

Appendix A:

**Opinion of the Georgia Supreme Court, Case No. S19A0439
(April 15, 2019)**

evidence presented at trial, when viewed in the light most favorable to the verdict, is sufficient to authorize a rational trier of fact to find Carpenter guilty of the crimes of which he was convicted. See Jackson v. Virginia, 443 U.S. 307, 319 (III) (B) (99 SCt 2781, 61 LE2d 560) (1979).

2. Carpenter claims that the trial court erred when it limited his cross-examination of Hernandez. In particular, Carpenter wanted to elicit testimony that, a few months before Vasquez was killed, Hernandez had threatened a man who caught Hernandez breaking into his property. The man tackled Hernandez, and after Hernandez was arrested, Hernandez told a detective that he was going to kill the man who tackled him and caused him to be arrested. According to Carpenter, this “other acts” evidence is admissible under OCGA § 24-4-404 (b) to show that Hernandez had a motive to kill Vasquez. The trial court, however, refused to allow Carpenter to

elicit this evidence on cross-examination.² In doing so, the trial court did not abuse its discretion.

Evidence that Hernandez threatened to kill a man certainly would tend to show that Hernandez has a general propensity to threaten others with violence, but that is not a permissible purpose for evidence offered under OCGA § 24-4-404 (b). As we have explained before, extrinsic evidence is admissible to show motive only when it is “logically relevant and necessary to prove something other than [a] propensity to commit the crime charged.” Brooks v. State, 298 Ga. 722, 726 (2) (783 SE2d 895) (2016) (citation and punctuation omitted). Carpenter argues that the evidence at issue shows that Hernandez has not only a general propensity to threaten violence, but also a more particularized desire to seek violent retribution against someone who has caused him trouble. A major problem with this argument is the absence of any evidence that

² We note that Carpenter was permitted to elicit testimony on cross-examination that Hernandez had been caught “going into . . . multiple people’s cars” and was on probation for “taking a bike from a house” in April 2016. Carpenter also was able to cross-examine Hernandez about his status as a probationer and his plea to reduced charges in this case.

Vasquez was killed as retribution for anything. Indeed, Carpenter argued at trial not that Vasquez was killed by Hernandez as retribution for causing Hernandez trouble, but rather, that Vasquez was killed by someone who was motivated to kill “for no reason.” Evidence that Hernandez had a desire to seek violent retribution against another person on another occasion was not “logically relevant and necessary” to establish motive under OCGA § 24-4-404 (b), and the trial court did not abuse its discretion when it refused to allow Carpenter to elicit such evidence on cross-examination. Cf. State v. Jones, 297 Ga. 156, 158 (1) (773 SE2d 170) (2015).³

3. Carpenter also claims that the trial court erred when it charged the jury that “a conspiracy is an agreement between two or more persons to do an unlawful act, and . . . [w]hen persons associate

³ Carpenter also contends that the trial court erred when it allowed the prosecution to elicit testimony about the source of the handguns that Carpenter and his friends carried to the apartment complex, arguing that the presentation of this evidence violated a pretrial agreement that the prosecution would offer no such evidence. But we fail to find any such agreement in the record of the pretrial proceedings. The record does reveal a different agreement—that the prosecution would not present evidence about firearms found at the time Carpenter was arrested, since those firearms were “not connected to [this] case at all”—but that agreement is not implicated by the testimony about which Carpenter now complains.

themselves in an unlawful enterprise, any act done by any party to the conspiracy to further the unlawful enterprise is considered to be the act of all of the conspirators.” Carpenter argues that this charge is misleading because the trial court failed to specify that the “unlawful enterprise” at issue was an “unlawful armed robbery.” Absent that specification, he says, the jury might have been misled to believe that it could find him guilty of murder simply because he had agreed to participate in an “unlawful enterprise” to purchase marijuana from Vasquez, even if the jury found that it was Hernandez who killed Vasquez, that Carpenter never agreed to participate in any enterprise other than to purchase marijuana, and that Hernandez shooting Vasquez was beyond the scope of the enterprise to purchase marijuana.

