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S.C. SUPREME COURT

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

APPELLATE CASE NO 2016-000421

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred in failing to direct a verdict in Appellant's favor on the charge of grand larceny where the state presented no direct or substantial circumstantial evidence that Appellant took or carried away any of the property in question?

2.

Whether the court's charge to the jury regarding grand larceny violated Appellant's right requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury and was not based on statutory language?

STATEMENT OF THE CASE

Appellant was indicted for grant larceny in excess of $10,000 in violation of S.C. Code Ann. 16-13-30(b)(2). R. 101 – 102. He proceeded to trial on February 18, 2016 in front of the Honorable Roger Henderson in Chesterfield County. R. 1. Mary Johnson-Lee represented the State, and Appellant was represented by Tonya Copeland-Little. R. 1. The jury found Appellant guilty, and Judge Henderson sentenced Appellant to the maximum sentence of 10 years. R. 100, ll. 10 – 13.

This brief follows.

ARGUMENT

1.

The trial judge erred in failing to direct a verdict on the charge of grand larceny where the state presented no direct or substantial circumstantial evidence that Appellant took or carried away any of the property in question.

Relevant facts

The events giving rise to the indictment began on October 29, 2014. R. 17, ll. 16 - 17. Amanda Stephens, Complainant, lived in Chesterfield County and was scheduled to travel to Mississippi on October 30, 2014 for military service. R. 17, l. 25 – R. 18, l. 13. In order to prepare for this trip, she loaded her belongings into a 7 x 16 trailer which belonged to her brother. R. 18, ll. 17 – 21. She contacted law enforcement after realizing that the trailer had gone missing. R. 19, ll. 7 - 16. She estimated the value of the goods to be $35,000. R. 23, ll. 13 - 18.

While investigating other alleged thefts, a member of the Chesterfield County Sheriff's Office located some of Complainant's belongings at Appellant's home. R. 26, ll. 8 – 24. A warrant was obtained in order to search the interior of Appellant's house. R. 26, ll. 24 - 25. Items belonging to Complainant were recovered from Appellant's residence. R. 27, ll. 6 - 13. At the time of the search warrant execution, no individuals were present at Appellant's residence. R. 32, ll. 12 - 21; R. 35, ll. 12 - 14; R. 40, line 22 – R. 41, line 1. A member of law enforcement who was present at the time of the search testified that she was unsure whether the power was on at the house. R. 33, ll. 3 – 4.

Appellant's friend and co-defendant, Julius Butler, testified that Appellant brought a trailer containing Complainant's belongings to him "one morning".[1] R. 49, ll. 3 - 10. Butler testified that Appellant claimed to have bought it. R. 49, ll. 3 - 14. Butler testified that Appellant never claimed to have stolen the trailer. R. 55, ll. 16 – 18.

A lieutenant with the Sheriff's Department, Anthony Jordan, called Appellant after the search warrant was executed. R. 41, ll. 2 - 18. Appellant met Jordan in Hartsville and rode with another member of law enforcement, Sergeant Joel Carnes, back to Chesterfield while Detective Greg Burns drove Appellant's truck to the Sheriff's Office. R. 41, ll. 2 - 18. Appellant was not read his Miranda[2] rights. R. 41, ll. 18 - 20. At that time, Complainant located additional items belonging to her in Appellant's truck. R. 65, ll. 10 - 25. Sergeant Carnes interviewed Appellant, and although he admitted that he was in possession of items which Complainant claimed had been in the trailer, Appellant never confessed to stealing the trailer. R. 66, ll. 12 – 18.

Following Carnes' testimony, the State rested and Appellant moved for a directed verdict based on the lack of evidence putting Appellant at the scene of the crime on or about October 29, 2014. R. 67, ll. 8 – 24. The State failed to address this element of grand larceny in its response, only discussing possession:

> [P]er the testimony of Mr. Butler, the defendant is the one who drove the trailer to his home even though he gave a story about where he got it from that's a jury question. Obviously, we've presented more than enough evidence to show that he was in possession of it, evidence that he actually pulled that trailer to Mr. Butler's home so we think that, that's clearly a jury question for them to decide whether or not we met the burden of proof for them to him find [sic] guilty.

R. 68, ll. 1 – 9.

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[1] Butler does not indicate the temporal proximity of this meeting in relation to the alleged theft.

[2] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Similarly, the trial court skimmed over the "taking and carrying away"[3] requirement, stating: "[t]here is certainly substantial circumstantial evidence in this case if there's not any direct evidence but there are some question as far as direct evidence as well but it's certainly a jury question at this point in time so I deny your motion." R. 68, ll. 11 - 15.

However, no testimony was offered which placed Appellant at or near Complainant's home in October 2014, the time of the alleged theft. The search warrant was executed on November 18, 2014, more than two weeks after the theft was reported to law enforcement. R. 39, ll. 12 – 13.

