

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FELIX BOWEN PRICE,

APPELLANT

APPELLATE CASE NO 2018-000855

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Price's motion for a directed verdict on the charge of malicious injury to personal property, South Carolina Code Section 16-11-510, because the Coca-Cola vending machine was not personal property as it was attached to the business Lakelands Cycles and belonged to Coca-Cola Incorporated?

STATEMENT OF THE CASE

On December 11, 2017, the Greenwood County Grand Jury indicted Felix Bowen Price on the charges of malicious injury to personal property third property crime, and petit larceny third property crime. On April 11, 2018, a trial was held in the absence of Appellant Price before the Honorable Frank R. Addy, Jr. and a jury. Appellant Price was represented by Chris Fedalei and Shane Goranson. The state was represented by Anna Sumner and Josh Thomas. Tr. 1. The jury returned a verdict of guilty on both charges as indicted. Tr. 127, ll. 9 – 24. The trial court sealed the sentence. Tr. 131, ll. 11 – 15.

On April 23, 2018, Appellant Price appeared before Judge Addy for sentencing. Judge Addy sentenced Price to ten years on each charge with sentences to run concurrent. April 23, 2018 Tr.1-6.

Trial counsel 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 denying Appellant Price's motion for a directed verdict on the charge of malicious injury to personal property, South Carolina Code Section 16-11-510, because the Coca-Cola vending machine was not personal property as it was attached to the business Lakelands Cycles and belonged to Coca-Cola Incorporated.

Relevant Facts

On the evening and early morning of October 9, 2017, Deputy Michael Crockett of the Greenwood County Sheriff's Office, was monitoring traffic for violations in Greenwood. He was parked across the road from Lakelands Cycle monitoring traffic. Tr. 59, ll. 5 -Tr. 60, ll. 12.

He saw a vehicle approaching which was driving "extremely slowly." Deputy Crockett became interested in the vehicle because it was going so slowly. As he watched, the vehicle did a U-turn in the middle of the road and then stopped in front of Lakelands Cycle. Tr. 60, ll. 13 – 25.

The deputy started towards the vehicle but had not turned on his lights at that point. When he looked across the parking lot of Lakeland cycle, he saw a person running from Lakeland Cycle to the stopped vehicle. The deputy then initiated his blue lights and proceeded to the vehicle. He saw the man "stuffing stuff" into the vehicle. When Deputy Crockett approached the two people, he learned that the man who had been running was Felix Price and the driver of the car was Sue Price. Tr. 61, ll. 1 –21.

Deputy Crockett called for other officers because it was 2:00 in the morning. When the deputy looked in the vehicle, he saw in the backseat a black stocking mask or a face mask, a small pry bar, a glove and a coat with a bulge. Tr. 63, ll. 1- 25. When the other deputies arrived, they checked the business. They discovered that a Coca-Cola vending machine had been broken into. Items were missing from the vending machine. Deputy Crockett then checked the backseat

of the vehicle and learned that the bulge under the coat was the change/money container from the vending machine. Tr. 65, ll. 1 – 25. On the outside of the vehicle sitting in the grass were a larger pry bar and another metal object which turned out to be a large crowbar. Tr. 66, ll. 2 – Tr. 67, ll. 6.

Deputy Crockett's patrol car had a dash camera which recorded a video of the incident. Tr. 67, ll. 13 – 25. Deputy Crockett also obtained a copy of the business's surveillance video which had a camera close to the vending machine that recorded the incident. Tr. 75, ll. 1 – Tr. 76, ll. 10.

On December 11, 2017, the Greenwood County Grand Jury indicted Price on the charges of malicious injury to personal property and petit larceny. Indictments 2017-GS-24-2176 and 2017-GS-24-2175. On April 11, 2018, Appellant Price proceeded to trial before the Honorable Frank R. Addy, Jr. and a jury. Tr. 1.

At trial, Deputy Crockett testified about the incident. Tr. 59, ll. 1 – Tr. 78, ll. 10. Then Chery Warren, the criminal court clerk at the Greenwood County Magistrate's Office, testified about the trial held for Sue Price, wife of Appellant Price, on November 13, 2017. Ms. Warren operated the audio recording of the trials and hearings at the Magistrate's Court. She produced the recording of Sue Price's trial (State's Exhibit 10). Tr. 100, ll. 5 – Tr. 101, ll. 25.

Ms. Warren described Appellant and his wife as being very close and affectionate with each other that day. Ms. Warren said that Appellant Price talked about his wife's health problems as she had had four strokes. She also had trouble hearing and speaking so Appellant was there to speak on her behalf. Ms. Warren said appellant Price was clearly at court to help his wife. She agreed that he was a "doting affectionate husband." Tr. 102, ll. 12 – Tr. 105, ll. 18.

