

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

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JUN 26 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM JOSEPH PHILLIPS,

APPELLANT

Appellate Case No. 2013-001339

REPLY BRIEF

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ARGUMENT

In its initial brief, the State concedes that criminal intent is an essential element of accessory before the fact of murder. Initial Br. Resp't 18. The State also concedes that the trial judge did not give a criminal intent charge to the jury. Initial Br. Resp't 18-19. The State did not address Appellant's argument that the evidence presented at trial raised issues that warranted a specific jury instruction on criminal intent. Instead, the State interprets the trial judge's jury charges as impliedly covering the requisite criminal intent. Initial Br. Resp't 9, 20. Relying on implicit meanings to instruct the jury on criminal intent, an essential element of accessory before the fact of murder, where the evidence presented at trial supported an explicit charge on criminal intent is legally insufficient and error.

For a conviction to comport with due process, the State is required to prove every element of the charged offense beyond a reasonable doubt. Dervin v. State, 386 S.C. 164, 168, 687 S.E.2d 712, 713 (2009) ("Due process requires the State to prove every element of a criminal offense beyond a reasonable doubt." (citing State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004))); State v. Brown, 360 S.C. 581, 590, 602 S.E.2d 392, 397 (2004) ("It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant.").

The State's burden of proof includes proving that the defendant acted with the requisite criminal intent required to commit the crime. State v. Lee-Grigg, 374 S.C. 388, 402, 649 S.E.2d 41, 48-49 (Ct. App. 2007) aff'd, 387 S.C. 310, 692 S.E.2d 895 (2010) ("A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense." (citing State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000))).

A trial judge is required to charge the jury with the law that conforms to the evidence presented at trial. State v. Bryant, 391 S.C. 225, 233, 705 S.E.2d 465, 469 (Ct. App. 2010) (citing State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008)). “If there is any evidence to support a jury charge, the trial judge should give a requested charge on the matter.” Id. at 233, 705 S.E.2d at 469-70 (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999)). “The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law.” Id. at 233, 705 S.E.2d at 470 (citing State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007)). A trial judge’s jury instructions should be reviewed to determine if they were sufficient to cover a defendant’s request to charge a correct statement of law. See State v. Mattison, 388 S.C. 469, 485, 697 S.E.2d 578, 587 (2010).

In Mattison, the South Carolina Supreme Court was “disturbed” by the lower court’s finding that a defendant’s request to charge a correct statement of law was “implicit” in the judge’s instructions, commenting that “to require jurors to delve into and interpret a judge’s ‘implicit’ instruction is contrary to the purpose of a trial judge being an instructor of the law” and “[i]f this were the case, the burden would effectively shift from the trial judge, as the instructor of the law, to the jury to discover the ‘hidden’ meaning in a judge’s charge.” Id. at 483-84, 697 S.E.2d at 586. The jury charge in Mattison was ultimately saved by an explicit charge on intent. Id. at 484, 697 S.E.2d at 586. Here, there was no saving charge to cover criminal intent.

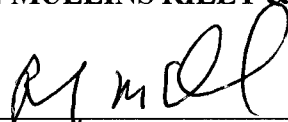
CONCLUSION

Appellant requested a jury charge on criminal intent based on the evidence presented at trial that created an issue of fact as to whether Appellant possessed the requisite criminal intent to be convicted of accessory before the fact of murder. Initial Br. Appellant 10-11; Tr. 579:22-580:6; Tr.

583:7-20.¹ The trial judge received Appellant's proposed criminal intent charge and rejected it without comment. Tr. 583:7-20. As conceded by the State, the trial judge did not charge the jury on criminal intent. Initial Br. Resp't 18-19. This was error and prejudicial to Appellant, who was convicted without the State proving, and the jury finding, beyond a reasonable doubt that Appellant possessed the requisite criminal intent for accessory before the fact of murder. Therefore, Appellant is entitled to a new trial.

Respectfully Submitted,

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This 26th day of June, 2014.

¹ **Ms. Gorton:** "I'm also asking for an instruction on criminal intent. . . . I believe that the facts could reasonably be construed by the jury that Joe was upset about Christine and – Christina and Charlie and that he made many, many comments which caused JJ to ultimately act. But if he didn't have the criminal intent to do so, then he can't be guilty of this charge. If he complained about it and talked about how upset he was and how something needed to be done about Charlie, but he had no intent for anyone to kill Charlie." Tr. 579:22-580:6.

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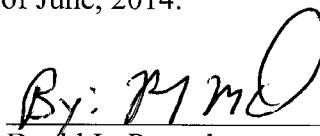
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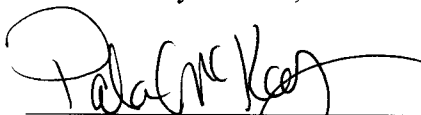
CERTIFICATE OF SERVICE

The undersigned attorney hereby certified that a true copy of the Reply Brief of Appellant in the above referenced case has been served upon Kaycie S. Timmons, Esquire, State of South Carolina, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201, this 26th day of June, 2014.

By: 

David L. Paavola
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of June, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.