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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-001066

THE STATE,

Respondent,

v.

TONY AVELLA SANDERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted in March of 2022 for third-degree burglary and petit larceny. Appellant proceeded to a jury trial June 19, 2023, in Oconee County in front of the Honorable R. Lawton McIntosh. Appellant was represented by Amanda Surles, Esquire. The jury found Appellant guilty as charged. He was sentenced to five year's imprisonment suspended on three years of imprisonment and five years' probation.

STATEMENT OF FACTS

On September 23, 2021, Benny Blackwell, the owner the of property at issue, went over to the property to cut the grass. (R. 64). When he arrived, his wife noticed something was wrong with the storage building on the property. (R. 66). Upon further inspection Blackwell realized that items that should have been inside were scattered in front of the building. (R. 66). When Blackwell opened the building, he noticed that all of the tools on the pegboard were missing, the back window of the building was open, and the screen was broken. (R. 67). The building was in complete disarray and numerous things that were stored in the building were missing, including ATV ramps, a pole saw, a chain saw, an air compressor, a tie rod to an airplane, multiple tools, and a hot water heater. (R. 74).

After walking more of the property, Blackwell noticed that the pole saw and the tie rod were propped against the house of his neighbor. (R. 77). Blackwell had numerous game cameras set up around the property and Blackwell and police looked through the photos to see who had come onto the property. (R. 78). The footage showed two men, including Appellant on the cameras at 9:07 am on September 14, 2021. (State's Exhibits 10-15). Appellant is also seen wearing a headlamp around his neck in which Blackwell identified as his own headlamp that was stored inside the building. (R. 83-84).

At the time, Alwyn Jorden, Blackwell's neighbor, had a roommate named Jade Jenson and Jorden was able to identify the men in the photos as Appellant and Kristopher Summerlin because they had been to the house a few times with Jenson. (R. 94). Summerlin testified at trial and when asked how well he knew Appellant, he claimed he had only known him for about two to three years but didn't know him well or really hang out with him. (R. 99). Summerlin testified he told Appellant to meet him at Jorden and Jenson's house because there were supposedly drugs next door. (R. 99-101). Summerlin admitted to not having permission to be on the property. (R.

104). Summerlin denied entering the storage building and stated that he only pled guilty to third-degree burglary to get out of county and go to prison. (R. 100-105).

Jade Jenson's testimony was proffered outside the presence of the jury. In her proffered testimony, Jenson testified that a few days after the incident Appellant had told her that they "stole some stuff." (R. 143). In her testimony in front of the jury, she was asked when the next time she had spoken to Summerlin was after that day, to which Jenson responded, "probably a few days later." (R. 147). The solicitor then asked her "what did he tell you a few days later?" (R. 147). Jenson responded this time with "They had told me that they had stole some stuff from the building." (R. 147).

STANDARD OF REVIEW

Issue 1

In an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the State. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). "In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Id. The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

Issue 2

"In criminal cases an appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388

S.C. 469, 479, 697 S.E.2d 578, 583 (2010). When reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). Further, "[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (citing State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000)). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002). "No instruction should be given by the trial judge, at the request of appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975).

ARGUMENT

I. The trial judge properly denied Appellant's directed verdict motion on the charges of burglary third-degree and petit larceny.

Appellant argues the trial court erred in denying Appellant's motions for directed verdicts on the State's burglary and larceny charges brought against him. Specifically, he maintains that the State failed to present any evidence that he knew of and/or was part of Summerlin's plans and therefore there was no proof of his intent. Appellant's argument lacks merit because there is circumstantial evidence showing intent by Appellant.

"A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein." S.C. Code Ann. §16-11-313. "The only requirement is that there be intent to commit any crime at the time of entry." Pinckney v. State, 368 S.C. 502, 505, 629 S.E.2d 367, 369 (2006). The person's actions after entering the dwelling can be evidence in determining whether the person had the intent to commit a crime at the time of entry. Id.

