

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable Kristi Lea Harrington, Circuit Court Judge JUL 24 2015
Appellate Case No. 2013-001035

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SC Court of Appeals

THE STATE,

Respondent,

v.

SHAWN J. BURRIS,

Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

Appellant contends the panel should reconsider its opinion affirming his convictions for unlawful obtaining of nonferrous metals and possession of tools of a crime, asserting the Court "misapprehended" the directed verdict and evidentiary issues he raised on appeal.¹ On the contrary, the Court was well aware of Appellant's assertions on both issues, and simply rejected them.

Appellant's directed verdict argument in the Petition for Rehearing is essentially the same argument he made in the Brief of Appellant - the State failed to prove the stolen pipes were nonferrous metals because it did not submit expert testimony. (Brief of Appellant, pp. 9-10). As discussed in the Brief of Respondent, however, the store

¹Appellant did not appeal the possession of tools of a crime conviction.

manager and police officers testified the pipes were copper pipes, which are included in the statutory definition of “nonferrous metals,” and their testimony was undisputed. In denying Appellant’s directed verdict motion, the circuit court specifically referenced that testimony. (Brief of Respondent, pp. 7-8). Viewed in the light most favorable to the State, and applying the appropriate standard of appellate review, there was sufficient evidence to submit the case to the jury, and this Court properly affirmed the circuit court on that issue.

Appellant also contends the Court “disregarded the prejudice suffered by [Appellant] when the judge and the state did not do as they promised to do pretrial,” in connection with testimony regarding the amount of damages resulting from Appellant’s actions. The Court found this issue was not preserved for appellate review. As argued in the Brief of Respondent, however, even if the issue was preserved, it was meritless.

During the pretrial discussion regarding evidence of specific damage amounts, the State indicated it did not intend to go into the specific amounts damages until sentencing, but did plan to prove some amount of damages as part of the *res gestae* of the offense. The circuit court ruled the State could present evidence the copper pipe was cut, mutilated or otherwise injured, which necessarily included some cost associated with the damage, but did not rule the specific damage amount was inadmissible. (R., pp. 22-25).

In keeping with the pretrial indication, the State did not elicit any testimony regarding the specific amount of damages during the store manager’s direct examination, but merely asked the manager to describe the damages, the steps the store undertook to mitigate the damages, and the overall effect on the store, which the manager described as “catastrophic.” On cross-examination, however, Appellant referenced “invoices” Bi-Lo’s

loss prevention officers submitted to law enforcement that were purportedly used at Appellant's bond and preliminary hearings. After the manager testified some of the documents Appellant showed him related to a different store, Appellant asked why the documents were presented in the case against him, and the manager testified he did not know what invoices the loss prevention officers submitted. Appellant then asked questions about the dates work at the store occurred, clearly implying some of the work was not related to removal of the copper pipes. (R., pp. 177-192).

On re-direct, the State asked the manager about the dollar amount of damages to the store. Over Appellant's objection, the manager testified the damages were approximately \$189,000, and gave a list of things included in that amount. On re-cross, Appellant asked the manager if Bi-Lo was just trying to "make up for losses at other stores." (R., pp. 192-195).

By questioning the veracity of Bi-Lo's damages submissions, Appellant clearly attacked the store manager's credibility regarding the "catastrophic" damages sustained as a result of Appellant's actions. At a minimum, this tactic opened the door to testimony regarding the actual amount of damages, and what was included in it, to show the store manager's testimony regarding the "catastrophic" damages was credible and valid.

Appellant's implication the store fabricated the amount of damages changed the situation, the State had a right to elicit testimony in response, and Appellant cannot claim he was deceived in any way. In essence, Appellant claims "foul" while ignoring what actually occurred at trial.

Based on the foregoing and the arguments in the Brief of Respondent, Respondent State of South Carolina respectfully submits this Court properly affirmed the circuit

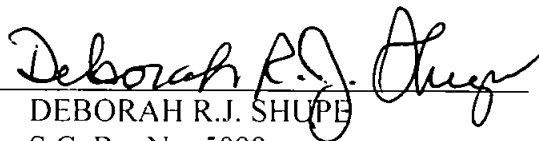
court's rulings on both issues presented. Accordingly, Appellant's Petition for Rehearing should be denied.

Respectfully Submitted,

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Attorney General

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By: 
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July 24, 2015

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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Respondent's Return to Petition for Rehearing on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 24th day of July, 2015.


SALLY B. ELLSION
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

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LaNelle Cantey DuRant
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
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Re: State v. Shawn J. Burris
Appellate Case No. 2013-001035

Dear Ms. DuRant:

Enclosed herewith and served upon you are two copies of the Respondent's Return to Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny Abbott Kitchings (original and 1 copy enclosed)
Victim Services (with enclosure)