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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Williamsburg County
Honorable R. Ferrell Cothran, Jr., Trial Judge
Honorable R. Kirk Griffin, Post-Conviction Relief Judge
Appellate Case No. 2023-001321

ROBERT LEE REDDOCK,

Petitioner,

vs.

THE STATE,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE

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STATEMENT OF ISSUE ON BELATED 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?”

COUNTER-STATEMENT OF ISSUE ON BELATED APPEAL

Did the trial judge err in instructing on accomplice liability when the sum of the evidence presented at trial, from both the State and the defense, was equivocal as to whether Reddock was the principal in the armed robbery?

STATEMENT OF THE CASE

Reddock was arrested following an investigation into an armed robbery at Vicki's convenience store and was later indicted by the Williamsburg County Grand Jury for armed robbery and possession of a weapon during a crime of violence (2019-GS-45-0256). Based on Reddock's prior convictions, the State noticed Applicant with its intention to seek life without parole pursuant to S.C. Code Ann. §17-25-45.

Reddock was represented by William Joseph Virgil Barr, Esquire. Assistant Solicitors Warren Anderson and Ella Alston of the Third Circuit Solicitor's Office prosecuted the case. On June 14, 2021, the State called the case to a jury trial before the Honorable R. Ferrell Cothran, Jr., circuit court judge. The jury found Reddock guilty of armed robbery and acquitted Reddock of possession of a weapon during the commission of a violent crime. On June 17, 2021, Judge Cothran sentenced Applicant to life imprisonment for armed robbery pursuant to Section 17-25-45. Applicant did not file a notice of appeal.

Reddock timely filed an application for post-conviction relief ("PCR"), and, in response, the State filed a return requesting an evidentiary hearing. On June 13, 2023, an evidentiary hearing was commenced in the Sumter County Court of Common Pleas with the Honorable R. Kirk Griffin, circuit court judge, presiding. Applicant was represented by Timothy Griffith, Esquire, and the State was represented by Assistant Attorney General T. Cruise Mitchell. During the hearing, Reddock argued he was entitled to belated appellate review pursuant to *White v. State*, 263 S.C 110, 208 S.E.2d 35 (1974). Following the hearing, the PCR judge granted Reddock belated appellate review pursuant to White and denied Reddock's other allegations. That ruling was subsequently confirmed through a written order filed on August 11, 2023. Reddock then timely filed a notice of appeal.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on an evidentiary matter absent a clear abuse of that discretion resulting in prejudice to the defendant. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see *State v. Torres*, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Patterson*, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

ARGUMENT

The trial judge properly instructed the jury on accomplice liability where the sum of the evidence and testimony presented at trial was equivocal as to whether Reddock was the principal in the armed robbery.

Reddock contends that the trial judge erred in instructing the jury on accomplice liability where the State presented no evidence that the other person in the car with Reddock robbed Vicki's. Reddock's argument rests on the false assertion that an accomplice liability charge is only warranted if the State presents evidence that is equivocal as to whether a defendant was the principal. However, the correct analysis is whether there was any evidence presented, from the State *or defense*, that supports a charge of accomplice liability. There was sufficient evidence and testimony presented at trial supporting an accomplice liability jury instruction. Therefore, Reddock's conviction should be affirmed.

Relevant Facts

On July 15, 2019, a masked individual came into Vicki's store in Williamsburg County, put a gun in the clerk's face, and demanded money. (App'x p.51). The clerk, William Thompson, described the perpetrator as wearing a baseball style cap, a nylon-type face covering, a dark shirt with a white patch on in it, and latex style gloves. (App'x p.51). The clerk gave the perpetrator around \$800. (App'x p.52). After taking the money, the robber left the store and got in the passenger seat of a burgundy four-door Buick driven by another individual. The clerk described that individual as a young, black male. (App'x p.55; p.58). The clerk testified he could not identify the masked individual who robbed the store. (App'x p.58).

Michael Dunmore of the Williamsburg County Sherriff's Department responded to a call regarding the robbery. (App'x p.61–62). Dunmore received a description of the suspect vehicle. (App'x p.61). On his way to Vicki's store, roughly 20 minutes after the robbery, Dunmore

observed a vehicle matching the description of the suspect vehicle travelling at a high rate of speed. (App'x p.62; p.72–73). Dunmore activated his blue lights at which time the suspect vehicle accelerated and continued driving away. A high-speed chase ensued. (App'x p.63). Eventually, the suspect vehicle wrecked and rolled over into the wood line. (App'x p.66). After the suspect vehicle wrecked, Dunmore exited his patrol vehicle and entered the woods whereupon he chased down Reddock and tackled him to the ground. (App'x p.67). Reddock was apprehended wearing a shirt matching the description the clerk gave and carrying a brown bag of cash. (App'x p.68). Dunmore testified he did not see which suspect got out of which seat of the vehicle. (App'x p.74). Once Reddock was apprehended, Reddock's co-defendant, Patterson, came of the woods with his hands up surrendering to law enforcement. (App'x p.106).

