STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Court of General Sessions
Hon. Frank R. Addy, Circuit Court Judge

Appellate Case No. 2018-000855

THE STATE,

Respondent,

v.

FELIX BOWEN PRICE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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I.

The trial court correctly denied Appellant's motion for a directed verdict because the soft drink vending machine was "personal property" within the meaning of the malicious injury to personal property statute.

STATEMENT OF THE CASE

A Greenwood County grand jury indicted Appellant for petit larceny[1] and malicious injury to personal property.[2] Appellant was tried in his absence before the Honorable Frank R. Addy on April 11, 2018. Appellant was convicted and sentenced as a habitual offender to ten years' incarceration on each charge, with the sentences to be served concurrently. The sentence was sealed until Appellant's appearance in court on April 23, 2018. Appellant filed a notice of appeal on May 1, 2018.

[1] S.C. Code Ann. 16-13-30 (2015).
[2] S.C. Code Ann. 16-11-510 (2015).

STATEMENT OF FACTS

On the evening of October 9, 2017, Greenwood County sheriff's deputy Michael Crockett was patrolling Highway 72/ 221 near the town of Greenwood. Tr. 59-60. He observed a car stop in the roadway in front of Lakelands Cycles, a motorcycle dealership. Tr. 60. A man ran from the front of the business and put something in the car. Tr. 61. Crockett engaged his blue lights and approached the car. 61. He identified Sue Price as the driver and Felix Price (Appellant) as the man who ran from Lakelands Cycles. Tr. 61. Inside the car, Crockett could see a pry bar, black stocking mask, and gloves. Tr. 63. He saw two pry bars on the ground outside the car. Tr. 66.

Backup officers arrived. Tr. 65. They found that the Coca-Cola vending machine in front of the business had been broken into. Tr. 65. The vending machine's door latch was broken and the door was ajar. Tr. 72. The coin catcher had been removed. Tr. 73. Crockett discovered the coin catcher in the car. Tr. 65; 71. The incident was captured on video by Crockett's dash camera and the business's surveillance camera. Tr. 67-68; 75-76.

The owner of Lakelands Cycles, Bradley Boggs, testified at trial. Tr. 106. He explained that Coca-Cola owned the vending machine. Tr. 108. When asked on direct examination whether the machine was "affixed" to his property, he stated that it was. Tr. 108. At the conclusion of the State's case, Appellant moved for a directed verdict on the ground that the vending machine was not "personal property" within the meaning of the statute because Boggs testified the machine was "affixed" to his property. Tr. 110. The court denied the motion, explaining "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...." Tr. 110.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Larmand, 415 S.C. 23, 29, 780 S.E.2d 892, 895 (2015). On appeal from the denial of a directed verdict, appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. Id. at 30, 780 S.E.2d at 895. If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury. Id.

ARGUMENT

I.

The trial court correctly denied Appellant's motion for a directed verdict because the soft drink vending machine was "personal property" within the meaning of the malicious injury to personal property statute.

Appellant argues the trial court should have directed a verdict of not guilty of malicious injury to personal property. He claims the vending machine he broke into "was not personal property" because "It was attached to the real property owned by Mr. Boggs" and "The machine was not owned by an individual as it was owned by the Coca-Cola Corporation." Brief of Appellant at 8–9. Appellant does not cite any authority to support his argument, which should be rejected. The trial court correctly denied the motion because the vending machine was "personal property" within the meaning of the statute. This Court should affirm.

Meaning of "Personal Property"

Section 16-11-510 of the South Carolina Code, entitled "Malicious injury to animals and other property," makes it unlawful for any person to "wilfully 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." S.C. Code Ann. 16-11-510(A) (2015). The statute does not define "personal property," "goods," or "chattels."

