

Case Brief: *State v. Abbitt**

INTRODUCTION

Determining whether evidence is relevant in criminal proceedings can be a delicate balance. Too stringent a standard could block exculpatory evidence and lead to wrongful convictions. Too lax of a standard could overwhelm juries and derail trials. Under North Carolina law, the standard of relevance for evidence implicating third parties is that the evidence “must (1) point directly to the guilt of some specific person, and (2) be inconsistent with the defendant’s guilt.”¹ In *State v. Abbitt*,² the Supreme Court of North Carolina considered how to apply that standard where evidence suggested that the defendants may have had an unidentified accomplice—introducing the possibility that both the defendants and the implicated third party were involved in the commission of the crime.³ The Supreme Court of North Carolina deemed the evidence implicating a third party in *Abbitt* inadmissible because even though it tended to show a third party’s involvement, it was not inconsistent with the defendant’s guilt.⁴ In doing so, the court set a high bar for showing that evidence is “inconsistent with the defendant’s guilt” that may require future defendants to offer additional evidence that the third party was not their accomplice.

FACTS OF THE CASE

Defendants Sindy Lina Abbitt and Daniel Albarran were charged with attempted robbery, assault with a deadly weapon, and the murder of Lacynda Feimster.⁵ Each charge arose from a single series of events occurring on the night of May 24, 2016.⁶ Evidence at trial tended to show that Feimster left work and returned home, where her son and mother were waiting.⁷ When Feimster arrived, she was accompanied by a Black woman who was armed with a gun and a Hispanic man who was wearing latex gloves.⁸ Feimster and the woman went into Feimster’s bedroom while the man sat in the living room with Feimster’s mother.⁹ At trial, Feimster’s mother testified that the man made several phone

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1. *State v. Abbitt*, 385 N.C. 28, 40–41, 891 S.E.2d 249, 258 (2023) (quoting *State v. McNeill*, 326 N.C. 712, 721, 392 S.E.2d 78, 83 (1990)).

2. 385 N.C. 28, 891 S.E.2d 249 (2023).

3. *See id.* at 42, 891 S.E.2d at 259.

4. *Id.* at 43, 891 S.E.2d at 259.

5. *Id.* at 29, 891 S.E.2d at 251.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

calls, including one in which the man said to an unknown person, “She wants to know how far you are. Where are you? How far away are you?”¹⁰ He also looked out the front door of the apartment several times.¹¹ Eventually, the woman left the bedroom and “struck [Feimster’s mother] in the face with the gun, knocking [her] to the floor and ordering [her] to ‘stay down.’”¹² The woman told the man to search the bedroom, and he found nothing.¹³ Both Feimster and her mother told the pair that they had no money.¹⁴ The woman then told Feimster she should have given her the money and fatally shot Feimster in the head before running out of the apartment.¹⁵

The main evidence presented at trial linking Abbitt and Albarran to the crimes was eyewitness identification and cell phone records.¹⁶ Three days after the crimes occurred, Feimster’s mother identified Abbitt and Albarran in a photo lineup as the perpetrators with “one hundred percent certainty.”¹⁷ She identified them again later in the investigation and at trial.¹⁸ Additionally, cell phone data placed Abbitt and Albarran near Feimster’s workplace, grocery store, and apartment leading up to and around the time of the crime.¹⁹ Abbitt and Albarran had also contacted each other over the phone in the days surrounding the crimes, but not on the actual day of Feimster’s killing.²⁰

At trial, Abbitt and Albarran’s defense counsel sought to introduce additional evidence implicating another duo, Ashley Phillips and “Tim Tim” McCain, as the perpetrators.²¹ During the investigation into Feimster’s death, a member of Feimster’s family had named Phillips as a potential suspect.²² Phillips then voluntarily went to the police station, arriving in a car that matched a description given by a confidential informant of a car outside Feimster’s apartment on the day of her death.²³ In the car, officers found a .25-caliber gun, which matched the type of shell casings found on the scene, and white latex gloves similar to the ones Feimster’s mother reported that the male perpetrator had worn.²⁴ Notably, Phillips’s photo was not used in the lineups where Feimster’s mother identified Abbitt, but when Feimster’s mother was

10. *Id.* at 30, 891 S.E.2d at 251.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 30, 891 S.E.2d at 252.

