STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

MARY W. LEDDON
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's motion for a directed verdict because the State presented substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of first-degree burglary and grand larceny.

II.

The trial judge properly gave the jury an instruction regarding "the hand of one is the hand of all" where there was evidence supporting that Appellant and a co-participant acted together to burglarize the victim's home and steal from her.

STATEMENT OF THE CASE

In June of 2011, a Spartanburg County Grand Jury indicted Appellant for first-degree burglary and grand larceny. On January 14, 2013, Appellant proceeded to trial. Richard H. Whelchel represented Appellant at trial, and Assistant Solicitor Timi Poulos represented the State at trial. On January 16, 2013, the jury found Appellant guilty of both charges. The Honorable J. Derham Cole sentenced Appellant to forty years of imprisonment for the first-degree burglary conviction and ten years of imprisonment for the grand larceny conviction.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On December 11, 2010, Appellant broke into his neighbor's, Elizabeth Ann Vandahm ("Victim"), home and stole various items. Earlier that day, Victim left her home in order to go to work. (R. p. 22.) When Victim left her home, everything was in normal condition. (R. p. 23.)

At trial, Anna Holcombe, Victim's neighbor, testified that she was doing yard work in her own yard and in Victim's yard on the day of the burglary. (R. p. 91; R. pp. 93-94.) According to Holcombe, Appellant and Gary Manigan, Appellant's nephew ("Nephew"), were watching Holcombe do yard work. (R. pp. 95-96.) Appellant and Nephew kept interrupting Holcombe's yard work by asking her how long she was planning on being outside. (R. p. 96.) Holcombe never had any dealings with Appellant. (R. p. 96.) Appellant sat on his porch for the majority of the time that Holcombe was outside. (R. p. 97.)

When Victim returned home from work, at approximately 10:30 p.m., she noticed glass on her kitchen floor. (R. p. 25.) She also saw a big piece of cement on her kitchen floor. (R. p. 25; R. p. 33.) Victim's computer monitor, printer, and beer were missing. (R. p. 26; R. p. 28; R. p. 35.) In addition, Victim's jewelry, including a pair of diamond earrings, were missing. (R. p. 26.) When Victim went to her bathroom, she saw glass and a brick on her bathroom floor. (R. p. 27; R. p. 32.) Her bathroom window was broken. (R. p. 27; R. p. 32.) Further, Victim noticed that someone tried to pry open her backdoor. (R. p. 27; R. p. 47.)

After the police arrived at her home, Victim found a trash bag, which contained her stolen computer monitor and printer, in her backyard behind her "hog wire fence." (R. pp. 36-37.) The trash bag appeared to be one of her trash bags. (R. p. 37.) According

to Officer Charles Hair, the hog wire fence was easily bendable; the fence would not have kept anyone from going in and out of the yard. (R. p. 108.) Officer Hair was able to lift fingerprints from the stolen computer monitor and printer. (R. pp. 112-113.)

While the police were still at Victim's home, Appellant came to her home. (R. p. 50.) Appellant asked Victim a lot of questions, including if she knew if the police had found anything yet. (R. p. 51.) Victim had never met Appellant before this occasion. (R. p. 52.)

Around 2:00 a.m., after everyone had left, Appellant came back to Victim's house and knocked on the door. (R. p. 53.) Appellant asked Victim for a beer and told her that "it was shame what had happened to [her] house and that he watches [her] and that he watches [her] house." (R. p. 53.)

According to Investigator Lou Mathis Jones, the palm print found on the stolen computer monitor and the fingerprint found on the stolen printer, which were found in a trash bag located in Victim's backyard, belonged to Appellant. (R. p. 133.)

According to Victim, prior to the burglary, Appellant had never been inside her home. (R. p. 50.) There was no reason for Appellant to have touched anything inside her home, including her computer monitor or printer. (R. pp. 49-50.) Further, there was no reason for Appellant to have ever been in her backyard. (R. p. 51.)

On December 13, 2011, two days after the burglary, Nephew sold Victim's stolen diamond earrings to a pawn shop for $50. (R. pp. 156-157; R. p. 159.)