Discussion

The State's case against Appellant for the grand larceny charge was largely circumstantial. 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). During Appellant's trial, a total of 10 witnesses testified for the prosecution. None of those witnesses offered evidence that Appellant took or carried away the goods in question. Therefore, at least one element of grand larceny was not present, and the Court should have directed a verdict in Appellant's favor.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991); State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct.App.1997). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). If there is any direct evidence or any substantial

[3] State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002).

circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997).

When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "The trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt." State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 779 (2011). The State has the burden of proving "the accused was at the scene of the crime when it happened and that he committed the criminal act". State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). "The [trial] court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

None of the 10 witnesses who testified on behalf of the prosecution offered any evidence which placed Appellant at or near Complainant's home. Appellant readily admitted to being in possession of Complainant's belongings, but the record does not include any evidence, from law enforcement or otherwise, which indicates that Appellant was the individual who stole Complainant's belongings and was thereby even potentially guilty of grand larceny.

In State v. Arnold, our Supreme Court held fingerprint evidence placing Arnold with the victim on the day of the murder was not substantial and merely raised a suspicion of Arnold's guilt. 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004). In Arnold, the victim's body was discovered off a dirt road in Colleton County. Id. at 388, 605 S.E.2d at 530. The victim was last seen alive three days earlier, when he borrowed a friend's BMW to go to a dentist appointment.

Id. One of the State's witnesses testified he had introduced the victim to Arnold. Id. The witness indicated he had received a message from Arnold to call him at a phone number belonging to Arnold's father, who lived in Gray, Tennessee. Id. at 389, 605 S.E.2d at 530. The borrowed BMW was later found in a parking lot in Johnson City, Tennessee, approximately ten miles away from where Arnold's father lived. Id. The BMW had unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the car's center console. Id. In concluding that the circumstantial evidence presented by the State was not sufficient to overcome a directed verdict motion, the court reasoned:

> Viewing the evidence most favorably to the State, [Arnold]'s fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where [Arnold] was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that [Arnold] killed [the victim]. Further, there is no evidence [Arnold] was at the scene of the crime, which according to the State's theory was in Colleton County.

Id. at 390, 605 S.E.2d at 531 (footnote omitted).

Similar holdings can be found in Bostick and Odems, supra. In Appellant's case, multiple witnesses testified that Appellant was only in possession of stolen property; no evidence was offered which placed Appellant at the scene of the crime. Therefore, no evidence existed pertaining to the taking or carrying away of Complainant's property. Appellant even admitted to being in possession of Complainant's property the month following the theft, which could induce a suspicion of guilt had Appellant been charged with possession of stolen property. However, he was charged with grand larceny, and there was no evidence which placed Appellant at the scene of the crime. Due to the non-existence of evidence indicating that Appellant took or carried away Complainant's property, the jury should not have received the case because it could not have reasonably inferred guilt as to all elements of the grand larceny charge.

When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). Even in the light most favorable to the State, there is no evidence which indicates that Appellant took or carried out property from Complainant's home. A jury therefore could not find Appellant guilty of grand larceny beyond a reasonable doubt. The trial court should have directed a verdict in Appellant's favor.

2.

The court's charge to the jury regarding grand larceny violated Appellant's right requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury and was not based on statutory language.

Relevant facts

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, l. 3 – 10. (emphasis added).

Defense counsel objected to this instruction. R. 90, ll. 7 – 12. Defense counsel explained, "it sounds confusing. It makes it sound as if merely being in possession of the property is proof that … he stole the property." R. 90, ll. 7 – 12. The trial judge disagreed and found the language proper based on the statute. R. 90, ll. 13 – 17. The statute, as cited by the trial judge at the beginning of the trial reads as follows:

> (A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor, triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.
>
> (B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:
>
> > (1) five years if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;

(2) ten years if the value of the personalty is ten thousand dollars or more.

S.C. Code Ann. § 16-13-30.

Discussion

The trial court's jury charge contained a burden-shifting instruction which the jury relied on as an accurate and perhaps conclusive presumption. The larceny statute does not include language indicating "complete possession of the property even for an instant is enough to show a taking and carrying away" as the trial court stated. Counsel has searched for relevant and binding authorities which include that language and has found only one. Collins v. Cartledge, No. 2:14CV1200-BHH-WWD, 2014 WL 8396824, (D.S.C. Nov. 14, 2014), report and recommendation adopted, No. CIV.A. 2:14-1200-BHH, 2015 WL 1518144 (D.S.C. Mar. 30, 2015). In that instance, the issue of jury instruction was not raised during PCR and was therefore procedurally barred. Outside of that case, counsel found no South Carolina state or federal sources containing language indicating that the slightest removal of the property or the complete possession of stolen property even for an instant was sufficient to prove a taking.

