

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

V.

CALVIN TERRELL WILLIAMS,

RESPONDENT,

APPELLANT

APPELLATE CASE NO. 2016-001276

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for directed verdict on the charge of accessory before the fact to bank robbery where the solicitor did not present any evidence that Appellant was solely an accessory and the presentation of both charges was confusing to the jury?

STATEMENT OF THE CASE

On April 30, 2015, the Spartanburg County Grand Jury returned an indictment against Appellant Calvin Terrell Williams for one count of armed robbery and one count of bank robbery. R. 370 (armed robbery/bank robbery indictment). On May 6, 2016, the Spartanburg County Grand Jury returned another indictment against Williams for accessory before the fact to bank robbery. R. 372 (accessory indictment).

On June 6 – 8, 2016, Williams appeared for trial before the Honorable Roger L. Couch and a jury. Williams was represented by Matthew Shealy, and the state was represented by solicitor Barry Barnette. R. 1; R. 101; R. 291.

The jury returned a verdict of guilty of the offense of bank robbery. R. 355, l. 22 – 356, l. 7. Williams was sentenced to a mandatory term of life without parole pursuant to S.C. CODE ANN. § 17-25-45. R. 368, ll. 11-16.

This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion for directed verdict on the charge of accessory before the fact to bank robbery where the solicitor did not present any evidence that Appellant was solely an accessory and the presentation of both charges was confusing to the jury.

Relevant Facts

Williams sixteen year old son, Shyquone Williams (hereinafter "Shyquone"), went into a BB&T bank in Spartanburg, South Carolina. He handed the teller a handwritten note that read:

This is an armed robbery. This is an armed bank robbery. I demand \$40,000 in large bills with no bands around the money. No dye packs. No bait money. No tracking devices. I want all the money placed in my book bag. No silent alarms. If you obey me nobody will get hurt.

R. 166, l. 13 – 171, l. 4. Because there was no book bag, the teller put approximately two thousand dollars in envelopes, along with a dye pack, and gave it to Shyquone. R. 173, l. 18 – 175, l. 9. The defense's theory of the case was that Shyquone acted alone in robbing the bank and lied to Williams about his need to go to the bank to pick up money from someone that day. R. 162, l. 1 – 163, l. 22.

After his initial arrest, Shyquone repeatedly denied that his father had any involvement in the bank robbery. R. 198, ll. 11-16; R. 199, l. 23 – 201, l. 12. However, he eventually told the police that the robbery was Williams' idea, that Williams told him how to write the demand note, and that Williams procured their ride to the bank.¹ R. 188, l. 17 – 195, l. 16; R. 198, ll. 17-25. Shyquone admitted that he walked from the van where Williams and the driver were waiting and robbed the bank. On his way back to the van, the red dye pack in the money exploded. R. 195, l. 17 – 196, l. 3. When he got to the van, Williams asked Shyquone whether he "had it" and

¹ There was no evidence that the driver of the van, Kenneth Blassingame, had any knowledge of or involvement in Shyquone's bank robbery. R. 194, ll. 4-20; R. 244, ll. 3-6.

Shyquone responded “no, he wasn’t there.” R. 196, ll. 4-7. The driver dropped them off near Quail Pointe apartments, where they were later apprehended by police. Shyquone claimed that Williams threw Shyquone’s stained clothing into the bushes and gave him an orange hoodie to wear. R. 196, l. 20 – 198, l. 10.

Following the close of the state’s case, defense counsel made a motion for directed verdict, arguing that the State had not presented sufficient evidence that Williams was merely an accessory before the fact. He argued if the judge found that there was sufficient evidence that Williams was “present” at the scene of crime, that the solicitor had not submitted any evidence that Williams was “not present when the offense was committed” such that Williams could not be convicted as an accessory before the fact. Judge Couch denied the motion. R. 294, l. 2 – 303, l. 8. However, the trial judge instructed the jury that it could not find Williams guilty of both offenses because guilt of one precludes guilt of the other. Rather, the jury could find Williams not guilty of both offenses, guilty of bank robbery only, or guilty of accessory before the fact to bank robbery only. R. 308, l. 7-13; R. 343, ll. 1-15; R. 346, l. 13 – 348, l. 13.

During deliberations, the jury sent out one question: “Will you explain again hand of one hand of all and how his presence or not being there prevents him from being guilty of both charges?” R. 349, l. 15 – 350, l. 3. The jury was recharged on the elements of the two offenses and various principles related to accomplice liability and mere presence. R. 350, l. 4 – 354, l. 13.