We conclude that the instruction about which Carpenter complains is not misleading. To begin, we have held before that “[i]t is not error to charge on the subject of conspiracy when the evidence tends to show a conspiracy, even if a conspiracy is not alleged in the indictment.” Edge v. State, 275 Ga. 311, 313 (6) (567 SE2d 1) (2002)

(citation and punctuation omitted). We also have held that, when a trial court is authorized to charge the jury on conspiracy “as a theory by which the jury could connect [the defendant] as a party to the crimes in question,” the trial court properly may charge the jury in terms of an “unlawful enterprise” without specifying the object of the enterprise. Mister v. State, 286 Ga. 303, 307-308 (5) (b) (687 SE2d 471) (2009). Moreover, when we are presented with a claim that a particular instruction is misleading, “[w]e do not evaluate jury charges in isolation, but rather consider them as a whole to determine whether there is a reasonable likelihood the jury improperly applied a challenged instruction.” Salahuddin v. State, 277 Ga. 561, 564 (3) (592 SE2d 410) (2004).

Here, in addition to the instruction on conspiracy, the trial court charged the jury that the prosecution had the burden “to prove every material allegation of the indictment and every essential element of the crimes charged beyond a reasonable doubt,” that the prosecution had to show that Carpenter committed each crime knowingly and intentionally, and that the jury was authorized to

find Carpenter guilty of felony murder *only* if it found beyond a reasonable doubt that Vasquez was killed in connection with one of the predicate felonies alleged in the indictment—aggravated assault and attempted armed robbery. The trial court also charged the jury in connection with its instruction on conspiracy that a conspirator is responsible for the acts of other parties to the conspiracy “only insofar as such acts are naturally and necessarily done to further the conspiracy.”

We see no likelihood that the jury would have been misled by these instructions to believe that it could find Carpenter guilty of felony murder simply because it believed he was involved in an uncharged enterprise to purchase marijuana. To the contrary, we are satisfied that the jury charge as a whole adequately informed the jury that it could find Carpenter guilty of felony murder only if it found beyond a reasonable doubt that he was a party (as a conspirator or otherwise) to one of the felonies charged in the indictment as a predicate of felony murder. See Ware v. State, ___ Ga. ___ (2) (Case No. S18A1295, decided March 11, 2019) (jury

charges as a whole "adequately informed the jury that [the defendant] could only be found guilty of felony murder if the [predicate felony] was the proximate cause of [the victim's] death") (citation omitted). The charge on conspiracy was not error.

Judgment affirmed. All the Justices concur.

Appendix B:

**Order Denying Motion For New Trial, DeKalb Superior Court, State of Georgia,
State v. Carpenter, Case No. 16CR3823-8
(September 5, 2018)**

Code "provides very specific, limited methods for attacking or supporting the credibility of a witness by evidence in the form of opinion or reputation.")

IV. Co-defendant Hernandez's testimony was sufficiently corroborated to support Defendant's convictions.

In his final enumeration of error, Defendant repeats his sufficiency allegation of error, specifically arguing that co-defendant Hernandez' testimony was not corroborated in every particular. It is true that under Georgia law, a felony conviction cannot be based solely on the uncorroborated testimony of an accomplice. Cisneros v. State, 299 Ga. at 844; O.C.G.A. § 24-14-8. However,

sufficient corroborating evidence may be circumstantial, it may be slight, and it need not of itself be sufficient to warrant a conviction of the crime charged. It must, however, be independent of the accomplice testimony and must directly connect the defendant with the crime, or lead to the inference that he is guilty.

(Citation and punctuation omitted.) Threatt v. State, 293 Ga. 549, 551 (1) (748 SE2d 400) (2013). And "evidence of the defendant's conduct before and after the crime was committed may give rise to an inference that he participated in the crime." (Citations and punctuation omitted.) Cisneros, 299 Ga. at 845 (1) (b) See Stanbury v. State, 299 Ga. 125, 128 (1) (786 SE2d 672) (2016); Mitchell v. State, 279 Ga. 158, 159-60 (1) (611 SE2d 15) (2005). Further, the law does not require corroboration of every particular of an accomplice's testimony or that the corroborating evidence match the testimony of the accomplice in every detail. E.g., Threatt, 293 Ga. at 552 (1); Mitchell, 279 Ga. at 159 (1).

