STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TONY A. SANDERS,

APPELLANT

APPELLATE CASE NO. 2023-001066

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant Tony Avella Sanders was convicted of third degree burglary and petty larceny during the June 2023 term of the Oconee County General Sessions Court before Judge Lawton McIntosh. Appellant was sentenced to imprisonment for a term of five years suspended on three years, and five years probation. Attorney Amanda Surles represented appellant at the hearing and Assistant Solicitor Bethany Ann Blundy prosecuted the case.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

1. 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, 708 S.E.2d 774 (2011) (quoting State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000)). Evidence must constitute positive proof of facts and circumstances which reasonably tend 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 error. This Court must look at the evidence in the light most favorable to the state. State v. Bostick, supra. See also State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). If the state failed to present any direct evidence or any substantial 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, supra.

2. In criminal cases an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). An appellate court will not reverse the trial judge's decision regarding jury instructions unless the trial court abused its discretion. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law or when grounded in factual conclusions without evidentiary support. Id.

QUESTION I

The trial judge erred in denying appellant's motions for directed verdicts on the state's burglary and larceny charges brought against him in the case.

At trial, Benny Blackwell testified that he realized that the storage unit on his property had been broken into via the back window on September 14, 2021, and that his ATV equipment and other tools were missing from therein. Tr. 57, l. 22 – p. 85, l.1. An investigation into the matter followed whereinafter photographs were obtained from the security cameras placed on the property. Subsequently, appellant and Kris Summerlin were named as suspects and arrested. Summerlin pled guilty to burglary and testified as a state's witness at appellant's trial. Appellant did not testify at trial.

In the case at bar, appellant was merely present at the crime scene. Appellant traveled to the Jorden residence on September 14, 2023, to visit Jade Jensen. The Jorden residence was located adjacent to Blackwell's storage unit. After appellant arrived, he noticed that his car battery died. Thereafter, appellant was duped by Summerlin (who was also present at the Jorden residence at the time) into believing that if he assisted Summerlin with helping to move certain items per Summerlin's request, then Summerlin would help him get the car started. Appellant knew not of Summerlin's burglary plot. See Defense Counsel's opening comments. Tr. 52, l. 17 – p. 53, l. 19.

Summerlin testified at trial and explained that on the date in question, he and appellant both drove their respective vehicles to the Jorden residence to see Jade Jensen. Summerlin stated that he asked appellant to help him look for something (presumably next door), and that appellant merely followed him. Summerlin admitted that appellant "didn't know what he

(appellant) was doing" and that appellant did not burglarize the storage unit in question. Tr. 108, l. 2-14, Tr. 101, l. 23 – p. 104, l. 19; 0, l.10-13. Tr. 97.

Jade Jensen, who lived at the Jorden residence located next door to the Blackwell storage unit, testified that appellant and Summerlin came to visit her on the date in question, and that she went to sleep (after ingesting fentanyl) shortly after they arrived. Jensen explained that when she woke thereafter on that same date, she discovered that the two men were gone. Jensen added that a few days later, Summerlin stated that "they stole some stuff from a building." Tr. 144, l.15-p. 148, l.17.

There were six still photographs offered into evidence as state's exhibits extracted from the storage unit camera surveillance video taken on the date of the burglary. According to the testimony of Officers Hellems, Justice, and O'Kelley, the photographs showed appellant walking with Summerlin, but it was clear that the photographs showed appellant held nothing. See state's exhibits #10-13 and #15. There was one photograph of both men walking and holding a piece of equipment (see state's exhibit #14); however, note that Blackwell admitted that the equipment was located beside his brother's car rather than inside the storage unit. Tr. 175, lines 16-24; Tr. 67, l.11-13; Tr. 83, lines 15-19.

Third degree burglary is entering a building without consent and with the intent to commit a crime therein. S.C. Code Ann. §16-11-313. A defendant may not be convicted of a crime without proof beyond a reasonable doubt that he acted with criminal intent. State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). Intent may be shown by acts and conduct from which a jury may naturally and reasonably infer intent. State v. Lee Grigg, 374 S.C. 388, 649 S.E.2d 41 (2007). In the case at bar, the evidence showed that appellant was present while Summerlin carried out the activities, but there was no evidence establishing that appellant knew

of and/or was part of Summerlin's plans. Again, note that Summerlin admitted appellant knew nothing of his plans and actions in connection to the storage unit. The pictures established only that appellant was in the company of Summerlin. This was insufficient proof that appellant played a role in Summerlin's scheme. Also, the evidence indicated that the ATV ramps were placed outside of the storage unit rather than inside it.

