

RECEIVED

Aug 01 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAHIEM JARRARD GRIFFIN,

APPELLANT

APPELLATE CASE NO. 2024-000676

INITIAL BRIEF OF APPELLANT

JORDAN WAYBURN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

STANDARD OF REVIEW6

ARGUMENT

 I. Evidence supported a mere presence charge, and the trial court erred by denying Appellant's request7

 II. The trial court erroneously believed a mere presence charge is appropriate only for accomplice liability, but evidence of third-party guilt can also support the charge.....8

 III. Clamp's testimony discrediting Appellant's alibi was pitting and improper lay opinion about the credibility of a witness based on hearsay10

CONCLUSION.....13

TABLE OF AUTHORITIES

Cases

<i>State v. Austin</i> , 299 S.C. 456, 385 S.E.2d 830 (1989)	9
<i>State v. Brandt</i> , 393 S.C. 526, 713 S.E.2d 591 (2011)	8
<i>State v. Brownlee</i> , 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995).....	11
<i>State v. Burriss</i> , 334 S.C. 256, 513 S.E.2d 104 (1999).....	7
<i>State v. Dennis</i> , 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996)	8, 9
<i>State v. Franklin</i> , 299 S.C. 133, 382 S.E.2d 911 (1989).....	7
<i>State v. Harry</i> , 420 S.C. 290, 803 S.E.2d 272 (2017).....	10
<i>State v. James</i> , 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010).....	7, 8, 9
<i>State v. Kimbrell</i> , 294 S.C. 51, 362 S.E.2d 630 (1987)	7
<i>State v. Lee</i> , 298 S.C. 362, 380 S.E.2d 834 (1989).....	7
<i>State v. Mattison</i> , 388 S.C. 469, 697 S.E.2d 578 (2010)	8
<i>State v. Robertson</i> , 191 S.C. 509, 5 S.E.2d 28 (1939)	7
<i>State v. Santiago</i> , 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006).....	7
<i>State v. Stokes</i> , 339 S.C. 154, 528 S.E.2d 430 (Ct. App. 2000).....	7
<i>State v. Thompson</i> , 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007)	11
<i>State v. Williams</i> , 427 S.C. 246, 830 S.E.2d 904 (2019)	6, 8, 12

Other Authority

16 Corpus Juris, <i>Criminal Law</i> § 2370 (1918)	12
--	----

STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to give a "mere presence" jury instruction where appellant admitted to being at the scene of the crime and testified other third-parties committed the murder?

STATEMENT OF THE CASE

In May 2022 Appellant Rahiem Griffin was indicted by the Greenville County grand jury of murder and possession of a weapon during the commission of a violent crime. R. p. *. He was tried before Judge Patrick C. Fant, III and a jury from April 15 to 18, 2024. Tr. 1. He was represented at trial by Richard Warder and Russell Sanford. Tr. 1. Meghan Gasser and Jonathan Gregory prosecuted the case for the state. Tr. 1.

Ultimately the jury found Appellant guilty of both charges. Tr. 521:21-522:2. The court issued a forty-five-year sentence for murder to run concurrently with a five-year-sentence for the weapons charge. Tr. 526:24-527:8.

This appeal follows.

STATEMENT OF FACTS

In January of 2014, Marquail Hellams, Jonathan Hellams, and Appellant Rahiem Griffin lived together in a house on Glenlea Lane outside of Greenville. Tr. 236:21-24, 206:15-18. Destany Fields was dating Appellant at the time and lived there as well. Tr. 237:23-238:10. Several others also lived there some of the time. Tr. 238:11-23. Marquail and Appellant were good friends and considered each other brothers. Tr. 249:2-4, 298:16-17, 334:9-16, 454:1-5.

The night of January 31, 2014, Marquail and Appellant left the house around 8:30 to buy Xanax. Tr. 242:19-244:11; State's Ex. 63, pages 12, 15. They were drug dealers, and some of their customers—Kris and Jaime Capatino—drove them and Destany to the planned buy. Tr. 258:18-259:24, 286:20-287:18, 301:13-25. Kris and Jaime were addicted to heroin and high that night. Tr. 251:21-252:13, 256:18-257:18, 285:8-286:4. They dropped Marquail and Appellant off at a house on Davis Road and left intending to return after the deal was complete. Tr. 262:9-263:19, 287:14-288:11, 306:1-13. Sometime later, they picked up only Appellant. Tr. 265:7-24, 288:5-17, 306:22-307:5. Marquail was found deceased the next day on a gravel road from Davis Road off Piedmont Highway. Tr. 139:4-25; State's Ex. 2-3.

