

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2018-000175

THE STATE,RESPONDENT

v.

CLYDE DEVON SINGLETARY,APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion for a directed verdict where the State presented direct and substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of willfully damaging or injuring an electric utility system.

STATEMENT OF THE CASE

Clyde Devon Singletary (Appellant) was indicted at the August 2016 term of the grand jury for Florence County for malicious injury to utility system (2016-GS-21-01313). Prior to trial Appellant moved to relieve his public defender and proceed *pro se*. Following an examination by the court, Appellant's motion was granted and he represented himself. (September 14, 2017, Tr.p.1-p.36). Respondent (the State) was represented by Assistant Solicitor Todd S. Tucker of the Twelfth Circuit Solicitor's Office. (Tr.p.1). On January 24, 2018, Appellant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable D. Craig Brown, to seven (7) years' imprisonment. (Indictment & Sentencing Sheet; Tr.p.147-p.150). Appellant timely filed a notice of intent to appeal his conviction and sentence and a brief in support of his appeal was submitted by LaNelle C. DuRant of the Office of Appellate Defense. This Brief of Respondent follows.

STATEMENT OF FACTS

Glenda Singletary, Appellant's aunt, lived in a trailer very close to the trailer where Appellant resided near Lake City, South Carolina. The property is owned by Ms. Singletary's father and sister. Appellant lived in a trailer owned by his mother. Appellant had no electricity connected to his trailer; however, Ms. Singletary did have electricity. (Tr.p.42-p.47).

On May 11, 2016, Ms. Singletary went to church with a friend. When she returned home, she saw a haze of smoke and a loose electric wire on the ground. She also saw that Appellant had electric lights in his trailer, which he did not have previously. Ms. Singletary called Santee Electric Co-op (Santee) about the loose wire and to restore her power. She noticed a wire that was previously hanging down was now hooked up to another pole and then to Appellant's trailer. (Tr.p.47-p.49).

A Santee employee and the Sheriff's Department responded to the incident location. The employee had to turn the transformer off while he fixed the damage and restored power to Ms. Singletary. When he left, he took the loose wire that Appellant had snatched from the utility pole. After the employee and the deputy left, Ms. Singletary heard a chainsaw and looked out to see Appellant attempting to cut down the utility pole. She called Santee again, but by the time the employee arrived, Appellant had turned the chainsaw off. Ms. Singletary explained that Appellant told the Santee employee they did not own the utility pole on Appellant's property, he did. The Santee employee called law enforcement who again responded to the scene, but only after Appellant had gone into the woods with the chainsaw. (Tr.p.51-p.54).

Channing Matthews was the Santee employee sent to the incident location to repair the electrical wire damaged by Appellant. Ms. Singletary showed Matthews the live wire which was hooked to a black extension cord, which he said indicated that a person was trying to acquire electrical power to their residence from the utility pole. When Matthews went to disconnect the transformer so he could repair the line, he saw Appellant with a chainsaw. Appellant expressed to Matthews that the utility pole was on Appellant's land and Appellant did not want the pole; therefore, he would attempt to cut the pole down. (Tr.p.62-p.65). Matthews called law enforcement. He stayed in his work truck because he would have to "cross the ditch" to disconnect the transformer. However, he was able to restore power after law enforcement arrived. (Tr.p.66-p.67).

About forty-five minutes later, Matthews received a second call to return to Appellant's residence. Ms. Singletary had called Santee and explained she saw Appellant sawing the utility pole. When Matthews arrived back at the incident location, he saw the utility pole was partially cut. He later learned the cutting stopped because the chain had come off of Appellant's

chainsaw. Matthews took three photos to depict the incident. (Tr.p.67-p.68). Matthews took photos of the pole showing Appellant had cut approximately three inches deep. (State's Exhibits #8 and #9). He also took a photo of a different pole which Santee customers have at their homes where the power comes from the transformer. (State's Exhibit #7). Matthews went back to the incident location the following day and replaced the damaged utility pole. (Tr.p.69-p.71).

Deputy Trixie Ussery of the Florence County Sheriff's Department responded to the call made by Matthews on May 11, 2016, to come out to the incident location. The call referenced a disorderly man cutting power lines. When Deputy Ussery arrived, she met with Matthews. He explained to Deputy Ussery that he called law enforcement because Appellant threaten to cut down utility poles. Deputy Ussery remained at the incident location until Matthews was able to make the necessary repairs to Ms. Singletary's electricity. (Tr.p.78-p.81).

Deputy Ussery was called back to the location about an hour later that night because Appellant was actually cutting the utility pole with a chainsaw. Ms. Singletary explained to law enforcement that she witnessed Appellant cutting the utility pole with a chainsaw. Deputy Ussery noted the utility pole appeared to be cut halfway through. Deputy Ussery did not see Appellant but heard a chainsaw somewhere off in the woods. (Tr.p.81-p.83).

