

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

William H. Seals, Jr., Circuit Court Judge

RECEIVED

FEB 09 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DAEVON H. WILLIAMS

APPELLANT

APPELLATE CASE NO. 2014-002714

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Williams' motion for a directed verdict on grand larceny when the state did not present substantial circumstantial evidence that Appellant Williams entered the home of the victim and took away the victim's items that he was seen to possess which only raised a suspicion of guilt and the state did not prove the value of the items was more than \$2000?

STATEMENT OF THE CASE

On October 16, 2014, the Dillon County Grand Jury indicted Daevon Williams on the charges of burglary second degree non-violent and grand larceny between two thousand and ten thousand dollars. On December 8-9, 2014, Williams proceeded to trial before the Honorable William H. Seals and a jury. Appellant Williams was represented by Nathan Scales, and the state was represented by Ashley A. McMahan and Jason S. Anders. Tr. 1. The jury found Williams not guilty of the burglary but did find him guilty of grand larceny. Judge Seals sentenced Williams to the maximum sentence of five years. Tr. 116, ll. 14 – 25. This appeal follows.

STATEMENT OF FACTS

On March 27, 2012, Brenda Arnette, a retired guidance counselor, was at a meeting of the hospital board when she received a call from a neighbor that her back door was left open. She asked her neighbor to check the door. He inspected it and told her that the door had been broken. Tr. 43, ll. 21 – Tr. 44, ll. 25.

Ms. Arnette called the police who were at her house when she arrived home. She realized that numerous items were missing such as her laptop, various pieces of jewelry, and old coins that had belonged to her father. Tr. 45, ll. 1 – Tr. 46, ll. 23. She testified that the total cost to replace the items was \$3449.92. Tr. 47, ll. 1 – Tr. 50, ll. 25. She had an inventory sheet that she submitted to State Farm Insurance with the missing items. However, she stated that a particular necklace, bracelet, and cross were not listed because at the time, she did not realize they were missing. She did not list the coins because they were returned to her. Tr. 49, ll. 12 – Tr. 50, ll. 6.

On cross examination, Ms. Arnette admitted that although the crime occurred on March 27, 2012, the report from State Farm was done October 24, 2012. She said she was “a little slow in doing it.” Tr. 52, ll. 14 – Tr. 53, ll. 21. She also admitted that she gave a statement to the pawn shop three days after the robbery on March 30, 2012 verifying that this same necklace, bracelet were hers. Although she knew in March that these items had been taken, she did not include them on the State Farm list. Tr. 53, ll. 22 – Tr. 54, ll. 14. These items were sold to the Main Street Pawn and Gun shop on the morning of March 28, 2012, the day after the robbery. Tr. 37, ll. 13 – Tr. 40, ll. 25.

She stated that the replacement cost of the stolen items was assessed by State Farm to be \$1550.25. Tr. 54, ll. 15 – Tr. 55, ll. 4.

Chief of Police for Lakeview, James T. McDaniel, testified that they obtained fingerprints from the crime scene but they were inconclusive and could not render a usable print. Tr. 71, ll. 19 – Tr. 73, ll. 2. The Chief reported that there were no usable fingerprints, no DNA, and no eyewitnesses to this crime. No one saw Appellant Williams near or at the crime scene. Tr. 74, ll. 5 – Tr. 75, ll. 13. The list of personal property provided to him by Ms. Arnette came to a total value of \$2501.00. Tr. 75, ll. 24 – Tr. 76, ll. 17.

Chief McDaniel admitted that the monetary value of the stolen property of Ms. Arnette was an educated guess. It was based on what Ms. Arnette told him. Tr.76, ll. 20 – Tr. 79, ll. 7.

Chief McDaniel also testified that Williams did not provide a statement nor confession. Tr. 78, ll. 1 – 22.

Stephen Burkett was operating the Main Street Pawn and Gun shop on March 28, 2012. He bought a necklace, bracelet and charm from Daevon Williams for \$80 on that date. Williams signed the pawn ticket as both the customer and Burkett have to sign the ticket as a contract. Burkett said that Williams was a customer of the pawn shop. Tr. 37, ll. 13 – Tr. 42, ll. 20.

Ronald Conyers worked at the IGA grocery store in Lakeview. He knew Daevon Williams because Conyers knew Williams' parents. Conyers gave a statement to Chief McDaniel on March 29, 2012 explaining that Williams had approached him on that date asking Conyers to hold an old coin for him. Williams asked for a regular dollar in exchange. Williams did bring the regular dollar back to Conyers. Tr. 57, ll. 12 - Tr. 60, ll. 3.

