

The Supreme Court of South Carolina

State of South Carolina, Respondent,

v.

Emmith Williams, Petitioner.

Appellate Case No. 2011-188488

ORDER

This matter is before the Court upon petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Williams*, Op. No. 2010-UP-552 (S.C. Ct. App. filed Dec. 21, 2010). The petition is denied.

 C.J.
FOR THE COURT

Columbia, South Carolina

June 21, 2012

cc:

Norman Mark Rapoport

Mark Reynolds Farthing

Salley W. Elliott

Alan McCrory Wilson

Kathrine Haggard Hudgins

The Honorable Jenny Kitchings

G. Thomas Cooper, Jr.

Jeanette W. McBride

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 2010-UP-552 (S.C. Ct. App. filed 12/21/2010)

07-GS-40-04668, 4518, and 5451.

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

EMMITH ALLEN WILLIAMS,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 2/25/2011.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the armed robbery convictions when the trial judge refused to direct a verdict of acquittal on the two armed robbery charges because the State failed to establish that Williams was armed or by action or words used a representation of a deadly weapon or any object which a person present during the commission reasonably believed to be a deadly weapon?
2. Did the Court of Appeals err in affirming the burglary first degree conviction when the trial judge refused to direct a verdict of acquittal on the burglary first degree charge because the State failed to establish that Williams threatened the use of a deadly weapon or displayed what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm?

STATEMENT OF THE CASE

In June of 2007, the Richland County Grand Jury indicted Williams for two counts of armed robbery and one count of burglary first degree, indictments #07-GS-40-4518, 4668, 5451. On December 15, 2008, Williams proceeded to jury trial before the Honorable G. Thomas Cooper. Williams was represented by attorneys Nicole Singletary and Jennifer Davis. The jury returned verdicts of guilty. Pursuant to S.C. Code §17-25-45, Judge Cooper sentenced Williams to life without parole. A timely notice of intent to appeal was filed on December 22, 2008, and the direct appeal perfected on Williams' behalf.

On December 21, 2010, the South Carolina Court of Appeals affirmed the convictions. State v. Williams, 2010-UP-552 (S.C.Ct.App. filed December 21, 2010). The petition for rehearing was filed and on February 25, 2011, the Court of Appeal denied the petition for rehearing. This petition for writ of certiorari follows.

ARGUMENTS

1. The Court of Appeals erred in affirming the armed robbery convictions when the trial judge refused to direct a verdict of acquittal on the two armed robbery charges because the State failed to establish that Williams was armed or by action or words used a representation of a deadly weapon or any object which a person present during the commission reasonably believed to be a deadly weapon.

The jury convicted Williams of two separate counts of armed robbery. One count involved taking money and keys from Sabrina Monsanto as she was working at the Shoe Department shoe store. The other count involved the taking of car keys and a car belonging to Mitchell and Martha Darnell. The witnesses testified that they thought Williams had a weapon because he had his hand in his pocket. Importantly, none of the witnesses testified that Williams pretended to have a weapon in his pocket.

Ms. Monsanto, a clerk at the shoe store, testified, “He came up to the counter and he had his hand in his pocket. It was like bulged out like he had a weapon. And he came up on me and he said, ‘Give me all the money’ very softly.” (R. p. 18, lines 6-9). Upon cross examination Ms. Monsanto admitted that she never saw a weapon and admitted that Williams never said he had a weapon. (R. p. 40, lines 19 – p. 41, lines 1-5). Upon redirect examination Ms. Monsanto testified that she thought he had a gun, “Because he had his hand in his pocket.” (R. p. 46, lines 8-15).

Rickey Johnson, another employee of the shoe store who was present at the time of the incident testified, “He had his hands in his pocket. So that’s one of the reasons why I didn’t go forth to try to do anything because he had his hands in his pocket.” (R. p. 53, lines 2-4). When questioned on cross examination Mr. Johnson testified, “He had his hands in his pockets. So whether he had a weapon or not, I was not going toward him. I wasn’t going to do anything.” (R. p. 59, lines 21-23). Upon re-direct examination Mr. Johnson was asked how Williams acted like

he had a weapon and he testified, "With his hand in his pocket, I suspected that he had something because when he was walking out the store he still had his hands in his pocket. So that's really the reason why I didn't do anything. When he was walking out he was I guess trying to rush to get out." (R. p. 62, lines 8-17). Mr. Johnson admitted that he never saw a weapon. (R. p. 59, lines 13-16).

The other armed robbery charge involved Mitchell and Martha Darnell. Ms. Darnell testified that when Williams approached her outside of her house and mumbled something. (R. p. 71, lines 4-10). Ms. Darnell testified, "He had his hand in his pocket like he had a weapon." (R. p. 72, lines 1-7). Ms. Darnell admitted that she never saw a gun or any other weapons. (R. p. 88, lines 1-8).

