

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-5011

LATOYA S. FAGG,

Appellee.

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Opinion filed July 30, 2010.

An appeal from the Circuit Court for Leon County.  
Mark E. Walker, Judge.

Bill McCollum, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellant.

No appearance for Appellee.

PER CURIAM.

The State appeals an Order Granting Motion for Judgment of Acquittal After a Jury Verdict. The State argues that Appellee's alleged act of deleting computer

files from her former employer's computer system constituted the destruction of data pursuant to section 815.04(2), Florida Statutes, which provides that "[w]hoever willfully, knowingly, and without authorization destroys data . . . residing or existing internal or external to a computer . . . commits an offense against intellectual property." The trial court rejected this argument, concluding instead that because the employer was able to retrieve the files from its hard drives, there was no evidence that Appellee destroyed data as required for a conviction of section 815.04(2). We agree with this conclusion. We also agree with the trial court that although there was testimony that the employer was able to retrieve everything except "the last four days," the employer's witness also testified that he did not know whether anything had been lost from those four days.

Accordingly, because the State did not present competent evidence to establish that Appellee destroyed data, we AFFIRM.

DAVIS, PADOVANO, and LEWIS, JJ., CONCUR.