

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge


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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CLYDE DEVON SINGLETARY,

APPELLANT

APPELLATE CASE NO 2018-000175

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in not granting a directed verdict because the judge stated that he was not sure the charge was under S.C. Code Section 16-11-0740--the indictment statute--based on the testimony, as there had been no testimony that there was damage to the transformer, which was described as the electric utility system in the statute; and the judge thought the charge was more appropriate under Section 16-11-750 which described damage to electric lines?

STATEMENT OF THE CASE

On August 25, 2016, the Florence County Grand Jury indicted Clyde Singletary on the charge of malicious injury to utility system pursuant to South Carolina Code Section 16-11-0740. On September 14, 2017, Appellant Singletary appeared before the Honorable D. Craig Brown for a hearing on Singletary's attorney status. The Public Defender's Office moved to be relieved, and Appellant moved to represent himself. Following an examination by the court, Appellant Singletary was granted his motion to represent himself. Sept. 14, 2017 Tr. 1 – 36. On January 22, 2018, Singletary appeared again before Judge Brown for a pretrial conference. January 22, 2018 Tr. 1 – 7.

On January 24, 2018, Singletary appeared before the Honorable D. Craig Brown and a jury for a trial. Appellant Singletary appeared *pro se*, and the state was represented by Todd S. Tucker. Jan. 22, 2018 Tr. 1. The jury found Singletary guilty as indicted. Tr. 146, ll. 1 – 15. The judge sentenced Singletary to seven years' incarceration. Tr. 150, ll. 17 – 23. Singletary filed a notice of appeal. This appeal follows.

STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The trial court erred in not granting a directed verdict because the judge stated that he was not sure the charge was under S.C. Code Section 16-11-0740--the indictment statute--based on the testimony, as there had been no testimony that there was damage to the transformer, which was described as the electric utility system in the statute; and the judge thought the charge was more appropriate under Section 16-11-750 which described damage to electric lines.

Relevant Facts

Glenda Singletary, a relative of Clyde Singletary, lived in a trailer very near the trailer where Appellant lived near Lake City, South Carolina. The property belonged to Ms. Glenda's father and sister. Appellant lived in the trailer that his mother did own. Appellant had no electricity in his trailer but Ms. Glenda did have electricity. Tr.42, ll. 1 – Tr. 47, ll. 13.

On May 11, 2016, Ms. Glenda had gone to church with a friend. When she returned home, she saw that Appellant had electric lights in his trailer which he did not have before. She also saw a haze of smoke, and an electric wire that was loose and down low. She called Santee Electric Co-op to move the wire. Then she noticed a wire that was supposed to be hanging but was hooked up to another pole and to Appellant's trailer. Tr. 47, ll. 18 – Tr. 49, ll. 24.

The person responded from Santee Electric Co-op and cut the transformer off and took the wire with him as Appellant had "snatched" the wire from the utility pole. Tr. 50, ll. 7 – Tr. 51, ll. 5. Then, Ms. Glenda heard the chainsaw start and she saw Appellant cutting the light pole down. She called Santee again and told them. When the person from Santee arrived, the chainsaw had cut off. Ms. Glenda said that Clyde told the Santee person that they did not own the light poles on Appellant's property. The Santee person then called the Sheriff, and Appellant

disappeared. People from Santee replaced the damaged pole within the next few days. Tr. 51, ll. 7 – Tr. 54, ll. 24.

Channing Matthews with Santee Electric Co-op went to Ms. Glenda's home to repair the electric wire. Ms. Glenda showed him the live wire which was hooked to a black extension cord which indicated that the person was trying to get electric power to his house from the utility pole. Tr. 62, ll. 6 – Tr. 64, ll. 4. When Matthews backed up to disconnect the transformer, he saw Appellant with the chainsaw. Appellant told Matthews that the poles were on Appellant's land. Appellant did not want them, so he was going to cut them all down. Tr. 65, ll. 1 – 25.

Matthews called the Sheriff's Office. Matthews stayed in his truck because he would have to "cross the ditch" to disconnect the transformer. Appellant disappeared. Law enforcement arrived. Matthews then disconnected the transformer so he could work on the powerlines. He did restore power and then went home. Tr. 66, ll. 1 – Tr. 67, ll. 20.

About forty-five minutes later, Matthews received another call to return to Appellant's area. Ms. Glenda had called Santee Electric and told them that Appellant was "sawing the pole." When Matthews arrived, he saw that the pole had been sawed but learned that the chain had come off of the saw. Matthews took three pictures to depict the situation. Tr. 67, ll. 21 – Tr. 68, ll. 25.