The evidence produced at trial demonstrated that Defendant Carpenter, co-defendant Christian Hernandez and another friend Tyler Wofford¹ were hanging out at an

¹ Mr. Wofford was called to testify at trial but invoked his 5th Amendment privilege outside the presence of the jury. (T. 957).

abandoned house on Lavista Road, smoking marijuana on August 11, 2016. (T. 976-972). The three teenagers initially planned to buy more marijuana from the victim, Lucio "Geo" Vasquez, but then the plan changed at Defendant's suggestion and they decided to rob him instead. (T. 980, 987). Armed with handguns that Defendant Carpenter supplied, they arranged to meet Mr. Vasquez at a nearby apartment complex to rob him of marijuana and money. (T. 980, 985, 987).

Mr. Vasquez arrived at the apartment complex in a car driven by his longtime girlfriend Marina Hemmen. (T. 770-773). Ms. Hemmen knew that Mr. Vasquez occasionally sold small amounts of marijuana, and was present when Defendant and his friends called to arrange this purchase of \$30 worth of drugs. (T. 768). When the couple arrived, Defendant Carpenter and co-defendant Hernandez got into the back seat. (T. 771-772, 987-989). Almost immediately, Defendant took out his handgun and pointed it at Mr. Vasquez. (T. 792-806, 989-990). During a brief struggle, Defendant shot the victim twice. Mr. Vasquez died of his injuries. (T. 772-775, 993). Mr. Hernandez never pulled his weapon, but ran from the scene with Defendant and Tyler Wofford. (T. 806-809, 989-996). Later than night, Defendant sold the murder weapon to an unknown person. (T. 1040, 1073).

Beyond the testimony of Ms. Hemmen and Mr. Hernandez, the State introduced phone records, text records, Uber account information, expert ballistics and medical testimony. Contrary to Defendant's assertions, the testimony of co-defendant Hernandez was abundantly corroborated by Ms. Hemmen identifying the "white guy" she didn't know as the shooter, the ballistics evidence establishing that a .25 caliber weapon killed Geo Valesquez, phone and text records consistent with Mr. Hernandez's version of

events, and Defendant's flight from the scene. The evidence was more than sufficient to sustain the convictions and support the verdicts of guilty.

Defendant's Amended Motion for New Trial is hereby DENIED on each and every ground therein.

So ORDERED this 5th day of Sept 2018.

Linda W. Hunter
Linda W. Hunter
Stone Mountain Judicial Circuit

Cc: Peter K. Johnson, Chief ADA
Anna Cross, Special ADA
Brian Steel, Attorney for Defendant
Don Samuel, Attorney for Defendant

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)
v.) INDICTMENT NO. 16CR3823-8
BENJAMIN CARPENTER,) JUDGE HUNTER
Defendant.)

NOTICE OF APPEAL

Notice is hereby given that Defendant, Benjamin Carpenter, hereby appeals to the Supreme Court of Georgia from the Order denying Defendant's Amended Motion for New Trial signed by the Honorable Judge Hunter on September 5, 2018 and filed on said date.

The Clerk will kindly take note that the transcript of evidence of Defendant's Motions, trial, Motion for New Trial and all other transcripts, if any, are to be included with the Record on Appeal.

No portion of the Record is to be omitted on Appeal.

The Supreme Court of Georgia has jurisdiction of this case on Appeal.

This 6th day of September, 2018.

Respectfully submitted,

/s/ BRIAN STEEL
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing **NOTICE OF APPEAL** either by placing a true copy of same in the United States Mail with adequate postage affixed thereon or by hand delivery to the following:

Peter K. Johnson, Esq.
Anna Cross, Esq.
DeKalb County District Attorney's Office
556 North McDonough Street
Suite 700
Decatur, GA 30030

This 6th day of September, 2018.

Respectfully submitted,

/s/ BRIAN STEEL
BRIAN STEEL
GA Bar No. 677640
Attorney for Mr. Carpenter

**Additional material
from this filing is
available in the
Clerk's Office.**