Then, Brad Boggs, the owner of Lakelands Cycles, testified for the state. On October 8, 2017, he was at Lakelands Cycles and the vending machine was fine. Then he received a call from law enforcement at 2:00 in the morning about the business. He testified that the surveillance system was working on October 9, 2017. Tr. 106, ll. 1 – Tr. 107, ll. 25.

Mr. Boggs testified that the vending machine was “affixed” to the property of the business. He also testified that the vending machine was owned by Coca-Cola Incorporated. He also admitted that “physically” there was no loss to him. Tr. 108, ll. 1 – Tr. 109, ll. 13.

At the close of the state’s evidence, defense counsel moved for a directed verdict on the malicious injury to personal property because the vending machine was affixed to the real property of Lakelands Cycles. Therefore the machine was not personal property. Tr. 109, ll. 16 – Tr. 110, ll. 11.

The state argued that the machine was not a fixture and was personal property. The state said that it did not have to be Mr. Boggs’ property but any property. Tr. 110, ll. 12 – 16. The trial judge ruled:

Even though it’s attached somehow to the property, I don’t know that the fact that it’s affixed to the property necessarily makes it part of the real property, but that’s an interesting motion and an interesting argument.

Tr. 110, ll. 17 – 25.

The judge denied the directed verdict motion and reaffirmed all previous motion and rulings. Tr. 110, ll. 25 – Tr. 111, ll. 3.

The defense presented no case and put up no witnesses. Appellant Price did not testify. Tr. 111, ll. 1 – 6; Tr. 2-3.

The judge charged the jury on malicious injury to personal property during his jury charges. The judge said to the jury that Appellant was charged with malicious injury to personal

property and the state must prove that he willfully damaged the personal property of another person. Tr. 124, ll. 7 – Tr. 125, ll. 5.

The jury returned a verdict of guilty on both charges as indicted. The judge sealed the sentence. Tr. 127, ll. 8 – 25; Tr. 121, ll. 11 – 15.

On April 23, 2018, Appellant Price appeared before Judge Addy, his trial judge, for sentencing. April 23, 2018 Tr. 1 - Tr. 2. Appellant Price explained to the judge that he was unable to be in court for the trial because his wife was having medical problems and he wanted to ensure that she was taken care of before he came to court. Defense counsel explained that Appellant Price had intended to plead guilty. Appellant Price explained the same thing to the judge in more detail. April 23, 2018 Tr. 3, ll. 12 – Tr. 5, ll. 6.

The judge sentenced Price to ten years on each charge with the sentences to run concurrent. The judge also required that Price be screened for the addictions treatment unit. April 23, 2018 Tr. 5, ll. 7 – Tr. 6, ll. 4.

Trial counsel filed a notice of appeal. This appeal follows.

Discussion

(A) It is unlawful for a person to willfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the

property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held that the State presented insufficient evidence to submit Bostick's murder charge to the jury, and therefore trial court should have granted a directed verdict of acquittal, where no direct evidence linked the defendant to the crime scene or items from the victim's house found in a burn pile on defendant's mother's property; there was no testimony tending to establish that Bostick had control over the burn pile; blood found on defendant's pants could not be matched to victim's DNA; and the weapon used to beat victim was never introduced into evidence. No evidence was presented concerning defendant's knowledge that victim may have had money in a briefcase in her home.

The Supreme Court also held in Bostick that the evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt in order to be sufficient to submit this charge to the jury; and 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.

When the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict. State v. Pearson, 415 S.C. 463, 783 S.E.2d 802 (2016); State v. Thompson and State v. Guinyard, 420 S.C. 192, 802 S.E.2d 623 (Ct. App. 2017).

According to Black's Law Dictionary 792 (Abridged 6th ed. 1991) the word "personal" means appertaining to the person; belonging to an individual.


The trial court erred in denying Price's motion for a directed verdict because the vending machine was not personal property. It was attached to the real property owned by Mr.

Boggs. The machine was not owned by an individual as it was owned by the Coca-Cola Corporation. It was not the personal property of Mr. Boggs.

The state did not and could not prove the elements of the indictment for malicious injury to personal property because the vending machine was not personal property as named in the indictment.

CONCLUSION

Based on the above, Appellant's case should be remanded for the entry of a directed verdict.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2019.

STATE OF SOUTH CAROLINA
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THE STATE,

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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 Felix Bowen Price, #198147, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of February, 2019.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.