William Lorimar, who was working across the street from the Darnells testified, "The homeowner, I can't remember her name across the street, she said, 'He's got a gun or a knife.'" (R. p. 103, lines 19-20). When asked if he saw a weapon, Mr. Lorimar testified, "Just his hand in his pocket." (R. p. 103, lines 23-24). Francisco Chacon, another worker who was across the street at the time of the incident also admitted that he never saw a weapon but instead simply saw that Williams had his hands in his pocket. (R. p. 108, lines 7-23).

Mr. Darnell testified that once inside the house, "He – as he approached me and got about arm's length from me, he reached out his left hand and said, 'Give me your car keys now.'" (R. p. 218, lines 4-6). Mr. Darnell testified, "But he had his hand in his right pocket, and something was protruding from that right pocket or pushing out on the right pocket I guess." (R. p. 218, lines 11-14). Upon cross examination Mr. Darnell admitted that he never saw a weapon and Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 234, lines 1-13).

At the close of the State's case Williams moved for a directed verdict as to the armed robbery charges based on the fact that the State failed to establish that Williams was armed and the State failed to establish that by action or words he used a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon. (R. pp. 378 – 400). The judge denied the motion stating that the victim's perception is significant and stating, "And so they in 1996 added the language that the person present during the commission of a robbery reasonably believed to be a deadly weapon." (R. p. 400, lines 22-25). The judge erred.

The armed robbery statute was amended in 1996 to require that the defendant "while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon . . ." S.C. Code §16-11-330. "The primary significance of the amendment is to explicitly provide that one who purports to be armed with a deadly weapon, and who is armed with something reasonably perceived to be a deadly weapon, is guilty of armed robbery even if not actually armed with a deadly weapon." McAninch, Fairey, and Coggiola, *THE CRIMINAL LAW OF SOUTH CAROLINA* (5th Ed. 2007) p. 290. Importantly, one has to purport to be armed with something reasonably perceived to be a deadly weapon. The act of having one's hand in his pocket is not, without more, purporting to be armed with something reasonably perceived to be a deadly weapon. The statute requires the defendant to allege being armed. There is nothing in the record to establish that Williams ever alleged that he was armed. The victim's unsubstantiated belief that Williams was armed because he had his hands in his pocket is not sufficient for purposes of the armed robbery statute.

During the directed verdict motion, the State argued that State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (1986) stood for the proposition that the armed robbery statute does not require display of a deadly weapon. (R. p. 397, lines 4-8). While the deadly weapon need not be displayed, as required for the burglary statute discussed in issue two, the 1996 amendment clearly requires the defendant to allege being armed with something reasonably perceived to be a deadly weapon. In Nix the defendant alleged to be armed by pointing something under his shirt, satisfying the “armed” requirement of the armed robbery statute. Williams never pointed anything alleging that he was armed.

In State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002), the Court found that words unaccompanied by any corroborating action are not sufficient to establish the armed element for armed robbery. In Muldrow the defendant handed the store clerk a note that said, “Give me all your cash or I’ll shoot you.” The court reversed Muldrow’s conviction for armed robbery and remanded for sentencing on the lesser included charge of strong armed robbery. There is even less evidence in this case than in Muldrow because the record reflects that Williams never threatened the victims with words either written or verbal **and** there was no corroborating action to indicate that Williams was armed. As in Muldrow, Williams’ armed robbery convictions should be reversed and the case remanded for sentencing on strong armed robbery.

In affirming the convictions, the Court of Appeals wrote:

We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct.App. 2005) (“the appellate court may reverse the trial judge’s denial of a motion for a directed verdict only if there is no evidence to support the judge’s ruling.”); State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct.App. 2003) (“The State may prove the corpus delicti of armed robbery by establishing that a robbery was committed and either one of two additional elements: (1) that the robber was armed with a deadly weapon or (2) that the robber

alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object.”).

(App. p. 1-2).

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30, 36 (2001). The State failed to produce evidence that Williams alleged that he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object, an element of armed robbery. The Court of Appeals erred in affirming the armed robbery convictions.

2. The Court of Appeals erred in affirming the burglary first degree conviction when the trial judge refused to direct a verdict of acquittal on the burglary first degree charge because the State failed to establish that Williams threatened the use of a deadly weapon or displayed what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm.

The jury convicted Williams of burglary first degree for entering the Darnell’s home and taking their car keys. Pursuant to the statute, the two elements of aggravation alleged in Williams’ indictment for burglary first degree are that he used or threatened the use of a dangerous weapon or that he displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm. S.C. Code §16-11-311(A)(1)(c)(d). The indictment alleges “That Emmith Williams did in Richland County on or about May 7, 2007, unlawfully enter the dwelling of Mitchell and Martha Darnell at [address deleted] without consent and with the intent to commit a crime therein, To wit: the defendant did use or threaten the use of a dangerous weapon and or displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).” (R. p. 404). The State failed to establish that Williams used or threatened to use a dangerous weapon during the

course of the burglary and the State failed to establish that Williams displayed what appeared to be a dangerous weapon.

Mr. Darnell admitted that Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 243, lines 1-13). Ms. Darnell did not testify that Williams threatened to shoot her. Simply keeping your hand in your pocket is not threatening the use of a dangerous weapon.

