

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLEVELAND RICHARDSON,	§	
	§	No. 630, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0511009920A
	§	
Plaintiff Below-	§	
Appellee.	§	
	§	

Submitted: June 11, 2007

Decided: July 24, 2007

Before **HOLLAND, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 24th day of July 2007, it appears to the Court that:

(1) Appellant Cleveland Richardson appeals his Superior Court convictions of Attempted Murder First Degree, Robbery First Degree, Burglary First Degree, Conspiracy Second Degree, and four counts of Possession of a Firearm During Commission of a Felony. Richardson raises five issues on appeal, three of which challenge the trial court's jury instructions on accomplice liability. Richardson first contends that the Superior Court erred by providing an accomplice liability instruction that implied an objective standard for conviction. Second, he contends that the accomplice liability instruction was incomplete. Third,

Richardson contends that the trial court erred by failing to include an instruction pursuant to 11 *Del. C.* § 274. Fourth, Richardson argues that his convictions were not supported by sufficient evidence. Finally, Richardson contends that the trial court gave a flawed burglary instruction. We find no merit to Richardson's arguments and affirm.

(2) At 9:30 pm on November 9, 2005, Thomas Morganstern was asleep in his second floor bedroom. At about midnight, he woke up when an intruder, later identified as Cleveland Richardson, entered his bedroom with a flashlight. The victim's dog stirred and Richardson fled down the stairs. Morganstern grabbed a loaded pistol and chased after him.

(3) When Morganstern reached the bottom of the steps, he saw Richardson and his accomplice, Stephen Norwood, in the dark living room. Morganstern and Norwood exchanged gunfire. Norwood fired at least one round past Morganstern. Norwood was killed and Richardson was seriously injured as a result of the gunfire.

(4) Richardson was arrested and charged with Attempted Murder First Degree as well as other related offenses on November 10, 2005. His jury trial began on June 20, 2006. At the prayer conference, defense counsel argued that certain aspects of the trial judge's instructions, particularly those dealing with accomplice liability, were flawed and incomplete. The trial judge rejected

counsel's arguments. The jury ultimately found Richardson guilty of Attempted Murder First Degree, Robbery First Degree, Burglary First Degree, Possession of a Firearm During the Commission of a Felony and Conspiracy Second Degree. Richardson's motion for judgment of acquittal was denied and he was sentenced to life imprisonment for Attempted Murder.

(5) Richardson first contends that the trial judge erroneously instructed the jury on accomplice liability.¹ Specifically, he contends that because the trial judge inserted the term "reasonably" in the instruction, the judge "essentially made Richardson strictly liable for his companion's [acts]."² We review a trial judge's jury instructions *de novo*.³ "A defendant has no right to have the jury instructed in a particular form. However, a defendant is entitled to have the jury instructed with a correct statement of the substantive law."⁴

¹ The jury was instructed as follows:

It is the law that when two or more people agree to commit a crime and it is reasonably foreseeable that another crime or crimes not specifically agreed on in advance might reasonably be committed while they were committing the crime they contemplated, and if the other crime or crimes aid or further [sic] the originally contemplated crime, then they are both responsible for committing the incidental or consequential crime or crimes.

² The trial judge rejected this argument, explaining that the jury was first asked to decide whether Richardson "subjectively, intended to commit a nighttime, house burglary with an accomplice." Next, the jury was asked "to decide, objectively, whether a burglar in Defendant's position could reasonably foresee, under all the circumstances, that during the burglary an occupant might appear, a weapon might be produced, and someone . . . would be killed."

³ *Guy v. State*, 913 A.2d 558, 563 (Del. 2006).

⁴ *Claudio v. State*, 585 A.2d 1278, 1282 (Del. 1991) (citing *Miller v. State*, 224 A.2d 592, 596 (Del. 1996)).

(6) Section 271 of the Delaware Criminal Code imposes accomplice liability on an individual who, “intending to promote or facilitate the commission of the offense . . . aids, counsels or agrees or attempts to aid the other person in planning or committing it.”⁵ As this Court explained in *Claudio*, “[t]he inquiry under § 271 is not whether each accomplice had the specific intent to commit murder, but whether he intended to promote or facilitate the principal’s conduct constituting the offense. . . . As long as the result was a foreseeable consequence of the underlying felonious conduct their intent as accomplices includes the intent to facilitate the happening of this result.”⁶

(7) This Court upheld an instruction similar to the one given in this case in *Collins v. State*.⁷ We re-affirmed that holding in *Chance v. State*.⁸ Under Section 271, a defendant does “not have to specifically intend that the result, a killing, should occur.”⁹ Thus, in this case, the State was not required to prove that Richardson subjectively foresaw the consequential crime. Instead, it need only prove that it was reasonable for someone in Richardson’s position to foresee the

⁵ 11 *Del. C.* § 271(2)(b).

⁶ *Claudio*, 585 A.2d at 1282.

⁷ 655 A.2d 1224 (Del. 1995) (TABLE) (“if you unanimously find beyond a reasonable doubt that a principal-accomplice relationship existed between the participants with respect to the robbery and you find that it is *reasonably* foreseeable that as a consequence of the robbery other offenses might be committed in furtherance of the robbery, then all participants are equally responsible for the consequential crime or crimes without the jury having to find a defendant specifically intended the result of the consequential crime of crimes.”) (emphasis added).

⁸ 685 A.2d 351, 358 (Del. 1996).

⁹ *Claudio*, 585 A.2d at 1282.

consequential crime. Therefore, the Superior Court’s jury instruction was a correct statement of the substantive law.

