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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY

Court of General Sessions
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2016-000421

THE STATE,

Respondent,

v.

SAMUEL EDWARD ALEXANDER, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly denied Appellant's directed verdict motion because the State presented sufficient evidence to submit the case to the jury.

II.

The trial court correctly charged the jury on grand larceny based on the current and correct law of South Carolina.

STATEMENT OF THE CASE

A Chesterfield County Grand Jury indicted Appellant for grand larceny, value over $10,000. (R.101-102.) On February 18, 2016, Appellant proceeded to a trial before the Honorable Roger Henderson and a jury. Tonya Copeland-Little, Esquire, represented Appellant, and Assistant Solicitor Mary Johnson-Lee, Esquire, represented the State. The jury found Appellant guilty, and Judge Henderson sentenced him to ten years' imprisonment. (R. 100).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On October 29, 2014, Amanda Stephens called the Chesterfield County Sheriff's Office to report that her brother's trailer, which had been loaded the night before with all of her belongings for a military move, had been stolen. (R. 17, line 16–R. 18, line 21; R. 26, lines 8–11; R. 58, line 8–25). While investigating numerous reports of stolen vehicles of all types, officers discovered boxes on Appellant's porch that they identified as being related to items Stephens had reported missing. (R. 26, lines 12–25; R. 27, lines 1–13; R. 37, line 11–R. 38, line 8). Officers from the Chesterfield and Darlington Sheriffs' Offices obtained a search warrant for Appellant's residence. (R. 26, lines 24–25; R. 27, lines 14–23; R. 35, lines 3–11). Officers recovered from the residence numerous items belonging to Stephens. (R. 28, line 2–4). The Sheriff's Office determined Appellant was involved in the theft of Stephens' property, and he was charged with grand larceny over $10,000 and brought to trial. (R. 62, lines 12–14; R.101-102).

At trial, Stephens testified that she had been scheduled to report for a new military assignment in October of 2014 and had borrowed her brother's trailer, which she loaded with all her belongings the night before she was to depart. (R. 18, line 8–R. 19, line 6). When she awoke the next morning, the trailer was gone. (R. 19, lines 7–11). She reported the theft to the Chesterfield County Sheriff's Office and at some point after she moved, the Sheriff's Office notified her that the trailer had been recovered; however, the items that were still inside were in bad condition. (R. 19, line 12–R. 20, line 8). She only recovered a fraction of what was missing and what she did receive was covered in live roaches, rat droppings, and dog feces and was unusable. (R. 21, line 18–R. 23, line 6). She testified the value of the stolen property was

approximately $35,000 and made clear she did not know Appellant or give him or anyone else permission to take the trailer. (R. 23, line 13–R. 24, line 2).

Investigator Angel Tubbs of the Chesterfield County Sheriff's Office testified regarding her involvement in the case. As part of a wider investigation into reports of numerous stolen vehicles, she ultimately came across the trailer. Based on interviews with other people, which led her to Appellant's house, Tubbs saw empty boxes connected to the items Stephens had reported stolen sitting on the porch in plain view. (R. 26, lines 12–24). That led her to work with the Darlington County Sheriff's Office (where Appellant's house was located) to obtain a search warrant and search Appellant's residence. (R. 26, lines 24–25; R. 27, lines 14–23). The officers found many of the items Stephens had reported missing. (R. 29, lines 2–4). Caroline Tyler, an evidence technician with the Chesterfield County Sheriff's Office, testified that the trailer itself was also recovered—she believed somewhere in Chesterfield County—and that she analyzed and labeled each item before helping load them back into the trailer. (R. 31, lines 17–21).

Next, Amos Nivens testified he lived on the same road as a man named Julius Butler in October and November of 2014 and came into possession of a sixty-foot trailer from Butler. (R. 42, lines 3–25). He did not pay for the trailer at the time because Butler told him he did not have the title yet but that Nivens could keep it and use it until he got the title in a couple of weeks. (R. 43, lines 1–20). On cross-examination, Nivens testified Butler told him the trailer belonged to his friend Sammy, and he clarified this on redirect. (R. 44, line 21–R. 45, line 9–12). Jason Garris testified that in early November 2014, he bought a golf cart, a bedroom suite, and a washer and dryer from Sammy Alexander (Appellant) and Julius Butler. (R. 46, lines 12–24).