Williams never displayed what appeared to be a dangerous weapon. During the directed verdict motion the State argued, “We believe that when his hand was in his pocket was a display of a knife, a gun, pistol or other weapon.” (R. p. 395, lines 1-3). The judge noted, “That’s pretty much of a stretch.” (R. p. 395, line 4). In denying the motion for a directed verdict as to the burglary charge, the judge likened the “uses or threatens to use” a dangerous weapon to the “reasonably believed” language contained in the armed robbery statute. (R. p. 401, lines 1-13). The judge stated, “I think it’s in the minds of the victims.” (R. p. 401, line 7). The judge erred. The threat must be reasonable and not just perceived from what may be an understandably anxious strong armed robbery victim. The record clearly establishes that Williams’ hand remained in his pocket during the entire course of the incident. He simply entered their home and demanded the car keys. Williams never threatened the use of a deadly weapon and he never displayed what appeared to be a dangerous weapon. The judge erred in refusing to direct a verdict of acquittal on the burglary first degree charge. The charge should have been submitted to the jury as burglary second degree.

On appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). In ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight. Id. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State.


State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). If there is any direct or circumstantial reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). Viewing the evidence in the light most favorable to the State, there is no direct or circumstantial evidence to establish that Williams threatened the use of a deadly weapon or that he displayed a dangerous weapon or what appeared to be a dangerous weapon during the course of the burglary. The uncorroborated suspicion of the victim is not sufficient to satisfy the element of the burglary first degree statute.

In affirming the burglary first degree conviction, the Court of Appeals failed to address the State's failure to prove that Williams threatened the use of a deadly weapon or that he displayed a dangerous weapon or what appeared to be a dangerous weapon, an element of burglary first degree. In contrast to the armed robbery statute, the burglary first statute requires a display of a dangerous weapon or what appears to a dangerous weapon or the threat of the use of a deadly weapon. The State failed to prove this element of burglary first degree. The Court of Appeals erred in affirming the conviction for burglary first degree.

CONCLUSION

Based on the above arguments, the petition for writ of certiorari should be granted to allow further briefing on the issues.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 26th day of May, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 2010-UP-552 (S.C. Ct. App. filed 12/21/2010)
07-GS-40-04668, 4518, and 5451.

THE STATE,

RESPONDENT,

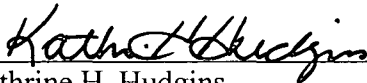
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EMMITH ALLEN WILLIAMS,

PETITIONER

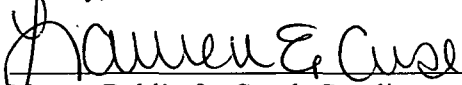
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Mark Farthing, Esquire, and the S.C. Court of Appeals this 26th day of May, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 26th day
of May, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

JUL 22 2011

S.C. Supreme Court

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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 by his actions or words he was armed with a deadly
 weapon while using a representation of a deadly weapon or
 an object reasonably believed to be a deadly weapon.7**

**II. The Court of Appeals correctly affirmed the denial of
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STATEMENT OF ISSUES ON CERTIORARI

I.

The Court of Appeals properly affirmed the denial of Petitioner's directed verdict motion as to the armed robbery charges because there was substantial evidence presented from which the jury could find Petitioner guilty of each element of armed robbery, including that Petitioner alleged by his actions or words he was armed with a deadly weapon while using a representation of a deadly weapon or an object reasonably believed to be a deadly weapon.

II.

The Court of Appeals correctly affirmed the denial of Petitioner's directed verdict motion as to the first-degree burglary charge because there was substantial evidence presented from which the jury could find Petitioner guilty of each element of first-degree burglary, including that Petitioner was guilty of multiple aggravating factors.

STATEMENT OF THE CASE

Procedural History

Petitioner Emmith Allen Williams was arrested in North Carolina following an investigation into two armed robberies and a home invasion committed in Columbia, South Carolina. In June of 2007, the Richland County grand jury indicted Petitioner for two counts of armed robbery and one count of first-degree burglary. On December 15, 2008, Petitioner proceeded to trial in the Richland County court of general sessions with the Honorable G. Thomas Cooper, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Petitioner as indicted. The trial judge sentenced Petitioner to life imprisonment without the possibility of parole for each offense pursuant to S.C. Code Ann. § 17-25-45. Petitioner then timely filed and perfected an appeal.

Subsequently, in an unpublished opinion, the Court of Appeals unanimously affirmed Petitioner's conviction. State v. Williams, Op. No. 2010-UP-552 (S.C. Ct. App. filed Dec. 21, 2010). Petitioner petitioned the Court for rehearing, and the petition was denied. Petitioner then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Around 10:00 a.m. on the morning of May 7, 2007, Sabrina Monsanto, who was five-months pregnant at the time, arrived at her place of employment, The Shoe Dept, to open the store for the day. (R. pp. 11-12). Her co-worker, Rickey Johnson, arrived around the same time. (R. p. 49). Upon arriving, Monsanto and Johnson observed a man walking around in front of another nearby store in the same shopping center. (R. p. 13; p. 50). The man, Petitioner Emmith Allen Williams, was wearing a red jacket, dark pants, and a black do-rag. (R. p. 18; pp. 25-26; p. 50; p. 57).