Our Supreme Court has consistently disapproved instructions in larceny prosecutions which place the burden on the defendant to explain how he came into possession of recently stolen goods. State v. Gaines, 271 S.C. 65, 244 S.E.2d 539 (1978). Conclusive presumptions "conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime," Morissette v. United States, 342 U.S. 246, 275, 72 S.Ct. 240, 255, 96 L.Ed. 288 (1952), and they "invad[e the] factfinding function," United States Gypsum Co., 438 U.S. 442, 446, 98 S.Ct. 2864, 2878, 57 L.Ed.2d 854 (1978), which in a criminal case the law assigns to the jury. Sandstrom v. Montana, 442 U.S. 510, 510, 99 S. Ct. 2450, 2452, 61 L. Ed. 2d 39 (1979).

Based on the trial court's charge, complete possession of stolen goods the month after the theft is tantamount to taking and carrying away. The logic behind this jury instruction fails to account for the intervention or involvement of a third party: an unknown individual could have stolen Complainant's belongings then transferred possession to Appellant. In that instance, Appellant would have complete possession of the stolen property without having taken or carried it away from Complainant. A thief could have stolen Complainant's property and abandoned it on the side of the road after a tire on the trailer went flat. Additionally, and as defense counsel discussed in closing arguments, Appellant's co-defendant Butler may have been the one who stole Complainant's property, as the trailer was transferred from him to a potential buyer. R. 42, ll. 19 – 25. Appellant could have even bought the trailer from Godley Moody Auction like he allegedly told Butler. R. 55, ll. 16 – 19. Either way, the given instruction is not an accurate portrayal of the law, and the jury's verdict should therefore be set aside and Appellant's conviction should be reversed.

Generally, the trial judge is required to charge only the current and correct law of South Carolina. State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000); Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct.App.1998); see also State v. Buckner, 341 S.C. 241, 534 S.E.2d 15 (Ct.App.2000) (holding jury charge is proper if, as a whole, it is free from error and reflects current and correct law of South Carolina).

In reviewing jury charges for error, consideration should be given to the court's jury charge as a whole in light of the evidence and issues presented at trial. Burroughs & Chapin Co. v. South Carolina Dep't of Transp., 352 S.C. 535, 574 S.E.2d 751 (Ct.App.2002); see also State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986) (when reviewing jury charge for error, Court must

consider charge as a whole); see also Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000) (when reviewing jury charge for alleged error, appellate court must consider charge as a whole in light of evidence and issues presented at trial).

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. In re McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001); State v. Johnson, 315 S.C. 485, 445 S.E.2d 637 (1994); State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990) (charge is sufficient if, when considered as a whole, it covers law applicable to case). The substance of the law is what must be charged to the jury, not any particular verbiage. Burkhart, 350 S.C. at 261, 565 S.E.2d at 303; State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994).

To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct.App.2000); see also Priest v. Scott, 266 S.C. 321, 223 S.E.2d 36 (1976) (in general, an alleged error in a portion of a charge must be considered in light of the whole charge, and must be prejudicial to the appellant to warrant a new trial).

Appellant was prejudiced by the trial court's inaccurate and misleading charge. The jury began deliberating at 3:17 p.m. and returned to the courtroom with its guilty verdict at 3:35 p.m. R. 93, ll. 8 – 13. It took the jury 18 minutes to determine Appellant's guilt, yet the verdict was based on a flawed charge. The State was not forced to prove every fact necessary to constitute the crime charged beyond a reasonable doubt. The jury may have found proof of possession, but there were insufficient facts to establish the taking and carrying away. Appellant is not guilty of grand larceny under the law based on the evidence provided at trial, and his conviction should be overturned.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction based upon the trial court's error in failing to direct a verdict in his favor and charging the jury based on an inaccurate and misleading version of the law.

Taylor D Gilliam
Appellate Defender

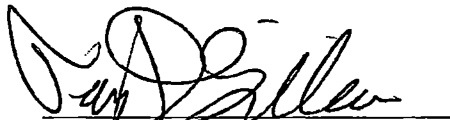
ATTORNEY FOR APPELLANT

This 31st day of January, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 31, 2017



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

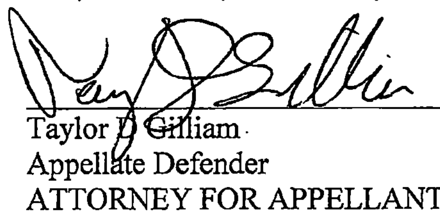
V.

SAMUEL EDWARD ALEXANDER, JR.,

APPELLANT

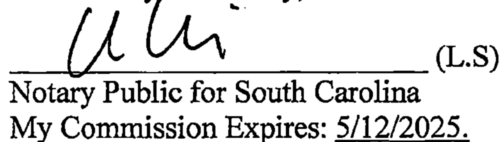
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of January, 2017.



Taylor D. Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of January, 2017.



_______________________ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025.

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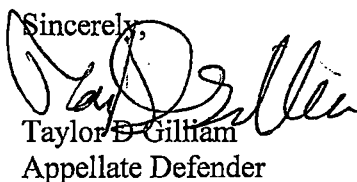
Re: The State v. Samuel E. Alexander, Jr.

Dear Ms. Roberts:

Enclosed are two copies of the Final Brief of Appellant in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,



Taylor D. Gilliam
Appellate Defender

TDG/css

Enclosure