

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Williamsburg County

Honorable R. Kirk Griffin, Circuit Court Judge

ROBERT LEE REDDOCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001321

BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred instructing the jury on accomplice liability where the state's theory at trial was that petitioner was the individual that committed the armed robbery and the state put forth no evidence contrary to that contention?

STATEMENT OF THE CASE

On December 12, 2019, a Williamsburg County grand jury indicted petitioner for two counts of armed robbery, two counts of conspiracy, failure to stop for blue light, and possession of a weapon during the commission of a violent crime.¹ App. 260-61. Petitioner's case was called to trial on June 14, 2021, before the Honorable R. Ferrell Cothran and a jury. App. 1. Virgil Barr represented petitioner and assistant solicitors, Warren Anderson and Ella Alston, represented the state. App. 1.

On June 17, 2021, the jury found petitioner not guilty of possession of a weapon during the commission of a violent crime but guilty of armed robbery.² App. 167, ll. 17-23. Judge Cothran sentenced petitioner to life without the possibility of parole. App. 183, l. 23-184, l. 4.

Thereafter, petitioner filed an application for post-conviction relief. App. 190-96. On June 13, 2023, an evidentiary hearing was held before the Honorable R. Kirk Griffin. App. 209-50. Petitioner was represented by Timothy Griffith and the state was represented by assistant attorney general Cruise Mitchell. App. 209.

On August 9, 2023, Judge Griffin signed an order granting belated appellate review pursuant to *White v. State*,³ and denied PCR as to all other claims. App. 251-59. Judge Griffin found defense counsel did not properly inform petitioner of his right to a direct appeal or pursue an appeal on petitioner's behalf. App. 255. Judge Griffin further found counsel should have made certain petitioner was fully aware of this right and in the absence of waiver by petitioner pursue an appeal on his behalf. App. 255.

¹ Petitioner was ultimately tried for armed robbery, possession of a weapon during the commission of a violent crime and criminal conspiracy. App. 36, ll. 2-9.

² The trial court granted petitioner's motion for directed a verdict as to criminal conspiracy. App. 128, ll. 8-9.

³ 263 S.C. 110, 208 S.E.2d 35 (1974).

Petitioner now files this brief addressing the direct appeal issue, as required by Rule 243, SCACR, simultaneously with a petition.

STANDARD OF REVIEW

“In criminal cases an appellate court sits to review errors of law only.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.*

ARGUMENT

The trial court erred instructing the jury on accomplice liability where the state's theory at trial was that petitioner was the individual that committed the armed robbery and the state put forth no evidence contrary to that contention.

Relevant facts

On July 15, 2019, a masked intruder entered Vicki's Store in Williamsburg South Carolina and robbed the clerk at gun point. App. 50, l. 19-51, l. 13. The clerk, William Thompson, described the person as a black male wearing a baseball cap, a nylon face covering, a dark shirt with a bleach stain, and black latex gloves. App. 51, ll. 14-22. Video from the Vicki's Store surveillance cameras show the robbery.⁴ App. 54, ll. 1-12; State's exhibit 1, video from Vicki's Store. Mr. Thompson opened the register and the man reached across and started grabbing money out of the drawer and instructed Thompson to put the remaining money in one of the little brown paper bags on the counter. App. 51, l. 24-52, l. 5. Mr. Thompson testified the man that robbed him left and got in the passenger side of a burgundy-colored Buick. He said there was an unmasked younger man driving the car. App. 55, ll. 1-16.

Officer Michael Dunmore was responding to the robbery when he saw a vehicle matching the description given by Mr. Thompson. App. 61, l. 20-62, l. 6. Dunmore activated his lights attempting to stop the vehicle. The vehicle did not stop and continued to accelerate until eventually wrecking in a ditch. App. 62, l. 20-63, l. 19. Both men in the vehicle attempted flee. Dunmore tackled petitioner and he was arrested. App. 67, ll. 3-24. Petitioner was wearing a dark shirt with a bleach stain on the left shoulder, and he had a brown paper bag with money in it. App. 68, ll. 1-7.

⁴ State's exhibit 1, video from Vicki's Store is on file with the Court.