After Monsanto and Johnson entered the business and began working, Petitioner walked past the store, turned around, and came inside before heading to the back of the store and out of sight. (R. pp. 14-16; pp. 50-51). Monsanto continued to work at the counter until Petitioner approached the register, asked a question, and returned to the rear of the store. (R. p. 17). Based on Petitioner's odd and "very eerie" demeanor, Monsanto believed he might attempt to rob her so she hid her car keys under the counter. (R. p. 17; p. 19). Shortly thereafter, Petitioner again walked back to the register. (R. p. 18). However, this time, Petitioner's right hand was concealed in his pocket, and his pocket was bulging out like he had a weapon. (R. p. 18).

After approaching Monsanto, Petitioner softly demanded all of the money in the register. (R. p. 18). Monsanto loudly repeated Petitioner's demand so Johnson would hear what was happening. (R. p. 18; p. 51). Petitioner continued to keep his right hand concealed in his bulging jacket pocket. (R. p. 18). Fearing for her unborn child, Monsanto opened the register and began collecting the money for Petitioner. (R. pp. 18-19). However, Petitioner became impatient, moved behind the counter, and grabbed the money with his left hand. (R. p. 19). Petitioner then demanded Monsanto's car keys, and she gave him a random key from her key ring. (R. p. 20).

After stealing the money from the register along with the key, Petitioner brushed past Johnson and exited the store. (R. p. 20). Johnson noticed Petitioner's hand was tucked in his pocket like he had something concealed inside, and he did not move to stop Petitioner because he feared Petitioner had a weapon. (R. p. 53; p. 60; p. 62). Once Petitioner was outside, Monsanto asked Johnson to lock the doors, and they moved to a central location away from the windows for safety. (R. p. 20). They then watched as

Petitioner unsuccessfully attempted to access Monsanto's vehicle before fleeing. (R. p. 20). Afterwards, Monsanto alerted law enforcement of the robbery. (R. p. 21).

Shortly thereafter, Martha Darnell ("Martha") took out the trash and was walking back inside of her home when she turned around and saw Petitioner standing behind her. (R. p. 68; p. 70). Martha asked Petitioner what he was doing there, and he moved towards her with his right hand concealed in his pocket like he had a weapon and with an object protruding from his pocket. (R. p. 69; pp. 71-73). Martha put her arm out to stop Petitioner and instructed him to leave, but Petitioner pushed her arm aside. (R. p. 71). Martha then attempted to lock the door and called to her husband for help. (R. p. 71). However, Petitioner pushed her aside and entered the Darnells' home. (R. p. 72).

Mitchell Darnell ("Mitchell"), Martha's husband, heard Martha's cry for help, headed towards the door, and observed Petitioner push his way into the house. (R. p. 217). Petitioner, who still had his right hand concealed in his pocket with something protruding from inside, reached out his left hand to Mitchell and immediately demanded his car keys. (R. p. 218). Believing Petitioner had a snub-nosed revolver in his pocket, Mitchell quickly gave Petitioner the keys. (R. pp. 218-219). Petitioner then left the home and headed towards the Darnells' cars. (R. pp. 219-220). Petitioner demanded to know which vehicle he had stolen the keys to, and Mitchell pointed out the car to Petitioner. (R. pp. 75-76; p. 220). Petitioner then moved to take the vehicle while continuing to keep one of his hands concealed in his pocket. (R. p. 76; p. 220).

Meanwhile, William Lorimer and Francisco Chacon were working across the street when they saw Petitioner enter the Darnells' home and Martha run outside calling for help. (R. pp. 97-98; p. 106). In response, Lorimer called 911 while Chacon walked over with a shovel to confront Petitioner. (R. pp. 98-99; p. 105). However, Chacon

backed away after he and Lorimer saw Petitioner reach into his pocket like he had a weapon, and Petitioner escaped in the Darnell's car. (R. p. 99; pp. 106-107; p. 220).

The next day, Petitioner was arrested in Raleigh, North Carolina. (R. p. 239-241). Following his arrest, Petitioner gave a written, signed statement to law enforcement confessing to the commission of both robberies and to the theft of the Darnells' car. (R. p. 271; pp. 349-350; p. 353). Petitioner admitted he may have had his hand in his pocket during the robberies while denying he was armed. (R. pp. 350-351). Officers showed photographic line-ups to the witnesses, and Monsanto, Johnson, Martha, and Mitchell all identified Petitioner as the robber. (R. p. 25; p. 54; p. 80; pp. 226-227). Subsequently, Petitioner was indicted for first-degree burglary and two counts of armed robbery, and he proceeded to trial. (R. pp. 403-408).