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a directed verdict because the State presented substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of first-degree burglary and grand larceny.

Appellant was indicted for was first-degree burglary[1] and grand larceny.[2] On appeal, Appellant only claims that the State failed to prove that Appellant was the one that committed the crimes. Appellant does not claim that the State failed to prove any of the actual elements of the crimes. However, the State presented direct and substantial circumstantial evidence of Appellant's guilt, which included the following: 1) Victim's home was broken into; 2) Victim's computer monitor, printer, beer, and jewelry were stolen; 3) Appellant and Nephew watched Victim's neighbor, Holcombe, do yard work for a long period of time; 4) Appellant and Nephew kept asking Holcombe when she would be finished doing her yard work; 5) on the night of the burglary, the police found a fingerprint on Victim's stolen printer, which was found in Victim's backyard; 6) the fingerprint matched Appellant's fingerprint; 7) on the night of the burglary, the police found a palm print on Victim's stolen computer monitor, which was found in Victim's backyard; 8) the palm print matched Appellant's palm print; 9) the stolen printer and monitor were found in a black trash bag that came from inside Victim's home; 10) prior

---

[1] A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . (2) the burglary is committed by a person with a prior record of two or more convictions for burglary. . . . S.C. Code Ann. § 16-11-311 (A)(2).

[2] Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without the owner's consent. State v. Condrey, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (Ct. App. 2002). If the value of the goods unlawfully taken and carried away during a theft exceeds $2,000, the theft constitutes the felony offense of grand larceny. See S.C. Code Ann. § 16-13-30 ("Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny.").

to the burglary, Appellant had never been inside Victim's home; therefore, there was no reason for his fingerprint and palm print to be on her computer monitor or printer; 11) there was no reason for Appellant to be in her backyard; 12) around 2 a.m. on the night of the burglary, Appellant knocked on Victim's door, asked her for a beer, told her it was shame what happened to her house, and told her that he "watches [her] and that he watches [her] house"; 13) Nephew sold Victim's diamond earnings to a pawn shop two days after the burglary; and 14) Appellant had two prior burglary convictions.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). When an appellate court is reviewing the denial of a directed verdict motion in a case solely involving circumstantial evidence, this Court has instructed:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

Id. at 594, 606 S.E.2d at 478 (citations omitted) (emphasis in original).

Accordingly, an analysis of the trial judge's ruling hinges on whether all of the circumstantial evidence taken together was sufficient for the jury to reasonably infer the defendant's guilt for the crimes beyond a reasonable doubt. Id. at 595, 606 S.E.2d at 478. Critically, 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. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). **"[U]nless there is a total failure of evidence** tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

Analysis

In burglary and larceny cases, proof that the defendant was in recent possession of stolen property supports an inference that the defendant was the person who stole the property and creates a question of fact for the jury to resolve. See State v. Lyles, 211 S.C. 334, 339, 45 S.E.2d 181, 183 (1947); State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (instructing that the inference to be drawn from recent possession of stolen property is an evidentiary fact as opposed to a rebuttable presumption and constitutes circumstantial evidence of guilt); State v. Campbell, 131 S.C. 357, __,127 S.E. 439, 440-41 (1925) (holding that the trial judge properly submitted the charges for housebreaking and grand larceny to the jury where the State presented evidence that the defendant was in possession of the stolen property and noting that in burglary and larceny cases, recent possession of stolen property is an evidentiary fact that the jury can use to find guilt); McNamara v. Henkel, 226 U.S. 520, 525 (1913) ("Possession of [recently stolen property] in these circumstances tended to show guilty participation in the burglary. This is but to accord the evidence, if unexplained, its natural probative force.").

