STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to the Court of Appeals
Appeal From Charleston County
Court of General Sessions
Kristi L. Harrington, Circuit Court Judge

Opinion No. 2017-UP-263 (S.C. Ct. App. Filed 6/28/17)

Appellate Case No. 2017-001928

THE STATE,

Respondent,

v.

DEAN NELSON SEAGERS,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

I.

Whether the trial court erred by charging the jury the law of accomplice liability when the State presented evidence to support the charge and advanced the theory throughout trial.

STANDARD OF REVIEW

An appellate court will not reverse a trial court's decision regarding a jury charge absent an abuse of discretion. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583-84 (2010). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant for distribution of cocaine base in violation of S.C. Code Section 44-53-375. Petitioner proceeded to jury trial before the Honorable Kristi L. Harrington on July 6, 2015. Petitioner was convicted and sentenced to imprisonment for life without the possibility of parole pursuant to S.C. Code Section 17-25-45 (2014). The Court of Appeals affirmed his conviction on June 28, 2017 and denied his petition for rehearing on August 18, 2017. Petitioner filed a petition for writ of certiorari on October 9, 2017. On March 7, 2018, this Court granted certiorari on the third issue raised by Petitioner, whether the trial court erred by charging the jury the law of accomplice liability.

STATEMENT OF FACTS

Petitioner was the target of a controlled buy operation conducted by narcotics investigators with the City of Charleston Police Department. R. 227. Officers utilized a paid confidential informant to contact Petitioner and arrange a purchase of cocaine. R. 229; 264; 205. The officers equipped the informant with a video recorder and live audio transmitter to document the purchase. R. 234-35. Investigator Michael Burke listened as the informant contacted Petitioner, arranged to purchase cocaine, and travelled on his bicycle to an unoccupied house in downtown Charleston to complete the transaction. R. 232; 271; 185. When the informant arrived at the house, he saw Petitioner in a second story window. R. 184. The informant testified there were two other people inside. R. 185. Someone, who the informant could not see, lowered a jar down from the second story window using a string. R. 216. The informant deposited one hundred dollars into the jar, which was raised back up. State's Exhibit 2. When the jar was lowered a second time, it contained two grams of crack cocaine. State's Exhibit 2. The informant collected the crack cocaine and delivered it to Officer Burke, who was waiting down the street. R. 186. Petitioner was arrested in the same house several months later. R. 245-46.

ARGUMENT

I.

The trial court properly charged the jury the law of accomplice liability because the State presented evidence to support the charge and advanced the theory throughout trial.

Petitioner claims the trial court erred by charging the law of accomplice liability because there was no evidence that Petitioner acted in concert with anyone. However, the record shows the State presented evidence from which a rational juror could conclude that Petitioner acted with others to distribute the drugs, and the State advanced this theory throughout trial. Because the evidence supported a conclusion that Petitioner acted in concert with others, the trial court correctly chose to explain the relevant law to the jury. The Court of Appeals correctly found the trial court did not err.

"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. "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). 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 trial court's decision regarding a jury charge absent an abuse of discretion. Mattison, 388 S.C. at 479, 697 S.E.2d at 583-84. To warrant reversal, a trial judge's charge must be 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 individual culpability for joint action, 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. In contrast, mere presence at the scene or prior knowledge that a crime would be committed is insufficient to establish 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.

In State v. Barber, this Court held the trial judge properly charged the law of accomplice liability where the evidence was "equivocal" on which of four robbers shot and killed the victim. State v. Barber, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). The Court explained: "Like a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). In that case, the charge was warranted because the State presented "evidence to support the conclusion that Barber was acting with the other men during the robbery." Id. at 237, 712 S.E.2d at 439.

The same scenario is present in this case. The State was limited by the fact that police could not prove who actually transferred the drugs to the informant's possession. Though the informant arranged the purchase with Petitioner, he could not say who physically lowered the drugs down to him. Consequently, the State advanced the theory of accomplice liability to show

that regardless whose hands were holding the other end of the string, Petitioner was still guilty because he was the organizer and an active participant in the transaction.

The prosecution laid the foundation for this theory of the case beginning with its first witness, Jacob Grill. Grill, a narcotics investigator and member of the DEA's drug task force, explained that drug distribution operations are often sophisticated, with dealers using various tactics to insulate themselves from inculpation. For example, Grill testified dealers often avoid making personal hand-offs to buyers, opting instead to leave the drugs hidden in a secret location and disclosing the location only after receiving payment. R. 117. Other times, a dealer might negotiate the transaction but have a different person hand-deliver the drugs. R. 117-18. Grill explained that "drug dealers think that as long as they're not, you know, putting the drugs in someone's hands, then they're not tied to it[.]" R. 118. Grill went on to testify that vacant houses are often used as hubs of drug distribution operations, with multiple people using the "stash house" as a base from which to conduct their operation because they have no demonstrable connection to the property. R. 118. This adds another layer of plausible deniability. R. 119.

Consistent with that testimony, the jury heard evidence that the location of this transaction was an unoccupied house, and that two other individuals were present during the transaction. R. 271; 185. The State argued in its closing that the address was being used as a "trap house." R. 492. The State also argued the fact that Petitioner's phone and car were not registered to his name further showed he was involved in a sophisticated drug operation. R. 484. The State further argued the fact that no fingerprints could be lifted from a cup with a string tied to it recovered from the incident location showed that multiple people had been handling the cup. R. 451-53. All of this evidence supports the State's theory of the case: Petitioner is guilty

whether it was he or one of the other two people in the house who lowered the drugs from the window.

The State submitted evidence from which the jury could believe Appellant acted in concert with others to complete the drug transaction. No more is required to warrant a charge on accomplice liability. Had the judge not given the charge, she would have created the danger that the jury would decide for itself the legal effect of concerted action. This would have been an abdication of her judicial responsibility. The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). Given the equivocal nature of the evidence, the danger of a confused or uninformed jury far outweighed the risk involved in simply explaining the legal significance of concerted action. Under our precedents, the court would have committed error by *not* giving the charge. See 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."). Such was the case in State v. Fair, where this Court found error because the trial court gave "no instructions to the jury responsive to the theory upon which appellant was charged in the indictment and upon which the State sought to convict." State v. Fair, 209 S.C. 439, 445, 40 S.E.2d 634, 637 (1946). This and other cases make clear that trial courts should take into account the parties' theories of the case when deciding whether to give a charge. See also State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000); State v. James, 386 S.C. 650, 654, 689 S.E.2d 643, 645 (Ct. App. 2010); Chesser v. Tyger River Pine Co., 155 S.C. 356, 152 S.E. 646, 650 (1930).

Finally, Petitioner has not demonstrated prejudice. The theory of accomplice liability had been advanced by the State throughout the trial. Recognizing the legal significance of the

presence of multiple people during the transaction and the impossibility of proving who actually lowered the drugs from the second story window, Petitioner requested and received a "mere presence" charge. R. 417. The judge gave this charge despite the fact there was no evidence presented that Petitioner was present but uninvolved in the transaction.[1] Surely the State was entitled to an explanation of accomplice liability on the same premise. The judge acted within her discretion when she decided it would be helpful to the jury in deciding guilt or innocence to receive an explanation of the law of accomplice liability. This is the purpose of jury instructions. Accordingly, the trial court did not err. The conviction should be affirmed.

[1] Even the informant's purported recantation offered by Petitioner does not allege Petitioner was present but uninvolved. Rather, it alleged Petitioner was "not there." R. 403.

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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June 4, 2018

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Brief of Respondent on Petitioner 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 4th day of June, 2018.

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Legal Assistant

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