Black's Law Dictionary defines "personal property" as "Any movable or intangible thing that is subject to ownership and not classified as real property. — Also termed personalty; personal estate; movable estate; (in plural) things personal." PROPERTY, Black's Law Dictionary (10th ed. 2014). Black's defines "goods and chattels" as "Loosely, personal property of any kind; occasionally, tangible personal property only. — Also termed *goods and*

effects; *goods and merchandise.*" GOODS AND CHATTELS, Black's Law Dictionary (10th ed. 2014). It defines "goods" as "Tangible or movable personal property other than money; esp., articles of trade or items of merchandise." GOODS, Black's Law Dictionary (10th ed. 2014). It describes "chattel" as "Movable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property." CHATTEL, Black's Law Dictionary (10th ed. 2014). Together, these definitions make clear that the type of property under discussion is (1) movable and (2) not real property.

Although South Carolina appellate courts have not defined "personal property," "goods," or "chattels" in relation to § 16-11-510, the terms have well-established meanings in other areas of law. Appellant rightfully equates "personal property" in this context with its meaning in the law of fixtures. "A fixture is generally defined as an article which was a chattel, but by being physically annexed to the realty by one having an interest in the soil becomes a part and parcel of it." Carson v. Living Word Outreach Ministries, Inc., 315 S.C. 64, 70, 431 S.E.2d 615, 618 (Ct. App. 1993). The comparison to the law of fixtures is appropriate, especially considering there exists a companion statute to malicious injury to personal property— malicious injury to real property. Section 16-11-520 of the South Carolina Code, entitled "Malicious injury to tree, house, outside fence, or fixture; trespass upon real property," makes it unlawful for a person to "wilfully and maliciously cut, mutilate, deface, or otherwise injure a tree, house, outside fence, or **fixture** of another or commit any other trespass upon real property of another. S.C. Code Ann. 16-11-520(A) (2015) (emphasis added). Sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable. State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). It follows that property cannot

be both real and personal property, begging the question: was the soft drink vending machine in this case a fixture or personal property?

"A chattel does not become a fixture by mere affixation to realty." City of N. Charleston v. Claxton, 315 S.C. 56, 62–63, 431 S.E.2d 610, 614 (Ct. App. 1993). "Criteria for determining whether an item remains personalty or becomes a fixture when affixed to realty includes: (1) the mode of attachment; (2) the character of the structure of the article; (3) the intent of parties making the annexation; and (4) the relationship of the parties." Id. "The tendency, therefore, is to consider that the fact of actual fastening is, in itself, but a slight indication that the article is a fixture, when, notwithstanding the apparent permanent character of its annexation, it is susceptible of removal without injury to the premises or to the structure constituting a part of the premises to which it is attached, or to the article itself." Planter's Bank v. Lummus Cotton Gin Co., 132 S.C. 16, 128 S.E. 876, 879 (1925).

Even buildings and other structures may remain personal property if they are not intended to become a permanent part of the realty. "[W]here a structure is placed upon land,—not to promote the convenient use of the land, but to be used for some temporary purpose, external of the land, and the land is used only as a foundation, because some foundation is necessary for the business, then the structure and its belongings are not fixtures." City of Greenville v. Washington Am. League Baseball Club, 205 S.C. 495, 32 S.E.2d 777, 784 (1945).

The vending machine at issue in this case was not a structure. See State v. Bybee, 109 N.M. 44, 46, 781 P.2d 316, 318 (1989) (holding a soft drink vending machine did not constitute a "structure" for purposes of burglary statute). It was a chattel that could be picked up and moved. As the court noted, the machine was likely bolted to the building "to keep it from tipping over on people or [to keep] people from backing up a truck to it and making off with it."

Tr. 110. The very fact that the vending machine was susceptible to being carried away shows that it was not a fixture. See, e.g. Com. v. Greenplate, 9 Pa. D. & C. 629 (Quar. Sess. 1927) (affirming conviction for larceny of two vending machines).

Tax law also characterizes vending machines as personal property. E.g. Greco Bros. Amusement Co. v. Chu, 113 A.D.2d 622, 624, 497 N.Y.S.2d 206, 208 (1986) (describing a vending machine as "personal property" for tax purposes); A. & M. Consol. Indep. Sch. Dist. v. Fickey, 542 S.W.2d 735, 736 (Tex. Civ. App. 1976) (same); Golden Age Dayton Corp. v. Bowers, 11 Ohio App. 2d 193, 193, 229 N.E.2d 111, 112 (Ohio Ct. App. 1965) (same); Macon Coca-Cola Bottling Co. v. Evans, 214 Ga. 1, 1, 102 S.E.2d 547, 548 (1958) (vending machines are "personalty"). Appellant has not articulated any reason why this Court should take a different view in the interpretation of this criminal statute.

