

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	
)	
ISAIAH CLEVELAND,)	ID No. 0804031043
)	
Defendant.)	

Submitted: October 15, 2009
Decided: December 3, 2009

**On Defendant’s Motion for Judgment of Acquittal
GRANTED IN PART - DENIED IN PART**

MEMORANDUM OPINION

Steven P. Wood, Esquire; Gregory Strong, Esquire; Department of Justice, 820 North French Street, Wilmington, Delaware 19801. Attorneys for State of Delaware.

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CARPENTER, J.

Presently before the Court is Defendant’s Motion for Judgment of Acquittal as

to Murder in the Second Degree and the two Possession of a Firearm During the Commission of a Felony charges relating to the underlying homicide and kidnapping offenses. For the reasons set forth below, the motion will be granted as to the firearm offense connected to the kidnapping charges but in all other respects the motion will be denied.

A jury trial began on April 20, 2009 trying Isaiah Cleveland (“Cleveland” or “Defendant”) and his co-defendant Tyrone Anderson for the murder of Clifford Henson, Jr. (“Henson” or “the victim”).¹ On May 6, 2009, the jury convicted Cleveland of Unlawful Imprisonment in the Second Degree, Attempted Assault in the Third Degree, and Conspiracy in the Third Degree, all which were lesser included offenses of the originally charged offenses. However, the jury was unable to reach a unanimous verdict as to Murder in the Second Degree and the two counts of Possession of a Firearm During the Commission of a Felony.

Delaware Superior Court Criminal Rule 29(c) allows a defendant to move for judgment of acquittal following the jury’s return of a verdict.² When reviewing the Defendant’s motion, the Court must do so in a light most favorable to the State and

¹ The two defendants were tried at the same time but before different jury panels.

² **Super. Ct. Crim. R. 29(c) Motion After Discharge of Jury.** If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

determine whether any rational trier of fact could have found that the State established all the elements of each offense beyond a reasonable doubt.³ Therefore, a judgment of acquittal is granted only where the State provided insufficient evidence at trial to sustain the guilty verdicts.⁴

A. Murder in the Second Degree

Since no one who was actually present at the murder scene testified during the trial and the murder weapon was not recovered, there was no “smoking gun” evidence regarding who actually shot Mr. Henson introduced at trial. Cleveland did tell another inmate that while he was present when the shooting occurred, it was his co-defendant, Anderson, who was the actual shooter that evening. As such, circumstantially the evidence introduced at trial would lead one to believe that Cleveland did not personally pull the trigger that lead to Mr. Henson’s homicide. But this fact alone does not relieve Cleveland of liability for the homicide. One who is an accomplice may be held liable for offenses committed by others where such conduct was a reasonable foreseeable consequence in furtherance of the originally agreed upon offense.⁵

In this vein, the Cleveland jury was given these instructions regarding accomplice liability:

³ See *State v. Massey*, 2007 WL 1653503, at *1 (Del. Super. May 7, 2007); *Vouras v. State*, 452 A.2d 1165, 1169 (Del. 1982).

⁴ *Vouras*, 452 A.2d at 1169.

⁵ See *Chance v. State*, 685 A.2d 351, 358 (Del. 1996) (citing *Collins v. State*, 1995 WL 120655 (Mar. 10, 1995) (ORDER)). The Court also notes that the jury was instructed consistent with the culpable mental state regarded when different degrees of homicide are applicable.

[t]he relevant inquiry here is not whether the defendant as an accomplice had the specific intent to commit the underlying charge, but whether he intended to promote or facilitate the principal's conduct constituting the offense. An accomplice does not have to specifically intend that the underlying offense should occur. As long as the result was a foreseeable consequence of the underlying felonious conduct, his intent as an accomplice includes the intent to facilitate the happening of the result. To explain it another way -- it is also the law of Delaware that all persons who join together with a common intent and purpose to commit an unlawful act which, in itself, makes it foreseeable that a criminal offense not specifically agreed upon in advance might be committed, are responsible for the commission of such an incidental or consequential criminal offense, whenever the second offense is one in furtherance of or in aid to the originally contemplated unlawful act.”⁶

Thus the question now is whether any rational juror could have made these findings when they considered Cleveland's conduct.

The Court finds that the evidence at trial sufficiently illustrates the existence of a conspiracy between Cleveland and other co-defendants to administer a “beating” of Henson for stealing drugs and weapons. Once Cleveland and the other co-defendants lured the victim into the blue SUV and drove him to a remote location to administer the assault, each defendant became responsible for the reasonably foreseeable consequences of their actions and of those of their co-defendants. Here, the defendants were upset at Henson for stealing their drugs and weapons and decided

⁶ Jury Instructions at 5-6.

that they needed to physically beat Henson to prevent such conduct from reoccurring. This was not a group of businessmen sitting down to reasonably discuss the consequences of Mr. Henson's action but a group of criminals intending to protect their illegal activity turf. Drugs and weapons were a part of these defendants' daily dealings and therefore it would be foreseeable that one of the defendants would have brought along a weapon to insure the intended "beating" went as planned or that the assault would escalate to the point where weapons would be used. Thus, the evidence overwhelmingly indicates that the events of that day were not only foreseeable, but also were indeed likely to occur. Therefore, the Court denies the Motion of Judgment of Acquittal as to Murder in the Second Degree and the related Possession of a Firearm During the Commission of a Felony charge.

B. Possession of a Firearm During the Commission of a Felony (Kidnapping in the First Degree)

In regards to Possession of a Firearm During the Commission of a Felony relating to the Kidnapping in the First Degree offense, Defendant claims that "[b]ecause the jury concluded that Mr. Cleveland was not guilty of Kidnapping First Degree, an acquittal of the companion charge of Possession of a Firearm During the Commission of a Felony charge is required."⁷

The jury found Cleveland not guilty of Kidnapping in the First Degree, but

⁷ Mot. for Judgment of Acquittal at 2.

guilty of Unlawful Imprisonment in the Second Degree. Because Unlawful Imprisonment in the Second Degree is a class A misdemeanor⁸ and is not a lesser-included felony of Kidnapping in the First Degree, this Court must grant Defendant's Motion for Judgment of Acquittal. The State agrees and the motion will be granted.

C. Conclusion

Accordingly, the Court DENIES the Defendant's Motion for Judgment of Acquittal as to the Murder in the Second Degree and Possession of a Firearm During the Commission of a Felony relating to the homicide offense and GRANTS the motion as to the Possession of a Firearm During the Commission of a Felony where the underlying felony was Kidnapping in the First Degree.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

⁸ 11 *Del C.* §781.