

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SAMUEL EDWARD ALEXANDER, JR.,

APPELLANT

APPELLATE CASE NO 2016-000421

Appeal from Chesterfield County

Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED

AUG 09 2018

Opinion No. 2018-UP-335

SC Court of Appeals

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Samuel Edward Alexander, Jr. respectfully petitions the Court for a rehearing of its Opinion No. 2018-UP-335 issued on July 25, 2018 based upon the following points overlooked or misapprehended by the Court:

I.

**“As to whether the circuit court properly denied Alexander’s directed verdict motion”**

Grand larceny is the felonious taking and carrying away of the goods of another against the owner’s will or without his consent. State v. Keith, 283 S.C. 597, 325 S.E.2d 325 (1985);

State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979). The “corpus delicti” in larceny consists of two elements, the loss of the property by the owner and the loss by a felonious taking. State v. Teal, 225, S.C. 472, 82 S.E.2d 787 (1954).

The State is required to prove every element of a charged offense to obtain a conviction. State v. Attardo, 263 S.C. 546, 211 S.E.2d 868 (1975); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). In reviewing the denial of a motion for directed verdict, the appellate court must view the evidence in the light most favorable to the State. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). However, where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted. See State v. Lee, 294 S.C. 461, 365 S.E.2d 734 (1988).

None of the ten witnesses who testified on behalf of the State offered any evidence which placed Appellant at or near the home from which the goods were missing. The record contains no evidence that Appellant took or carried away the goods in this case. Due to the non-existence of evidence indicating that Appellant took or carried away the property, the jury should have not received the case; the jury could not have reasonable inferred guilt as to this element of the grand larceny charge.

The evidence offered by the State at trial was testimony from Amanda Stephens that approximately \$35,000 of her property was missing, evidence that some of Stephens’ belongings were allegedly located inside Appellant’s residence, and testimony from Julius Butler that Appellant was in possession of a trailer with Stephens’ belongings in it. During an interview conducted by Joel Carnes of the Chesterfield County Sheriff’s Office, Appellant never confessed to stealing the trailer; only possessing items from it. R. 66, ll.17 – 18. Notably absent was any

evidence that Appellant was involved in the asportation of Stephens' property. Appellant confided in Butler that he purchased the trailer. R. 55, ll. 11 – 19.

As charged by the trial judge, the State “must prove beyond a reasonable doubt that the defendant took and carried away the property of another against the will or without the consent of the other person.” R. 88, ll. 3 – 7.

Respectfully, even in the light most favorable to the State, no evidence existed, circumstantial or otherwise, which would have been sufficient to allow a reasonable juror to find Appellant guilty of grand larceny beyond a reasonable doubt. As argued by defense counsel, the State “certainly offered evidence of possession of stolen goods,” but “[t]here’s been no evidence that establishes [Appellant’s] presence at the scene of the crime at the time alleged.” R. 67, ll. 18 – 24. The State failed to prove every element of grand larceny, and substantial circumstantial evidence reasonably tending to prove the guilt of Appellant was lacking in this matter.

## II.

### **“As to whether the circuit court properly instructed the jury on the law of possession of recently stolen property”**

The trial judge instructed the jury with the law surrounding grand larceny:

The State must prove beyond a reasonable doubt that the defendant took and carried away the property of another against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property even for an instant by the defendant is enough to show a taking and carrying away of the property.

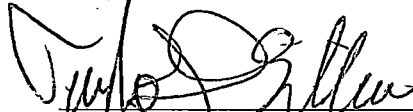
R. 88, ll. 3 – 10.

Respectfully, this Court’s reliance on State v. Dewitt, 254 S.C. 527, 176 S.E.2d 143, 145 (1970), overruled on other grounds by State v. Cooper, 279 S.C. 301, 306 S.E.2d 598 (1983) is misplaced. In Dewitt, the South Carolina Supreme Court held the inference that “one is found in possession of recently stolen property” is “one of fact and not of law.” 254 S.C. 527, 530, 176

S.E.2d 143, 145. “It is evidentiary in nature and not conclusive.” Id. “The fact of possession is merely circumstantial evidence of guilt and should be charged as such.” Cooper 279 S.C. at 302, 306 S.E.2d at 599.

At neither the instruction on possession of recently stolen goods nor the jury charge on grand larceny did the circuit court properly instruct the jury that possession is merely circumstantial evidence. R. 86, l. 25 – R. 87, l. 6; R. 88, ll. 3 – 16. In fact, the words “merely circumstantial” cannot be found within the record. Additionally, the charged language regarding “slightest removal” or “complete possession” were not mentioned within the context of recently stolen property. As a result, the charge was flawed, and Appellant was prejudiced.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

TAYLOR D GILLIAM  
Appellate Defender

This 9th day of August, 2018.

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Honorable Roger E. Henderson, Circuit Court Judge

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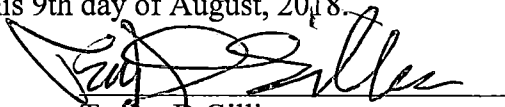
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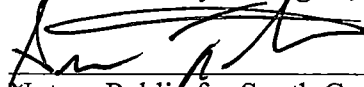
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The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Samuel E. Alexander, Jr., at 320 S. Gilliard St., Florence, SC 29506, this 9th day of August, 2018.

  
Taylor D. Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE  
ME this 9th day of August, 2018.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 10/30/2022