Kris, Jaime, and Destany testified at trial to those essential facts but varied on some details. Kris—who had pending charges as a codefendant—testified Appellant and Marquail were arguing in the backseat on the drive. Tr. 250:10-17, 261:7-15, 268:18-269:2. On the other hand, Jamie testified there was "no fussing in the vehicle, or anything" as they drove to buy the Xanax. Tr. 289:2-5. Destany—who also had pending charges as a codefendant—testified she saw Appellant carrying a gun in the car. Tr. 295:12-16, 307:14-308:8. Kris, however, never saw a weapon in the car. Tr. 261:19-20. Kris, Jaime, and Destany did not testify about what happened after dropping Appellant and Marquail off because they did not see anything more

until they picked Appellant up. All of the charges against Kris and Destany were dismissed one month after Appellant's trial with the disposition note, "prosecutorial discretion."¹

When Appellant testified at trial, he readily admitted to leaving with the others to buy Xanax. Tr. 444:12-17, 446:10-23. Critically, however, he knew what happened after they were dropped off. He testified he and Marquail walked down a gravel road off Davis Road to meet with someone named "Man" to buy the Xanax. Tr. 433:1-434:19, 447:7-11. As he and Marquail approached, he saw Man had two unfamiliar people with him. Tr. 434:20-25. Marquail shined a light into his bag to show Man the marijuana they brought to trade for the Xanax. Tr. 447:7-14. Then one of Man's friends snatched Marquail's bag and started running. Tr.447:14-16. Appellant realized they were being robbed and then ran away too. Tr. 447:16-17. He heard gunshots as he ran and hid in the bushes nearby. Tr. 447:16-24. He never saw Marquail again. Eventually the Capatinos drove back by, and Appellant left with them after unsuccessfully searching for Marquail. Tr. 448:6-13-449:4.

After Marquail's body was found, Wayne Campbell of the Greenville County Sherriff's Office investigated the case in 2014, but eventually the leads ran out and it was sent to the cold case unit. Tr. 217:3-8, 369:4-5. The case was reopened in 2021 after Jason Cox in the cold case unit requested a CSLI analysis of several phone records previously obtained. Tr. 370:5-372:14. After receiving the results of that analysis, Cox spoke with Jaime and then arrested Appellant, Kris, and Destany. Tr. 375:9-21. Mathew Wilde of the FBI testified at trial to explain his CSLI analysis placing Appellant and Destany together—as they testified—driving from Glenlea Lane, out to Davis Road, and back again. Tr. 406:19-409:17; State's Ex. 63, pages 15-20. Marquail's

¹ *State v. Kris Thomas Capatino*, Greenville County, No. 2021A2330203467 (dismissed 2024); *State v. Destany Maria Fields*, Greenville County, No. 2021A2330203465 (dismissed 2024).

records showed him leaving Glenlea Lane with the others, but his phone was found next to his body, and the records confirmed it did not leave Davis Road. Tr. 404:10-406:5; State's Ex. 63, pages 11-13.

Prior to closing arguments, Appellant requested the trial court instruct the jury that mere presence at the scene of a crime is insufficient to establish guilt. Tr.459:20-24. The state argued the charge is inappropriate because it "would potentially confuse the issues in this case" and is "typically a charge when it is a . . . hand of one is the hand of all situation." Tr. 460:1-5. Appellant responded, "I believe saying that being at the scene of a crime does not mean that you committed a crime would not confuse the jury one bit." Tr. 460:16-16-19. The trial court refused the request: "I don't see this as an aiding and abetting or accomplice liability circumstance that would warrant the mere presence charge." Tr. 460:22-461:3. Appellant renewed his objection after the jury instructions. Tr. 515:16-19.

During deliberations the jury requested "confirmation" that it had correctly identified whose phone number belonged to whom and then to rehear Appellant's testimony. Court's Ex. 9-10; Tr. 516:1-14. The trial court refused to answer the first question but did bring the jury back to hear Appellant's testimony again. Tr. 517:1-7, 520:7-25; Court's Ex. 10. Ultimately the jury found Appellant guilty as charged, and the trial court sentence him to a total of forty-five years in prison. Tr. 521:21-522:2, 526:24-527:8.

STANDARD OF REVIEW

Whether "any evidence" exists to warrant a jury charge is a question of law this Court reviews de novo on appeal. *State v. Williams*, 427 S.C. 246, 249, 830 S.E.2d 904, 906 (2019).

