

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

FEB 11 2016

SC Court of Appeals

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

APPELLATE CASE NO. 2013-000253

Opinion No. 2016-UP-022

RETURN TO PETITION FOR REHEARING

On January 20, 2016, this Court affirmed Appellant's conviction for first degree burglary and grand larceny. Appellant submitted a Petition for Rehearing on February 5, 2016, arguing this Court overlooked or misapprehended several points. To the contrary, this Court properly affirmed Appellant's conviction for the reasons discussed below.

I.

In his Petition for Rehearing, Appellant contends that this Court overlooked the factually intensive nature of Appellant's argument the trial court erred in denying his directed verdict. Appellant also contends this Court misapprehended Appellant's argument the trial judge erred in charging the jury on accomplice liability.

Regarding the sufficiency of the evidence for a directed verdict argument, Appellant cites *State v. Bennett*, Op. No. 27600 (S.C. Sup. Ct. filed Jan. 6, 2016) for the proposition this Court must conduct another factually intensive review of the case at hand to determine “whether the evidence presented [in the light most favorable to the State] is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.”

Appellant presents the same arguments presented in his Final Brief. Essentially, Appellant argues the State failed to present sufficient evidence of his guilt. However, the record reflects 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 continued to ask 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.

Moreover, Appellant attempts to distinguish his case from *State v. Larmand*, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015), by suggesting the State is required to offer competing testimony concerning Appellant's plausible explanation for the evidence against him. However, Appellant assumes his explanation for his fingerprints being on the stolen property was plausible. Appellant had never been into Victim's home prior to the burglary. The police found the stolen property the same night as the burglary, within a few hours of the crime. Appellant never mentioned finding the property to the police or the victim when he was present during the investigation at the victim's house that evening. A reasonable juror could certainly conclude Appellant was guilty from the State's case in chief. The explanation offered by the defense -- Appellant was returning from a chess match in another neighborhood and happened upon the plastic bag, touched the contents, and returned the bag to the ground -- lacked credibility.

In summary, the State presented substantial circumstantial evidence of Appellant's guilt sufficient to allow a reasonable juror to find the defendant guilty, pursuant to the analysis set forth in *Bennett*. Accordingly, Appellant's convictions and sentences should be affirmed.

II.

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.

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." *State v. Condrey*, 349 S.C.184,194, 562 S.E.2d 320, 325 (Ct. App. 2002)..

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 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 State v. Cooper*, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983)(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 appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result). Accordingly, Appellant's convictions and sentences should be affirmed.

In sum, this Court correctly found the trial court judge committed no reversible error and affirmed Appellant's conviction and sentence for first degree burglary and grand larceny.

CONCLUSION

This Court did not misapprehend or overlook any issues of fact or law. Therefore, Appellant's Petition for Rehearing should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

SUSANNAH R. COLE
Staff Attorney

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: 
Susannah R. Cole
Bar # 68383

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 11, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

FEB 11 2016

SC Court of Appeals
Respondents

THE STATE,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

APPELLATE CASE NO. 2013-000253

Opinion No. 2016-UP-022

PROOF OF SERVICE

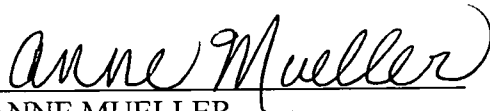
I, Anne Mueller, certify that I have served the within Return to Petition for Rehearing, with proof of service, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Daniel S. McQueeney, Jr., Esquire
Post Office Box 2498
Mount Pleasant, SC 29465

Mr. Robert M. Dudek, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

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

This 11th day of February, 2016.


ANNE MUELLER
Legal Assistant

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



RECEIVED
FEB 11 2016
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

February 11, 2016

Daniel S. McQueeney, Jr., Esquire
Post Office Box 2498
Mount Pleasant, SC 29465

RE: State v. Michael A. Manigan
Appellate Case No. 2013-000253

Dear Mr. McQueeney:

I am enclosing one (1) copy of the Return to Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

Susannah R. Cole
Assistant Attorney General
Bar # 68282

SRC/am
Enclosures

cc: Honorable Jenny A. Kitchings (original and six (6) enclosed)
Robert M. Dudek, Esquire (one (1) copy enclosed)
Victim Services