS;
2. Intentionally or knowingly;
3. Committed an assault on [his
girlfriend]; and
4. Intentionally caused serious bodily
injury to her.

We agree with the State that the jury instruction correctly listed the elements of aggravated assault, including the culpable mental states.

Aggravated assault requires that a person commit "assault as defined in [Utah Code section 76-5-102, and . . . intentionally cause[] serious bodily injury to another." Utah Code Ann. § 76-5-103(1)(a) (2008) (emphasis added).² An "[a]ssault is . . . an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another." Id. § 76-5-102. Because the assault statute does not provide the culpable mental state required to support a

¹Although Hutchings failed to object to these instructions in the trial court, he requests that we review them under the plain error doctrine. The State does not contest our review of these issues.

²Because it is irrelevant to this appeal, we need not address the alternative element of aggravated assault, that is, the use of a dangerous weapon or other means likely to produce death in the commission of the assault, see Utah Code Ann. § 76-5-103(1)(b) (2008).

conviction, "intent, knowledge, or recklessness shall suffice to establish criminal responsibility." Id. § 76-2-102. To be liable for aggravated assault, however, the defendant must also have intentionally caused serious bodily injury. See id. § 76-5-103(1)(a). Thus, there are actually two mens rea requirements that must be met to convict a defendant of aggravated assault: the first is the intent, knowledge, or recklessness included in a simple assault charge; the second is the requirement that the defendant intentionally cause serious bodily injury. The challenged jury instruction correctly identified each of these mental state requirements.³ Accordingly, we reject counsel's claim that the jury instruction was erroneous.⁴

Finally, Hutchings challenges the instruction to the jury that defined "intentional" conduct. That instruction stated, "A person engages in conduct intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result." Hutchings argues that to be guilty of aggravated assault he must have intended to cause the serious bodily injury suffered by the victim, not simply the conduct that resulted in the serious bodily injury. We disagree. It is enough to satisfy the mens rea requirement if the defendant intends the act that results in serious bodily injury. See State v. Fontana, 680 P.2d 1042, 1044 n.1 (Utah 1984) (upholding nearly identical instructions for intent).

Because counsel has complied with the requirements of Anders v. California, 386 U.S. 738 (1967), and because we confirm that the Anders issues are frivolous, we grant counsel's request to withdraw with respect to the Anders issues only and affirm the trial court's rulings with respect to those issues. In addition, the jury instructions properly informed the jury of the elements

³Indeed, by not including recklessness as a basis for a finding of assault, the State was held to a higher standard of proof for that mens rea element than required by the statute.

⁴Because we conclude that the jury instruction was proper, we need not address Hutchings's claim that he received ineffective assistance of counsel when his trial lawyer failed to object to the instruction.

of aggravated assault, including the mental states required.
Accordingly, we affirm the convictions.

Carolyn B. McHugh, Judge

I CONCUR:

Russell W. Bench, Judge

I CONCUR IN THE RESULT:

William A. Thorne Jr., Judge