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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County
The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2018-002040

The State, Respondent,

v.

Steven Deontae Hoover, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The circuit court properly denied Appellant's request for a spoliation jury charge because there was no evidence the State acted in bad faith, or failed to preserve any potentially exculpatory evidence in its possession.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On June 12, 2017, the Oconee County Grand Jury indicted Appellant Steven Deontae Hoover on one count of shoplifting in connection with an incident at Walmart on February 10, 2017. The case was called for a jury trial on November 7, 2018, before the Honorable R. Lawton McIntosh, Circuit Court Judge.

Pre-trial, Appellant moved to exclude the arresting officer's bodycam video from evidence, arguing it contained hearsay and discussions with individuals who were not going to testify at trial. The video showed all the deputy's interactions with Appellant from the deputy's arrival through Appellant's arrest, including Appellant changing his story about how and why he had the merchandise, and why he tried to walk out of the store without paying for it. The court excluded most of the video because it was difficult to understand what was being said, and it contained hearsay. The State then indicated the witnesses would just testify about what happened. (Trial Testimony [TT], pp. 36-60; Record on Appeal [R.], pp. 4-28).

Josh Haney, the Walmart loss prevention employee, testified he was working on February 10, 2017, and his supervisor alerted him to a situation at the Customer Service Desk. Haney observed Appellant standing at the desk with a large grill in a shopping cart, and he was advised Appellant was attempting to "return" the grill without a receipt. Haney told the customer service employee to perform the return like they normally would handle returns. (TT, pp. 80-82; R., pp. 38-40).

When Appellant was unable to produce identification and a receipt for the grill, the return was denied. Haney then observed Appellant leave the store without paying for the grill, and he stopped Appellant in the store vestibule between the inner doors and the outer doors. He told Appellant he was stopped because he had not paid for the grill, and they walked to the loss prevention office. (TT, pp. 82-83; R., pp. 40-41).

Appellant told Haney he attempted to return the grill several days earlier, and left it at the Customer Service Desk. He stated when he came back to the store on the 10th and the return was denied, the customer service employee told him to "just take it out with him." Haney testified he had worked in Walmart loss prevention for ten years, and employees did not tell customers "to just take merchandise." He further testified Appellant was never able to produce a receipt for the grill. (TT, pp. 83-88; R., pp.41-46).

Corporal James Young of the Oconee County Sheriff's Office testified he responded to a shoplifting call at Walmart on February 10, 2017. He went to the loss prevention office, advised Appellant of his Miranda rights, which Appellant waived. (TT, pp. 95-97; R., pp. 53-55).

Appellant told Cpl. Young he purchased the grill approximately three months earlier, and came to the store with a man named Billy to return the grill on February 8, 2017. The return was refused because he did not have any identification or a receipt, so he left the grill there and left the store. Appellant stated he subsequently called the store Customer Service Desk, and a customer service employee advised him to just come to the store, grab a grill off the shelf and bring it to the Customer Service Desk so they could do a return on it and refund the money. According to Appellant, when he returned to the store on February 10th, Appellant again did not have his identification or a receipt, and the customer service employee told him he could not leave the grill at the desk, so he walked out of the store with the grill. (TT, pp. 97-98; R., pp. 55-56).

Cpl. Young testified he remained at the Walmart for approximately forty-five minutes before arresting Appellant. During that time, Appellant's story changed several times, and Cpl. Young had Haney pull the store video from February 8th in order to verify Appellant's claim he was there that day to return the grill. Cpl. Young, Josh Haney and Appellant reviewed the store video, which confirmed Appellant was in the store on February 8th with another man, but he never

had the grill that day. After watching the video, Appellant then claimed he was covering for the man named Billy, and Billy told him to do it. (TT, pp. 98-100; R., pp. 56-58).

After viewing the February 8th video, Cpl. Young arrested Appellant for shoplifting. He testified he did not request a copy of the store's February 10th video because Appellant admitted coming into the store, getting the grill off a shelf, taking it to the Customer Service Desk, and then leaving the store without paying for it. (TT, pp. 100-102; R., pp. 58-60).

During a jury charge conference, Appellant requested a spoliation charge "because the State did not produce evidence that was available to them, solely to them, in particular, the video tape of the incident on that day." He further argued the video "may have shown something different from what they testified it showed." The court denied the requested charge, finding the evidence did not meet the legal standard for a spoliation charge, and nothing prevented Appellant from requesting a copy of it, so it was equally accessible to him for approximately sixty days after his arrest. The court stated Appellant was not prohibited from making a spoliation type argument to the jury. (TT, pp. 120-122; R., pp. 69-71).

During closing arguments, Appellant argued the State had the burden to prove its case, and could have made the February 10th video available so the jury could see exactly what happened that day. He also talked about different witnesses the State could have called to testify at trial, but failed to do so. (TT, pp. 130-133; R., pp. 79-82).

The jury convicted Appellant of shoplifting as indicted, and the court sentenced him to ten years incarceration, suspended to seven years incarceration. (TT, pp. 160-169; R. pp. 101-110). This appeal followed.

STANDARD OF REVIEW

A jury charge which is substantially correct and covers the law does not require reversal. State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 464 (Ct. App. 2003). "An appellate court will only reverse a trial court's decision regarding a jury charge if there is an abuse of discretion." State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423, 435 (2017) (*citing* State v. Pittman, 373 S.C. 527, 647 S.E.2d 144, 166 [2007]); State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 584 (2010) (same). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Marin, 415 S.C. 475, 783 S.E.2d 808, 812 (2016).

ARGUMENT

The circuit court properly denied Appellant's request for a spoliation jury charge because there was no evidence the State acted in bad faith, or failed to preserve any potentially exculpatory evidence in its possession.

Appellant contends the circuit court erred by denying his request for a spoliation of evidence charge based on the State's failure to obtain a copy of the Walmart video from the day Appellant was arrested (February 10th). This contention is meritless.

The trial court is only required to charge the current and correct law in South Carolina. Marin, 783 S.E.2d at 812 (*citing* State v. Brandt, 393 S.C. 526, 713 S.E.2d 591, 603 [2011]). The law to be charged must be determined from the evidence presented at trial. *Id.*

The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300, 307 (2001); State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (*citing* State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 [1991]) (same). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

As a threshold matter, the video from February 10th was never in the State's possession, so the State could not preserve or destroy it. Further, Appellant presented no evidence the State acted in bad faith in not obtaining a copy of the February 10th video, or that the video's exculpatory value was readily apparent. Cpl. Young testified he did not request a copy of the video because

Appellant admitted doing everything the video would show, and all the evidence indicated the video would show nothing different from the testimony of Haney and Cpl. Young regarding the events leading to Appellant's arrest. Significantly, as the circuit court noted, nothing prevented Appellant from obtaining a copy of the February 10th video after his arrest, so the video was equally accessible to Appellant.

Finally, other than speculative, conclusory claims, Appellant did not, and cannot, establish any prejudice from the court's failure to give a spoliation jury charge. Both Haney and Cpl Young testified about their first-hand observations of Appellant's action on February 10th, as well as Appellant's statements and admissions prior to his arrest. Appellant was able to cross-examine them, and then argue to the jury about what the February 10th video might show, as well as other witnesses he claimed the State should have called at trial. In short, Appellant actually benefitted from the absence of the video, and he was not prejudiced by the court's denial of his request for a spoliation charge.

The circuit court properly considered the requirements for a spoliation jury charge, and found Appellant failed to meet any of the requirements. Accordingly, the circuit court's ruling should be affirmed.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Appellant's conviction should be affirmed.

Respectfully submitted,

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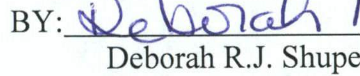
BY: 
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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