

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)
 BEN HAYES,)
 Appellant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CASE NO: 2023-CP-07-01829

ORDER
AFFIRMING CONVICTION

(Appeal Dismissed)

THIS MATTER came before me by way of Ben Hayes’ (hereinafter “Appellant”) appeal of his conviction for Entering Premises after Notice or Refusing to Leave on Request pursuant to S.C. Code Ann. § 16-11-620. Appellant argues that the Magistrate erred in submitting the case to the jury, and a reasonable jury could not have found him guilty, because the evidence established a legal cause and a good excuse for his entering the property in question. Oral argument was held on March 26, 2024. Present at the hearing was Mary Jordan Lempesis and Brian C. Kiel, attorney(s) for the State. Also present was William S. Hammett, III, attorney for Appellant. For the reasons set forth below, the Magistrate Court’s decision(s) are affirmed and the appeal in this matter is dismissed.

STATEMENT OF FACTS

The undisputed facts of this case are that on or about June 27, 2023, Appellant was found on the premises of 225 Tarpon Boulevard, Fripp Island, in Beaufort County, South Carolina. One day prior, on June 26, 2023, Appellant was issued a formal notice of trespass by the Beaufort County Sheriff’s Office (hereinafter “BCSO”) for the same premises. That notice came at the request of agents from the Fripp Island Property Owners Association and Fripp Island Security (hereinafter “Fripp Island”). According to the record, Appellant had also been warned in writing by Fripp Island that he was not to enter the premises in question without permission. On June 27,

2023, the day of his arrest, Appellant sent an email to Fripp Island with completed forms for registration of golf carts he owns and rents to his customers. Shortly thereafter, the same day, Appellant, with a golf cart in tow, arrived on the premises of the Fripp Island Offices for which he had been officially trespassed by BCSO. Fripp Island Security Officers requested BCSO assistance. BCSO arrived, investigated, and cited Appellant for a violation of S.C. Code 16-11-620 for trespassing onto 225 Tarpon Boulevard, Fripp Island.

The matter was placed before a jury in the Beaufort County Magistrate's Court on September 26, 2023. Appellant was represented by counsel and presented evidence in the case. The State called several witnesses establishing the prior relationship between the Appellant and Fripp Island, the notice of trespass, and that the Defendant returned to the property in question on the day of his arrest. BCSO Deputy Nicholas Horne testified that when he arrived at 225 Tarpon Boulevard on June 27, 2023, he found the Appellant seated in a golf cart which was located on a trailer in the parking lot. Deputy Horne further testified that the Appellant admitted that he had received the trespass notice but thought he could be in the parking lot.

Appellant's trial attorney presented evidence that one of Appellant's clients received a citation while operating an unregistered golf cart belonging to Appellant. Appellant argued that his presence at 225 Tarpon Boulevard, Fripp Island was necessary because the golf cart had to be inspected at this location. At the close of evidence, Appellant's trial attorney moved for a directed verdict on the grounds that legal cause or good excuse existed for the violation of the trespass notice. The motion was denied, and the question was submitted to the jury. The jury found the Appellant guilty.

STANDARD OF REVIEW

“In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception.” State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 681, 682 (Ct. App. 2001). “When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006) (citing State v. Cherry, 361 S.C. 588, 593–593, 606 S.E.2d 475, 477–478 (2004)). “A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged.” Id. “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” Id.

DISCUSSION

Appellant argues this Court should reverse the Magistrate’s denial of his directed verdict motion because the State failed to offer any counter evidence to create more than one inference as to whether he had legal cause or good excuse. See, Steinke v. S.C. Dep’t of Lab., Licensing & Regul., 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). S.C. Code Ann. § 16-11-620 applies to a person who is on the property “without legal cause or good excuse.” Town of Springdale v. Butler, 299 S.C. 276, 279, 384 S.E.2d 697, 698 (1989) (finding police officers response to a complaint under the color of law establishes legal cause). An accused may not be convicted when invited back to the forbidden premises by a tenant, agent, or representative of authority. Com. v. Richardson, 313 Mass. 632, 638, 48 N.E.2d 678, 682 (1943). Likewise, the common law defense of necessity frees a person subject to a no-trespass warning if compliance would create a greater harm to the person than non-compliance would. See, Com. v. Magadini, 474 Mass. 593, 600, 52

N.E.3d 1041, 1049 (2016) (reversing a homeless defendant from conviction where trial court failed to instruct on the defense of necessity when facts supported defendant was subject to chilling outdoor weather). When the State makes out a prima facie case under a statute and the defendant claims to fall within an “exception” in the statute, the burden is on the defendant to establish the defense. State. V. Attardo, 263 S.C. 546, 211 S.E.2d 868 (1975). Furthermore, when dealing with a statutory crime to which there are exceptions, the defendant bears the burden of showing his actions fit within the exception and the State is not required to negate each exception to the offense to sustain its burden of proof. State v. Clarke, 302 S.C. 423, 396 S.E.2d 827 (1990)

In the instant case, Appellant argues that he had the legal right or good cause to trespass onto 225 Tarpon Boulevard, Fripp Island to have his golf cart registered. In support of his argument, Appellant introduced emails noting a citation for having an unregistered golf cart. However, the State produced evidence, and this Court has reviewed the same, that Appellant had reasonable alternatives to getting his golf cart registered. Namely, evidence existed that a member of his family could, and did respond to the location, only after his arrest. The State further produced uncontradicted evidence that Appellant was found at 225 Tarpon Boulevard, Fripp Island, after receiving the trespass notice not to be on that property.

After hearing arguments from both sides and a review of the lower court record, this Court agrees with the Magistrate’s Court’s denial of Appellant’s directed verdict motion. This Court finds that the State offered evidence, when viewed, as it must be, in the light most favorable to the State, that Appellant knowingly and voluntarily trespassed onto 225 Tarpon Boulevard, Fripp Island after receiving. As such, thus Court must affirm the Magistrate’s Decision to deny the directed verdict motion.

CONCLUSION

Accordingly, and for the reasons set forth above, IT IS THEREFORE ORDERED that the Magistrate's decisions, specifically the denial of Appellant's directed verdict motion are AFFIRMED.

IT IS FURTHER ORDERED that the jury's verdict will not be disturbed, the conviction is AFFIRMED, and that this appeal is hereby dismissed.

AND IT IS SO ORDERED!

Marvin H. Dukes, III
Presiding Judge, Fourteenth Judicial Circuit

_____, 2024.
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Ben Hays VS South Carolina State Of

Case Number: 2023CP0701829

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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