Brian Ammons worked at the Save a Coin convenience store in Lakeview. In March 2012, Williams came into the store and tried to sell to Ammons some old coins. Tr.

60, ll. 14 – Tr. 62, ll. 21. A couple of days later, Daryl Arnette who was the son of Ms. Brenda Arnette, came into the convenience store. Daryl told Ammons that he had some old coins that were “missing.” Ammons told him that someone had been in the store with some old coins, but Ammons did not know his name. Tr. 63, ll. 1 – 24.

Daryl Arnette testified that he had returned to Lakeview from Atlanta in January 2012 and was living with his mother. He had items stolen during the break-in at his mother’s home. Tr. 64, ll. 10 – Tr. 65, ll. 25. After Ammons told him of the coins, Daryl went to the police and told them. Ammons had also described to Daryl the car that the man with the coins was in. As Daryl was passing the IGA, he saw this car so he went into the IGA. There he saw Williams wearing one of Daryl’s tee shirts. Daryl knew it was his because it was given only to people who worked at a special event in Atlanta. It was from a local high school’s first annual car show, and Daryl was a car salesman in Atlanta. When Daryl told Williams that he got that shirt from Daryl’s drawer, Williams replied that Daryl “did not know what he was talking about.” Tr. 66, ll. 23 – Tr. Tr. 70, ll. 25.

In a pretrial motion, defense counsel asked the judge to dismiss the grand larceny charge on the basis that the conduct did not match the crime. He argued that the inventory summary by State Farm Insurance listed the cash value of the property at \$1229.67 with a total settlement of \$1899.67. This amount was below the statutory required amount of \$2000 as a threshold amount. Since the State Farm amount did not meet the threshold required, the charge should be dismissed. The judge denied the motion at that time but said it could be taken up at the directed verdict stage. Tr. 28, ll. 19 – Tr. 29, ll. 13.

After the state rested, defense counsel moved for a directed verdict on both the burglary and grand larceny. Counsel argued that the evidence only raised a mere suspicion

of Williams' guilt. The state presented no evidence of the elements of the crimes as nothing placed Williams at the scene of the crime. Tr. 79, ll. 13; Tr. 83, ll. 15 – Tr. 84, ll. 4. Counsel argued:

Your Honor, again, my client's mere possession of the items does not amount to proof that he is guilty of burglary or grand larceny.

Tr. 84, ll. 5 – 7.

Counsel then asked for a directed verdict on the grand larceny based on the fact that the value of the missing items did not meet the amount of \$2000 as required by the statute. He argued that the crime was committed March 27, 2012, and the inventory summary list was created in October 2012. Tr. 84, ll. 8 – 24.

The state argued that they were not interested in the weight but merely the existence. The judge remarked that in a criminal trial, substantial circumstantial evidence was required. The state argued that the replacement value of the items was over \$2000. The fact that Williams possessed the stolen items the next day was enough for the jury to infer his guilt. Tr. 85, ll. 1 – Tr. 86, ll. 6. The judge stated:

Court: The key is substantial circumstantial evidence.

State: Yes, Sir.

Court: There doesn't appear to be any direct evidence or not much anyway.

Tr. 86, ll. 7 – 11.

The judge continued to say that Williams did pawn the stolen items the next day; he had two old coins he tried to trade; and he was caught by Daryl Arnette wearing his tee shirt. The judge ruled there was enough circumstantial evidence to make it substantial. Tr. 86, ll. 11 – 20.

Regarding the value of the items for the grand larceny, the judge stated that the value went up and down. Therefore, that was an argument for the jury. He denied the directed verdict motion. Tr. 86, ll 21 – 25.

In his closing argument, defense counsel argued that he was not disputing that Williams was in possession of the stolen items. However, he argued that the state could not put Williams at the scene of the crime, and that was necessary for a verdict of guilty on any of these charges. Tr. 101, ll. 8 – Tr. 102, ll. 10.

The judge decided on his own to charge the jury on the lesser include charge of petit larceny. The state objected. The judge replied that the value had been an issue throughout the trial and had gone “up and down.” He was going to charge it. Tr. 82, ll. 16 – Tr. 83, ll. 8.

The jury found Williams not guilty of the burglary but found him guilty of grand larceny. Tr. 112, ll. 4 – 25.

