STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2015-001662

THE STATE,

Respondent,

v.

DEAN NELSON SEAGERS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

The trial court properly charged the jury on the theory of accomplice liability because evidence existed to support the charge.

STATEMENT OF THE CASE

Appellant was indicted at the November 2012 term of the grand jury for Charleston County for distribution of cocaine base. He was ultimately convicted as indicted after a jury trial before the Honorable Kristi Lea Harrington, who sentenced him to life without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code (2014). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Dean Nelson Seagers (Appellant) was arrested and subsequently indicted for distribution of cocaine base after being the target of a controlled drug buy. His case proceeded to trial before the Honorable Kristi Lea Harrington.

At trial, the State presented the testimony of Detective Charles Jacob Grill with the Drug Enforcement Administration Task Force of the Charleston Police Department. Initially, the State offered him, without objection, as an expert in narcotics investigations. (Tr.139.) After providing general background testimony, Detective Grill was questioned about the specifics of the case. (Tr.160.) He testified that in this instance he was not the lead investigator, but he assisted with perimeter security and surveillance during the controlled drug buy. (Tr.162.) During Detective Grill's testimony, he stated he was familiar with Appellant's voice, explaining he had been interacting with that community for almost a decade and had had previous conversations with Appellant. (Tr.165.) Appellant objected on the grounds that Detective Grill was not a voice identification expert. (Tr.165.) The State responded it was not seeking to introduce him as an expert and the trial court overruled the objection, stating the witness was permitted to testify as to what he heard and saw. (Tr.165.) Detective Grill then testified that when he listened to the live wire that day he recognized Appellant's voice. (Tr.166.) Detective Grill further explained he had an hour-long conversation with Appellant after his arrest. (Tr.168.) He also stated he watched the video after the buy and recognized Appellant's voice. (Tr.169.)

Robert Drayton testified that he had been a confidential informant with the Charleston Police Department and participated in the controlled buy of cocaine from Appellant. After introducing the video of the buy, Drayton went on to testify about how he purchased the drugs

from a house on Alston Street. He explained he called Appellant to arrange to buy some cocaine. (Tr.217.) Drayton further testified that after arriving at the Alston Street house, the drugs were lowered to him in a jar from an upstairs window. (Tr.216.) He stated he did not witness Appellant physically lowering the drugs, but he saw him afterwards in the upstairs window. (Tr.217.) Drayton noted there were two other people in the Alston Street house at the time. (Tr.217.) He stated that after he purchased the drugs, he gave them to the lead investigator. (Tr.213–14.)

After the close of evidence, the trial court discussed the requests to charge and asked Appellant's counsel if he "would object to the inclusion of hand of one" to which he answered in the affirmative. (Tr.450) The trial court then stated it would charge the jury on the hand of one based on the testimony. (Tr.450.) After closing statements and the jury charge, Appellant was found guilty of distribution of cocaine base and was sentenced to life without the possibility of parole. (Tr.507, 512.)

ARGUMENTS

I.

The trial court properly admitted Detective Grill's voice identification testimony because he established the basis for his familiarity with Appellant's voice and it was unnecessary to qualify him as a voice identification expert. Further, there is no intimation the State sought to qualify him as an expert in voice identification and any contention that the jury may have inferred that is baseless speculation.

Appellant argues the trial court erred in allowing Detective Grill to testify that he recognized Appellant's voice on the video presented at trial because there was insufficient foundation for his identification. Additionally, Appellant argues that the trial court erred in admitting the testimony because the jury may have inferred he was an expert in voice identification because he had been previously qualified as an expert in narcotics investigations.

"The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion." *State v. Hewins*, 409 S.C. 93, 103, 760 S.E.2d 814, 819 (2014). "An abuse of discretion occurs when the decision of the trial court is based upon an error of law or upon factual findings that are without evidentiary support." *Id.*

"For some time, a witness' testimony of identification of a person by having heard his voice has been regarded as legitimate and competent evidence to establish identity in criminal cases." *State v. Smith*, 307 S.C. 376, 386, 415 S.E.2d 409, 415 (Ct. App. 1992). To satisfy the requirements of authentication under the South Carolina Rules of Evidence, the proponent of the evidence may demonstrate: "Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." Rule 901(b)(5), SCRE.