16. *See id.* at 41–42, 891 S.E.2d at 258–59.

17. *Id.* at 31, 891 S.E.2d at 252.

18. *Id.*

19. *Id.* at 36, 891 S.E.2d at 255.

20. *Id.*

21. *Id.* at 31–32, 891 S.E.2d at 252–53.

22. *Id.* at 31, 891 S.E.2d at 252.

23. *Id.* at 31–32, 891 S.E.2d at 252.

24. *Id.* at 32, 891 S.E.2d at 252.

ultimately shown a photo of Phillips, she said, “[w]ell, she does kind of look like” the woman who shot Feimster.²⁵ As for McCain, who was allegedly commonly associated with Phillips, an eyewitness placed him in the vicinity of Feimster’s apartment around the time of the murder with a woman who resembled Phillips.²⁶ The defense counsel wished to enter these facts into evidence for two reasons: (1) to suggest that Phillips and McCain, and not Abbitt and Albarran, were behind Feimster’s killing; and (2) to show that the police investigation leading to Abbitt and Albarran being charged with the crimes was incomplete.²⁷

The State moved to exclude “the mention of possible guilt . . . of another,” arguing that the evidence implicating Phillips and McCain did not meet the relevancy requirements.²⁸ The trial court granted the State’s motion, saying “that evidence of the guilt of others must be relevant under Rule of Evidence 401 and ‘must tend both to implicate another and be inconsistent with the guilt of the defendant.’”²⁹ The *Abbitt* trial court considered the evidence in the light most favorable to the State and determined that the defense’s evidence failed the second prong of the relevancy standard.³⁰ Abbitt’s counsel countered that the evidence “suggested that there was only one Black woman connected to Feimster’s murder” and, as such, any evidence implicating Phillips was inconsistent with Abbitt’s guilt.³¹ Still, the trial court stood by its ruling and allowed defense counsel to ask limited questions about the thoroughness of the investigation but not ask any questions that would implicate Phillips.³² For example, the defense attorneys could ask questions, such as why the officers did not test the items found in Phillips’s car but could not ask who the car or those items belonged to.³³

Consequently, the State presented its evidence, including the phone records and witness identification, at trial while Abbitt and Albarran presented none.³⁴ Abbitt was convicted of first-degree murder, attempted robbery with a dangerous weapon, and assault with a deadly weapon.³⁵ Albarran was convicted

25. *Id.* at 32, 891 S.E.2d at 252–53.

26. *Id.*

27. *Id.* at 32–33, 891 S.E.2d at 253.

28. *Id.* at 31, 891 S.E.2d at 252.

29. *Id.* at 33, 891 S.E.2d at 253 (quoting *State v. Cotton*, 318 N.C. 663, 667, 351 S.E.2d 277, 279–80 (1987)).

30. *Id.*

31. *Id.* at 34, 891 S.E.2d at 254.

32. *Id.*

33. *Id.*

34. *Id.* at 36, 891 S.E.2d at 255.

35. *Id.*

of first-degree felony murder, attempted robbery with a dangerous weapon, and assault with a deadly weapon.³⁶ Both Abbitt and Albarran appealed.³⁷

LEGAL ISSUES AND OUTCOMES

The Supreme Court of North Carolina considered only one issue on appeal: whether the trial court erred in excluding the evidence implicating Phillips and McCain.³⁸ As part of this issue, Abbitt and Albarran contended that the trial court erred in viewing the evidence in the light most favorable to the State.³⁹ Ultimately, the Supreme Court of North Carolina agreed that the evidence should have been viewed in the light most favorable to the defendants but otherwise affirmed the trial court's decision, holding that "while the excluded evidence demonstrated the possibility of the involvement of other perpetrators, nonetheless it did not serve to also exculpate defendants."⁴⁰

