

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-000526

THE STATE,

Respondent,

v.

MARY HELEN ROBERTS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's directed verdict motion because the State presented evidence supporting a conviction for shoplifting.

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant for shoplifting-enhancement. (R. *Indictment). On December 14, 2016, Appellant proceeded to a bench trial before the Honorable R. Lawton McIntosh. James Boyd, Esquire, represented Appellant, and Assistant Solicitor Ryan Newkirk represented the State. The judge found Appellant guilty and sentenced her to six years' imprisonment, suspended on two years' service with five years of probation to follow. (Tr. 34).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of her appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On January 20, 2016, Appellant was captured on a surveillance camera entering a Walmart with no merchandise, obtaining two jugs of oil from the shelves and placing them in a cart, and then going to the customer service desk where she “returned” the oil and received a store gift card for the value of the items. (Tr. 6, lines 17–24; Tr. 10, lines 3–13). Steven Flowers, a member of the Walmart loss prevention team, approached her to confront her about shoplifting and asked her to accompany him to the customer service office, which she refused to do. Even though she had already bought and paid for some groceries, she left the groceries and exited the store with the gift card. (Tr. 10, line 17–Tr. 11, line 8). She was subsequently arrested and charged with shoplifting.

At trial, Flowers explained that after Appellant refused to come with him and left the store, he contacted police and made a video of what the surveillance camera had captured. (Tr. 11, lines 9–11). Because she made a “return” without a receipt, the store had obtained her identification, so he was able to give police her driver’s license number and name. (Tr. 16, lines 20–23). Officer Eric Olson then testified that he used the information to search the SCDMV, which brought up a photograph of Appellant that he compared to the photograph he had of the suspect in the vestibule area of Walmart on the day of the incident. (Tr. 17, lines 9–23). He could clearly see it was the same person, so he printed the DMV photo, showed it to one of the loss prevention officers at Walmart to confirm the identification, and sought a warrant for Appellant’s arrest. (Tr. 17, line 25–Tr. 18, line 7).

After the State rested, defense counsel moved for a directed verdict, arguing the State had made out a case of obtaining property by false pretenses but had not made out a case of shoplifting. (Tr. 19, lines 13–23). While he conceded that Appellant took possession of the oil, he argued she did not deprive the merchant of the oil because it went right back to Walmart when

she “returned” it. He argued the fact that she took a gift card in return for the oil was definitely a false pretense because she falsely claimed to have purchased the oil when she did not. (Tr. 19, line 24–Tr. 20, line 16). The solicitor responded that while he initially wrestled with what to charge in the indictment, he believed the crime fit into subsection (A)(1) of section 16-13-110. (Tr. 21, lines 10–13). He argued that Appellant took possession of the merchandise “with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value.” (Tr. 21, lines 13–20). He reasoned that because Walmart gave Appellant the value of the oil in a gift card, even if the oil went back on the shelf and was resold, Walmart would still be out the initial purchase. (Tr. 21, lines 21–25). The trial judge agreed and then pointed out that although the oil stayed in the store, she took the gift card—which was the value of the oil—with her when she left the store. (Tr. 22, lines 3–9). The trial judge denied the motion.

ARGUMENT

The trial court properly denied Appellant's directed verdict motion because the State presented evidence supporting a conviction for shoplifting.

Appellant argues the trial judge erred in denying Appellant's directed verdict motion, claiming the facts did not warrant a shoplifting charge. On the contrary, the facts of the case as presented by the State fit into subsection (A)(1) of the shoplifting statute. When Appellant took oil off the shelf and "returned" it for a gift card, she took possession of merchandise offered for sale by the store with the intention of depriving the merchant of the possession, use, or benefit of that merchandise without paying the full retail value, as outlined in the shoplifting statute. Thus, the trial judge properly denied the directed verdict motion and this Court should affirm.

It is axiomatic that in ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *Id.* Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). Furthermore, "[w]hat a legislature says in the text of a statute is considered the best evidence of

the legislative intent or will. Therefore, the courts are bound to give effect to the express intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Appellant argues that rather than presenting a shoplifting case, the State presented an obtaining property under false pretenses case. The offense of obtaining property by false pretenses is codified in section 16-13-240 of the South Carolina Code. It is defined as:

“A person who by false pretense or representation . . . obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property.” S.C. Code Ann. § 16-13-240 (2015).

Under the plain language of the statute, the victim of the crime has to be a “person,” which Walmart is not. The plain meaning of “person” is “a human being.” Black’s Law Dictionary 1324 (10th ed. 2014). A store is not a human being. Thus, Appellant’s argument that obtaining property by false pretenses fits the crime she committed is incorrect. In fact, the only offense that fits the circumstances is shoplifting. The facts fit squarely into subsection (A)(1).

(A) A person is guilty of shoplifting if he: (1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value.

S.C. Code Ann. § 16-13-110 (A)(1) (2015). Walmart is a merchant; Appellant took possession of merchandise offered for sale there; and she intended to, and did, deprive Walmart of the benefit of the merchandise without paying the full retail value when she obtained a gift card for the valued amount without paying for it. The trial judge correctly reasoned that she took the value of the oil when she left the store with the gift card, which was loaded with the price of the oil.

While South Carolina has not addressed the specific facts of this case, where merchandise is taken and traded for a gift card of equal value, Georgia has. In *Grady v. State*, 742 S.E.2d 22, 23 (Ga. Ct. App. 2013), Grady brought two racquetball racquets into a store, got a return sticker for them, placed them on a shelf, and instead attempted to return two more expensive tennis racquets. The store issued a gift card in exchange for the racquets, and Grady was stopped while leaving. *Id.* Georgia's shoplifting statute is similar to South Carolina's, and Grady argued the state could not prove intent because he had bad eyesight that prevented him from being able to tell that his refund was more than the racquetball racquets were worth. *Id.* However, the court found that to show "intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession therefor or of the value thereof," it was enough that the defendant had made false statements that the merchandise he was attempting to obtain a refund for had been paid for. *Id.*

In another Georgia case, the facts are even more similar to the case at hand. In *Gilliam v. State*, 517 S.E.2d 348, 349 (Ga. Ct. App. 1999), Gilliam entered the store empty handed like Appellant did, picked up a jacket, and "returned" it for a merchandise voucher. The court found Gilliam intended to appropriate the jacket to his own use to by using it to get cash, depriving the store of the possession of the jacket, at least temporarily, and representing that he owned it. *Id.* at 350. The court noted that the refund represented the value of the jacket. *Id.*

Here, the State presented sufficient evidence that Appellant deprived the store of possession of the oil, falsely represented she owned it, and received the value of it in the form of a gift card. Thus, the trial court properly denied the directed verdict motion and proceeded to consider the evidence as the fact-finder in the case. This Court should affirm.

CONCLUSION

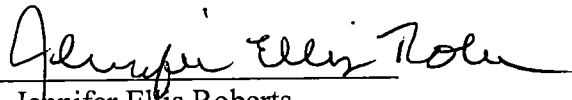
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 29, 2017

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APPEAL FROM YORK COUNTY
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R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-000526

THE STATE,

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v.

MARY HELEN ROBERTS,

Appellant.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, 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 29th day of August, 2017.

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AUG 29 2017

SC Court of Appeals

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August 29, 2017

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RE: State v. Mary Helen Roberts
Appellate Case No. 2017-000526

Dear Mr. Pachak,

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/db
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division