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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH DANDRE COOPER,

APPELLANT

APPELLATE CASE NO. 2022-000415

ANDERS BRIEF OF APPELLANT

JOANNA K. DELANY
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by denying Appellant's directed verdict motion based on failure to prove intent, where proof of criminal intent was lacking?

STATEMENT OF THE CASE

On December 17, 2020, a Beaufort County Grand Jury indicted Joseph Cooper, Appellant, for larceny, value two thousand dollars or less, enhanced per S.C. Code Ann. § 16-1-57 ("A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony.") Appellant was also indicted for breaking into a motor vehicle or compartment to steal (auto breaking).[1]

Appellant was tried before the Honorable Robert J. Bonds and a jury, from January 18 – 20, 2022. Appellant was represented by Colin Hamilton. Jared Shedd prosecuted the case. Appellant was convicted of larceny and acquitted of auto breaking. The court sentenced him to ten years' imprisonment. On March 25, 2022, the parties reconvened for a hearing on Appellant's post-trial motions, which were denied.[2]

This appeal follows.

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[1] R. 382 – 385.

[2] R. 1 – 2; R. 358; R. 339, ll. 2-11; R. 356, ll. 5-11; R. 386 – 387.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." *Id.* "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *Id.* at 139, 708 S.E.2d at 776-777. "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." *Id.*, at 139, 708 S.E.2d at 777; *see also State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the State failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409.

ARGUMENT

The trial court erred by denying Appellant's directed verdict motion based on failure to prove intent, where proof of criminal intent was lacking.

Relevant facts

On August 10, 2019, Isabella Todd, Complainant, left her multicolored purse in her rental car when she parked at Burkes Beach in Hilton Head. Complainant was at the beach for about an hour and a half, and when she returned to the car, the window had been shattered and her purse was gone. Complainant had medication in the purse.[3]

No witnesses saw the theft, the theft was not captured on surveillance cameras, and no forensic evidence was sought. Surveillance cameras at nearby Chaplin Park captured video footage of Appellant arriving at the park in a silver Volvo driven by an acquaintance, Delphia Doyle. Doyle testified that on the day of the theft, she gave Appellant a ride to the park, let him out of the car, and picked him up again a short while later. Doyle claimed Appellant had a multicolored purse when he got back in the car, and she could see there were pills in it. Appellant was questioned by police officers, but he did not confess. The purse was never recovered. [4]

The State's theory of the case was that Appellant smashed the rental car window and stole the purse before leaving with Doyle. Police officers suspected Doyle was involved in the theft, but she insisted she was not. Appellant moved for a directed verdict, but the court denied the motion. The jury convicted Appellant of larceny but acquitted him of auto breaking. Appellant filed a post-

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[3] R. 159, l. 16 – 166, l. 3.

[4] R. 181, l. 21 – 182, l. 1; R. 200, l. 3 – 201, l. 5; R. 173, ll. 6-15; R. 183, l. 25 – 185, l. 5; State's Exhibit #2; R. 250, l. 18 – 255, l. 9; State's Exhibit #5; R. 180, ll. 1-12.

trial motion in which he renewed his directed verdict motion based on the State's failure to prove criminal intent. The court held a hearing on the matter and denied the motion. [5]

Discussion

The State failed to prove intent to commit larceny. "Common law petit larceny became a statutory offense after the enactment of an 1866 statute which reclassified the offense as a misdemeanor and established a twenty dollar threshold . . . It has remained a statutory offense since 1866 and has changed little to this day." *State v. Parker*, 344 S.C. 250, 257, 543 S.E.2d 255, 259 (Ct. App. 2001). *See* S.C. Code Ann. § 16-13-20 (simple larceny of any article of goods or chattels with a value of two thousand dollars or less is petit larceny).

"Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without his consent." *State v. Condrey*, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (Ct. App. 2002) (citing *State v. Keith*, 283 S.C. 597, 325 S.E.2d 325 (1985); *State v. Brown*, 274 S.C. 48, 260 S.E.2d 719 (1979)). "To make out the offense of larceny, there must be a felonious purpose." *Id.* (citing *State v. Williams*, 237 S.C. 252, 116 S.E.2d 858 (1960)). "The taking must be done *animo furandi*—with a view of depriving the true owner of his property and converting it to the use of the offender." *Id. Accord Kerrigan v. State*, 304 S.C. 561, 563, 406 S.E.2d 160, 161 (1991).

The trial court erred when it refused to direct a verdict of acquittal since the State did not prove intent. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "When a motion for a direct verdict is made in a criminal case where the State relies exclusively on

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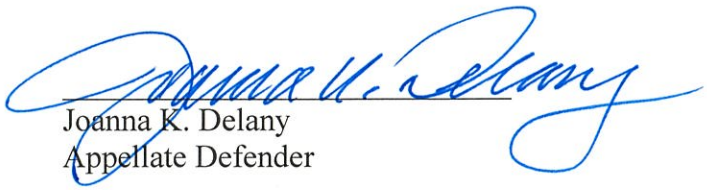
[5] R. 303, l. 3 – 304, l. 16; R. 259, l. 4 – 265, l. 13; R. 267, l. 10 – 268, l. 18; R. 339, ll. 2-11; R. 381; R. 360, l. 3 – 379, l. 1.

circumstantial evidence, the lower court is concerned with the existence or nonexistence of evidence, not with its weight." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). "When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). Where evidence merely places the defendant at the crime scene but fails to show he committed the crime, the defendant is entitled to a directed verdict. *State v. Johnson*, 291 S.C. 127, 129, 352 S.E.2d 480, 482 (1987). The jury found Appellant was not guilty of breaking into Complainant's car. But Complainant's purse was in the car when it was stolen. Although Appellant was seen with a purse later, the evidence was circumstantial and merely raised a suspicion of Appellant's guilt of larceny. The trial court should have directed a verdict in Appellant's favor.

CONCLUSION

Based on the foregoing argument, Appellant requests this Court reverse his conviction and sentence and remand for entry of a directed verdict of acquittal.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of December, 2022.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Dandre Cooper states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Robert J. Bonds, which was held on January 18 – 20, 2022 and March 25, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Joseph Dandre Cooper.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of December, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 15th day of December, 2022.