Discussion

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004). S.C. CODE ANN. § 16-11-380 provides: “It is unlawful for a person to enter a building or part of a building occupied as a bank, depository, or building and loan association with intent to steal money or securities for

money, either by force, intimidation, or threats.” In order to be convicted as a principal under the theory of the “hand of one is the hand of all,” the State must prove beyond a reasonable doubt that the defendant was actively or constructively present at the scene. State v. Zeigler, 364 S.C. 94, 107, 610 S.E.2d 859, 866 (Ct. App. 2005). “A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting or assisting in the commission of the crime.” Id. “Present means to be sufficiently near to aid and abet and assist in the commission of the crime.” Id. A conviction as an accessory before the fact requires a showing that the accused: “(1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that some principal committed the crime.” State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993).

In State v. McClure, 312 S.C. 369, 440 S.E.2d 404 (Ct. App. 1994), this Court found no error in the trial court’s refusal to grant the defense’s request for a jury charge on accessory before the fact where he had only been indicted as a principal. McClure gave a statement to police in which he admitted that he helped plan the robbery of the pawn shop with Fred Turner. Id. at 370, 400 S.E.2d at 405. McClure said he gave Turner the gun to use and stood in a field where he could observe the rear of the pawn shop during the robbery, as agreed upon. Id. at 370-71, 400 S.E.2d at 405. McClure heard three shots fired, after which Turner ran up, gave him money and jewelry, and asked McClure to dispose of the gun. Id. at 372, 400 S.E.2d at 406. A charge on accessory before the fact is only proper where “the evidence points to an exclusionary offense.” McClure, 312 S.C. at 372, 440 S.E.2d at 406 (citing State v. Good, 315 S.C. 135, 432 S.E.2d 463 (1993) (“the law of accessory is only required where the evidence points to an exclusionary offense which dictates that different proof is required as to each defendant”)). This Court found that the evidence against McClure revealed “no exclusionary situation that

eliminates McClure from having participated in the murder at the pawn shop as a principal,” finding that his statement to the police “paint[ed] McClure as anything but an accessory before the fact.” Id.

Initially, Williams does not concede that he played any role in the planning or commission of the robbery of the BB&T bank. However, on appeal from denial of a directed verdict requires that the evidence be viewed “in a light most favorable to the State.” State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). Thus, he discusses the evidence from that perspective while maintaining his innocence.

Here, there was no evidence to indicate that Williams acted solely as an accessory before the fact. As such, the trial judge erred in denying the defense’s request for a directed verdict on the charge. Under the discrete facts of this case, it is simply not possible that the jury could have believed that Williams aided in the planning of the bank robbery **only**. Rather, if Williams was involved in the planning, his alleged subsequent actions of procuring the ride to the bank, directing the driver where to park before, directing the driver where to drop them after, providing new clothes to Shyquone, and disposing of the dye-pack stained clothing, would have constituted aiding and abetting. See State v. Chavis, 277 S.C. 521, 522–23, 290 S.E.2d 412, 412–13 (1982) (upholding denial of directed verdict on armed robbery where there was evidence that Chavis helped plan the robbery, appeared at the scene prior to the crime, provided necessary weapons and tools, and received a portion of the proceeds, even though he did not accompany the actual perpetrators). The jury had to either believe that Williams planned and assisted in the commission of the bank robbery or had no role in the robbery at all.

The trial judge’s failure to direct a verdict on the accessory charge resulted in its inclusion in the jury charge, which made it confusing to the jury. The jury sent out a written

question during its deliberations, which asked: "Will you explain again hand of one hand of all and how his presence or not being there prevents him from being guilty of both charges?" R. 349, l. 15 – 350, l. 3. The judge's response was to recharge the jury. R. 350, l. 4 – 354, l. 13. Rather than focusing on the credibility of Shyquone's testimony, which was the real matter to be determined in their deliberations, the jury was distracted by the purported "question of fact" regarding whether Williams was "present." The improper submission of the accessory charge to the jury undermined the jury's finding of guilt as to the offense of armed robbery. Williams is accordingly entitled to a new trial.

CONCLUSION

Based on the foregoing, Appellant Calvin Terrell Williams respectfully requests that this Court reverse his conviction and grant him a new trial.


Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Calvin Terrell Williams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on June 6-8, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Calvin Terrell Williams.

Respectfully Submitted,



Laura R. Baer

Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2017.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Transcript of trial held June 6-8, 2016;
- (2) True-billed indictments.

I certify that this designation contains no matter which is irrelevant to this appeal.


Laura R. Baer
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January 18, 2017

ATTORNEY FOR APPELLANT

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CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

January 18, 2017.



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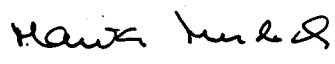
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Calvin Terrell Williams, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of January, 2017.


Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of January, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 3, 2023