Matthews took pictures of the pole Appellant had cut into about three inches deep. (State's Exhibits 8 and 9). He also took a picture of a different pole which people have at their houses where the power comes from the transformer to the house. (State's Exhibit 7). Matthews went back the following day and replaced the cut utility pole. Tr. 69, ll. 21 – Tr. 71, ll. 23.

Deputy Trixie Ussery responded to the call on May 11, 2016 to Ms. Glenda's place. The call was concerning a "disorderly male cutting power lines." When she arrived, she met with

Matthews from Santee Electric. He told the deputy he had called because of the man threatening to cut down the utility poles. The deputy stayed until Matthews repaired the wire and they both left. Tr. 78, ll. 21 – Tr. 81, ll. 7.

The deputy was called back about an hour later because Appellant was cutting the utility power pole with a chainsaw. Ms. Glenda told her that Ms. Glenda saw Appellant cut the power pole. The deputy saw that the utility pole was cut “halfway” through. The deputy did not see Appellant that night but heard the chainsaw in the woods. Tr. 81, ll. 18 -Tr. 83, ll. 21.

Appellant was arrested two days later on May 13, 2016. Tr. 86, ll. 5 – 14; Tr. 95, ll. 1 – 17. On August 25, 2016, the Florence County Grand Jury indicted Clyde Singletary on the charge of malicious injury to utility system pursuant to South Carolina Code Section 16-11-0740. At his trial on January 24, 2018, Appellant was allowed to represent himself. Sept. 14, 2017 Tr. 1 – 36. The witnesses included Ms. Glenda, Channing Matthews, Deputy Trixie Ussery, and Investigator Tilton. Appellant Singletary did not testify. Tr. 2-Tr.3.

At the close of the state’s evidence, Appellant asked that the “case be dismissed on injustice.” Appellant argued that “testimony was being entered without evidence.” Tr. 98, ll. 1 – Tr. 102, ll.2. The judge ruled that he was going to view Appellant’s motion that the case be dismissed upon injustice as a motion for a directed verdict. Then the judge denied the motion for a directed verdict. Tr. 102, ll. 1 – 24.

During the judge’s charge conference with the attorneys, the judge told the state that the title of the indictment statute was “Malicious injury to telegraph, telephone or electric utility system.” The judge said that a separate malice charge was not necessary. The judge then asked about section 16-11-750 and if it was a lessor included of 16-11-740? The state responded that 16-11-740 was a “stand-alone” statute. Tr. 106, ll. 25 – Tr. 108, ll. 25.

Following a break, the judge told the state that the judge was “perplexed” and had a question for the state regarding the statute under which Appellant was indicted. The judge again repeated the title of Section 16-11-740 and said there was no issue-regrading telegraph or telephone but it “boiled down” to the electric utility system which the statute did not define. Tr. 109, ll. 9 – Tr. 110, ll. 5.

The judge said he did some research and could not find a definition in Black’s Law Dictionary so he went to the computer. He came up with a transformer which the judge said there was testimony that the witness had to cut the transformer off. The state then added that the transformer was attached to the pole that Appellant was trying to saw down. The judge then said there was no damage to the transformer. Tr. 110, ll. 6 – Tr. 111, ll. 2.

The judge then pointed to Section 16-11-750 which provided for unlawful injury or interference with electrical lines and that it was unlawful for a person to willfully take down, or remove injure, obstruct displace, destroy lines. The judge then asked the state: “Is that not what we have here?” Tr. 111, ll. 4 – 25.

Following some discussion, the judge said:

And so, what I’m struggling with here is I don’t know that it is under 740 here based upon the testimony I’ve heard.

Tr. 113, ll. 4 – 7.

The state argued that Appellant cut the pole that had the transformer which was closest to the road. The state argued that “that one could have very well affect power to there and to other places.” The judge said: “But there’s been no testimony about that.” Tr. 113, ll. 8 – 25.

Appellant then pointed out to the court that the photos that were admitted into evidence and show the pole that was replaced had no transformer on that pole. Appellant continued to point out that the transformer was on the outer limits by the ditch on the road and there was no

problem with that one. The judge decided that the pictures of State's Exhibits 8 and 9 were beyond the line that was erected for the transmission of electrical current. The decided that he was going to charge both statutes: 16-11-740 and 16-11-750. Tr. 114, ll. 1 – Tr. 115, ll. 20.

