ORIGINAL

RECEIVED
JUN 25 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARRIE CALLAHAM,

APPELLANT

APPELLATE CASE NO. 2012-212210

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State presented insufficient evidence to establish guilt under a theory of accomplice liability when Appellant was merely present near the scene of the crime where two co-defendants forced their way inside of a trailer home and robbed the occupants and the State failed to prove that there was an agreement between Appellant and the co-defendants to assist in the commission of the armed robbery and burglary?

2. Did the trial judge err in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State failed to present sufficient independent evidence to corroborate Appellant's statement that the co-defendants were armed and one of the co-defendants asked her to drive them to West Columbia so they could "deal with something"?

STATEMENT OF THE CASE

In 2011, the Lexington County Grand Jury indicted Carrie Callaham for burglary first degree and armed robbery, indictments #2011-GS-32-1216, 1218. On May 23, 2012, Callaham proceeded to jury trial before the Honorable George C. James, Jr. Attorneys Robert Madsen and Bennett Castro represented Callaham at trial. Attorneys Lawrence Wedekind and Will Whetstone prosecuted the case on behalf of the State. The jury returned verdicts of guilty and Judge James sentenced Callaham to 15 year concurrent sentences. A timely notice of intent to appeal was served on May 25, 2012. This appeal follows.

ARGUMENTS

1. The trial judge erred in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State presented insufficient evidence to establish guilt under a theory of accomplice liability when Appellant was merely present near the scene of the crime where two co-defendants forced their way inside of a trailer home and robbed the occupants and the State failed to prove that there was an agreement between Appellant and the co-defendants to assist in the commission of the armed robbery and burglary.

Just after midnight on June 16, 2010, Ricky Bell and Quincy Holley forced their way into the home of Abdul Bargas and Mirna Herrera. Bargas and Herrera lived in the trailer home with their two children and Herrera's brother, Rigaberto Herrera. R. pp. 71 – 72. Bell and Holley were both armed. R. p. 75, lines 16-18. Once inside they demanded money and took Mirna and Rigaberto's wallets as well as Rigaberto's necklace. R. p. 74, line 1 – p. 75, lines 1-11.

At trial, a neighbor, Marcelo Prado, testified that around midnight on June 16, 2010, he and a friend were coming home from getting something to eat when he saw a woman in a blue S.U.V. parked in the trailer park with the engine running. R. p. 228, lines 15 – p. 229, lines 1-24. Prado testified that he and his friend went in his house and ate their food. R. p. 230, lines 1-4. Prado lived in trailer 1. R. p. 241, lines 20-21. Prado and Ramon ate their food and Ramon left. After Ramon left he called Prado and told him there was a robbery happening at trailer 6 in the trailer park. R. p. 230, lines 2-25. Prado called 911. R. p. 231, lines 6-13. While Prado was on the phone with the police he saw the blue S.U.V. drive away. R. p. 243, lines 1-7; 25 – p. 244, lines 1-11.

Sergeant Robert McIntyre with the West Columbia Police Department testified that based on the 911 call he stopped a dark blue Tahoe he saw close to the trailer park. (R. pp. 95-98. The driver was Appellant, Carrie Callaham. R. p. 99, lines 7-22. Ricky Bell was in

the front passenger seat. R. p. 122, lines 2-4. Quincy Holley was seated behind the driver in the backseat. R. p. 122, lines 7-8. The officer asked the three to step out of the S.U.V. The officer testified that as Bell stepped out of the vehicle, a gold bracelet[1] fell to the floorboard of the S.U.V. R. p. 103, lines 11-20. When the officer recovered the jewelry, he also observed the butt of a pistol in the floorboard. R. p. 103, lines 18-24. Another gun was found in the backseat. R. p. 103, line 23 – p. 104, lines 1-2. Two wallets containing the victims' identification cards were also found in the S.U.V. R. p. 105, line 17 – p. 106, 107, lines 1-9. The officer testified that he found four rounds of ammunition in Appellant's pocket. R. p. 122, lines 15-23.