ARGUMENT

I. Evidence supported a mere presence charge, and the trial court erred by denying Appellant's request.

A defendant "is entitled to a mere presence charge if the evidence supports it." *State v. James*, 386 S.C. 650, 653, 689 S.E.2d 643, 645 (Ct. App. 2010) (citing *State v. Franklin*, 299 S.C. 133, 141, 382 S.E.2d 911, 915 (1989)). "The failure to charge 'mere presence' may constitute reversible error." *Id.* (quoting *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989)). "The trial court commits reversible error when it fails to give a requested charge on an issue raised by the indictment and evidence presented." *Lee*, 298 S.C. at 364, 380 S.E.2d at 835 (first citing *State v. Kimbrell*, 294 S.C. 51, 56, 362 S.E.2d 630, 632 (1987), then citing *State v. Robertson*, 191 S.C. 509, 5 S.E.2d 285, 285 (1939)).

The state's evidence in this case demonstrated that Appellant rode in a car with Marquail, Destany, and the Capatinos to a home on Davis Road near where Marquail's body was found the next morning. Appellant admitted at trial to riding in the car with the others and being dropped off with Marquail. He explained, however, that he was merely present at the scene of the crime where others robbed Marquail and killed him. Not one witness saw or heard any indication that Appellant killed Marquail, except that he was last seen alive with Appellant. The facts of the state's theory, even considered alone, show little more than Appellant's presence near Marquail around the time of his death. Thus, the charge was supported by the evidence and should have been given. *State v. Stokes*, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) (citing *State v. Franklin*, 299 S.C. 133, 382 S.E.2d 911 (1989)) ("If the evidence supports it, the defendant is entitled to a mere presence charge."); *see also State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006) (citing *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999))

("If there is any evidence to support a jury charge, the trial judge should grant the requested charge.").

In those cases where our appellate courts have affirmed the refusal of a mere presence charge, it has been because no interpretation of the facts could support it. For example, in *State v. Dennis*, 321 S.C. 413, 468 S.E.2d 674 (Ct. App. 1996), the defendant "denied even being at the scene of the robbery" and thus was not present at all. 321 S.C. at 420, 468 S.E.2d at 678. Then, had the jury disbelieved him and concluded he was at the scene, "there was ample evidence . . . he was more than merely present without knowledge of the criminal conduct," and so the charge was inappropriate regardless of what the jury believed occurred. 321 S.C. at 421, 468 S.E.2d at 678. In *State v. James*, 386 S.C. 650, 689 S.E.2d 643 (Ct. App. 2010), the charge was unnecessary because at trial "defense counsel conceded there was no evidence that anyone other than James was present at the scene." 386 S.C. at 654, 689 S.E.2d at 645.

This case is different. Appellant's testimony clearly establishes other people were the true perpetrators of the offense while he was merely present, thus requiring the charge. *See State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011) ("If there is any evidence to support a charge, the trial court should grant the request." (quoting *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005))).

II. The trial court erroneously believed a mere presence charge is appropriate only for accomplice liability, but evidence of third-party guilt can also support the charge.

The trial court refused the charge request and stated, "I don't see this as an aiding and abetting or accomplice liability circumstance that would warrant the mere presence charge." Tr. 460:22-461:3. That is an error of law. The charge is appropriate outside of the accomplice liability context—it is appropriate, as all charges are, when supported by the evidence. *E.g.*, *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("A request to charge a correct

statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." (quoting *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989))). A mere presence charge is particularly appropriate where there is evidence of third-party guilt.

This Court has previously explained,

"Mere presence" is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant's mere presence near the contraband does not establish possession.

James, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010) (quoting *Dennis*, 321 S.C. at 420, 468 S.E.2d at 678). The most likely circumstances in which a mere presence charge will be necessary are these two, and that is why no published appellate court decision of which counsel is aware addresses the charge outside of those circumstances. However, neither *James* nor *Dennis* purported to establish an exhaustive or exclusive list of circumstances where a mere presence instruction may be necessary.

The fundamental reasoning behind the Court's generalized statement in *Dennis* and *James* is that where someone else might be criminally liable, the jury needs to be informed that the defendant's mere presence near that other person's crime is not sufficient to establish his guilt. In the first instance, the defendant is allegedly an accomplice of another and that other person commits a crime in his presence. If the defendant is not an accomplice, which must be decided by the jury, then he is merely present at the scene of someone else's crime. In the second,

someone has committed a crime by possessing contraband. If the defendant is not that person, then, again he is merely present at the scene of someone else's crime.