Therefore, appellant was not guilty of burglary. Additionally, it logically follows that appellant was not guilty of petty larceny either. No proof of intent registered under either of the offenses charged against appellant in the case. The jury recognized this, which is probably why a request was submitted for a re-charge on the law of third degree burglary. Tr. 204, l. 24 – p. 205, l. 4. A defendant is entitled to a directed verdict when the state fails to present evidence of all elements of the charged offense(s) in a case. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). The lower court erred in denying appellant's motions for directed verdicts on the state's burglary and larceny charges brought against him in the case.

QUESTION II

The trial erred in charging the jury on what consideration to give appellant's "alleged" statement because the case was devoid of any evidence that appellant gave a statement in the case.

At no point whatsoever was any evidence presented at trial establishing that appellant made a statement in the case. Jensen testified that Summerlin told her "that they stole some stuff from a building." Tr. 147, l.23-24. Appellant never made a statement at all about the case. It was error to assign appellant to Summerlin's statement by bootstrapping Summerlin's comment to appellant. Summerlin's statement served only to implicate Summerlin. The addition of appellant as a partner in crime via Summerlin's statement sans any statement from appellant constituted

error, and the jury charge to that effect was improper. Defense counsel objected to a jury charge regarding appellant's "alleged' statement because there was no statement given by appellant in the case. Tr. 159, l.11-p. 161, l.2. The trial judge gave the following jury charge in the matter:

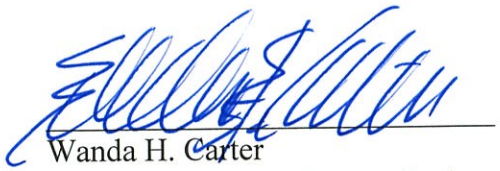
> Now, also, ladies and gentlemen, a statement alleged to have been made by the defendant has been admitted into evidence in this case. While the Court has determined that the statement was admissible, I instruct you that you make an ultimate decision of whether or not the defendant made the statement. If the defendant did make the statement, we must determine whether the statement was made by the defendant voluntarily and of his own freewill. This means that the statement was not caused by pressure, fear, force, threats, coercion, or intimidation, or by hope or a promise of leniency, or a reward of any kind. In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of the question.
>
> Some of the factors that you must consider are the age of the defendant, and the defendant's education or lack of education, the defendant's mental ability or capacity, the defendant's IQ or intelligence, the defendant's background and environment, the place and length of detention, the nature of the questioning, and the advice or lack thereof to the defendant of his or her Constitutional rights. Including, but not limited to, the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, and that if he could not afford a lawyer, a lawyer would be appointed to him without cost, and that he could stop making the statement at any time.
>
> You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement. The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was, you may give the statement any further consideration that you deem proper.
>
> You must decide what weight, if any, should be given to the alleged statement. If you determine that the alleged statement was not a free and voluntary statement of the defendant, you should not consider the statement at all. Tr. 192, l.2-p. 193, l.17.

The trial judge is required to charge the correct law that is applicable to the case. State v. Marin, 404 S.C. 615, 745 S.E.2d 148 (2013). Improper jury charges can result in undue emphasis

in a case. State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013). The law to be charged is determined from the evidence presented at trial. Cook v. State, 415 S.C. 551, 784 S.E.2d 665 (2015). In the case at bar, there was no evidence that appellant gave a statement in the case, and the tie of Summerlin's statement to appellant and the following jury charge on the same constituted error. The prejudice was great because of the inference that suggested appellant was connected to Summerlin's actions, which in turn negatively impacted appellant's defense. The trial court erred in charging the jury in this regard.

CONCLUSION

Based on the foregoing arguments, counsel for appellant would request that this case be remanded to the lower court for a new trial.



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This 19th day of January, 2024.