In this case, there was evidence that showed that Appellant did not have permission to be on the property. Summerlin and Blackwell both testified that there was no permission for them to be on the property. (R. 85, 104). There was testimony from Brandon O'Kelley, from the Oconee County Sheriff's Office that the back window of the storage building was open, and the screen was broken which was most likely the point of entry. (R. 130-131). Appellant argues that there is no evidence establishing that he knew of or was a part of Summerlin's plans, however the evidence of breaking the screen and entering through the window is enough to show that while he may not have known the plans before getting to the property, he was aware of the plans and intended to participate once he was there. Appellant further argues that the pictures only

establish that Appellant was in the company of Summerlin and because the ATV ramps were outside of the storage there is no evidence that Appellant entered the storage building. There is also testimony that the headlamp Appellant is seen wearing in one of the game photos was Blackwell's and was located **inside** the storage building. (R. 84).

Appellant makes the same argument for the petit larceny charge stating that there was no proof of intent. Larceny involves the taking and carrying away of the goods of another, which must be accomplished against the will or without the consent of the other. State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (Ct. App. 2001). Appellant is shown carrying ATV ramps and a headlamp off Blackwell's property without consent to do so, and a jury could reasonably conclude he knew he had no consent to do so since he had to crawl through someone's window to gain access to the headlamp. (State's Exhibits 10-15). See McMillan v. State, 383 S.C. 480, 680 S.E.2d 905 (2009) (holding the presence of closed doors and locked windows is notice to the world that entry is forbidden).

II. The giving of the jury charge regarding a statement by Appellant was harmless.

Appellant argues that the trial court erred in charging the jury on what consideration to give Appellant's statement because the case was devoid of any evidence that Appellant gave a statement in the case. Appellant argues that at no point whatsoever was any evidence presented at trial establishing that Appellant made a statement in the case because Jenson testified that Summerlin told her "that they stole some stuff from a building." (Initial Brief of Appellant p. 6; R. 147). In Jenson's testimony she was being asked about Summerlin and what he said to her a few days later, but Jenson does not reply with Summerlin told me that they stole stuff, but "They had told me that they had stole some stuff from a building." (R. 147). This statement by Jenson implies that both Summerlin and Appellant told her that they had stolen things from the building.

When going over the jury charges, the trial court mentioned a charge on statement by the defendant stating that he did not remember any distinct statements by the defendant. (R. 159). Trial Counsel stated that she didn't feel that the charge was necessary because the statement made by the defendant came out in the proffered testimony, but not in the presence of the jury. (R. 159-160). Ultimately the trial judge did charge the jury on the following charge:

> 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 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 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.

(R. 192-193).

While this jury charge was formerly[1] given for a statement by the defendant made to police, it did not prejudice by giving any undue emphasis on the case for Appellant because there was no statement in front of the jury. Appellant argues that there was no evidence that Appellant gave a statement and therefore there was nothing the jury could have considered. While true, that fact is exactly why the jury instruction could not possibly have been prejudicial. Further, the jury asked the judge to recharge the charge of burglary in the third-degree, if they had any questions regarding what statement or whether there was a statement, they had the opportunity to ask at that time, but did not. (R. 204-206). Therefore, even if the trial judge erred in giving the jury charge it was harmless.

[1] See State v. Miller, 441 S.C. 106, 893 S.E.2d 306 (2023) (recognizing that the instruction of voluntariness is a legal question and is unnecessary going forward for trial courts to submit the question of voluntariness to the jury).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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August 28, 2024

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Wanda H. Carter, Esquire, counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 28th day of August, 2024.

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From: Grace Sommer
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Attachments: SANDERS Tony - FBOR (03677487xD2C78).PDF

Good Afternoon Ms. Carter,

Attached please find a Final Brief of Respondent in The State v. Tony Avella Sanders (2023-001066). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

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