In State v. Mitchell, our Supreme Court held that the defendant was entitled to a directed verdict for the burglary in the first degree charge. State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). When the victim arrived at his home, he noticed that his beer was missing from his refrigerator. Id. at 408, 535 S.E.2d at 127. Six days later, the victim went into his spare room and noticed glass on the floor. Id. When the victim pushed the blinds back, he noticed a hole in the glass of his window, and the window was unlocked. Id. According to the victim, the defendant had been inside victim's home on a couple of occasions. Id. The defendant helped unload some furniture into victim's home. Id. In addition, the defendant attended a social gathering at victim's home. Id. When the officer inspected the victim's home, he noticed that there was no glass on the exterior of the house, but there was a fingerprint on the screen. Id. The fingerprint matched the defendant's fingerprint. Id.

In finding that the defendant was entitled to a directed verdict for the burglary charge, our Supreme Court noted that the State failed to present any evidence on whether "the screen was on the window at the time the window was broken or when the screen had been removed." Id. at 409, 535 S.E.2d at 127. Further, "the fact that [the defendant's] fingerprint was on a screen that was propped up against the house does not prove entry **where [defendant] had been in and around the victim's house at least three time prior to the burglary.**" Id. (emphasis added).

In State v. Gilliam, our Supreme Court held that the defendant was entitled to a directed verdict for the housebreaking charge and grand larceny charge. State v. Gilliam, 245 S.C. 311, 315, 140 S.E.2d 480, 482 (1965). In reaching its conclusion, the Court noted:

> The evidence casts no light on whether the pane of glass was broken and the window unlatched from the outside in the nighttime or from the inside during business hours. The custodian of the stamps did not testify and no foundation was laid by evidence for an inference of theft from the fact that they were 'missing' from his desk. The unexplained presence of defendant's fingerprint on a fragment of the broken pane outside the building **might inculpate him** if the evidence established that the building was feloniously entered and by this means, which, as has been seen, it fails to do.

Id., 245 S.C. at 315, 140 S.E.2d at 482 (emphasis added).

In this case, the trial judge properly denied Appellant's directed verdict motion because substantial evidence was presented establishing Appellant's guilt for each element of burglary in the first degree and grand larceny. Specifically, the following evidence was presented: 1) Victim's home was broken into; 2) Victim's computer monitor, printer, beer, and jewelry were stolen; 3) Appellant and Nephew watched Victim's neighbor, Holcombe, do yard work for a long period of time; 4) Appellant and Nephew kept asking Holcombe when she would be finished doing her yard work; 5) on the night of the burglary, the police found a fingerprint on Victim's stolen printer, which was found in Victim's backyard; 6) the fingerprint matched Appellant's fingerprint; 7) on the night of the burglary, the police found a palm print on Victim's stolen computer monitor, which was found in Victim's backyard; 8) the palm print matched Appellant's palm print; 9) the stolen printer and monitor were found in a black trash bag that came from inside Victim's home; 10) prior to the burglary, Appellant had never been inside Victim's home; therefore, there was no reason for his fingerprint and palm print to be on her computer monitor or printer; 11) there was no reason for Appellant to be in her backyard; 12) around 2 a.m. on the night of the burglary, Appellant knocked on Victim's

door, asked her for a beer, told her it was shame what happened to her house, and told her that he "watches [her] and that he watches [her] house"; 13) Nephew sold Victim's diamond earnings to a pawn shop two days after the burglary; and 14) Appellant had two prior burglary convictions.

Further, this case is distinguishable from Mitchell. Unlike the defendant in Mitchell, Appellant had never been into Victim's home prior to the burglary. Further, the fingerprint found in Mitchell was on a screen that was propped up against the exterior of the house. Mitchell, 341 S.C. at 408, 535 S.E.2d at 127. Here, Appellant's fingerprint was found on the stolen goods that came from inside the Victim's home. Moreover, the police found the fingerprint on the stolen goods on the same night of the burglary. Thus, the State presented evidence that Appellant was in recent possession of the stolen property. See Campbell, 131 S.C. at 357, 127 S.E. at 440-41 (noting that in burglary and larceny cases, recent possession of stolen property is an evidentiary fact that the jury can use to find guilt); State v. Miller, 287 S.C. 280, 284, 337 S.E.2d 883, 886 (1985) (finding Miller's recent possession of stolen property was "competent circumstantial evidence of larceny" and further finding the fact that Miller sold the stolen property for a fraction of its actual value supported the jury's guilty verdict).