The Supreme Court of North Carolina affirmed the standard for evidence implicating third parties: "the proffered evidence 'must (1) point directly to the guilt of some specific person, and (2) be inconsistent with the defendant's guilt.'"⁴¹ The court also delved into the roots of this evidentiary standard.⁴² The underlying rule is that, to be admissible, evidence implicating a third party, like all evidence, must be relevant.⁴³ Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁴⁴ The standard of relevancy in criminal cases is "relatively lax."⁴⁵ The two-step standard for evidence implicating third parties is meant to be a proxy for relevance.⁴⁶ The court explained that evidence showing that a third person had the opportunity to commit the offense, "*without tending to show that such person actually did commit the offense and that therefore the defendant did not do so*, is too remote to be relevant and should be excluded."⁴⁷

Here, Abbitt and Albarran argued that the evidence they proffered met this standard for admissibility because available evidence suggested that the

36. *Id.*

37. *Id.*

38. *Id.* at 37, 891 S.E.2d at 255.

39. *Id.* at 39, 891 S.E.2d at 257.

40. *Id.* at 38–39, 891 S.E.2d at 256–57.

41. *Id.* at 40–41, 891 S.E.2d at 258 (quoting *State v. McNeill*, 326 N.C. 712, 721, 392 S.E.2d 78, 83 (1990)).

42. *Id.*

43. *Id.* at 41, 891 S.E.2d at 258 (citing *State v. Miles*, 222 N.C. App. 593, 607, 730 S.E.2d 816, 827 (2012)).

44. *Id.* at 40, 891 S.E.2d at 257 (quoting N.C. R. EVID. 401).

45. *Id.* at 41, 891 S.E.2d at 258 (quoting *Miles*, 222 N.C. App. at 607, 730 S.E.2d at 827).

46. *Id.* at 40–41, 891 S.E.2d at 258.

47. *Id.* at 41, 891 S.E.2d at 258 (quoting *State v. Brewer*, 325 N.C. 550, 564, 386 S.E.2d 569, 576 (1989)).

crime was committed by one pair of people—a Black woman and a Hispanic man—and that, therefore, evidence suggesting that Phillips and McCain committed the crime necessarily suggested that Abbitt and Albarran were innocent.⁴⁸ In addressing this argument, the court agreed that the proffered evidence implicated Phillips and McCain but held that it did not exculpate Abbitt and Albarran.⁴⁹ In viewing the evidence in the light most favorable to the defendant, the court reasoned that even if Phillips and McCain were outside of Feimster’s apartment just before or during the murder, the evidence would not sufficiently indicate that Abbitt and Albarran were not still the pair inside Feimster’s apartment.⁵⁰ The court pointed to the fact that the man in her apartment was conversing with a third person over the phone to suggest that more than just the two people in the apartment were involved.⁵¹ The court also emphasized the strength of the evidence showing that Abbitt and Albarran were involved in the murder, such as the cellphone data and witness identification.⁵² Thus, the court reasoned that the evidence implicating Phillips and McCain “was not inconsistent with direct and eyewitness evidence of either defendant’s guilt” and was properly excluded.⁵³

Justice Earls penned a dissent in which she argued that the exclusion of the evidence implicating Phillips and McCain not only was improper under the Rules of Evidence but also denied Abbitt and Albarran their “constitutional right to a fair trial and ‘a meaningful opportunity to present a complete defense.’”⁵⁴ Her dissenting opinion was based on three main arguments: that the trial court and the majority of the Supreme Court of North Carolina misapplied the relevancy standard,⁵⁵ that the majority’s holding was inconsistent with precedent,⁵⁶ and that at least some of the evidence should have been admitted for purposes of impeachment.⁵⁷ First, Justice Earls characterized the application of the standard by the trial court and the majority as too limiting.⁵⁸ Justice Earls agreed with the majority that evidence implicating another must also “be inconsistent with the guilt of the defendant,” but she asserted that this standard must be interpreted consistently with the general relevancy standard from which it is derived.⁵⁹ As recognized by the majority, the standard of

48. *See id.* at 39, 891 S.E.2d at 257.