Appellant provided the following statement to Investigator Page Moore with the West Columbia Police Department:

> On June 15, 2010, I, Carrie Callaham, met Black[2] on Farrow. I only known him for a couple of days. Mr. Black and his friend asked me to drive them to West Columbia so they can deal with something. Mr. Black had a gun and his friend. It was two auto guns. Mr. Black dropped some shells in the car. I picked them up and put the shells in my pocket. At this time I was parked in front of the trade [sic].
>
> Mr. Black and his friend told me if I opened my mouth, I would be hurt. They got out of the car and walked away. When they returned to the car, Mr. Black still had the gun, telling me to drive. When the police came behind us, he told me if I say anything, me and my kids will be hurt. At this time I see two handguns, one little one and one large gun.
>
> Mr. Black put his gun under the seat of the car. At this time I did not know what him or his friend was doing. I asked them where their get the gun. He would not let me know at this time I was contact at 10:00 PM I met Mr. Black friend tonight of this.

R. p. 274, line 24 – p. 275, lines 1-24, R. p. 407.

---

[1] It appears that the bracelet was actually a necklace. R. p. 107, lines 10-17.
[2] Appellant refers to Ricky Bell as Black.

Neither Ricky Bell nor Quincy Holley testified against Appellant. Bell pled guilty to attempted armed robbery and received a fourteen year sentence. R. p. 389, lines 10-14; p. 397, lines 21-24. Holley pled guilty to burglary first degree and received a twenty year sentence. R. p. 397, line 24 – p. 398, lines 1).

At the close of the State's case, counsel for Appellant moved for a directed verdict of acquittal for both the burglary first degree and armed robbery charges. R. pp. 303 – 308; 315 - 316. Specifically, counsel argued, "Additionally, Your Honor, we believe that we should be granted a directed verdict on the theory of mere presence." R. p. 305, lines 13-15. Counsel further argued that the State's evidence, at best, only established accessory after the fact. R. p. 307, lines 12-15. Counsel argued:

> You have no one testifying as to what happened beforehand, that there was any type of communication, any type of planning, anything that they got together and said, 'Hey, this is what is going to happen,' whether it was by words, whether it was by written, or whether it was by simply a tacit understanding of the parties.
>
> Certainly, I think the State could end up making an argument that in the end she potentially somehow knew what they had done, but the evidence in is that a car is parked at Number 1 and that ultimately what occurs, occurs way down at Number 6.
>
> So we believe if the State quite honestly had anything, it would have been an accessory after the fact and not charged as a principle, considering the distance. So based on that, Your Honor, we would move for a directed verdict. R. p. 307, line 16 – p. 308, lines 1-7).

The judge denied the directed verdict motion writing, "Lastly, while evidence would point to her being an accessory after the fact, I noted that you didn't say it also might point to her being an accessory before the fact. If you are an accessory before the fact and accessory after the fact and you are there, that's what the hand of one, hand of all is all about, at least from my standpoint. So I will deny your motions at this time." The judge erred. There is

no evidence to support accessory before the fact as there is no evidence that appellant agreed to assist in the commission of an armed robbery or burglary. In State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769-770 (Ct.App. 2010), the South Carolina Court of Appeals wrote:

> Under the "hand of one is the hand of all" theory of accomplice liability, 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. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, m]ere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.
>
> State v. Thompson, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct.App.2007) (internal quotations and citations omitted).
>
> "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.' " See State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct.App.2002) (quoting State v. Langley, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999)). In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties. Id. at 193, 562 S.E.2d at 324 (stating that under the hand of one is the hand of all theory, "[a] formally expressed agreement is not necessary to establish the conspiracy" which brings the accomplice to the scene of the crime).