Courtney McClorin, an employee at the Williamsburg County Detention Center, performed a buccal swab of Reddock sometime after the incident. (App'x pp.80–81). McClorin then sent the buccal swab to SLED for testing. (App'x p.81). Investigator Juan Ballard testified two latex gloves and a baseball cap were found on the roadside of Highway 41 by law enforcement personnel. (App'x p.90). The gloves and hat matched the description from the in-store surveillance footage from Vicki's. (App'x p.92). An air-soft gun was also found in the roadway that appeared to be the same firearm used in the robbery. (App'x p.97). Ballard sent these items to be tested by SLED. (App'x p. 99).

Jennifer Bartman, an expert in DNA analysis, testified she tested Reddock's DNA from the buccal swabs to the items retrieved from the scene. (App'x pp.118–119). Bartman testified that there was a mixture of two individual's DNA on the baseball cap and gloves, with a very high likelihood one of those individuals was Reddock. (App'x 119–121; 123–125).

Following the denial of Reddock's directed verdict motion, a charge conference was held wherein the State requested an instruction on accomplice liability. (App'x pp. 131–132). The trial court agreed to charge accomplice liability with no objection from the defense. (App'x p.132). Following closing arguments, defense counsel objected to the hand of one, hand of all jury instruction which was denied by the trial court. (App'x pp.146–147).

Analysis

The trial judge did not abuse his discretion. “The law to be charged must be determined from the evidence presented at trial.” *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010). The trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by any record evidence. *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App. 2005).

This Court explained in *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 766, 769-70 (Ct.App. 2010) that:

Under the “hand of one is the hand of all” theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.

State v. Thompson, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct.App.2007) (internal quotations and citations omitted).

The trial judge properly instructed jurors on accomplice liability. Here, evidence was presented to support the conclusion that Reddock was acting with his co-defendant during the

commission of the armed robbery. The evidence presented at trial showed that a masked man entered the Vicki's store, robbing the store clerk with what appeared to be a firearm, while a getaway driver waited outside. While the State's theory of the case was that Reddock was the man seen on video robbing the Vicki's, evidence was also presented that supports the conclusion Reddock was not the man seen on video robbing the Vicki's but rather was the getaway driver. In fact, the entire theory of Reddock's defense was that Reddock may have been the getaway driver. In Reddock's opening statement, Counsel made the following remarks:

Now, you're going to see a video. You're going to see a man with a mask, that's all you're going to see. Beyond all doubt. You're also going to learn there's two people involved. You're also going to learn there's going to be some scientific evidence presented to you. You're going to learn that scientific evidence is going to show that two people were involved.

(App'x. p.48)

From the very outset of the trial, Counsel for the defense implied that two individuals were involved, and Reddock was not the man in the video robbing the Vicki's. On cross-examination of the State's first witness, the store clerk, Counsel elicited testimony that the clerk saw another black male in the driver's seat of the car. (App'x. pp.59). The clerk then testified that it could have been someone else [besides Reddock] who robbed the store. (App'x p.60). On cross-examination of the responding officer, Michael Dunmore, the following exchange occurred:

Q. I'm saying when you came up on them in your car, because you're behind them in the vehicle, that was around about 9:32?

A. The suspect's vehicle, yes.

Q. Okay. So, roughly, that's about 9:09, 9:32, it's about 20, 21 minutes, right?

A. Roughly.

Q. Okay. And so in that 21 minutes we don't really know what happened, right?

A. Correct.

Q. We don't know if they made a pit stop. *We don't know if they switched out drivers.* I mean, 20 minutes is a good amount of time, you would agree with me on that?

A. I would.

Q. Okay. Now, as you came up on the suspects, could you see who was driving?

A. I saw a black male with a blue in color shirt driving and another black male with dark clothes on in the passenger - - the front passenger seat and the seat was laying all the way back.

(App'x. pp.72-73) (Emphasis added)

Clearly, this testimony was elicited to show that the two passengers in the suspect vehicle could have switched places during the 21 minutes between the robbery and when law enforcement first attempted to initiate a traffic stop of the suspect vehicle. Meaning, Reddock may have been the driver and not the individual on the video robbing Vicki's.