The familiarity the witness must possess is not substantial and any concerns with the reliability of the identification go to the weight, not the admissibility, of the testimony. 3 Wharton's Criminal Evidence § 14:6 (15th ed. 1999).

Appellant acknowledges, as he must, that voice identification testimony based on familiarity with the speaker's voice is a long-accepted means of establishing identity. Understandably, Appellant's argument on the lack of foundation is limited to distinguishing the facts of prior case law. However, factual differences do not change the very straightforward application of the rules of evidence. Appellant's alleged defects in Detective Grill's identification may be valid bases for attacking the weight of the evidence, but they do not preclude introduction of the testimony. Establishing the foundation of admissibility for voice identification only requires the witness has at some other time heard the person's voice under circumstances connecting the voice and speaker. Here, that is plainly satisfied. Detective Grill testified he had interactions with Appellant based on his work with the community over the years. Additionally, Detective Grill spoke with Appellant at the station after his arrest. The law requires no more for admissibility.

Nevertheless, it appears Appellant also contends that because Detective Grill was qualified as an expert in narcotics investigation, the jury may have inferred he was also an expert in voice identification. This conjecture ignores the fact that in the presence of the jury the solicitor explained she "[was not] attempting to admit [Detective Grill] as an expert" in voice identification. (Tr.165.) Therefore, any misguided assumptions the jury might have made were dispelled. Additionally, Appellant's suggestion that once a witness has been qualified as an expert in any topic, that witness cannot provide lay testimony because the jury *might* get confused, is contrary to a foundational belief inherent in our system of trial by jury—that a jury

listens to instructions. *See Jones v. United States*, 527 U.S. 373, 394 (1999) (stating that juries are presumed to follow the instructions they are given). Therefore when a trial court informs the jury a witness is an expert in narcotics investigation, the law assumes that is the sole area of expertise the jury considers. Accordingly, the trial court did not err in allowing Detective Grill to testify about recognizing Appellant's voice on the audio and video of the drug transaction.

II.

The trial court properly charged the jury on the theory of accomplice liability because evidence existed to support the charge.

Appellant also argues the trial court erred in charging the jury on the law of accomplice liability, alleging there was no evidence presented that Appellant acted in concert with anyone.

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). The law charged must be determined based on the evidence presented at trial and a trial court should not decline to charge the law on any issue raised by the indictment or evidence. *Id.* at 479, 697 S.E.2d at 583. If any evidence exists to support a charge, it should be given. *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002). An appellate court will not reverse a conviction unless the trial judge's charge is both erroneous and prejudicial. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003).

Accomplice liability is premised on the notion that in determining culpability the hand of one is the hand of all. *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014). Accordingly, under this theory, "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." *Id.* Without more, mere presence or prior knowledge that a crime would be committed is insufficient to constitute guilt. *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 769–70 (Ct. App. 2010). "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 584.

Here, evidence was adduced at trial that Drayton spoke to Appellant on the phone to arrange the transaction and again after he received the drugs. Further, Drayton did not see the individual who lowered the drugs down to him from the upstairs window. He testified there were three people in the house at the time, opening the possibility that other persons participated in the crime. All the claims of defects in the evidence are merely arguments as to the weight of the evidence and whether the State has met its burden. Appellant ignores the standard of review, which is whether there is any evidence supporting the jury charge. Evidence was submitted that Appellant may have acted in concert with others in executing the drug transaction. No more is required to warrant a charge on accomplice liability. Accordingly, the trial court did not abuse its discretion in charging the jury on accomplice liability.

CONCLUSION

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

Respectfully submitted,

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August 3, 2016

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

I further certify that all parties required by Rule to be served have been served.
This 3rd day of August, 2016.

Angela Bennett

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ALAN WILSON
ATTORNEY GENERAL

August 3, 2016

Tara D. Shurling, Esquire
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Re: The State v. Dean Nelson Seagers
Appellate Case No. 2015-001662

Dear Ms. Shurling

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Ranee Saunders
Assistant Attorney General
Bar # 100073

RS/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services