During trial, each of the witnesses recounted the circumstances of the crimes. (R. p. 18; p. 51; pp. 71-72; pp. 98-99; p. 105; p. 218). Regarding the presence of a weapon, Monsanto testified Petitioner kept his hand in his pocket throughout the first robbery and noted Petitioner's pocket bulged out like he had a weapon. (R. p. 18; pp. 39-40). Monsanto stated Petitioner never told her he was armed, but she asserted he did not have to because he kept his hand in his pocket like he had a gun. (R. p. 38; p. 48). Monsanto testified she believed Petitioner had a gun and surrendered the money against her wishes because she did not want to be harmed. (R. p. 46). Likewise, Johnson testified he did not try to stop Petitioner because Petitioner had his hand in his pocket and was acting like he had a weapon. (R. p. 53; p. 62). Johnson believed Petitioner was armed based on Petitioner's hand being concealed in his pocket. (R. pp. 62-63).

Similarly, Martha testified Petitioner had his hand in his pocket when he forced his way into her home during the second robbery, and she noted his pocket was

protruding out. (R. pp. 72-73; p. 87; p. 89). Martha firmly believed Petitioner was armed with a gun based on the way he was acting and the way he concealed his hand in his pocket. (R. pp. 73-74; p. 77; p. 91; pp. 94-96). Mitchell testified he believed Petitioner was armed and stated he saw an object protruding from Petitioner's pocket that looked like a snub-nosed revolver. (R. pp. 218-219; p. 233). Lorimer believed Petitioner was armed and confirmed Petitioner reached his hand into his pocket like there was a weapon inside. (R. p. 99; p. 104). Finally, Chacon testified he backed off from Petitioner after Petitioner put his hand in his pocket and threatened him like he had a weapon because Chacon believed Petitioner had a gun. (R. pp. 106-108).

Subsequently, at the conclusion of the State's case, Petitioner moved for a directed verdict on the armed robbery and first-degree burglary charges. (R. pp. 380-381). Petitioner asserted none of the witnesses saw him with a weapon and their assumptions he was armed based on his hand being concealed in his pocket were unreasonable. (R. p. 384). Petitioner argued simply having a hand in a pocket was not sufficient to qualify as a representation of a weapon and claimed a variety of things in his pocket could have created a bulge. (R. p. 386). He further argued there was no evidence establishing he threatened the use of or displayed what appeared to be a weapon during the burglary. (R. p. 389). After considering the issue and reviewing the relevant case law, the trial judge denied the directed verdict motion. (R. p. 401). Petitioner was subsequently convicted as indicted. (R. pp. 409-411). Petitioner timely appealed his conviction, and the Court of Appeals affirmed in an unpublished opinion. Petitioner sought rehearing, his petition was denied, and Petitioner then filed a Petition for Writ of Certiorari in the Supreme Court.

ARGUMENT

I.

The Court of Appeals properly affirmed the denial of Petitioner's directed verdict motion as to the armed robbery charges because there was substantial evidence presented from which the jury could find Petitioner guilty of each element of armed robbery, including that Petitioner alleged by his actions or words he was armed with a deadly weapon while using a representation of a deadly weapon or an object reasonably believed to be a deadly weapon.

Petitioner contends the trial judge erred in denying his motion for a directed verdict as to the two armed robbery charges. Petitioner maintains no evidence was presented establishing he ever alleged he was armed with a deadly weapon through his actions or words during the robberies. To the contrary, Petitioner committed the robberies while keeping his right hand concealed in his pocket to create the appearance he was armed with a deadly weapon. His actions were designed to convey the threat of a weapon to his victims in order to command their compliance during the crimes, and Petitioner's victims interpreted his actions in this manner. Based on this evidence, the jury could conclude Petitioner robbed the victims while alleging through his actions he was armed with a deadly weapon while using his concealed hand in his pocket, along with the bulging contents of his pocket, as a representation of a deadly weapon. Therefore, the trial judge properly denied Petitioner's directed verdict motion, and the Court of Appeals correctly affirmed Petitioner's conviction. Petitioner's petition for a writ of certiorari should be denied.

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). On appeal from the denial of a directed verdict motion, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292,

625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial judge's denial of a motion for a directed verdict if there is no evidence supporting the trial judge's decision. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

The offense of armed robbery is the commission of a robbery by a person either armed with a deadly weapon or pretending to be armed with a deadly weapon while using a representation of one or while using any object reasonably perceived as one. State v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007); see S.C. Code Ann. § 16-11-330(A) ("A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony[.]"). Thus, a defendant may be convicted of armed robbery if the jury concludes the defendant alleged during the robbery he was armed under the requisite statutory conditions without having to conclude the defendant was actually armed. State v. Jones, 342 S.C. 248, 253, 536 S.E.2d 396, 398 (Ct. App. 2000). The issue of whether or not a deadly weapon was used during a robbery is a question of fact for the jury to resolve. State v. Simmons, 360 S.C. 33, 43-44, 599 S.E.2d 448, 453 (2004).

