

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR12-178

WAYNE LADELL TAYLOR, JR.  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered FEBRUARY 27, 2013

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. CR-10-3381]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

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**KENNETH S. HIXSON, Judge**

A jury in Pulaski County Circuit Court found appellant Wayne Taylor, Jr., guilty of aggravated robbery, theft of property, first-degree battery, and committing a terroristic act. These charges followed what appellant's brief describes as "a drug deal gone bad." Appellant does not challenge the sufficiency of the evidence to support his convictions, but an overview of the evidence presented by the State is necessary to frame the issues he raises on appeal.

On January 25, 2010, Nathan Holloway and Tommy Pickel traveled in Holloway's truck from Des Arc to Jacksonville to purchase marijuana from Brian Owens. When they arrived, Owens advised them that he did not have enough marijuana to complete the deal. Owens indicated he could obtain the additional marijuana, and they agreed to meet later at a park. Later that evening, Holloway and Pickel met Owens at the park to complete the purchase. Another vehicle pulled in behind Holloway's truck. The other vehicle was



occupied by three black males. Pickel got out of Holloway's truck with the \$650 cash they were using to buy the marijuana and sat down in the unoccupied front passenger seat of the other vehicle. Pickel testified that one of the males in the back seat pointed a gun at him and demanded his money. Pickel gave the man with the gun the \$650. Then, the gunman and Pickel exited the vehicle. The gunman ran toward Holloway's truck and began firing his gun in the direction of the truck. Holloway, who was still behind the wheel in the truck, responded by reaching for his loaded .22 rifle located in the back seat or floorboard and began shooting in the direction of the gunman. During the exchange of gunfire Pickel was shot in the left eye and the gunman was shot in the chest. Pickel eventually reentered Holloway's truck and Holloway took Pickel to a local hospital. Owens and the gunman left the scene with the men in the other vehicle. During the investigation, law enforcement identified the gunman as Taylor, the appellant. Blood splatters and thirteen spent nine-millimeter shell casings were found on the ground at the scene. They also discovered twenty-eight text messages exchanged between Owens's cell phone and appellant's cell phone, all within a few hours before and after this crime. They also discovered that appellant was treated that day at a nearby hospital for a gunshot wound to his chest. Subsequent DNA testing confirmed that the blood splatters found on the ground at the park came from the appellant. The State presented photographs depicting bullet holes in Holloway's truck.

Appellant appeals, arguing that the trial court erred in (1) excluding evidence that Holloway also had a shotgun in his truck; (2) allowing the State to amend the first-degree



battery information at the closing of the State's case; and (3) instructing the jury on accomplice liability. We affirm.

In her first point, the appellant contends that the trial court erred in prohibiting the appellant from mentioning a shotgun during the trial. In addition to the .22 rifle that Holloway used in the exchange of gunfire, there was an unloaded shotgun and a box of shells in the backseat area of the Holloway truck. The shotgun was not used in the exchange of gunfire nor was it brandished during the exchange. At a pretrial hearing, the State requested that no mention be made of the fact that law enforcement recovered an unloaded shotgun and some shotgun shells from Holloway's truck. The State acknowledged that Holloway fired a rifle from his truck, but it asserted that the shotgun was not involved in any way in the shots fired at the park and that the shotgun was irrelevant. Defense counsel objected on the basis that appellant did not know what ammunition struck his chest, whether it was from a rifle or a shotgun, so that the shotgun was relevant evidence. The trial court ruled that no mention of the shotgun or shells would be allowed, overruling defense counsel's objection.