Following a break, the judge told the parties that he had changed his mind after reviewing the statutes. He said:

I'm going to charge 16-11-740. I believe that's what I'm obligated to do under the law and so that's what I'm going to charge.

Tr. 116, ll. 7 – 19.

Appellant told the court that he was asking to challenge the validity of this indictment but he was never given that opportunity. The judge said that he believed the indictment was sufficient. Appellant said that he had filed a motion through the Clerk of Court asking to challenge his indictment because he felt like the "prosecutor was doing something funny in his case." The judge told Appellant he would allow him to put anything on the record. However, the judge said that he had ruled on the sufficiency of the indictment. Tr. 116, ll. 21 – Tr. 117, ll. 24.

The jury found Appellant Singletary guilty as indicted. Tr. 146, ll. 1 – 9. The judge sentenced Appellant to seven years. Tr. 150, ll. 17 – 21. Appellant filed an appeal. This appeal follows.

Discussion

Pursuant to Rule 19, SCRCrimP, on the motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. The trial judge shall consider only the existence or non-existence of evidence and not its weight.

South Carolina Code Section 16-11-740 provides:

It is unlawful for a person, without the consent of the owner, to willfully:

- (1) destroy, damage, or in any way injure a telegraph, telephone, electric utility system, satellite dish, or cable television system, including poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances;
- (2) obstruct, impede, or impair their services or transmissions or;
- (3) aid, agree with, employ, or conspire with a person to do or cause to be done any of the acts mentioned in this section.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years.

South Carolina Code Section 16-11-750 provides:

It shall be unlawful for any person within this State, willfully and wantonly and without the consent of the owner:

- (a) to take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current or any poles, towers, wires, conduits, cables, insulators or support upon which wires or cables may be suspended or any part of any such line or appurtenances or apparatus connected therewith,
- (b) to sever any wire or cable thereof or in any manner interrupt the transmission of electrical current over and along any such line,
- (c) to take down, remove, injure or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current or
- (d) to wantonly or willfully cause injury to any of the property mentioned in this section by means of fire.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned not longer than one year, or both fined and imprisoned, in the discretion of the court. But nothing herein contained shall operate to prevent any person from removing any such wires or apparatus affixed to his private property without his consent.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Young, 424 S.C. 424, 818 S.E.2d 486 (Ct. App. 2018), reh'g denied (Sept. 20, 2018) On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. Id.

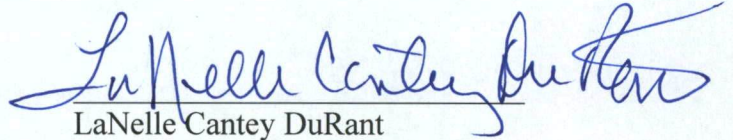
A trial court should grant a criminal defendant's directed verdict motion when the evidence presented merely raises a suspicion of his or her guilt. State v. Mealor, No. 2013-002752, 2018 WL 3862993 (S.C. Ct. App. Aug. 15, 2018).

The trial judge erred in not granting a directed verdict to Appellant Singletary because the state did not prove that Appellant caused damage to an electric system, as required by section 16-11-740, which the trial court determined included the transformer. However, the judge himself said there had been no testimony that the transformer had been damaged. The judge stated that the testimony and evidence did not fit Section 16-11-740 but would have been more appropriate under Section 16-11-750 as that statute concerned damage to electrical wires. However, Appellant was indicted under Section 16-11-740.

Pursuant to Rule 19, SCRCrimP, the trial court could have granted a directed verdict on the court's own motion. The judge said he was "obligated under the law" to charge 16-11-740 as it was the statute named in the indictment. Tr. 116, ll. 7 – 19.

CONCLUSION

Based on the above, Appellant Singletary's conviction and sentence should be vacated and his case remanded for the granting of a directed verdict.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of February, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Honorable D. Craig Brown, Circuit Court Judge

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THE STATE,

RESPONDENT,

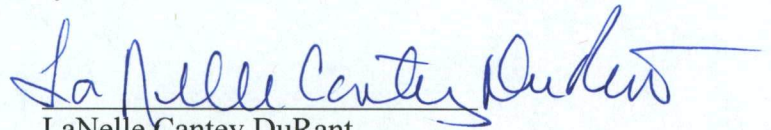
V.

CLYDE DEVON SINGLETARY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Clyde D. Singletary, #305678, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 1st day of February, 2019.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2019.

 (L.S)
Notary Public for South Carolina

My Commission Expires: September 27, 2028.