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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
The Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2022-000774

THE STATE,

Respondent,

v.

ANGEL MISAEL IBARRA,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by giving an instruction on accomplice liability where aiding and abetting is an element of trafficking heroin and the evidence tended to show that Appellant and Israel Cervantes were accomplices in a drug enterprise operated out of Appellant's home and shed.

STATEMENT OF THE CASE

During its April 2019 term, a Lexington County Grand Jury indicted Appellant Angel M. Ibarra with trafficking in heroin, 28 grams or more, possession of methamphetamine, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime. (Indictments). Appellant proceeded to a jury trial before the Honorable Debra R. McCaslin, Circuit Court Judge, from May 23–25, 2022.. The jury convicted Appellant as charged. (R. 313-14). The court sentenced Ibarra to one year's incarceration for unlawful carrying of a pistol, five years for possession of a weapon during the commission of a violent crime, three years for possession of meth, and 25 years for trafficking in heroin, all to be served concurrently. (R. 337;). This appeal follows.

STATEMENT OF FACTS

Sometime in 2018, Appellant Angel Ibarra became the target of a drug investigation under his street name “Ace.” (R. 17–18, 204). Shortly thereafter, Appellant’s home at 220 Leica Lane in West Columbia became the target of narcotics surveillance. (R. 19–25). Based on the investigation, law enforcement obtained a search warrant for the premises. (R. 30–31). On October 24, 2018, law enforcement executed the search warrant. (R. 31). While executing the search warrant, police found Israel Mendoza Cervantes inside a back shed suspected of use in the drug operation, whereupon he was taken into custody. (R. 35; 36; 154). Appellant was not home at the time the warrant was executed. (R. 123). Inside the shed, law enforcement found approximately \$3000 in cash, digital scales, balloons packaged with suspected narcotics, a container with suspected narcotics, a container of “cut,” a ledger, multiple loaded firearms, spare magazines, and ammunition, all “very consistent with a drug enterprise.” (R. 39-44; 58-90; 115; 232-34). Investigators also discovered a TV inside the shed that gave a live feed from a surveillance camera on the corner of the house pointed towards the shed. (R. 45; 119-21).

Inside the residence, police discovered a digital scale in Appellant’s brother’s bedroom¹, more balloons consistent with those found inside the shed, a security system controlling the cameras, and an empty Glock case inside Appellant’s bedroom. (R. 46-47). Inside Appellant’s bedroom, investigators also found “insurance information, mail, as well as banking information all with his name on the paperwork as well as that address,” loose ammunition, more cash, and a bag of suspected narcotics. (R. 91-93; 100-03). When Appellant was arrested nearby following a traffic stop, law enforcement found a loaded Glock wedged between the driver’s seat and the center console, a gun light, loaded magazines, and spare ammunition. (R. 110-13; 213–18).

¹ Appellant’s brother was a 15-year-old minor not suspected of being engaged with the drug enterprise and was not charged. (R. 110).

Regarding why Appellant was arrested and charged, on redirect, Investigator Dabkowski related the following:

Q. And can you explain to us if the Defendant wasn't there at his home at the time of the execution of the search, how he was arrested and charged with these crimes and all the evidence found at his home?

A. Due to being seen going to and from – because the location was under surveillance prior to the execution of the search warrant. So due to it being his residence, he lives there, being seen going to and from the shed prior to the execution of the search warrant as well as then what was found during the traffic stop was why he was charged accordingly.

(R. 135, ll. 14–25). Prior to the execution of the warrant, aerial reconnaissance also detected activity on the premises: “I saw individuals either coming in, getting out of vehicles, going through the gate on the left and then going into the shed or from the front porch of the house back to the shed and from the shed back to the house.” (R. 143, ln. 25–144, ln. 4). Regarding Israel Cervantes and Appellant, investigators stated that they both had been seen frequenting Appellant's home and the shed up to the execution of the search warrant. (R. 34; 143—44; 311). Cervantes did not live at Appellant's home. (R. 94; 207).

Regarding all the suspected narcotics law enforcement collected the day of the warrant execution, analysts later determined that of the items found in the shed, there was approximately 96 grams of heroin and of the bag of suspected narcotics found in Appellant's bedroom, just over a gram of meth. (R. 186-93; 221).

Following the close of the State's case-in-chief, defense counsel moved for a directed verdict, arguing primarily that the State failed to show that Appellant was in control or generally responsible for any of the drugs or associated items found on the premises and that it was “another person.” (R. 239-40). The State responded by highlighting that “I think we've shown ample evidence that would link the Defendant to each and every one of these crimes.” (R. 241).

The trial court agreed and denied the motion for directed verdict. (R. 246). Shortly thereafter, the State requested a charge on accomplice liability:

We believe that the testimony has shown that there is at least two individuals involved in this drug enterprise, the Defendant being one of them. Obviously, Defendant was arrested on the way back to this home, but there was an individual found in the shed who was also charged with the exact same crimes. We would argue that based on those two individuals alone that we are entitled to a hand of one, hand of all charge. What one is guilty of, the other is.