Appellant was arrested on May 13, 2016. The Florence County Grand Jury indicted Appellant for malicious injury to an electric utility system pursuant to South Carolina section 16-11-740. At trial on January 24, 2018, Appellant was permitted to proceed *pro se*. The witnesses for the State included Ms. Singletary, Matthews, Deputy Ussery, and Investigation Tilton. (Indictment; Tr.p.2-p.3).

At the conclusion of the State's case, Appellant requested the case be dismissed on grounds of "injustice." (Tr.p.101-p.102). Appellant argued that his indictment was bogus

because “it ain’t been true-billed, it ain’t stamped.” The trial judge denied Appellant’s challenge to the indictment, finding it had in fact been true-billed. He then construed Appellant’s motion for “injustice” as a motion for a directed verdict. He explained to Appellant that the State had presented sufficient evidence to proceed and denied Appellant’s motion. (Tr.p.102). Appellant elected not to testify in his defense and the parties proceeded to closing arguments. (Tr.p.103-p.130).

The trial judge then charged the jury on the roles of the judge and jury, the State’s burden of proof, credibility of witnesses, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, criminal intent, Appellant’s right not to testify, and the elements of the crime. Neither party took exception to the jury charge or verdict form. (Tr.p.378-p.390). The jury deliberated for a little over forty minutes before finding Appellant guilty of malicious injury to an electric utility system, as indicted. Judge Brown sentenced Appellant to seven (7) years’ imprisonment. (Tr.p.150; Sentencing Sheet).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). 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. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016); *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); *State v. Condrey*, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion. *Phillips*, 416 S.C. at 192, 785 S.E.2d at 452; *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, the trial court must submit the case to the jury 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.” *Phillips*, 416 S.C. at 192-93, 785 S.E.2d at 452 (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). Indeed, “the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury.” *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). The jury's focus is on determining whether every circumstance relied on by the State is proven beyond a reasonable doubt, and that all of the circumstances be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. *Phillips*, 416 S.C. at 193, 785 S.E.2d at 452; *State v. Littlejohn*, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955). The trial court must view the evidence in the light most favorable to the State when ruling on a motion for directed verdict, and must submit the case to the jury 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.” *Phillips*, 416 S.C. at 193, 785 S.E.2d at 452; *Littlejohn*, 228 S.C. at 329, 89 S.E.2d at 926. While “the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. 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.” See *State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); see also *State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”).

ARGUMENT

I.

The trial court properly denied Appellant's motion for a directed verdict because the State presented direct and substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of willfully damaging or injuring an electric utility system.

Appellant argues the trial court erred in failing to grant a directed verdict because the State did not prove that he caused damage to an electric system, as required by section 16-11-740. He claims the trial court determined an electric system included the transformer, and contends that where the judge himself said there had been no testimony that the transformer had been damaged, he was entitled to a directed verdict of acquittal. The State disagrees and submits this argument is without merit. The trial court properly denied Appellant's motion for a directed verdict because the State presented direct and substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each element of willfully damaging or injuring an electric utility system.

The evidence, viewed in a light most favorable to the State, showed that Appellant first pulled a live electrical wire down from a Santee power pole and used it to run electricity to his trailer, and then attempted to cut down the power pole itself with his chainsaw when the initial damage was repaired by a Santee employee. This evidence supports the jury's conclusion that Appellant was guilty of committing willful damage or injury to an electric utility system. Thus, the State presented evidence from which the jury could fairly and logically find Appellant satisfied all the elements of the crime beyond a reasonable doubt. Appellant's conviction and sentence should be affirmed.

Discussion / Analysis

The South Carolina Code provides:

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

- (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.

S.C. Code Ann. § 16-11-740 (Supp. 2018). Therefore, to withstand Appellant's directed verdict motion in the trial of this case, the State was required to produce evidence that Appellant willfully damaged or in any way injured an electric utility system, which includes "poles" or "wires." Here, there was abundant circumstantial evidence that Appellant pulled a live electrical wire down from a Santee power pole and used it to run electricity to his trailer. The State then offered direct eyewitness testimony that Appellant subsequently started to cut down the power pole itself with his chainsaw when the initial damage to the wire providing electricity to Ms. Singleton's trailer was repaired by a Santee employee. Viewing this evidence in the light most favorable to the State, a jury could reasonably deduce Appellant willfully damaged or injured an electric utility system. Accordingly, the trial court properly refused to direct a verdict in Appellant's favor. Appellant's conviction and sentence should be affirmed.

CONCLUSION

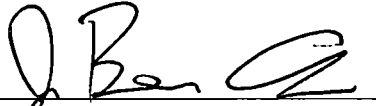
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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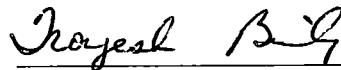
CLYDE DEVON SINGLETARY,APPELLANT.

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated April 25, 2019, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

LaNelle Cantey DuRant, Esquire
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I further certified that all parties required by Rule to be served have been served. This 25th day of April, 2019.



Troyeshi Brailey
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April 25, 2019

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Re: The State v. Clyde Devon Singletary
Appellate Case No. 2018-000175

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,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/tb
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division

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