49. *Id.* at 39, 891 S.E.2d at 256.

50. *See id.* at 42–43, 891 S.E.2d at 259–60.

51. *Id.* at 42, 891 S.E.2d at 259.

52. *Id.*

53. *Id.* at 44, 891 S.E.2d at 260.

54. *Id.* (Earls, J., dissenting) (citation omitted) (citing *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973)) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)).

55. *See id.* at 45–46, 891 S.E.2d at 261.

56. *See id.* at 47–48, 891 S.E.2d at 262–63.

57. *Id.* at 49, 891 S.E.2d at 263.

58. *See id.* at 45, 891 S.E.2d at 261.

59. *Id.*

relevance in criminal cases is “relatively lax.”⁶⁰ Accordingly, Justice Earls argued that the standard to introduce third party guilt should also be relatively lax, simply requiring that “the proffered evidence . . . tend to show the defendant did not commit the crime because someone other than the defendant was the perpetrator.”⁶¹ Additionally, Justice Earls’s application of the standard departed from the majority’s in her approach toward viewing the proffered evidence in the light most favorable to the defendant.⁶² Though the majority inferred in the defendant’s favor that Phillips and McCain were involved in the crime, it held open the possibility that *all four* parties were involved in the crime.⁶³ Furthermore, the majority relied on that possibility to hold the evidence implicating Phillips and McCain inadmissible.⁶⁴ Justice Earls asserted that in doing so, the majority was “draw[ing] reasonable inferences in favor of the State and not the defendants.”⁶⁵ Justice Earls reasoned that, without any evidence linking Abbitt and Albarran to Phillips and McCain, it was improper for the court to infer that all four persons were, or may have been, connected and exclude potentially exculpatory evidence based on that possibility.⁶⁶

Second, Justice Earls compared the facts in *Abbitt* to an analogous case, *State v. Israel*,⁶⁷ in which the Supreme Court of North Carolina deemed the proffered evidence admissible.⁶⁸ In *Israel*, the defendant was accused of murder.⁶⁹ The defendant moved to enter evidence implicating a third party, Marvin Mitchell, as the perpetrator of the crime.⁷⁰ That evidence indicated that “Mitchell was an ex-boyfriend of the victim’s, who had a history of assaulting her and stealing from her.”⁷¹ Additionally, the evidence included testimony from the granddaughter of the victim that Mitchell drank the same type of liquor that was found in the victim’s trash can with fingerprints that did not belong to the victim or the defendant.⁷² The defendant also wanted to include testimony from officers and surveillance video placing Mitchell near the scene of the murder during the timeframe that forensics had estimated that the

60. *Id.* at 45, 891 S.E.2d at 260 (quoting *State v. McElrath*, 322 N.C. 1, 13, 366 S.E.2d 442, 449 (1988)).

61. *Id.* at 45, 891 S.E.2d at 261.

62. *Id.* at 45–46, 891 S.E.2d at 261.

63. *Id.* at 43, 891 S.E.2d at 259–60 (majority opinion).

64. *Id.*

65. *Id.* at 46, 891 S.E.2d at 261 (Earls, J., dissenting).

66. *Id.* at 49, 891 S.E.2d at 263.

67. 353 N.C. 211, 539 S.E.2d 633 (2000).

68. *Abbitt*, 385 N.C. at 47–48, 891 S.E.2d at 262–63 (Earls, J., dissenting) (citing *Israel*, 353 N.C. at 212, 539 S.E.2d at 634).

69. *Israel*, 353 N.C. at 211, 539 S.E.2d at 634.

70. *Id.* at 215, 539 S.E.2d at 636.