The South Carolina Supreme Court has addressed the meaning of "personal property" in the context of malicious injury once, in the case of State v. Switzer, 59 S.C. 225, 37 S.E. 818 (1901). In that case, the State alleged Switzer "disconnect[ed] the oil-tank piping of the Gray Court Cotton-Oil Company, a corporation," causing the destruction of "a large amount of oil." Switzer, 59 S.C. at 225, 37 S.E. at 819. The court held Switzer was properly charged under the malicious injury to personal property statute. "The language of this statute is plain and unambiguous. The term 'other personal property' includes oil in an oil tank." Id. The indictment in Switzer described the oil itself as the property destroyed, but it seems Switzer could have just as easily been convicted for injuring the oil tank piping. The piping was clearly capable of being moved because Switzer disconnected it from the oil tank, causing the oil to spill.

It is hard to imagine that a soft drink vending machine could ever become so permanently attached to a piece of real property that it could be considered a fixture. Even if such an argument could have been made in this case, a directed verdict was not warranted. The trial court was required to view the evidence in the light most favorable to the State. If there is any legitimate dispute whether a piece of property is a fixture, the question should be submitted to the jury. "It is incumbent on the court to define a fixture, but whether it is such in a particular instance depends upon the facts of that case, unless the facts are susceptible of but one inference." Planter's Bank v. Lummus Cotton Gin Co., 132 S.C. 16, 128 S.E. 876, 882 (1925).

Trial counsel had the opportunity to persuade the jury that the vending machine did not qualify as personal property under the statute. He did not attempt to develop the facts regarding how the machine was "affixed" to Lakelands Cycles, nor did he ask any questions to establish Mr. Boggs' intent that the machine would become a permanent part of his real estate. Counsel did not argue the point in his closing argument, nor did he ask the court to define "personal property" for the jury. Mr. Boggs' simple "yes" response to the prosecutor's question whether the machine was "affixed" to his property does not establish that it was a fixture. There is no evidence in the record to suggest Mr. Boggs viewed this machine— which was owned by Coca-Cola— as a permanent attachment to his business.

Viewing the evidence in the light most favorable to the State, the vending machine was personal property. Accordingly, the trial court properly submitted the case to the jury. This Court should affirm.

Coca-Cola's ownership of the vending machine

To the extent Appellant argues the vending machine was not personal property because it was owned by a corporation, the argument is not preserved for review because it was not

presented to or ruled on by the trial court. Trial counsel moved for a directed verdict on the ground that the vending machine was not personal property because it was "affixed to the real property of Lakelands Cycle...." Tr. 110. He did not make any argument regarding Coca-Cola's ownership of the machine and the trial court did not rule on that issue. An argument not raised and ruled on by the trial court is not preserved for appellate review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). Furthermore, Appellant does not cite any authority to support his argument, which is so conclusory that this Court should deem it abandoned. Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (explaining that "short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review").

Even if preserved, the contention is meritless. Corporations are entities capable of owning property, and can be the victims of property crimes. See Switzer, 59 S.C. at 225, 37 S.E. at 819 (affirming conviction for malicious injury to personal property owned by a corporation). Likewise, the State was not required to prove Appellant acted with malice specifically towards the owner of the personal property in question. State v. Toney, 15 S.C. 409, 413 (1881). Instead, the State was only required to show that the act was willful and malicious. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 20, 2019

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THE STATE, Respondent,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by delivering two copies of the same, addressed to Lanelle Cantey Durant, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense; Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 20th day of March, 2019.

Anne Mueller

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March 20, 2019

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RE: State v. Felix Bowen Price
Appellate Case No. **2018-000855**

Dear Ms. Durant:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services