ARGUMENT

The trial court erred in denying Appellant Williams' motion for a directed verdict on grand larceny when the state did not present substantial circumstantial evidence that Appellant Williams entered the home of the victim and took away the victim's items that he was seen to possess which only raised a suspicion of guilt, and the state did not prove the value of the items was more than \$2000.

South Carolina Code Section 16-13-30 (B) provides that larceny of goods, chattels, instruments, or other personally valued in excess of two thousand dollars is grand larceny.

Larceny is defined in Black's Law Dictionary 609 (Abridged 6th ed. 1991), as: "the felonious stealing, taking and carrying or driving away another's personal property with the intent to convert it or to deprive owner thereof." Williams' indictment for grand larceny, Indictment 2014-GS-0642, provides:

That Daevon Hezzie Williams did , in Dillon County, on or about March 27, 2012, commit the crime of Grand Larceny, to wit: Daevon Williams did take and carry away the personal property of another, valued between Two Thousand Dollars (\$2000) and Ten Thousand dollars (\$10,000).

On appeal of a denial of a directed verdict of acquittal, the Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

A directed verdict motion should not be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v.

Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

In State v. Bostick 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held that the state presented insufficient evidence to submit the murder charge to the jury. The Court held that the trial court should have granted a directed verdict because the state's evidence only raised a "suspicion of guilt." Bostick was charged with the murder of his neighbor, who was an older woman. The evidence against Bostick consisted of items (car keys, calculator) belonging to the victim which were found in the Bostick family's burn pile; the fire accelerant in the burn pile was one not used by Bostick's mother; Bostick had a pattern on his shoes that matched the accelerant which was gasoline; the blood found on Bostick's jeans did not match the victim's.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court held that the circumstantial evidence did not tend to prove the defendant's guilt, and the defendant was entitled to a directed verdict because the state failed to produce evidence of the offense charged. The evidence against Odems consisted of his location in the getaway car in this burglary case ninety minutes after the burglary; the defendant fled from law enforcement; and Odems asked an uninvolved person to lie for him to the police.

There is clearly even less evidence in Williams' case to support a grand larceny charge than the evidence in Bostick or Odems where directed verdicts were granted. The state presented no evidence that Williams was even near the vicinity of Ms. Arentte's home, and no evidence that he entered it. The jury did not believe the state's evidence that Williams entered the home. Therefore, he could not have taken the items from the home. The judge

recognized there was no direct evidence of grand larceny. The judge erred in finding there was substantial circumstantial evidence. The most that Williams could be found guilty of based on the state's evidence was receiving stolen goods. The incident happened before 5:00 PM on March 27, 2012. Williams was at the pawn shop at 10:30 the next day. There was ample time for someone to have given him the stolen items. There was no DNA, no fingerprints, no eyewitnesses, and no statement by Williams.

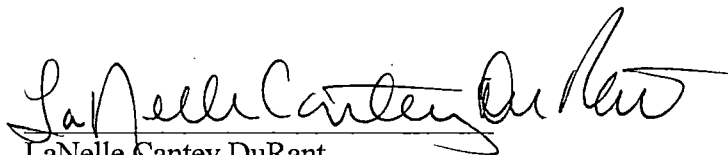
The second reason the judge should have granted the directed verdict was that the state did not prove the value of the stolen goods. The most objective estimate was from State Farm Insurance which was below the \$2000. The chief of police relied on Ms. Arnette's word. However, her word was not reliable as she did not do the inventory for State Farm until seven months after the incident. The judge knew the amount varied. Therefore that evidence was not reliable and should not have been allowed. The judge did not perform his role as gatekeeper of the reliability of the evidence. State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).

The judge should have granted the directed verdict on the grand larceny.

CONCLUSION

Based on the above, the conviction and sentence should be vacated, and the case remanded for the entry of a directed verdict.

Respectfully submitted,

A handwritten signature in cursive script that reads "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Dillon County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

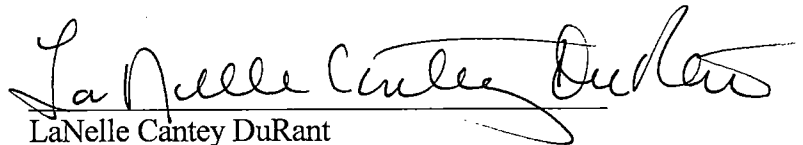
V.

DAEVON H. WILLIAMS

APPELLANT

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 J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Daevon H. Williams, #341606, at Palmer Pre-Release Center, 2012 Pisgah Road, Florence, SC 29501, this 9th day of February, 2016.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2016.

Maic M. S. (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.