71. *Id.*

72. *Id.*

murder occurred.⁷³ The trial court did not allow any of the evidence implicating Mitchell to be presented to the jury.⁷⁴ The defendant appealed, and the Supreme Court of North Carolina held that the lower court had erred in not admitting the evidence.⁷⁵

In holding that the proffered evidence met the standard for evidence implicating a third party, the *Israel* court discussed the requirement that the evidence be inconsistent with the defendant's guilt and show more than "mere conjecture" at length.⁷⁶ The *Israel* court contrasted the evidence proffered there with evidence deemed inadmissible in past cases.⁷⁷ The inadmissible evidence in past cases mostly demonstrated that a third party had some relationship to the victim or crime but not a full picture of the third party's opportunity or motive for the crime.⁷⁸ For example, evidence deemed inadmissible included testimony that a dark hair was found under a victim's fingernail,⁷⁹ a threat to a victim that predated a murder at issue by ten years,⁸⁰ and a detective's statement made immediately after a murder speculating that a specific individual was involved.⁸¹ The *Israel* court reasoned that, in contrast, the evidence proffered before them created more than a "mere conjecture" because it showed not only that a third party had the opportunity to commit the crime but also implicated a *specific* third party and demonstrated their recent, violent history with the victim.⁸²

Justice Earls reasoned that the evidence proffered in *Abbitt* was analogous to that in *Israel*, including that it identified specific individuals and indicated motive and opportunity.⁸³ For example, in both cases there was evidence indicating that the third parties were near the scene of the crime.⁸⁴ In fact, in *Abbitt*, eyewitness testimony placed McCain at Feimster's apartment much closer to the commission of the crime than the evidence implicating a third party did in *Israel* since, in the latter case, the investigators only had a broad estimate of when the crime occurred.⁸⁵ Additionally, Justice Earls argued that in *Abbitt* the evidence was *stronger* than that in *Israel* because it included evidence of modus operandi, such as the items in Phillips's car matching what was found at the scene and the conflicting testimony from the original eyewitness who

73. *Id.*

74. *Id.*

75. *Id.* at 216, 539 S.E.2d at 636.

76. *Id.* at 218–19, 539 S.E.2d at 638.

77. *Id.* at 218, 539 S.E.2d at 638.

78. *See id.*

79. *Id.* (citing *State v. Moseley*, 338 N.C. 1, 34, 449 S.E.2d 412, 432 (1994)).

80. *Id.* (citing *State v. Hamilton*, 351 N.C. 14, 20, 519 S.E.2d 514, 518 (1999)).

81. *Id.* (citing *State v. Rose*, 339 N.C. 172, 191–92, 451 S.E.2d 211, 222 (1994)).

82. *Id.* at 219, 539 S.E.2d at 638.

83. *State v. Abbitt*, 385 N.C. 28, 48, 891 S.E.2d 249, 262–63 (2023) (Earls, J., dissenting).

84. *Id.* at 47–48, 891 S.E.2d at 262 (citing *Israel*, 353 N.C. at 219, 539 S.E.2d at 638).

85. *Id.* at 48, 891 S.E.2d at 262 (citing *Israel*, 353 N.C. at 214, 539 S.E.2d at 635).

identified Abbitt.⁸⁶ Justice Earls reasoned that due to the similarities of evidence in the two cases, and the overall strength of the evidence proffered in *Abbitt*, the court's opinion was inconsistent with *Israel*.⁸⁷

Lastly, Justice Earls also stated that the proffered evidence should have been admitted for the purpose of impeaching the testimony of Feimster's mother.⁸⁸ "The primary purpose of impeachment is to reduce or discount the credibility of a witness for the purpose of inducing the jury to give less weight to his testimony in arriving at the ultimate facts in the case."⁸⁹ Justice Earls explained that the statement by Feimster's mother that Phillips resembled the perpetrator "could have called [her] recollection of the individuals in the apartment into question."⁹⁰ Altogether, Justice Earls concluded that "the proffered evidence 'constitute[d] a possible alternative explanation for the victim's unfortunate demise and thereby cast[] crucial doubt upon the State's theory of the case,' however, the jury never heard this potentially exculpatory evidence."⁹¹