He paid between $1,400 and $1,500 for the items and did not know where Appellant had gotten the property. (R. 47, lines 2–7).

Julius Butler then testified that Garris and Nivens are his neighbors and that he worked with Appellant. (R. 48, lines 9–20). He admitted he came into possession of a trailer and some personal belongings that were later determined to belong to Amanda Stephens. (R. 48, line 24–R. 49, lines 2). He explained that Appellant had knocked on his door one morning and told him he bought a trailer that had stuff in it and asked he if could leave it there until he could get a flat tire fixed, to which Butler agreed. (R. 49, lines 3–10). Appellant asked Butler if he knew anyone who might be interested in buying some of the items, and Butler thought of Garris. (R. 49, lines 14–20). Appellant then told Butler he wanted to sell the trailer too but that he did not have the proper paperwork. (R. 49, line 23–R. 50, line 3). Butler admitted that although the trailer sat there for approximately two months, Appellant never got the paperwork. (R. 50, lines 13–21).

Richard Carnes of the Chesterfield County Sheriff's Office testified that he determined Appellant was one of the people involved in the theft of the trailer and property and that he participated in the execution of the search warrant at Appellant's residence. (R. 60, line 21–R. 63, line 21). He testified that not only did officers find Stephens' items at the residence, but they also located additional stolen property in Appellant's truck, a full-size pickup. (R. 63, line 22–R. 66, line 5). In fact, his testimony was that while Stephens was at the Sheriff's Office, she recognized her own stolen items in the back of the truck that belonged to Appellant, which was parked in the Sheriff's Office bay. (R. 65, line 2–R. 66, line 5). Carnes interviewed Appellant, who did not confess to stealing the trailer but did admit to possessing the items from the trailer.

(R. 66, lines 12–18). Carnes testified that Butler had a very small vehicle that would not be capable of pulling a large trailer loaded with personal belongings. (R. 66, lines 19–25).

After the State rested, defense counsel moved for a directed verdict, arguing the State failed to offer any competent evidence of the charge of grand larceny. She claimed that although the State offered evidence of possession of stolen goods, it did not offer evidence that established Appellant's presence at the scene of the crime. (R. 67, lines 18–24). The State argued that Butler testified that Appellant drove the trailer to his home and that the question of where he got the trailer was one for the jury. (R. 68, lines 1–9). The trial court denied the motion, noting substantial circumstantial evidence existed to support submitting the case to the jury. (R. 68, lines 10–15).

Before closing arguments, the trial judge invited counsel into his chambers to look over the proposed jury charge. (R. 70, lines 7–10). Following that conference, both counsel agreed they were ready for closing arguments and did not make any objections to the charge on the record. (R. 70, lines 11–14). After the trial judge instructed the jury on the law, defense counsel took exception to the second part of the grand larceny charge, arguing it was "confusing. It makes it sound as if merely being in possession of the property is proof that the property, that he stole the property." (R. 90, lines 7–12). The trial judge noted her objection but disagreed. (R. 90, lines 13–17). The jury found Appellant guilty, and the trial judge sentenced him to ten years' imprisonment. (R. 100).

ARGUMENT

I.

The trial court properly denied Appellant's directed verdict motion because the State presented sufficient evidence to submit the case to the jury.

Appellant argues the trial judge erred in failing to direct a verdict on the charge of grand larceny, claiming the State presented no direct or substantial circumstantial evidence that Appellant took or carried away any of the property in question. On the contrary, the State presented direct testimony from Julius Butler that Appellant brought the stolen trailer and its contents to his home, thus providing substantial circumstantial evidence from which the jury could find him guilty of grand larceny. The trial court correctly denied his motion for a directed verdict, and this Court should affirm.

It is axiomatic that in ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." *Id.* at 292–93, 625 S.E.2d at 648. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is

sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." *State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 807 (2016).

"Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny." S.C. Code Ann. § 16-13-30(B) (2015). Larceny is the "felonious taking and carrying away of the goods of another" against the will or without consent of the other. *State v. Keith*, 283 S.C. 597, 598, 325 S.E.2d 325, 326 (1985) (citing *State v. Brown*, 274 S.C. 48, 49, 260 S.E.2d 719, 720 (1979)). "The principle has long been recognized in this State that, where one is found in possession of recently stolen property, a rebuttable inference or presumption of fact arises that he is the thief." *State v. Dewitt*, 254 S.C. 527, 530, 176 S.E.2d 143, 145 (1970). In *Dewitt*, our Supreme Court stated that "[t]he 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." *Id.*

Both Garris's and Nivens' testimony indicated that it was in November of 2014 that they obtained the trailer and property from Appellant and Butler. The theft occurred on October 29, 2014. Thus, Appellant was in possession of recently stolen property, which established a presumption that he was the thief. This evidentiary fact was sufficient to submit the case to the jury and let it determine what weight to give it. Additionally, as noted by the solicitor, Butler's testimony that the stolen trailer was being pulled by Appellant is further circumstantial evidence

that he carried away the goods of another. The trial court was correct in denying Appellant's motion for directed verdict, and this Court should affirm.

II.

The trial court correctly charged the jury on grand larceny based on the current and correct law of South Carolina.

Appellant argues the trial court's charge to the jury on 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." (App.Br.9). The only requirement for a jury charge is that it be based on the current and correct law of South Carolina. *See Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004) ("In general, the trial court is required to charge only the current and correct law of South Carolina."). It is not required that it be based only on the specific statutory language. Here, the charge was based on the current and correct law, and this Court should affirm.

As noted, "the trial court is required to charge only the current and correct law of South Carolina." *Sheppard*, 357 S.C. at 665, 594 S.E.2d at 472. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *Id.* at 479, 697 S.E.2d at 584.

It is interesting that Appellant's argument focuses on his claim that the charge "makes it sound as if merely being in possession of the property is proof that . . . he stole the property." (App.Br.9 citing R. 90, lines 9–12). Earlier in the charge, the judge instructed the jury, "If the defendant is found possessing recently stolen goods this may be used as evidence that the defendant stole the goods. This would simply be an evidentiary fact to be taken into consideration by you along with the other evidence in the case and you may give it the weight you decide it should have." (R. 86, line 25–R. 87, line 6). Defense counsel had no objection to

this portion of the jury charge, likely because it was also a current and correct statement of the law.

Appellant attempts to argue the jury charge on grand larceny was somehow burden shifting. He claims the jury "relied on [the charge] as an accurate and perhaps conclusive presumption." (App.Br.10). However, this is an unfounded assumption on his part. The trial judge clearly told the jury the State had to 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 [and that he] intended to permanently deprive the owner of the property . . . ." (R. 88, lines 3–14). As noted above, the trial judge also made clear earlier in the charge that the possession of stolen goods was an evidentiary fact to be taken into consideration when weighing the evidence. At no time did the trial judge indicate any presumptions existed about the fact that Appellant possessed the stolen goods. However, as discussed in the previous section, the inference does exist to the extent it is an evidentiary factor that should be considered by the jury and given the weight the jury deems appropriate. Because juries are presumed to follow instructions, here the jury was told to consider the possession of stolen property as an evidentiary fact and we can presume the jury did just that. *See Foye v. State*, 335 S.C. 586, 590 n.1, 518 S.E.2d 265, 267 n.1 (1999) ("A jury is presumed to follow instructions.").

