

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chesterfield County
Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED

OCT 22 2018

S.C. SUPREME COURT

Opinion No. 2018-UP-335 (S.C. Ct. App. filed July 25, 2018)

2014-GS-13-0837

THE STATE,

RESPONDENT,

V.

SAMUEL EDWARD ALEXANDER, JR.,

PETITIONER

APPELLATE CASE NO. 2016-000421

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX i

OPINION NO. 2016-000421 (S.C. Ct. App. filed July 25, 2018).....1

PETITION FOR REHEARING.....4

ORDER DENYING PETITION FOR REHEARING.....9

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE 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
Roger E. Henderson, Circuit Court Judge

Unpublished Opinion No. 2018-UP-335
Submitted May 1, 2018 – Filed July 25, 2018

AFFIRMED

Appellate Defender Taylor D. Gilliam, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Assistant Attorney General Jennifer Ellis Roberts, all
of Columbia, and Solicitor William B. Rogers, Jr., of
Bennettsville, for Respondent.

PER CURIAM: Samuel Alexander, Jr. appeals his conviction of grand larceny, for
which he was sentenced to ten years' imprisonment. Alexander maintains the circuit

court erred by (1) failing to grant his motion for a directed verdict and (2) giving a jury charge on possession of recently stolen property that contained burden-shifting instructions. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court properly denied Alexander's directed verdict motion: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the [circuit] court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("On appeal from the denial of a directed verdict, [the appellate court] must view the evidence in the light most favorable to the State."); *State v. Pearson*, 415 S.C. 463, 473, 783 S.E.2d 802, 807 (2016) ("This objective test is founded upon reasonableness[;] [a]ccordingly, in ruling on a directed verdict motion [when] the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." (quoting *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016))); *State v. Rogers*, 405 S.C. 554, 571, 748 S.E.2d 265, 274 (Ct. App. 2013) ("The supreme court has consistently evaluated the circumstantial evidence in a case as a whole, not in isolation from other evidence."); *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 ("[Thus], if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.").

2. As to whether the circuit court properly instructed the jury on the law of possession of recently stolen property: *State v. Brandenburg*, 419 S.C. 346, 349, 797 S.E.2d 416, 418 (Ct. App. 2017) ("An appellate court will not reverse the [circuit court]'s decision regarding a jury charge absent an abuse of discretion." (alteration in original) (quoting *State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011))); *id.* ("An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law." (alteration in original) (quoting *State v. Patterson*, 367 S.C. 219, 224, 625 S.E.2d 239, 242 (Ct. App. 2006))); *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009) ("In reviewing jury charges for error, [an appellate court] must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial."); *State v. Kinard*, 373 S.C. 500, 503, 646 S.E.2d 168, 169 (Ct. App. 2007) ("Generally, the [circuit] court is required to charge only the current and correct law of South Carolina."); *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("The law to be charged must be determined from the evidence presented at trial." (quoting *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001))); *Brandenburg*, 419 S.C. at 349, 797 S.E.2d at 418 ("To warrant reversal, a [circuit court]'s refusal to give a requested jury charge must be both

erroneous and prejudicial to the defendant." (alteration in original) (quoting *State v. Adkins*, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003)); *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583 ("[I]f the [circuit court] refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." (quoting *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989))); *State v. Dewitt*, 254 S.C. 527, 530, 176 S.E.2d 143, 145 (1970), (noting there is an inference or presumption of fact that arises when an individual is found in possession of recently stolen property that he is the thief), *overruled on other grounds by State v. Cooper*, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983); *id.* at 532, 176 S.E.2d at 146 ("In order to sustain an inference of guilt from the possession of stolen property, it must be shown that it was recently stolen."); *id.* ("The presumption or inference of guilt from possession of recently stolen goods is simply an evidentiary fact to be taken into consideration by the jury, along with the other evidence in the case, and to be given such weight as the jury determines it should receive."); *Cooper*, 279 S.C. at 302, 306 S.E.2d at 599 ("The fact of possession is merely circumstantial evidence of guilt and should be charged as such."); *id.* ("[P]ossession of recently stolen property should be characterized merely as an evidentiary fact and not described as 'rebuttable' or requiring a 'reasonable explanation.'"); *Mattison*, 383 S.C. at 479, 697 S.E.2d at 583 ("The substance of the law is what must be charged to the jury, not any particular verbiage." (quoting *Adkins*, 353 S.C. at 318–19, 577 S.E.2d at 464)); *Dewitt*, 254 S.C. at 534, 176 S.E.2d at 147 ("There is no prescribed length of time for a jury to reach a verdict."); *id.* ("Something more must appear, therefore, to warrant interference with a jury's verdict than the mere brevity of their deliberations.").

AFFIRMED.¹

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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

Opinion No. 2018-UP-335

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, 11.17 – 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,



TAYLOR D GILLIAM
Appellate Defender

This 9th day of August, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

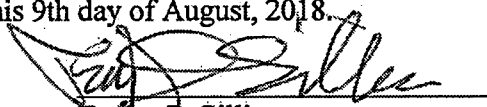
V.

SAMUEL EDWARD ALEXANDER, JR.,

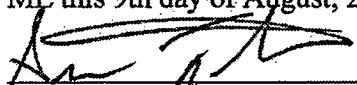
APPELLANT

CERTIFICATE OF SERVICE

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.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022

The South Carolina Court of Appeals

The State, Respondent,

v.

Samuel Edward Alexander, Jr., Appellant.

Appellate Case No. 2016-000421

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff

J.

John D. Beatty

J.

Stephen P. McDonald

J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
 John Benjamin Aplin, Esquire
 Taylor Davis Gilliam, Esquire
 Jennifer Ellis Roberts, Esquire

FILED

Sept. 20, 2018

William Benjamin Rogers, Jr., Esquire
The Honorable Roger E. Henderson

RECEIVED

SEP 20 2018

APPELLATE DEFENSE