Third-party guilt raises the same conceptual framework. In a way, accomplice liability and constructive possession cases are subsets of third-party guilt. They describe factual circumstances where there is evidence someone else has committed a crime while the defendant was merely nearby. The typical third-party guilt case is the same where there is evidence to suggest someone else committed a crime while the defendant was merely nearby. Appellant testified he went with Marquail down that gravel road, and Man and his friends turned their meeting into a murder scene. In exactly the same way as accomplice liability and contraband cases, Appellant was merely present at the scene of someone else's crime.

The trial court was legally mistaken in its belief mere presence is restricted to accomplice liability. Rather, the charge is proper in all third-party guilt circumstances if the defendant is present at the scene. Because its ruling was based on an error of law and evidence supported the charge, the trial court erred by refusing Appellant's request.

III. A mere presence charge is also appropriate to explain sufficient proof of guilt and what constitutes criminal conduct.

The charge was necessary to more fully explain the state's burden of proof. The jury was told, "circumstances that merely place upon the Defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the Defendant's guilt are not sufficient to authorize a conviction of the accused." Tr. 506:14-18. A mere presence charge would have made this vague statement more concrete. It would have correctly informed the jury that Appellant's mere presence at the scene of a crime is not sufficient proof of his guilt as an operation of law. *See State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 277 (2017) ("Mere

presence . . . , without more, is insufficient to constitute guilt." (quoting *State v. Thompson*, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007))).

In this way, the contraband category of cases also helps explain the function and purpose of the charge. In *State v. Brownlee*, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995), this Court explained:

The purpose of a mere presence charge in a drug case is to inform the jury that any inference which is permissibly drawn from the presence of the defendant at the location where drugs are found is, as a matter of law, insufficient by itself to convict a defendant of the possession or possession with the intent to distribute drugs. In other words, *the law does not allow a jury to conclude guilt beyond a reasonable doubt based solely upon the inferences drawn from presence* in the proximity of drugs. It is possible for the jury to infer knowledge of the drugs and the intent to exercise dominion and control over them from the mere presence. The law does not condemn this inference. However, the law will not allow that inference, without more, to prove possession beyond a reasonable doubt.

318 S.C. at 38, 455 S.E.2d at 706 (emphasis added). Thus, when applicable, the charge functions as a necessary explanation of the state's burden of proof.

Here, the primary thrust of the state's case was Appellant's presence near where Marquail's body was found. It heavily relied on the testimony of Kris, Jaime, and Destany about dropping Marquail and Appellant off near the location of Marquail's eventual death. Its last witness was an FBI expert who explained his CSLI analysis connecting all involved to the places described. Appellant agreed to these basic facts, and he testified someone else killed Marquail in his presence. In this context, as with possession, the jury needed to be informed that "any inference which is permissibly drawn from the presence of the defendant" at the location where Marquail was killed "is, as a matter of law, insufficient by itself to convict [Appellant]." *Id.* As with possession, it was "possible" for the jury to draw the inference that Appellant's presence

indicates he committed the murder. *Id.* "However, the law will not allow that inference, without more, to prove [the crimes] beyond a reasonable doubt." *Id.*

In addition, had the trial court instructed the jury that mere presence alone is insufficient proof of guilt, it could have corrected any misapprehension that Appellant could be responsible for the murder of Marquail at the hands of Man and his friends even if the jury believed him. The jury could have believed Appellant is still guilty of murder because, for example, he knowingly brought a gun to drug deal. *Cf. State v. Williams*, 427 S.C. 246, 250-54, 830 S.E.2d 904, 906-908 (2019) (holding knowingly bringing a firearm to a drug transaction is, as a matter of law, "calculated to produce a violent occasion" and thus bars self-defense). The jury might have believed he is responsible for whatever results flow from the drug crimes he admitted. The trial court instructed that criminal intent "can arise from action or failure to act" and "may arise from negligence, recklessness, or an indifference to duty or consequences." Tr. 511:11-19. From this language, the jury might have believed Appellant effectively "murdered" Marquail by arranging the meeting with Man and going with him to it. In that case, Appellant's conviction is based not on the evidence against him but the jury's misunderstanding of the law—one the mere presence instruction would have corrected. *See* 16 Corpus Juris, *Criminal Law* § 2370, at 972 (1918) ("An instruction is erroneous which authorizes the jury to convict defendant because of his presence . . . without requiring that he shall have aided in or encouraged the commission of the crime . . .").

CONCLUSION

For the foregoing reasons, Appellant requests this Court reverse his convictions and remand for a new trial.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of August, 2025.