

Circuit Court for Prince George's County
Case No. CT170506B

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 163

September Term, 2019

DONAVAIN HODGES

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 13, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by a jury in the Circuit Court for Prince George’s County of first degree murder and related offenses, Donavain Hodges, appellant, presents for our review a single question: whether the court erred or abused its discretion in instructing the jury on accomplice liability and denying a subsequent motion for mistrial. For the reasons that follow, we shall affirm the judgments of the circuit court.

The victim, Timothy Sherod, died of multiple gunshot wounds. During opening statements, the prosecutor contended that Mr. Hodges was the shooter, but defense counsel contended that Mr. Hodges’s former girlfriend C’essna Blow was the shooter. The State subsequently called Ms. Blow, who testified, pursuant to a plea agreement, that on February 12, 2017, she met Mr. Sherod and agreed to provide him sexual favors in exchange for \$130. Mr. Sherod gave the money to Ms. Blow, who subsequently departed. When Mr. Sherod contacted Ms. Blow and demanded that she return the money, Mr. Hodges used Ms. Blow’s phone to arrange a second meeting with Mr. Sherod. Using his motorcycle, Mr. Hodges transported Ms. Blow to the meeting, where Ms. Blow entered the passenger seat of Mr. Sherod’s vehicle and returned the money to him. Mr. Hodges then opened the passenger door and shot Mr. Sherod.

The State also entered into evidence a statement written by Mr. Hodges during an interview with police. Mr. Hodges stated that “[o]n the night of this killing,” Ms. Blow “want[ed] to ride the bike, before heading to [Mr. Hodges’s] house.” While the two were “riding the bike,” Ms. Blow directed Mr. Hodges to an “address that she showed [him] in her phone.” When they arrived, Ms. Blow told Mr. Hodges: “[W]ait[,] I’m about to step over here real quick[,] hold on.” Ms. Blow “walked towards the end of the stop sign . . .

and went right around the corner” and “out of [Mr. Hodges’s] sight.” A “few minutes” later, Mr. Hodges “heard a gun go off.” Mr. Hodges saw a “car that ha[d] its ignition on” and assumed that Ms. Blow was inside. Mr. Hodges “open[ed] up the passenger side front door and . . . screamed at her ‘let’s go.’” Mr. Hodges and Ms. Blow ran “back to [the] bike,” but Ms. Blow returned to the car to retrieve her phone. Mr. Hodges then transported Ms. Blow “straight back to [his] house.”

In its proposed jury instructions, the State requested that the court give the pattern instruction on accomplice liability.¹ Following the close of the State’s case, defense counsel objected to the instruction on the ground that Mr. Hodges’s “role . . . according to the State is . . . a principal,” and “not an accomplice to anyone.” The prosecutor countered that “even if[,] as Mr. Hodges [contended] during . . . trial[,] he was never the one who pulled the trigger,” the “State’s theory is that he participated in such a way that he shared

¹Specifically, the State requested that the jury be instructed as follows:

The defendant may be guilty of murder as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of murder as an accomplice, the State must prove that the murder occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that [h]e was ready, willing, and able to lend support, if needed. A person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice. The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered, along with all of the surrounding circumstances, in determining whether the defendant intended to aid a participant and communicated that willingness to a participant.

the intent and the motive and is therefor[e] still guilty as an accomplice.” The court agreed to give the instruction, but ordered “the State . . . to be clear in its closing” as to the theory it would pursue.

Following the close of the evidence, the court gave the instruction to the jury. During closing argument, the prosecutor again contended that Mr. Hodges was the shooter. Following argument, defense counsel requested “that the accomplice liability [instruction] be called back.” The court agreed and instructed the jury: “[O]n page seven on the jury instructions it says accomplice liability. In this particular case, the State has alleged that Mr. Hodges is the person that was the shooter in this case. As such, that instruction is no longer applicable to your deliberations and can be removed from your deliberations.” When the jury exited the courtroom, defense counsel moved for mistrial “based on them having been previously instructed on accomplice liability.” The court denied the motion.

Mr. Hodges first contends that the court “erred or abused its discretion” in giving the accomplice liability instruction, “because the facts and evidence did not support giving such an instruction and it was inapplicable.” We disagree. We have stated that a court errs in giving the accomplice liability instruction when “the evidence at trial [does not] generate an aiding and abetting instruction.” *Sweeney v. State*, 242 Md. App. 160, 174 (2019). Here, the State entered into evidence Mr. Hodges’s statement to police, in which he admitted to transporting Ms. Blow to and from the site of the shooting. This evidence was sufficient to generate an aiding and abetting instruction, and hence, the court did not err or abuse its discretion in giving the accomplice liability instruction.

Mr. Hodges next contends that the court “erred or abused its discretion” in denying the motion for mistrial, because “a jury could not follow the ‘undoing’ of the instruction and the consequences were vital to [Mr. Hodges] vis-à-vis receiving a fair trial.” We disagree. The Court of Appeals has stated that “generally[,] cautionary instructions are deemed to cure most errors, and jurors are presumed to follow the court’s instructions[.]” *Carter v. State*, 366 Md. 574, 592 (2001) (citation omitted). Here, the court, prior to deliberations, instructed the jury that the accomplice liability instruction was “no longer applicable . . . and can be removed.” We presume that the jury followed this cautionary instruction, and hence, the court did not err or abuse its discretion in denying the motion for mistrial.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**