In summary, the State presented substantial circumstantial evidence of Appellant's guilt. Accordingly, Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly gave the jury an instruction regarding "the hand of one is the hand of all" where there was evidence supporting that Appellant and a co-participant acted together to burglarize the victim's home and steal from her.

The trial judge did not err in giving the "hand of one is the hand of all" charge because there was evidence in the record supporting the charge.

Analysis

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). The trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

Under "the hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by his accomplice incidental to the execution of the common plan. State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "A formally expressed agreement is not necessary to establish the conspiracy. It may be shown by circumstantial evidence and the conduct of the parties." Condrey, 349 S.C. at 194, 562 S.E.2d at 325.

In this case, the State presented evidence that Appellant and Nephew were in close proximity of Victim's home prior to the burglary. Both Appellant and Nephew kept bothering Victim's neighbor, Holcombe, regarding when Holcombe was going to be finished with her yard work. Appellant and Nephew's behavior supports the inference that they were casing Victim's home prior to the burglary.

Further, the State presented evidence that two of Victim's windows were broken, and the objects used to break the windows were found inside the Victim's home. Additionally, someone attempted to pry Victim's backdoor. The fact that there were multiple windows broken and someone tried to pry the backdoor supports an inference that there was more than one person involved in the burglary. Moreover, the police found Appellant's fingerprint and palm print on Victim's stolen property, which according to Victim, he had no right to touch considering he had never been inside her home prior to the burglary.

Finally, the fact Nephew sold Victim's stolen earrings supports an inference that Nephew was also involved in the burglary. Appellant's fingerprint and palm print on the stolen goods was circumstantial evidence that he was also involved in the burglary. See State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (the State need not show a "formal expressed agreement" to prove that parties agreed and combined to achieve an illegal purpose, but may prove the agreement "by circumstantial evidence and the conduct of the parties"). Based upon their recent possession of stolen goods, the jury was entitled to infer that both men stole the goods. See, e.g., Cooper, 279 S.C. at 302, 306 S.E.2d at 599 (when one is found in possession of recently stolen property, the jury may infer circumstantially that he broke in and stole the property); see also State v. Irvin, 270 S.C. 539, 542-43, 243 S.E.2d 195, 196-97 (1978) (the trial judge properly denied a directed verdict as to both defendants where the State established the occurrence of a housebreaking and larceny and relied upon the defendants' possession of recently stolen items and the permissible inference that the defendants were the thieves). Thus, if the jury concluded that both men stole the goods, they could reasonably infer that the men stole those goods pursuant to a common plan.

The jurors were entitled to an instruction on "the hand of one is the hand of all" so that it would be clear that, even if the State could not definitively prove which one of the two men physically entered the victim's home and removed his property, Appellant was still guilty if they concluded that he and Nephew acted pursuant to, and carried out, a common plan to burglarize and rob the victim. See Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011) (holding that a charge on the hand of one is the hand of all is appropriate where the evidence is equivocal as to which of several persons acting in concert physically committed the crime). Therefore, since there was evidence in the record from which the jury could infer that Appellant and Nephew acted together to burglarize Victim's home and steal from her, the trial judge did not err in providing the jury with an instruction on "the hand of one is the hand of all." See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (if *any evidence* exists to support a charge, it should be given, and the trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence).

Further, the trial judge charged the jury on third party guilt. (R. pp. 220-221). Thus, Appellant suffered no prejudice from the hand of one is the hand of all charge. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (noting that appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result).

Accordingly, Appellant's and convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: Mary Williams-Leddon
Mary W. Leddon
S.C. Bar # 76192

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

MARY W. LEDDON
Assistant Attorney General

BY: Mary Williams Leddon
Mary W. Leddon
S.C. Bar # 76192

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Daniel S. McQueeney, Jr., Esquire
Pratt-Thomas Walker, P.A.
P.O. Box 22247
Charleston, SC 29413

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of December, 2014.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727