In the similar case of State v. Jones, Jones entered a convenience store and gave the store clerk a note indicating it was a stickup and demanding the surrender of all the money. Id., 342 S.C. at 250, 536 S.E.2d at 397. The clerk initially thought the note was a joke until he noticed Jones had his left hand concealed in his jacket pocket. Id. at 251, 536 S.E.2d at 397. The clerk then gave Jones the money from the store register without ever actually seeing a weapon because he feared being shot. Id. On appeal, the Court of Appeals looked to the indictment, which alleged Jones committed the robbery while armed with a deadly weapon, and concluded the evidence presented conflicted with the material allegations of the indictment. Id. at 253-254, 536 S.E.2d at 398-399. Therefore, the Court reversed Jones' conviction and found he was entitled to a directed verdict on the armed robbery charge as indicted. Id. However, the Court specifically found Jones could be re-indicted for armed robbery with a proper indictment correctly charging Jones with committing the robbery while alleging to be armed with a deadly weapon while using a representation of a deadly weapon or any object reasonably believed to be a deadly weapon. Id. at 254, n. 2, 536 S.E.2d at 399.

Likewise, although not controlling, the Georgia Court of Appeals addressed another very similar case in Martin v. State, 264 Ga. App. 813, 592 S.E.2d 483 (Ga. Ct. App. 2003).¹ In Martin, Martin entered a convenience store, asked the clerk for cigarettes, and then demanded the money in the cash register. Id. at 813, 592 S.E.2d at 484. The clerk surrendered the money after noticing Martin had his hand concealed in his coat pocket like he was armed with a gun. Id. However, Martin never verbally

¹ Importantly, Georgia's armed robbery statute is also similar to the armed robbery statute in South Carolina. See Ga. Code Ann. § 16-8-41(a) ("A person commits the offense of armed robbery when, with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon." (emphasis added)).

threatened to shoot, kill, or harm the clerk during the robbery. Id. Subsequently, Martin was charged with armed robbery and convicted. Id. at 814, 592 S.E.2d at 484. On appeal, the Georgia Court of Appeals affirmed his conviction finding the evidence of armed robbery was sufficient because the clerk perceived Martin had a gun during the robbery based on Martin's actions. Id. at 814, 592 S.E.2d at 485.

In the case sub judice, the trial judge properly denied Petitioner's directed verdict motion as to the armed robbery charges because Petitioner robbed the victims and alleged through his actions he was armed while using a representation of a deadly weapon. During the first robbery, Monsanto and Johnson testified they gave Petitioner the money from the register and did not attempt to stop him because Petitioner kept his right hand concealed in his pocket like he had a weapon. Petitioner continued to keep his right hand hidden in his pocket throughout the crimes and while he made his escape to command acquiescence from his victims. Then, during the second robbery, Mitchell and Martha testified Petitioner again kept his hand concealed in his pocket while forcing entry into their home, taking their car keys, and fleeing in their car. Mitchell and Martha each believed Petitioner was armed with a gun based on his concealed hand in his pocket, which had something protruding from inside. Finally, Lorimer and Chacon each observed Petitioner reach his hand into his pocket as he attempted to escape, and Chacon ceased his efforts to stop Petitioner after he testified Petitioner "threatened [him] like this, have a weapon in there or something like that." (R. p. 106). Critically, all six of the witnesses to Petitioner's crimes perceived his act of concealing his hand in his bulging pocket as a threat he was armed with a gun, and Petitioner's gesture is virtually universally recognized as conveying that precise threat.

Petitioner contends his act of concealing his hand in his pocket during the robberies was not sufficient to constitute an allegation he was armed, which he claims means he never alleged he was armed during the crimes as required for conviction under the armed robbery statute.² However, to the contrary, Petitioner's act of concealing his hand in his pocket was designed to achieve the exact result of conveying to his victims the threat he was armed and capable of using force if his demands were not quickly met, and each of the victims perceived Petitioner's actions in this exact manner. Based on the conveyed threat, the victims complied with Petitioner's demands and made no attempts to stop him. Thus, through his actions, Petitioner alleged to his victims he was armed by concealing his hand in his pocket, and his concealed hand along with whatever else was protruding from his pocket constituted a representation of a deadly weapon.