Investigator Juan Ballard collected evidence from Highway 41, the road between Vicki's and where petitioner was arrested. Ballard found two latex gloves and a baseball hat along the highway. App. 90, l. 16-91, l. 4. An airsoft pistol, believed to be the gun used, was found further down the road. App. 96, l. 23-97, l. 15. South Carolina Law Enforcement Division (SLED) DNA analyst, Jennifer Bartman, analyzed the evidence collected from Highway 41. App. 115-25. Bartman testified that petitioner's DNA was found in the baseball hat and in the gloves. App. 119, l. 14-122, l. 3.

At the conclusion of evidence defense counsel objected to the trial court charging the jury on accomplice liability. App. 146, ll. 6-8. Counsel argued the state only put forth evidence that petitioner, and petitioner alone, entered Vicki's and robbed the clerk at gunpoint. App. 146, ll. 8-12. The state responded it was the defense's position petitioner was the getaway driver and that as the driver petitioner could still be found guilty of armed robbery. App. 147, ll. 1-4.

The court overruled defense counsel's objection finding there was a factual basis on which the hand of one hand of all was an appropriate charge. App. 147, ll. 5-24. The trial court instructed the jury on accomplice liability. App. 157, l. 6-159, l. 2.

Discussion

The state put forth no evidence that petitioner was the driver or that the other individual robbed Vicki's store at gunpoint. Therefore, a charge on accomplice liability was not proper.

“For an accomplice liability instruction to be warranted, the evidence must be ‘equivocal on some integral fact and the jury [must have] been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.’” *State v. Washington*, 431 S.C. 394, 407, 848 S.E.2d 779, 786 (2020) (citing *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011)).

In *Washington* this Court held that an accomplice liability instruction was not warranted by the evidence and the error required a reversal. *State v. Washington*, 431 S.C. 394, 848 S.E.2d 779, (2020). In that case the defendant was convicted of voluntary manslaughter after a shooting at a nightclub resulted in the death of Trey Manigault. *Id.* Over defendant's objection the trial court charged the jury on accomplice liability. *Id.* at 402, 848 S.E.2d 783. In that case, this Court found the record contained no evidence that defendant's "accomplice" was the shooter and therefore the instruction should not have been given. *Id.* at 407, 848 S.E.2d 786.

In *Barber*, this Court held the accomplice liability instruction was supported by the evidence. *Barber v. State*, 393 S.C. 232, 712 S.E.2d 436 (2011). In *Barber* this Court noted the decision to charge accomplice liability depended on "whether there is any evidence that another co-conspirator was the shooter and Barber was acting with him when the robbery took place." *Id.* In that case, this Court held that an accomplice liability instruction was warranted because "the sum of the evidence presented at trial, both by the state and defense, was equivocal as to who was the shooter." *Id.* at 236, 712 S.E.2d at 439. The Court further stated that an alternate theory of liability may not be charged "merely on the theory the jury may believe some of the evidence and disbelieve other evidence." *Id.* at 236, 712 S.E.2d at 438.

Here, as in *Washington*, there was no evidence that the other person in the car with petitioner robbed Vicki's. The surveillance video showed an individual wearing clothing similar to the clothing petitioner was wearing when he was arrested. The evidence collected along the road had petitioner's DNA on it. For an instruction on accomplice liability to have been warranted there must be some evidence that petitioner's accomplice robbed the store, there was none. *Washington* at 410, 848 S.E.2d 787.

Petitioner was prejudiced by this error where the jury struggled during deliberations and

ultimately found petitioner guilty of armed robbery but not guilty of possession of a weapon. App. 167, ll. 17-23. During deliberations the jury asked the trial court how long petitioner had been incarcerated before trial. App. 165, ll. 1-20. According to defense counsel's testimony at PCR, the jury was deadlocked on the armed robbery charge and the court was about to give an *Allen*⁵ charge right before they came back with a verdict. App. 228, ll. 16-20. Additionally, it is noteworthy that the jury found petitioner guilty of armed robbery but not guilty of possession of a weapon. The jury's struggle together with the question to the trial court demonstrated the jury had some doubt regarding whether petitioner is the person in the video robbing Vicki's store. However, there was absolutely no evidence put forth at trial that the other man in the car was the man seen in the video.

⁵ *Allen v. United States*, 164 U.S. 492 (1896).

CONCLUSION

By reason of the foregoing argument, petitioner's convictions should be reversed, and this case remanded for a new trial.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of March, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

March 27, 2024.



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