

March 17, 2014

Hamm v. State

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Supreme Court Holds That Trial Court Must Give Instruction On Accomplice Testimony If Slight Evidence Supports It, Even If There Is Also Independent Evidence Of Corroboration Of Such Accomplice's Testimony

In *Hamm v. State*, S13A1696 (Mar. 17, 2014), appellant was convicted of murder and related charges. The evidence showed that appellant told Brittany O'Kelly to prostitute herself to obtain money for him to purchase drugs. O'Kelly left the apartment they shared and walked down to a gas station, where she met the victim, who engaged her services. The two drove back to the apartment complex, exited the vehicle and started walking toward a vacant apartment. Appellant then appeared, and pointed a gun at the victim. O'Kelly ran away and heard gunshots. The victim was found dead at the scene. O'Kelly, who testified for the State, claimed that she wanted to help the victim but was intercepted by appellant and forced back to the apartment. She further testified appellant forced her to leave town with him and threatened her life if she ever told anyone what happened. Almost 8 weeks later, appellant shot O'Kelly when she threatened to leave him. Once at the hospital, she revealed what she knew about the death of the victim.

The State also presented the testimony of Ronald Daniel. Daniel was at the apartment on the day of the murder. He testified that appellant emerged from a bedroom and told Daniel that "his girl [O'Kelly] had a lick set up." Daniel testified that a "lick" meant a robbery. Appellant left the apartment. According to Daniel, approximately 20 to 30 minutes later, appellant returned with O'Kelly, and appellant was carrying an AK-47. Daniel testified that appellant said he had "tried to rob . . . the amigo" but that he had to shoot when the victim grabbed for the gun. Daniel further testified that appellant asked him to hold the AK-47 at Daniel's apartment upstairs. Evidence also showed that a spent 7.62 caliber shell casing was recovered from the scene of the shooting and that an AK-47 is capable of firing that model of bullet.

Appellant argued that the trial court erred by failing to give his requested jury instruction regarding the need for corroboration of an accomplice's testimony. The Court agreed, noting that under former O.C.G.A. § 24-4-8 (now § 24-14-8), in felony cases where the only witness is an accomplice, the testimony of a single witness is not sufficient and must be supported by the testimony of at least one other witness or by "corroborating circumstances." The additional evidence may be circumstantial and 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.



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Appellant argued that the bulk of the testimony implicating him came from O’Kelly; that Daniel’s testimony supported a finding that O’Kelly was actually an accomplice in the shooting; and that therefore the trial court should have given his requested instruction on corroboration of an accomplice’s testimony.

The Court stated that to authorize a requested jury instruction, there need only be slight evidence supporting the theory of the charge. And, here, the Court noted, the trial court’s refusal to give the charge was based on the court’s finding that O’Kelly was not an accomplice. However, the Court found, there was ample evidence to support a finding that O’Kelly was an accomplice: Daniel testified that appellant told him O’Kelly had “set up a lick,” and O’Kelly admitted to having brought the victim to the scene of the shooting by offering to engage in sexual acts, to fleeing the scene immediately after the shooting, to leaving town in its aftermath, and to failing to report the crime until both she and appellant had been found by investigators. Given this evidence, it was error for the trial court to refuse to give the requested instruction. Whether O’Kelly was an accomplice, and the weight to be afforded her testimony if she was, should have been submitted for the jury’s determination.

In so holding, the Court found that there is a line of cases beginning with *Hall v. State*, 241 Ga. 252(7) (1978) establishing that there is no error in declining to give an instruction on accomplice corroboration, even if such a charge is requested, where the accomplice’s testimony is in fact corroborated by independent evidence. But, the Court found, the *Hall* Court failed to recognize that the sufficiency of the evidence corroborating an accomplice’s testimony, including whether the State has presented other witnesses to the same material facts as the accomplice, is an inquiry *entirely distinct* from whether a jury charge on the principle of accomplice corroboration is warranted. Thus, where, as here, there was slight evidence supporting a finding that a witness was an accomplice, the jury should have been given proper guidance not only on how to decide whether the witness was in fact an accomplice, but also on the extent to which it can rely on that witness’ testimony by itself to support a conviction. The mere fact that there was other evidence which could serve as corroboration did not dispense with the need for the requested charge because the jury, as the exclusive judges of credibility, could have rejected the other evidence and convicted solely on the accomplice’s testimony. A trial court’s failure to give the instruction where the State relies in part on the testimony of a possible accomplice thus leaves open the possibility of a conviction in violation of former O.C.G.A. § 24-4-8. Accordingly, the Court held, “we now overrule *Hall v. State* ... and its progeny, to the extent these cases hold that it is not error for a trial court to refuse to give a requested instruction on accomplice corroboration so long as the State relies in part on other evidence connecting the defendant to the crime.”

Nevertheless, the Court stated, the failure to give the requested charge did not necessarily demand reversal. A conviction in a criminal case will not be reversed when it is highly probable that an erroneous jury instruction did not contribute to



State Prosecution Support Division

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the verdict. Here, the Court found, in addition to O’Kelly’s testimony, the State adduced, through Daniel, appellant’s own admission that he had “killed an amigo” and appellant’s statement that “his girl had set up a lick.” The State also presented independent evidence that on the night of the shooting appellant fled his apartment, having implored his brother-in-law to retrieve him “as soon as possible,” and ultimately relocated with O’Kelly to another city. Further, the State adduced evidence that, on the day and in the vicinity of the shooting, appellant was in possession of an AK-47, a model which is capable of ejecting the particular type of shell casing recovered from the scene, and that appellant had asked Daniel to take his AK-47 after telling Daniel that he had shot someone. Under these circumstances, the Court concluded, any error in failing to give the requested charge was harmless.