² Numerous courts in other state jurisdictions have found the use of a concealed hand is sufficient to satisfy the required elements for an armed robbery conviction. See, e.g., State v. Bousley, 171 Ariz. 166, 168, 829 P.2d 1212, 1213 (Ariz. 1992) (affirming two armed robbery convictions where the two robbers positioned their hands under their clothing in such a way that they appeared to be armed with deadly weapons during the robbery); Edwards v. State, 360 Ark. 413, 419, 201 S.W.3d 909, 914 (Ark. 2005) (finding evidence sufficient for an armed robbery conviction where the robber demanded money from a gas station clerk, insinuated he had a gun by pointing his jacket at her, and the clerk believed the robber was armed); Marlin v. State, 273 Ga. App. 856, 859, 616 S.E.2d 176, 178 (Ga. Ct. App. 2005) (“[A] defendant’s concealed hand, if perceived by the victim to be a gun, is sufficient to support a conviction for armed robbery.”); State v. DeMeyers, 183 Mich. App. 286, 296-297, 454 N.W.2d 202, 207 (Mich. Ct. App. 1990) (“The manner in which the defendant concealed his hand simulated a gun and led [the victim] to believe that defendant had a gun in his pocket. This was sufficient evidence to satisfy the ‘armed’ element of armed robbery.”); State v. Jury, 3 Mich. App. 427, 432, 142 N.W.2d 910, 913 (Mich. Ct. App. 1966) (finding the defendant’s concealment of his hand in a manner resembling a gun created a factual issue as to whether or not the crime was an armed robbery); State v. La France, 117 N.J. 583, 595, 569 A.2d 1308, 1314 (N.J. 1990) (finding evidence sufficient to support a first-degree robbery conviction where the robber simulated having a gun by placing his hand in his pocket and the victims believed he was armed); State v. Broadhead, 179 A.D.2d 766, 767, 579 N.Y.S.2d 135, 136 (N.Y. App. Div. 1992) (“[D]espite the absence of any language specifically announcing the possession of a firearm, the defendant consciously displayed the object in his pocket when he reached into his bulky pocket, under such circumstances that the victims reasonably perceived that he had a handgun.”); State v. Ireland, 150 P.3d 532, 536 (Utah 2006) (finding evidence sufficient to support an aggravated robbery conviction where Ireland gestured with his concealed hand in order to influence the victim to surrender money and the victim believed Ireland was armed with a deadly weapon); State v. Combs, 175 W. Va. 765, 768, 338 S.E.2d 365, 368 (W. Va. 1985) (finding evidence sufficient for an aggravated armed robbery conviction where the robber concealed his hand in his pocket during the robbery and caused the victim to believe he was armed).

Critically, through the enactment of S.C. Code Ann. § 16-11-330, our legislature has expressed a desire to treat a defendant as an armed robber even where the defendant only falsely alleges he is armed while using some representation of a deadly weapon. By eliminating the requirement that a deadly weapon actually be used during a robbery in order for the crime to be considered the aggravated offense of armed robbery, our legislature recognized the enhanced risk and danger even the simulated use of a deadly weapon creates. See, e.g., United States v. Vincent, 121 F.3d 1451, 1455 (11th Cir. 1997) (“[T]he danger of a violent response that can flow from pretending to brandish, display, or possess a simulated weapon in perpetrating a robbery is just as real whether the object is a toy gun, or a concealed body part.”); United States v. Dixon, 982 F.2d 116, 124 (3rd Cir. 1992) (“Even though [the robber] did not possess an actual weapon underneath the concealing towel, her actions created a reasonable belief that she had a gun. Police responding to the crime or the victims of the crime could easily have retaliated violently because of the immediate threat they perceived. During the course of a robbery, people confronted with what they believe to be a dangerous weapon often find their perceptions impaired because of fear and the threat of violence. That perceived fear and threat can itself trigger a violent and even deadly response.”).

Therefore, because Petitioner alleged he was armed with a deadly weapon by concealing his hand in his bulging pocket during his crimes, Petitioner was guilty of the offense of armed robbery even though no gun was ever directly seen or recovered. See State v. Heck, 304 S.C. 345, 346, 404 S.E.2d 514, 515 (Ct. App. 1991) (“[D]isplay of the deadly weapon is not required.”). Otherwise, if more were required to support an armed robbery conviction, criminals would be encouraged to conceal their firearms from direct view and only use them as implied, hidden threats during robberies in order to escape

enhanced punishment for the aggravated offense. See Nix, 288 S.C. at 497, n. 2, 343 S.E.2d at 630 (“This statute does not require display of the deadly weapon; and it should not, we think, because a robber would be thus encouraged to hide his deadly weapon to escape the increased punishment for armed robbery.”). Petitioner’s argument to the contrary must fail due to the increased risk and danger even the implied presence of a deadly weapon can create during a robbery.

For the foregoing reasons, Petitioner’s actions coupled with his representation of a deadly weapon through the use of his concealed hand and bulging pocket constituted substantial evidence of the required elements of armed robbery. See State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003) (“The State may prove the corpus delicti of armed robbery by establishing that a robbery was committed and either one of two additional elements: (1) that the robber was armed with a deadly weapon or (2) that the robber alleged he was armed with a deadly weapon, either by actions or words, while using a representation of a deadly weapon or any object.”). Thus, after viewing the presented evidence in a light most favorable to the State, the trial judge was required to submit the case for the jury to decide. The Court of Appeals correctly affirmed Petitioner’s conviction, and Petitioner has failed to identify any grounds justifying further review on appeal. Petitioner’s petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly affirmed the denial of Petitioner's directed verdict motion as to the first-degree burglary charge because there was substantial evidence presented from which the jury could find Petitioner guilty of each element of first-degree burglary, including that Petitioner was guilty of multiple aggravating factors.

Petitioner contends the trial judge erred in denying the directed verdict motion.

Petitioner argues no evidence was presented establishing any of the required aggravated circumstances necessary for a first-degree burglary conviction. To the contrary, the trial judge properly denied Petitioner's directed verdict motion because evidence was presented from which the jury could conclude Petitioner was armed with a deadly weapon, used or threatened to use a dangerous instrument, or displayed what appeared to be a firearm during the crime. Therefore, viewing the evidence in a light most favorable to the State as required, the trial judge properly submitted the case to the jury for resolution of any factual disputes. The Court of Appeals correctly affirmed Petitioner's conviction, and Petitioner's petition for a writ of certiorari should be denied.

