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SC Court of Appeals

1IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2022-001618

Quavon Deshay Edmunds, Petitioner,

vs.

The State of South Carolina, Respondent.

REPLY

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ARGUMENTS

I. The trial court erred in charging the jury on accomplice liability.

The State argues that the trial court's charge to the jury on accomplice liability was correct because there was sufficient evidence to prove that Petitioner acted in concert with others and the evidence was equivocal as to who shot the victim. Brief of Respondent at 7-8. The State's argument relies on *Barber v. State,* 393 S.C. 232, 712 S.E. 2d. 236 (2011). In *Barber*, there were four co-defendants who all agreed to rob the victim. *Barber,* 393 S.C. at 234, 712 S.E.2d. at 437. One of the defendants remained in the car while the other three entered the home of the victim. *Id.* One of the three who entered the home shot two victims in the home, killing one of them. *Id.* Barber's three co-defendants all testified against him that they had planned the robbery and Barber was the one who shot and killed the victim while they were in the victim's home. *Id.* at 235, 438. The defense argued that the court should not charge the jury on accomplice liability because the State's theory of the case was that Barber was the shooter. *Id.* The court charged accomplice liability and the Supreme Court of South Carolina agreed on appeal that the charge was appropriate because there was evidence presented that the co-defendants agreed to act together for the unlawful purpose of robbing the victim with weapons, that the shooting of the victim was a natural occurrence of such an unlawful act, and there was equivocal evidence presented as to who was the shooter. *Id.* at 236, 438. The jury could decide Barber was guilty as the trigger man or as an accomplice.

The same is not true in this case. There was no evidence presented that there was an agreement to kill Miller-Knowles or to commit any other unlawful act. The only

evidence that there was any agreement at all was an agreement to retrieve Petitioner's property, which is not an illegal act. There was no agreement to rob, threaten, force, or harm Miller-Knowles in retrieving the property. There certainly was no agreement to pull up next to his vehicle and shoot and kill him from an adjacent vehicle. Thus, without an agreement to commit an unlawful act, there can be no accomplice liability for Petitioner. So even assuming arguendo that Petitioner was in the blue Camaro (which was not proven by the State) and some unknown other person shot Miller-Knowles, there was no evidence Petitioner knew that person was going to do that or was even armed. Not only was there no evidence that Petitioner knew those things, there was also no evidence of who that person might be, and the State plainly rests its case on the jury concluding that Petitioner was the shooter. See Tr. 50 (arguing Petitioner "shot into the red Infinity"), 485 (referring to Petitioner as the "principal" who "armed himself . . . for revenge"). The State called four of Petitioner's codefendants who all indicated they pled to accessory after the fact, and the attempted murder charges were dropped. See Tr. 171, 193, 215, 268. There was no evidence presented that any of his co-defendants shot the victim. Without any evidence that his co-defendants shot the victim and no evidence of any agreement to commit an illegal act, a jury charge regarding accomplice liability was inappropriate in Petitioner's case.

The State also relies on *State v. Harry* saying the facts have a "striking similarity." In *Harry*, the Petitioner and his co-defendants went to the victim's home to confront him about Petitioner's television. *State v. Harry*, 420 S.C. 290, 300, 803 S.E.2d 272, 277 (2017). All the co-defendants went to victim's home together and confronted him in his front yard. Petitioner's co-defendant was armed and shot the victim after a "head nod" from

Petitioner. *Id.* The Supreme Court of South Carolina ruled a jury instruction on accomplice liability was appropriate because there was evidence presented of an agreement between Petitioner and his co-defendant who shot and killed the victim. *Id.* Here, there was no such evidence presented of an agreement between Petitioner and the shooter to kill Miller-Knowles. There was no evidence presented as to who the shooter was either. This case is not "strikingly similar" to the facts at hand.

The State also argues that even if the charge was incorrect, it was harmless error because if Petitioner was not the accomplice, he was the shooter. This is simply untrue. This case is factually analogous to *State v. Washington*, not *Barber*. In *Washington*, the defense argued the charge on accomplice liability was improper because there was no evidence upon which the jury could conclude that some confederate of Washington's was the shooter. *State v. Washington* 431 S.C. 394, 402, 848 S.E.2d 779, 783 (2020). The Supreme Court agreed, observing that there was evidence that Washington shot the victim, and there was evidence that Washington did not shoot the victim—but there was no evidence that his only possible accomplice shot the victim. *Id.* at 410, 848 S.E.2d at 787. Similarly, here, there was no evidence supporting a charge on accomplice liability because there was no evidence that the shots were fired by an accomplice. Further, there was no evidence presented as to who that accomplice might be. The accomplice liability jury instruction was improper based on these facts.

Finally, the State argues that the jury instruction also was not an improper comment on the facts because the court was merely providing the jury with an example of what the hand of one is the hand of all means. This example provided by the Court goes beyond the

innocent nature described by the State, it was an improper comment on the facts of this specific case. In charging accomplice liability, the trial court twice referenced the example that "two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it's sometimes said, the hand of one is the hand of all." Tr. 519, 529. This case involved the firing of a single gun that led to many people being charged with attempted murder. The trial court's example intimates that the evidence presented satisfied the legal definition and thereby invade the jury's province as the ultimate factfinder.

This jury instruction was improper given the facts of this case and it contained an improper comment on the facts to the jury. This charge was in error and this Court should reverse and remand for a new trial.

II. The trial court erred in denying Petitioner's directed verdict motion.

The State argues the ruling denying Petitioner's motion for a directed verdict was proper because there was evidence presented to support a verdict of guilty on each charge for "all the reasons discussed in the first argument section." Brief of Respondent p. 16-17. All the State was able to present against Petitioner amounted to mere suspicion of guilt which is not sufficient to survive a motion for a directed verdict. ("When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "'Suspicion' implies a belief or opinion as to guilt based upon facts or

circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). The State believed Petitioner was the shooter or an accomplice of an unknown shooter, but the State failed to present proof that raised more than mere suspicion of Petitioner's guilt. Despite producing the testimony of Miller-Knowles and Lomax, a witness, and his four co-defendants, no one testified that Edmunds was the shooter in the blue Camaro or even confirmed he was in the blue Camaro at all. The only other evidence placing him in the area was from phone records that suggests the "general area that the phone could have been" and not an "exact location for the phone." Tr. 390. That general area spanned a mile and a half from the incident. Tr. 398. Further, as discussed above, even if Petitioner was in the blue Camaro, there was absolutely no evidence presented he shot the victim or of any agreement with an unidentified co-defendant to shoot the victim. For these reasons, there was insufficient evidence to allow any of the charges to be submitted to the jury. At best, the State has shown some facts that seem suspicious, but without more, that cannot withstand directed verdict.

CONCLUSION

Respectfully, Mr. Edmunds asks this Court to reverse and remand for a new trial.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this motion on Joshua Edwards of the South Carolina Attorney General's Office via email on this date, August 31, 2023.

/s/ Meagan Johnson