The admission or exclusion of evidence is a decision left to the sound discretion of the trial court. *Jones v. State*, 2011 Ark. App. 324. We do not reverse evidentiary rulings absent a showing of an abuse of discretion and resulting prejudice. *Sipe v. State*, 2012 Ark. App. 261; *Boatwright v. State*, 2011 Ark. App. 326. Even if there is evidentiary error, our supreme court has held that it is harmless error if the same or similar evidence is otherwise introduced. *Boyle v. State*, 363 Ark. 356, 214 S.W.3d 250 (2005). This was an arranged drug-transaction meeting and shootout wherein Holloway admitted using a .22-caliber rifle. There was no



evidence that the shotgun was used in the exchange. We hold that the trial court did not abuse its discretion in excluding the shotgun and shotgun shells as irrelevant to the issues before the jury.

Appellant's second point on appeal concerns the trial court allowing the State to amend its first-degree battery information at the conclusion of the State's case to conform to the proof. The State alleged that the battery (the gunshot wound) was committed by appellant or an accomplice while robbing Pickel. During the trial, the evidence that was introduced raised the possibility that the gunshot in which struck Pickel's eye could have come from Holloway's .22 rifle instead of the appellant's nine-millimeter handgun. The amendment sought to add another manner in which the battery could have happened, that being that the battery on Pickel happened while Holloway was resisting the robbery. Defense counsel objected, stating that an amendment would change the nature of the charge and subject appellant to unfair surprise. The State countered that this was only an alternative means by which the battery was committed, and defense counsel knew that Holloway fired a rifle during this episode and even cross-examined Holloway about the possibility that Holloway shot his friend Pickel. The trial court overruled the objection. Defense counsel did not ask for a continuance or to recall any witnesses.

The State is entitled to amend an information at any time before the case is submitted to the jury as long as the amendment does not change the nature or degree of the offense charged. *Green v. State*, 2012 Ark. 19. An amendment does not change the nature of the offense if it only changes the manner in which the crime was committed. *Id.*; *Hill v. State*,



370 Ark. 102, 257 S.W.3d 534 (2007). We discern no error in the trial court's ruling and affirm on this point.

Lastly, appellant argues that the trial court erred in instructing the jury on accomplice liability, AMI Crim. 2d 401. Defense counsel acknowledged that Owens and appellant were both charged in the criminal information but each was accused individually and principally, and not specifically as accomplices to each other. The trial court overruled the defense objection and instructed the jury on accomplice liability.

Inclusion or exclusion of a jury instruction is a matter of discretion for the trial court, whose ruling will not be reversed in the absence of an abuse of discretion. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). There is no distinction between principals and accomplices for purposes of establishing criminal liability. *Holsombach v. State*, 368 Ark. 415, 246 S.W.3d 871 (2007). A party is entitled to a jury instruction if it is a correct statement of the law and there is some basis in the evidence to support giving the instruction. *Id.*

A person is an accomplice of another in the commission of an offense if, with the purpose of promoting or facilitating the commission of the offense, the persons solicits, advises, encourages, or coerces the other person to commit the offense or aids, agrees to aid, or attempts to aid the other person in planning or committing the offense. Ark. Code Ann. § 5-2-403(a) (Repl. 2006); *Cook v. State*, 350 Ark. 398, 86 S.W.3d 916 (2002). Relevant factors in determining the connection of an accomplice to a crime are the presence of the accused in proximity of a crime, the opportunity to commit the crime, and association with



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a person involved in a manner suggestive of joint participation. *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004).

We hold that the trial court did not abuse its discretion in this instance. The evidence indicated that Pickel and Holloway followed Owens's direction to find a marijuana dealer. What resulted was a robbery and a shootout, evidenced by Pickel's gunshot wound to his eye and his blood in the truck, appellant's blood, and spent ammunition on the ground. Many text messages were exchanged between Owens and appellant immediately before and after this crime. There is, thus, evidence from which the jury could consider appellant a principal or an accomplice to the persons involved in this "drug deal gone bad." The trial court did not abuse its discretion.

We affirm appellant's convictions.

GLADWIN, C.J., and WYNNE, J., agree.

*The Law Office of Darrell F. Brown, Jr.*, by: *Darrell F. Brown*, for appellant.

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