

DA 22-0477

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 262N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN HILL,

Defendant and Appellant.

APPEAL FROM: District Court of the Third Judicial District,
In and For the County of Anaconda-Deer Lodge, Cause No. DC-21-54
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Rachel G. Inabnit, Law Office of Rachel Inabnit, PLLC, Missoula, Montana

For Appellee:


Austin Knudsen, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

Ben Krakowka, Anaconda-Deer Lodge County Attorney, Anaconda,
Montana

Submitted on Briefs: August 28, 2024

Decided: November 6, 2024

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court’s quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant, John Hill (Hill), was charged with three counts of attempted deliberate homicide (Counts I-III); three counts of assault on a peace officer (Counts IV-VI); one count of criminal possession of dangerous drugs (Count VII); one count of partner or family member assault (Count VIII); and one count of fleeing or eluding a peace officer (Count IX). Following trial, he was convicted on all counts except two of the attempted deliberate homicide counts—Counts II and III. Hill appeals his conviction for attempted deliberate homicide and asserts the District Court abused its discretion by failing to fully and fairly instruct the jury by failing to give his offered accountability instruction. We affirm.

¶3 On June 19, 2021, Hill, along with his passenger, Elizabeth Weber (Weber), were traveling in Hill’s pickup through Butte, Montana when they caught the attention of law enforcement. According to Hill, what transpired next “involve[d] a high-speed police chase, spike strips, and a vehicle shoot-out” ultimately resulting in Hill being charged as outlined above. At trial, the State sought to prove Hill attempted to kill law enforcement officers by shooting his AR-15 at them while they were deploying spike strips. The State’s case relied heavily on Weber’s testimony that upon Hill noticing police lights and sirens,

he hit the gas and sped away initiating the police chase. She asserted Hill wanted them both to die in a shoot-out with police. Upon seeing spike strips being set, Hill fired a shot from his AR-15 at law enforcement. After driving over the spike strips, the tires began to deflate, and Hill's vehicle gradually came to a halt. Hill was then taken into custody.

¶4 At the omnibus hearing, Hill asserted he would rely on a general denial putting the burden on the State to prove the charges beyond a reasonable doubt. At trial, Hill's defense centered on vigorously attacking Weber's credibility—arguing she was a manipulative methamphetamine-addicted convict on probation with a motive to lie—and asserting that based on the evidence presented, it was equally as likely that Weber, not Hill, was the one who fired the shot. During the settling of jury instructions, Hill offered a pattern accomplice or accountability instruction. The District Court denied the instruction for lack of evidence presented that Weber solicited Hill to fire the AR-15 at law enforcement, aided him in doing it, abetted him, agreed with him, or attempted to aid Hill in the planning of the commission of an attempted deliberate homicide.

¶5 We review jury instructions in a criminal case to determine whether they fully and fairly instruct the jury on the applicable law. *State v. Dobrowski*, 2016 MT 261, ¶ 6, 385 Mont. 179, 382 P.3d 490. “Taken as a whole, the instructions need only be sufficient to allow a defendant to fairly present asserted defense theories supported by applicable law and the evidence.” *State v. Mills*, 2018 MT 254, ¶ 33, 393 Mont. 121, 428 P.3d 834.

¶6 Hill argues that pursuant to § 26-1-303(4), MCA,¹ it is error for a district court not to give an accomplice instruction when (1) an accomplice gives direct testimony, (2) the defendant requests such an instruction, and (3) the instruction is not inconsistent with the defendant’s claim of innocence. The giving of an accomplice instruction, however, presupposes the existence of an accomplice. A person is an accomplice and legally accountable for the acts of another when “either before or during the commission of an offense with the purpose to promote or facilitate the commission, the person solicits, aids, abets, agrees, or attempts to aid the other person in the planning or commission of the offense.” Section 45-2-302(3), MCA.

¶7 From our review of the record, we agree with the District Court. No evidence was presented that Weber, either before or during the commission of the offense, solicited, aided, abetted, agreed, or attempted to aid Hill in the planning or commission of the attempted deliberate homicide. It was Hill’s defense that he did not fire the shot—or based on the evidence presented, it was equally possible that it was Weber who committed the offense, so the proof did not rise to the level of beyond a reasonable doubt. At the bottom line, Hill’s defense was that he did not commit the offense, not that Weber was legally accountable for his conduct or acted in concert with him, but that she alone was the guilty party. Under this circumstance, an accomplice instruction would have been inconsistent with his defense of complete innocence. *See State v. Flowers*, 2018 MT 96, ¶ 29,

¹ Section 26-1-303(4), MCA, provides, “the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust[.]”.

391 Mont. 237, 416 P.3d 180. Thus, we find no error in the District Court's denial of Hill's offered accomplice instruction.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶9 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE