

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR06-506

PAUL BARRON, SR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEES

Opinion Delivered FEBRUARY 25, 2009

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
[NO. CR-2000-124]

HONORABLE ALLEN DAVID EPLEY,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Paul Barron, Sr., appeals his conviction of January 8, 2002, by a Carroll County jury, which found him guilty of manufacturing methamphetamine, a controlled substance. He was sentenced to 180 months' imprisonment in the Arkansas Department of Correction. On appeal, he claims that the trial court erred by refusing to instruct the jury as to the fact that accomplice testimony must be corroborated. We find that the issue is not preserved for appellate review and affirm.

Barron was charged with manufacturing a controlled substance, methamphetamine, and possession of drug paraphernalia by information filed July 19, 2000. The information was filed following Barron's arrest during the execution of a search warrant on the residence of Kenny Parks and the discovery of a methamphetamine lab. Barron's first trial resulted in a mistrial based upon a hung jury.

At the second trial, Kimberly Parks testified that Barron had discussed manufacturing methamphetamine with her and her brother when they visited Barron in Branson, Missouri, where Barron lived. William Hayes testified that he came to Arkansas with Barron and they brought with them the supplies to manufacture methamphetamine. Hayes admitted that he had been involved in the manufacture of methamphetamine in the past. Hayes also testified that Barron's thirteen-year-old son was with Barron at the time of the arrest.

Officer Arthur Raff of the Arkansas State Police testified that a confidential informant told him that a methamphetamine lab was hidden behind a church down the road from the Parks residence. Raff verified that the lab was behind the church but did not take possession of the lab. He subsequently received a call from the informant with information that the backpack containing the lab had been moved and that individuals were going to cook methamphetamine at the Parks' residence. Officer Raff verified this information by surveillance on the property. When the search of the Parks' property was conducted, Barron did not run, but sat down outside the shed where the methamphetamine was being processed, and allowed himself to be arrested without protest. Officer Raff and other officers testified that a strong chemical odor emanated from the shed, and it was impossible to stay in the shed long without protective gear.

Barron was convicted of manufacturing methamphetamine, but was found not guilty on the charge of possession of drug paraphernalia. He was sentenced to fifteen years' imprisonment in the Arkansas Department of Correction. Barron filed a timely notice of appeal. However, because Barron's counsel failed to perfect the appeal and there was no

order dismissing the appeal or otherwise relieving counsel from his obligation, by unpublished per curiam dated June 1, 2006, the Arkansas Supreme Court ruled that attorney Phillip Moon remained responsible for representing Barron on appeal and directed the clerk to lodge the partial record. The court further directed Mr. Moon to file a petition for writ of certiorari within thirty days to call up the entire record, or that portion of it necessary for an appeal, to the Arkansas Supreme Court. The court also denied Barron's request to proceed in forma pauperis on appeal.

By per curiam¹ dated September 21, 2006, and pursuant to Mr. Moon's assertion in a petition for writ of certiorari that Barron discharged him as his attorney, our supreme court directed Mr. Moon to comply with the court's procedure to properly withdraw as counsel and to do so within thirty days. The Arkansas Supreme Court issued a per curiam opinion² on November 16, 2006, pursuant to Mr. Moon's motion to withdraw as counsel. The court held Mr. Moon failed to comply with Ark. R. App. P.-Crim. 16 (2006), because the language in Mr. Moon's motion to withdraw did not offer any explanation of why sufficient cause existed to warrant his being relieved of his appellate duties. The court denied his motion to withdraw, but issued a writ of certiorari to bring up, within thirty days, the entire record, or that portion of it necessary for an appeal.

By unpublished opinion dated January 16, 2008, this court denied Mr. Moon's motion to withdraw and ordered rebriefing. We held that Mr. Moon failed to comply with Rule 4-

¹*Barron v. State*, 367 Ark. 314, 239 S.W.3d 480 (2006).

²*Barron v. State*, 368 Ark. 129, 243 S.W.3d 325 (2006).

3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals and ordered rebriefing within thirty days. Again on June 25, 2008, by unpublished opinion dated June 25, 2008, this court denied Mr. Moon's motion to withdraw and remanded the case for rebriefing in compliance with Rule 4-3(j)(1).

This court now considers Barron's appeal on the merits.

With regard to our standard of review, our supreme court has stated that a party is entitled to a jury instruction when it is a correct statement of the law and when there is some basis in the evidence to support giving the instruction. *Barnes v. Everett*, 351 Ark. 479, 95 S.W.3d 740 (2003). We will not reverse a trial court's decision to give an instruction unless the court abused its discretion. *Id.* Barron claims that the trial court erred by refusing to instruct the jury as to the fact that accomplice testimony must be corroborated. He contends that he suffered prejudicial error when the jury was not given his proffered non-AMCI instruction on Hayes's and Parks's status as accomplices and the resulting need that their testimony be corroborated.

Barron argues that Kimberly Parks pled guilty to a felony charge as a result of the execution of the search warrant. Parks testified that she and her brother met with Barron, and Barron agreed to teach them how to cook methamphetamine. However, she also said that she did not know Barron was at the residence before the execution of the search warrant and did not know what was going on in the shed. Barron asserts that William Hayes testified that Barron had him come to Arkansas to help manufacture methamphetamine. He said that the items to manufacture the methamphetamine were transported by them from Barron's

residence to Parks's residence. He also admits that he had previous experience in the manufacture of methamphetamine.

Barron claims that based upon Hayes's and Parks's testimony, the jury should have been able to determine if they were accomplices. To that end, he proffered a jury instruction covering corroboration of the testimony of an accomplice. He argues that because there were accomplices in the case who testified, the trial court should have given the instruction he had proffered.

He contends that a person cannot be convicted of a felony based upon the testimony of an accomplice, unless that testimony is corroborated by other evidence tending to connect the defendant with the commission of the offense. *See* Ark. Code Ann. § 16-89-111(e). He argues that there is no evidence independent of accomplice testimony to show that he was the one manufacturing methamphetamine. He claims that the only evidence independent of accomplice testimony that connects him to the manufacture of methamphetamine was his presence at the residence at the time of the execution of the search warrant. He maintains that mere presence of a person at the scene of a crime is not proof of his or her guilt. *See Thomas v. State*, 330 Ark. 442, 954 S.W.2d 255 (1997).

Finally, Barron correctly points out that a party is entitled to a jury instruction when it is a correct statement of law and when there is some basis in the evidence to support giving the instruction. *Jones v. State*, 336 Ark. 191, 984 S.W.2d 432 (1999). Moreover, he argues that a trial court is required to give a jury instruction if there is some evidence to support it. *Id.* Therefore, he contends that there was sufficient evidence that Parks and Hayes were

accomplices and the trial court erred by not giving the jury instruction that he requested.

The State maintains that Barron's accomplice-corroboration challenge is barred. In order to preserve an accomplice-corroboration challenge to the sufficiency of the evidence for appellate review, a defendant must either have the trial court declare a witness to be an accomplice as a matter of law or submit the issue to the jury for determination. *E.g., Flowers v. State*, 92 Ark. App. 29, 210 S.W.3d 907 (2005). Because appellant failed to do either of these, his claim is barred.

The State points out that Barron's proffered instruction was not an AMCI instruction. A trial court should not use a non-model instruction unless it finds that the model instruction does not accurately reflect the law. *Jones, supra*. The State maintains that AMCI instructions existed for accomplice status and there was no finding that the AMCI instructions were not correct. Therefore, the trial court did not err in refusing to give Barron's non-AMCI instruction.

Moreover, Barron did not get a clear ruling as to why the instruction was being denied, and thus, Hayes's status as an accomplice was left unresolved. Barron's proffered instruction referenced only Hayes as an accomplice, completely leaving out Parks. Because Barron never presented the question of Parks's status as an accomplice to the judge or jury, the question is not preserved for appeal. *See Vickers v. State*, 313 Ark. 64, 852 S.W.2d 787 (1993). Because the jury was never told as a matter of law, or asked as a matter of fact to determine the accomplice status of either Parks or Hayes, the matter cannot be reached on appeal. Accordingly, we affirm.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.