STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DETRICK TIWAN WILLIAMS

APPELLANT

APPELLATE CASE NO. 2013-000074

INITIAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellants motion for a directed verdict on the charge of public indecency where an eyewitness merely testified that she was at Appellant's small apartment complex on the sidewalk between the central, encircled parking lot and Appellant's yard; where Appellant was inside his apartment, behind the front screen door around twenty-five feet away; and where she could not see his penis but could only make out his nude body and motions?

STATEMENT OF THE CASE

The York County grand jury indicted Appellant on one count of indecent exposure. R. *. On January 9, 2012, Appellant proceeded to trial before a jury and the Honorable John C. Hayes, III. Tr. 1. Appellant represented himself and Erin Joyner represented the State. Tr. 1.

At the conclusion of the trial on January 9, 2012, the jury found Appellant guilty. Tr. 138, ll. 21-24. Judge Hayes sentenced Appellant to three years imprisonment and registration as a sex offender. Tr. 142, ll. 20-25.

This appeal follows.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT BECAUSE THE STATE ADDUCED NO EVIDENCE THAT APPELLANT, STANDING BEHIND A SCREEN DOOR INSIDE HIS OWN APARTMENT, EXPOSED HIMSELF PUBLICLY OR IN A PLACE FROM WHICH THE PUBLIC WOULD FORESEEABLY VIEW HIM.

STATEMENT OF FACTS

At Appellant's trial, the State alleged that on December 25, 2011, Tamikya Staley visited a relative at a small apartment complex in Rock Hill. She pulled off South Wilson Street into a small parking lot, which was surrounded by the few buildings comprising the complex. After parking and as she began walking away from her vehicle, Appellant, who was acquainted with Staley, opened the screen door from a nearby apartment and peeped his head out and called out to her. He was allegedly naked and making motions as if masturbating. Tr. 56, l. 23 – Tr. 57, l. 21.

The State produced evidence that Appellant's apartment complex consisted of cluster of buildings with two or three town homes per building. The buildings surrounded a central, rectangular parking lot. Tr. 62, ll. 6-15. Staley testified that a main sidewalk traces around the perimeter of the parking lot, and smaller sidewalks extend off of it towards each front door. When she saw Appellant, he was approximately the same distance from her as the witness stand was to the attorney's podium in the courtroom. Tr. 84, l. 7 – Tr. 85, l. 1. She testified that she could not actually see his penis but could tell that it was in his hand. Tr. 86, l. 20 – Tr. 87, l. 4.

After the State presented its case, Appellant moved for a directed verdict. The trial judge denied the motion, stating "[t]here is evidence from which a jury could conclude that this happened and that you were the one who did it." Tr. 106, l. 24 – Tr. 107, l. 3.

DISCUSSION

In a criminal trial, after the State presents its evidence, a court must direct a verdict in the defendant's favor "if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19, SCRCrimP. "[T]he trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *State v. Cherry*, 348 S.C. 281, 285, 559 S.E.2d 297, 299 (Ct. App. 2001).

In this case, the trial court erred in denying Appellant's motion for a directed verdict because the State adduced no evidence that Appellant, standing behind a screen door inside his own apartment, exposed himself publicly or in a place from which the public would foreseeably view him. South Carolina Code Ann. § 16-15-130(A)(1) (Supp. 2006) makes it unlawful "for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway." "Statutes of this nature are directed against acts committed openly and affecting the public, and in order to outrage public decency openly, the act must be openly done in public instead of secretly with the public excluded from observing it." 67 C.J.S. *Obscenity* § 8.

Notably, South Carolina Code Ann. § 16-15-90(4), titled "Prostitution; lewdness, assignation and prostitution generally," alternatively makes it unlawful to "[e]xpose indecently the private person for the purpose of prostitution or other indecency." The intent of such a statute is to prohibit the intentionally lewd exhibition, beyond mere nudity, "of those private parts of the person which instinctive modesty, human decency,

or self-respect requires shall be customarily kept covered in the presence of others." 67 C.J.S. *Obscenity* § 9.

The cardinal rule of statutory construction is to give effect to the intent of the Legislature. *S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. District v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Legislative intent is first and foremost determined by the language of the statute. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citing *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997)). "The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." *Pee v. AVM, Inc.*, 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct. App. 2001).

"Statutes pertaining to the same subject should be harmonized," *Smith v. S.C. Highway Comm'n*, 138 S.C. 374, 136 S.E. 487 (1927). "A statute must be interpreted so as to avoid absurd results," *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964). A court must also presume that the legislature did not intend to do a futile act. *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct.App.2006). A criminal statute must be strictly construed, and any ambiguity must be resolved in favor of the defendant. *Hinton v. S.C. Dep't of Probation, Parole and Pardon Services*, 357 S.C. 327, 339, 592 S.E.2d 335, 336 (Ct. App. 2004).

Here, subsection 16-15-130(A)(1) provides that it is unlawful to expose oneself "in a public place . . . or to the view of any person on a street or highway." The State

adduced no evidence that Appellant was in point of fact in a public place. The record is clear both that Staley was the only observer to the event and that when she saw Appellant, he was inside the screen door of his own apartment. Further, she was ostensibly around only twenty-five feet from him and on a sidewalk next adjoining his own small yard. While Appellant arguably intended for an individual outside of his private property to see him exposed while entertaining a lewd motive, the facts in the record simply cannot support the altogether different hypothesis that he exposed himself publicly or in a place from which the public would foreseeably view him. Indeed, to conclude otherwise would render subsection 16-15-90(4) meaningless.

Additionally, the State adduced no evidence that Appellant was visible to any person on a street or highway. Staley testified she pulled off of South Wilson Street into the complex's small, central parking lot, which was surrounded by the apartment buildings. When she actually saw Appellant, she was on the sidewalk around the outside of the parking lot and directly adjoining the front yards of the apartments. Ostensibly around twenty-five feet from his front entrance, she made out Appellant behind the screen door. Even then, she admitted she could not see his penis but could only make out his naked body and motions. The State presented no testimony or other affirmative evidence to show that Appellant was visible to someone on South Wilson Street or even someone driving into the parking lot.

Thus, the record supports only that Appellant, while possibly entertaining a lewd motive, was nude in his own home, behind a screen door, and somewhat observable from the sidewalk directly in front and adjoining his yard. Neither the plain language of subsection 16-15-130(A), nor the surrounding statutes, nor the policies underlying the

statutes evince an intent criminalize Appellant's behavior as publicly indecent, and the trial court erred in denying his motion for a directed verdict.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse the decision of the trial court and dismiss the charge against him.

Respectfully submitted,

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of October, 2013.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictment(s);
(2) Transcript of January 9, 2012:
P. 1;
Pp. 56-58;
Pp. 61-62;
Pp. 79-93;
Pp. 106-107;
Pp. 138-142.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 17th, 2013

Benjamin John Tripp
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 17th day of October, 2013.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.