(8) Richardson’s second and related argument, that the accomplice liability instruction given in this case was “anorexic,” must also fail. At trial, he requested the pattern instruction on accomplice liability. The Superior Court instead used an instruction similar to the one approved by this Court in *Claudio*. A defendant is only entitled to an instruction that is a correct statement of the law. The instruction given in *Claudio* satisfies that standard.¹⁰ In addition, Richardson does not in any way argue the given instruction undermined the jury’s ability to render a verdict.¹¹

(9) Third, Richardson contends that the Superior Court erred by failing to provide an instruction pursuant to 11 *Del. C.* § 274. Richardson argues that because the jury was instructed pursuant to Section 271, he was entitled, as a matter of law, to a Section 274 instruction.

(10) Section 274 provides that, “[w]hen, pursuant to § 271 . . . 2 or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of an offense of such degree as is compatible with that person’s

¹⁰ *Id.* at 1281-83.

¹¹ See *Bishop v. State*, 593 A.2d 589 (Del. 1991) (TABLE) (“Although some inaccuracies may appear in the jury instructions, this Court will reverse only if such deficiency undermined the ability of the jury ‘to intelligently perform its duty in returning a verdict.’”)(quoting *Flamer v. State*, 490 A.2d 104, 128 (Del. 1984)).

own culpable mental state.”¹² An instruction under Section 274 is only appropriate “when the underlying offenses can be divided into degrees with different mental states for each degree.”¹³ First degree robbery, second degree robbery¹⁴ and attempted murder¹⁵ all require intentional conduct. Because the underlying offenses in this case all require the same *mens rea*, the requested instruction was properly denied.

(11) Richardson next contends that the Superior Court erred by denying his motion for judgment of acquittal because there is insufficient evidence to support his convictions of attempted murder, robbery and other weapons offenses. The trial judge denied Richardson’s motion, finding that the State adduced “overwhelming” evidence to support the convictions. We review the Superior Court’s denial of Richardson’s motion for judgment of acquittal *de novo* to determine “whether any rational trier of fact, viewing the evidence in the light

¹² 11 *Del. C.* § 274.

¹³ *Coleman v. State*, 765 A.2d 950 (Del. 2000) (TABLE).

¹⁴ *Id.*; see also 11 *Del. C.* §§ 831-32.

¹⁵ Attempt to commit a crime requires “the same grade and degree as the most serious offense which the accused is found guilty of attempting.” 11 *Del. C.* § 531. The *mens rea* element of attempt, however, always requires intent. Specifically:

A person is guilty of an attempt to commit a crime if the person: (1) intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.

Id.

most favorable to the State, could find a defendant guilty beyond a reasonable doubt of all the elements of the crime.”¹⁶ In doing so, we do not distinguish between direct and circumstantial evidence.¹⁷

(12) The evidence in this case, viewed in a light most favorable to the State, supports Richardson’s convictions. The evidence demonstrated that Richardson and his accomplice broke into a home in the middle of the night for the purposes of taking whatever they could find. It was reasonable for the jury to infer that Richardson knew that his accomplice was carrying a weapon. The evidence also demonstrated that Richardson’s accomplice engaged in a gunfight with the victim. This evidence sufficiently supports Richardson’s convictions.

(13) Finally, Richardson contends, for the first time on appeal, that the Superior Court’s instruction on first degree burglary was flawed because it failed to indicate that Richardson had to know that his accomplice was armed with a deadly weapon. Because he is raising this argument for the first time on appeal, we review for plain error.¹⁸ “Under the plain error standard of review, the error complained of must be so clearly prejudicial to the defendant’s substantial rights so

¹⁶ *Hardin v. State*, 844 A.2d 982, 988-89 (Del. 2004) (citing *Cline v. State*, 720 A.2d 891, 892 (Del. 1998)).

¹⁷ *Id.*

¹⁸ *Coleman*, 765 A.2d at 950.

as to jeopardize the fairness and integrity of the trial process in order to be considered.”¹⁹

(14) The Superior Court gave the following instruction:

Delaware law defines the offense of burglary first degree as follows: “A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein and when in effecting entry or when in the building or in immediate flight therefrom the person or another participant in the crime is armed with a deadly weapon.”

In order to find defendant guilty of burglary first degree, therefore, you must find that all the following elements have been established beyond a reasonable doubt:

First, defendant entered or remained unlawfully in a building. And second, the place where defendant entered or remained unlawfully was a dwelling. And third, defendant acted knowingly. And fourth, defendant’s actions occurred at night. And fifth, defendant intended to commit a crime in the dwelling. In this case, the alleged crime is theft. And sixth, defendant, or a participant in the crime, while entering, remaining in, or leaving the dwelling was armed with a firearm, a deadly weapon.

(15) After instructing the jury on burglary, the Superior Court provided an instruction on possession of a firearm during the commission of a felony. The court explained the elements as follows:

First, defendant committed a felony. In this count, the underlying felony charged is attempted murder first degree. And second, while committing the felony, Steven Norwood possessed a firearm. A firearm is any object capable of discharging a bullet through a gun barrel. And three, defendant

¹⁹ *Wainwright v. State*, 504 A.2d 1096, 1100 (1986).

acted knowingly. Defendant acted knowingly if he was aware that he was committing a burglary with Steven Norwood and it was reasonably foreseeable that Norwood possessed a firearm or that Norwood, defendant, or both of them would possess a firearm during the felony. In this count, as I mentioned, the felony is attempted murder first degree.

(16) Jury instructions must be viewed as a whole.²⁰ Viewed in their entirety, the instructions in this case adequately informed the jury of the required state of mind for conviction.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

²⁰ *Flamer*, 490 A.2d at 128.