Counsel continued to elicit testimony supporting this theory during the cross-examination of Juan Ballard, the lead investigator, in the following exchange.

Q. So its not conceivable - - not conceivable that the second co-defendant, while you guys were attending to Mr. Reddock, have enough time to take off the gloves, throw them down, take off the hat, throw it down, and then decide it's time to surrender, that's not possible?

A. No, we found the gloves miles away from the crash scene.

Q. Okay. And those same gloves, as we said before, when they were tested showed two sets of DNA?

A. Yes, sir.

(App'x. p.107).

Counsel was clearly eliciting that testimony to raise the possibility that Reddock's co-defendant was the individual wearing the gloves and cap matching the description of the person who robbed Vicki's. During the cross-examination of the forensic DNA analysis expert, the following exchange occurred:

Q. Now, I want to talk about the interior of the gloves. So the interior of the gloves, which I want to make sure the interior is the part where you would stick your hands in, correct?

A. This was listed as the interior as submitted of the pair of black latex gloves.

Q. Okay. And so when you tested the inside of the gloves, the inside of the gloves also had a mixture of two sets of DNA?

A. Yes, I interpreted that profile as a mixture originating from two individuals.

Q. And we settled this before that no one person typically does not have two sets of DNA?

A. Right. Each person has a unique DNA profile with the exception of identical twins.

Q. So in your expert opinion based on the results is it possible that two people had on these gloves?

A. It's possible.

Q. is it possible in your expert opinion that two people were wearing this baseball cap?

A. Yes, its possible.

(App'x. pp.124–125).

Once again, this testimony was being elicited to corroborate the argument that Reddock's co-defendant may have been the individual wearing the gloves and baseball cap; thus, inferring that the co-defendant was the principal in the armed robbery.

Reddock cites *Washington v. State*, 431 S.C. 394, 848 S.E.2d 779 (2020), in support of his argument. However, this case is easily distinguishable from *Washington*. In *Washington*, the Court decided an accomplice liability instruction was not warranted in a trial for murder, because there was no evidence presented, either by the State or defense, that the co-defendant was armed with a weapon; thus, only the defendant could have been the shooter. *Id.* at 409. Here, defense counsel elicited testimony from several eyewitnesses supporting the proposition that Reddock was not the principal in the armed robbery. Thus, unlike in *Washington*, sufficient evidence was presented to warrant an accomplice liability instruction.

Barber is clear that an instruction on accomplice liability is warranted if “the sum of the evidence presented at trial, *both by the State and defense*, was equivocal as to [the identity of the principal].” *Barber v. State*, 393 S.C. 232, 712 S.E.2d 436 (2011) (emphasis added). In *Barber*, the State’s theory of the case was that the defendant was the shooter who killed the victim during an armed robbery. However, defense counsel in *Barber* elicited testimony that his co-defendants were all armed during the robbery which “could also support a finding that one of the other robbers was the shooter.” *Barber* at 236. The Court decided an accomplice liability charge was warranted based on testimony defense counsel elicited throughout trial. *Id.* at 239.

This is exactly the situation we have here. Although the State’s theory of the case was that Reddock was the individual on video robbing the store, defense counsel elicited testimony at trial indicating the possibility Reddock could have been the getaway driver. This is sufficient to warrant an accomplice liability instruction. The testimony elicited from multiple witnesses on cross-examination is equivocal as to whether Reddock was the getaway driver or the robber. Additionally, Counsel outright argued in closing that during the unaccounted 21 minutes, the two passengers of the suspect vehicle could have switched places. (App’x p.143). The Solicitor argued in closing that Reddock is equally culpable under the hand of one, hand of all theory whether Reddock was the one who robbed the store or was the driver.¹ (App’x p.137). Therefore, the trial court did not err in instructing the jury on the hand of one, hand of all theory of accomplice liability.

¹ Notably, Counsel did not object to the accomplice liability jury instruction until after closing arguments had been made, even though a charge conference was held prior to the closings where the trial court indicated he would instruct the jury on accomplice liability. (App’x pp.131–132; p.146).

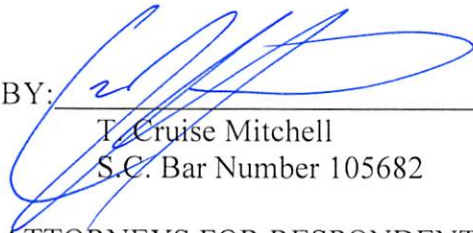
CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies this Brief of Respondent Pursuant to White v. State 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.”

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