POTENTIAL IMPACT

State v. Abbitt establishes a new hurdle for defendants hoping to introduce evidence implicating a third party. The evidence proffered by Abbitt and Albarran seemingly fit the evidentiary standard as applied in *State v. Israel* since it implicated specific people and indicated motive and opportunity. However, in *Abbitt*, the Supreme Court of North Carolina homed in on the fact that one of the perpetrators was on the phone, indicating involvement from someone other than the two defendants. This played a large role in the court's determination that the proffered evidence was not "inconsistent" with the defendants' guilt.⁹² After *Abbitt*, it appears that where the perpetrators have at least one unidentified accomplice, evidence implicating a third party may only be considered "inconsistent with the defendant's guilt," and therefore admissible, if it also shows that the implicated third party could not have been an accomplice to the defendants.

86. *Id.* at 48, 891 S.E.2d at 263.

87. *Id.* at 47, 891 S.E.2d at 262.

88. *Id.* at 49, 891 S.E.2d at 263.

89. *Id.* (quoting *State v. Bell*, 249 N.C. 379, 381, 106 S.E.2d 495, 498 (1959)).

90. *Id.*

91. *Id.* (alteration in original) (citation omitted) (quoting *State v. McElrath*, 322 N.C. 1, 13–14, 366 S.E.2d 442, 449 (1988)).

92. *See id.* at 41–42, 44, 891 S.E.2d at 260, 258–59 (majority opinion).

It is still unclear how much additional evidence is needed to meet this burden of showing “inconsistency” in cases where there is an unidentified accomplice. Here, there was no evidence specifically linking Abbitt and Albarran to Phillips and McCain. However, there was also no conclusive evidence that Abbitt and Albarran *were not* working with Phillips and McCain. Eyewitness testimony placed McCain and Phillips only outside of Feimster’s apartment, whereas Feimster’s mother testified that Abbitt and Albarran were inside the apartment. It is possible, though certainly not proven, that both of those testimonies are accurate and that all four persons were involved in Feimster’s death. It is possible in future cases that additional evidence suggesting the third party is *not* the accomplice—for example having a minimal description of the accomplice that does not match the implicated third party—may be enough to meet this standard. Or future courts could still require even more. What is clear is that by siding with the State where there was no evidence specifically linking the defendants to the implicated third parties, the Supreme Court of North Carolina is placing the burden on defendants to establish that additional amount of inconsistency.

Similarly, *State v. Abbitt* illustrates a conflict on the bench over what inferences are permissible when viewing the evidence in the light most favorable to the moving party. Both the majority and Justice Earls recognized that the proper standard here was to view the evidence in the light most favorable to the defendant.⁹³ In doing so, the majority concluded that even if Phillips was right outside of Feimster’s apartment, evidence of Phillips’s involvement would not exculpate Abbitt.⁹⁴ However, Justice Earls argued that by defaulting to the possibility that Abbitt and Phillips could have both been involved in the crime, instead of considering the possibility that it was Phillips in the apartment and Abbitt was innocent, the court made presumptions in favor of the State.⁹⁵ The debate over what inferences the court can make is significant as it also determines which party bears the burden of proof regarding whether the evidence is inconsistent with the defendant’s guilt. Under Justice Earls’s application of the standard, where there is evidence of an accomplice, it appears that the State would need to present at least minimal evidence connecting the defendant to the third party in order to overcome the inference that the defendant and the third party did not work together. Meanwhile, under the majority’s application, it is the defendant who must show that they did not work with the third party to commit the crime. This difference could extend past motions regarding evidence implicating a third party. Moving forward, defendants may be faced with a greater evidentiary burden in order to support

93. *Id.* at 43, 891 S.E.2d at 259; *id.* at 45–46, 891 S.E.2d at 261 (Earls, J., dissenting).

94. *Id.* at 43, 891 S.E.2d at 259–60 (majority opinion).

95. *Id.* at 46, 891 S.E.2d at 261 (Earls, J., dissenting).

presumptions in their favor on various types of motions before the court. This greater evidentiary burden, in turn, could affect the accuracy of our criminal justice system.

KATHRYN TURK**

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