Appellant states in his brief that other than *Collins v. Cartledge*[1], an unpublished case that contains the same jury instruction language for larceny, he has "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." (App.Br.10). On the contrary, our Supreme Court has determined the slightest removal of the

[1] No. 2:14CV1200–BHH–WWD, 2014 WL 8396824, at *11 (D.S.C. Nov. 14, 2014).

stolen property with felonious intent fulfills the requirement of the asportation element of the offense. *State v. Moultrie*, 283 S.C. 352, 354, 322 S.E.2d 663, 664 (1984) (quoting *State v. Tindall*, 213 S.C. 484, 489, 50 S.E.2d 188 (1948)). The *Moultrie* Court also recognized the goods did not even need to be removed from the premises, where the appellant simply moved the stolen tires thirty-three feet from the rack. Also, Appellant's argument uses the language "prove a taking," but the trial judge in this case actually used the word "show," not "prove." And because the jury charge must be considered as a whole, it is important to note that in other portions of the charge, the trial judge made clear the possession of the stolen property was an evidentiary factor to be considered, not something that "proved" a taking.

Appellant cites cases that disapprove of instructions in larceny cases that place the burden on a defendant to explain how he came into possession of stolen goods. The State acknowledges that *State v. Gaines*, 271 S.C. 65, 244 S.E.2d 539 (1978), makes clear that a trial judge cannot tell the jury that the defendant has the burden to explain his possession of stolen property. In *Gaines*, the trial judge undeniably erred by instructing the jury that a person found in possession of recently stolen goods was required to give some satisfactory explanation of his possession or the law would presume him to be the thief and guilty of larceny. The Court took the opportunity in *Gaines* to admonish the trial bench, stating:

> "The jury should not be instructed that the burden or duty is upon a defendant to explain possession in such cases, lest the jury draw the conclusion that either (1) the defendant is required to personally give explanatory testimony or (2), in the absence of explanation by the defendant, the inference is to be considered conclusive of guilt."

Gaines, 271 S.C. at 67, 244 S.E.2d at 540–41 (quoting *State v. DeWitt*, 254 S.C. 527, 530–31, 176 S.E.2d 143, 145 (1970) & citing *State v. Sumner*, 269 S.C. 175, 236 S.E.2d 815 (1977)).

Here, the trial judge did not in any way tell the jury Appellant had to give an explanation for his possession of the stolen goods. Thus, these cases are inapplicable.

The State also acknowledges the United States Supreme Court cases cited by Appellant finding that conclusive presumptions of intent would override the presumption of innocence and be inappropriate. Indeed, the State agrees with the Court that whether intent existed is certainly a question for the jury. However, no conclusive presumption regarding intent was set forth in this case. Indeed, no presumption was charged by the trial judge in his jury instructions. He simply told the jury the slightest removal of the property or complete possession of the property is enough to show a taking and carrying away.[2] Within the same section of charges Appellant complains about, the preceding statement by the trial judge was, "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, lines 3–7). That statement made it abundantly clear to the jury that its job was to find those elements of grand larceny beyond a reasonable doubt, not just based on something the judge said "showed" something. No "accurate and perhaps conclusive presumption" was contained in the instruction, and nothing about the instruction was at all burden-shifting. When viewed as a whole, the jury charge was entirely appropriate.

Additionally, Appellant's argument that "[t]he logic behind this jury instruction fails to account for the intervention or involvement of a third party" is without merit. (App.Br.11). The State submits everything Appellant argues regarding third party intervention was an excellent argument for defense counsel to make to the jury during her closing, which she did. However, those arguments do not mean that "the given instruction is not an accurate portrayal of the law."

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[2] This is the standard jury charge routinely given by trial judges around the state.

(App.Br.11). Indeed, as noted above, the wording of the trial judge's jury instruction on grand larceny was the current and correct law in South Carolina and 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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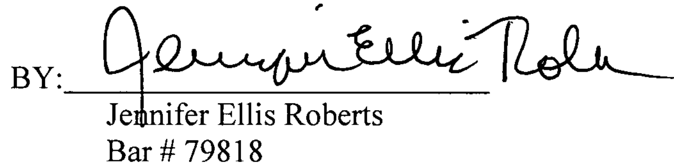
BY: 
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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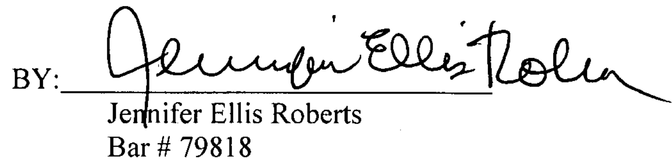
BY:
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