(R. 249, ln. 21— 250, ln. 10). Defense counsel responded that, regarding Appellant and Cervantes, “there’s not been any connection made between the two. I think to suggest if they’re working in concert together which would give rise to this hand of one, hand of all. There’s no evidence to support that.” (R. 250, ll. 13-23). The State rebutted by highlighting “ample testimony” linking the two men together as “known associates.” (R. 250—51). The trial court ultimately concluded that the charge would be proper: “Well, I think there was testimony they say saw him going back and forth to the shed when they were surveilling. Honestly, it’s a jury question, it’s not a question for me. I’ll let the jury decide, but I will charge hand of one, hand of all.” (R. 252, ll. 18-23).

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). “In reviewing jury charges for error, [the Court of Appeals] must consider the circuit court’s jury charge as a whole in light of the evidence and issues presented at trial.” State v. Adkins, 353 S.C. 312, 318, 557 S.E.2d 460, 463 (Ct. App. 2003). “When reviewing a jury charge for error, an appellate court considers the charge as a whole; the charge must be prejudicial to the appellant to warrant a new trial.” State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016). ““An appellate court will not reverse the trial [court’s] decision regarding a jury charge absent an abuse of discretion.”” State v. Washington, 424 S.C. 374, 394, 818 S.E.2d 459, 469 (Ct. App. 2018) (citing State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)).

ARGUMENT

The trial judge properly instructed the jury on accomplice liability because aiding and abetting is an element of trafficking heroin and the evidence tended to show Appellant and Cervantes were accomplices in a drug enterprise operated out of Appellant's home and shed.

Appellant contends that a jury charge on accomplice liability was due to a lack of evidence linking Appellant and Israel Cervantes together as accomplices. The charge was appropriate because there was evidence to support a finding that Appellant and Cervantes were working together selling drugs out of Appellant's home, and Appellant was not present at the execution of the search warrant yielding the drugs. This Court should affirm.

Trial courts have a duty to charge requested instructions which correctly state the law applicable to the issues supported by the evidence. State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct.App.1996). If there is any evidence to support a charge, it should be given. State v. Condre, 349 S.C. 184, 194, 562 S.E. 2d 320, 325 (Ct.App.2002).

Trafficking in heroin is defined as follows: "Any person who knowingly . . . provides financial assistance or otherwise aids, abets, attempts, or conspires to sell . . . deliver, purchase . . . or who is knowingly in actual or constructive possession" of 28 grams or more of heroin is guilty of trafficking in heroin. S.C. Code Ann. § 44-53-370(e)(3) (emphasis added). Under an accomplice liability theory, "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999) (emphasis added). Thus, accomplice liability principles were foundational to this case because accomplice liability is incorporated into the trafficking statute as an element of the crime. An instruction on accomplice liability was crucial to the jury's understanding of the law applicable to this case.

Furthermore, there is evidence in the record demonstrating Cervantes and Appellant were engaged in a coordinated and prolonged drug enterprise operated out of Appellant's home. As the solicitor summarized in closing arguments,

[Appellant] and Israel Mendoza Cervantes, they're acting together, they're known associates of this drug enterprise. They've been seen by law enforcement during the course of their investigation together acting in behaviors consistent with the illegal sell and trafficking of narcotics. They're acting together. One person is left in the shed presumably packaging more of those balloons while one person is out running another errand for this drug enterprise. They're working together.

[Appellant] is guilty of whatever Israel Mendoza Cervantes is guilty of as well. He was found in the shed. [Appellant] wasn't. That doesn't negate [Appellant's] guilt. The hand of one is the hand of all. This principle of law makes both [Appellant] and Israel Mendoza Cervantes equally responsible for the probable or natural consequences of the acts done by the others in carrying out the common plan. They're both guilty of this drug enterprise.

(R. 265, ln. 15—266, ln. 12).

Appellant claims an accomplice liability instruction was improper because Cervantes was a mere bystander, asserting Cervantes was simply minding his own business in a shed full of heroin. Brief of Appellant at 6. This assertion is not consistent with the evidence and the State's theory of the case, which strongly supported a finding that Appellant and Cervantes were working together to distribute heroin.

Even if Cervantes was a mere bystander, this would only enforce Appellant's guilt as the constructive possessor of the drugs. See State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006) (explaining in order to prove constructive possession, the "State must show a defendant had dominion and control, or the right to exercise dominion and control over the [illegal substance]"). The drugs were found in Appellant's home along with other incriminating evidence. Accordingly, the charge was not prejudicial to Appellant. See State v. Taylor, 356

S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (explain to warrant reversal, a jury charge must be both erroneous and prejudicial).

There was evidence that Appellant and Cervantes were working together to sell heroin, yet Appellant was not present when police executed the search warrant yielding the drugs. Furthermore, the law of accomplice liability forms an element of trafficking heroin. Accordingly, it was proper for the trial court to explain accomplice liability to the jury. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

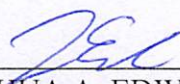
Respectfully submitted,

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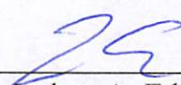
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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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