In the present case the State failed to prove that Appellant agreed to assist with the commission of an armed robbery and burglary. Appellant's statement that Black and Holley were armed and asked Appellant to drive them to West Columbia so that they could deal with something is not sufficient to establish the agreement element required for accomplice liability. The judge erred in refusing to direct a verdict of acquittal.

When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not the weight. State v. Al–Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003). When reviewing the denial of a motion for a directed verdict, an appellate court must review the evidence, and all inferences therefrom, in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). The trial court's denial of a directed verdict will not be reversed if supported by any direct evidence or substantial circumstantial evidence of the defendant's guilt. Id. Viewing the evidence in the light most favorable to the State, the trial judge's denial of the directed verdict motion is not supported by the record. The State failed to prove an agreement between Appellant and the co-defendants to commit an armed robbery and burglary. The judge erred in refusing to direct a verdict of acquittal.

> 2. The trial judge erred in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State failed to present sufficient independent evidence to corroborate Appellant's statement that the co-defendants were armed and one of the co-defendants asked her to drive them to West Columbia so they could "deal with something."

Without conceding the issue presented in argument one, if this Court finds that Appellant's statement is somehow sufficient to show an agreement to commit armed robbery and burglary, the State failed to present independent evidence to corroborate the statement. In addition to arguing that a directed verdict was required because the State failed to present evidence of an agreement, as argued in issue one, Appellant also argued that the State failed to present proof aliunde of the corpus delicti pursuant to State v. Osborne, 335 S.C. 172, 516, S.E.2d 201 (1999). (R. p. 176, line 3 – p. 177, 178, lines 1-20).

In State v. Osborne, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999), the South Carolina Supreme Court wrote:

> It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti.* State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996). See also State v. Brown, 103 S.C. 437, 442, 88 S.E. 21, 22 (1916) ("Before a defendant can be required to go into his defense, it is necessary that there shall be some proof of the corpus delicti"). (footnotes omitted).

As discussed in issue one, the State proceeded on a theory of accomplice liability. In order to prove accomplice liability, the State must prove an agreement between appellant and the co-defendants. If Appellant's statement constitutes proof of an agreement, under the corroboration rule, the State must provide sufficient independent evidence to corroborate the statement. "We clarify the law in this State that, consistently with Opper[3] and its progeny, the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred. Cf. Williams, 321 S.C. at 385 n. 2, 468 S.E.2d at 658 n. 2 (emphasizing that '[p]roof of corpus delicti is not a prerequisite to the admission of an extra-judicial confession of a defendant.')." Osborne, 335 S.C. at 179-180, 516 S.E.2d at 204-205.

The State's evidence, apart from Appellant's statement, established that Appellant waited in a car six trailer homes away from where the co-defendants committed the robbery and burglary, she drove the co-defendants away from the trailer park and when stopped by police she had bullets in her pocket. The State's evidence does not provide sufficient independent evidence that appellant agreed to assist the co-defendants in the

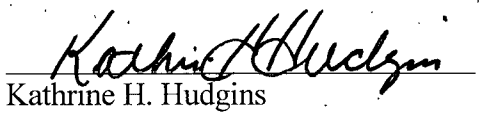
[3] Opper v. United States, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101 (1954).

commission of an armed robbery and burglary. The State had the ability to call Ricky Bell to testify about any agreement that may have existed and the State chose not to call Ricky Bell as a witness. R. p. 389, line 23 – p. 390, lines 1-16. The State presented no evidence of an agreement between Appellant and the co-defendants to assist in the commission of an armed robbery and burglary. The judge erred in refusing to direct a verdict of acquittal for both armed robbery and burglary.

CONCLUSION

Based on the above argument, the convictions and sentences should be reversed and a directed verdict of acquittal entered.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JUN 25 2013
SC Court of Appeals

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARRIE CALLAHAM,

APPELLANT

APPELLATE CASE NO. 2012-212210

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of June, 2013.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
~~this~~ 25th day of June, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 25th, 2013

Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589