In reviewing a motion for a directed verdict, the trial judge must view the evidence in a light most favorable to the State while focusing only on the existence of evidence as opposed to its weight. State v. Morgan, 282 S.C. 409, 411, 319 S.E.2d 335, 336 (1984). Unless there is a total failure of competent evidence tending to prove the charged offense, the trial judge should deny the directed verdict motion and submit the case to the jury. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). If there is any direct evidence or substantial circumstantial evidence tending to prove the defendant's guilt, the appellate court must find the case was properly submitted to the jury and affirm the trial judge's ruling. State v. Rowell, 326 S.C. 313, 315, 487 S.E.2d 185, 186 (1997).

A conviction for first-degree burglary requires proof of the entry of a dwelling without consent with the intent to commit a crime therein coupled with proof of at least one of several aggravating circumstances. State v. Cross, 323 S.C. 41, 43, 448 S.E.2d 569, 569 (Ct. App. 1994). These aggravating circumstances include: (1) possessing a deadly weapon during entry or immediate flight; (2) causing physical injury to a non-participant during entry or immediate flight; (3) using or threatening the use of a dangerous instrument during entry or immediate flight; or (3) displaying what is or appears to be a knife or any kind of firearm during entry or immediate flight. S.C. Code Ann. § 16-11-311(A)(1).

In the case at bar, the trial judge properly submitted the burglary charge to the jury because substantial circumstantial evidence was presented from which the jury could find Petitioner guilty of all of the elements of first-degree burglary, including multiple aggravating circumstances. Initially, the evidence presented tended to prove Petitioner was armed with a deadly weapon.³ Petitioner kept his hand suggestively concealed in his pocket during his entry into the Darnells' home and during his immediate flight from their home with something protruding from his pocket. Then, while making his escape, he again reached into his pocket like there was a weapon inside when Chacon moved to stop him with a shovel. Based on the inferences to be drawn from Petitioner's actions

³ Although the indictment only alleged the two aggravating factors of using or threatening the use of a dangerous instrument and displaying what appeared to be a knife or firearm, the indictment specifically referenced S.C. Code Ann. § 16-11-311 in describing the offense committed by Petitioner. Therefore, even though the aggravating factor of being armed with a deadly weapon was not specifically alleged in the body of the indictment, this allegation was properly incorporated into the charged offense through the statutory reference. See State v. Owens, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001) ("While the murder indictment does not specifically state appellant killed the victim with malice aforethought, it does state appellant killed the victim in violation of South Carolina Code Ann. § 16-3-10. This section defines murder as 'the killing of any person with malice aforethought, either express or implied.' Specific reference to § 16-3-10 in the body of the indictment provided appellant with notice of the elements of murder. While the better practice is to set forth the elements of the crime in the indictment rather than referring to the statutory section alleged to have been violated, the indictment here was sufficient to inform appellant of the elements of murder, including malice aforethought." (citations omitted)).

along with the presence of the object protruding from his pocket, the jury could reasonably conclude Petitioner was reaching into his pocket for a concealed weapon. Looking to the plain language of the first-degree burglary statute, Petitioner was only required to be armed with a deadly weapon and was not required to directly reveal it to anyone else during the crimes. See S.C. Code Ann. § 16-11-311(A)(1)(a) (stating a defendant is guilty of first-degree burglary if he commits the crime while “armed with a deadly weapon or explosive”). Therefore, regardless of whether or not Petitioner ever drew the weapon he appeared to be reaching for in his pocket and viewing the evidence in a light most favorable to the State, the trial judge was required to submit the case for the jury to resolve the factual dispute as to whether Petitioner was actually armed.

Furthermore, substantial evidence was presented establishing Petitioner threatened the use of a dangerous instrument during the burglary and also displayed what was or appeared to be a firearm during the crime. Based on the testimony presented, Petitioner concealed his hand in his pocket in a manner that conveyed the threat he was armed with a deadly weapon to his victims. Then, as Petitioner fled from the house, Chacon testified Petitioner reached into his pocket and threatened him when Chacon attempted to stop Petitioner’s escape. Each of the victims was threatened by Petitioner’s actions and believed he was armed with a gun based on the object protruding from his pocket, and Petitioner relied on this threat of a weapon to successfully commit the burglary. Viewing this evidence in a light most favorable to the State, the jury could reasonably conclude Petitioner threatened the use of a dangerous instrument or displayed what appeared to be a firearm during the burglary, particularly in light of Chacon’s testimony that Petitioner threatened him like he had a weapon. Therefore, the trial judge was required to submit the case to the jury. See, e.g., Broadhead, 179 A.D.2d at 767, 579

N.Y.S.2d at 136 (“[D]espite the absence of any language specifically announcing the possession of a firearm, the defendant consciously **displayed the object in his pocket when he reached into his bulky pocket**, under such circumstances that the victims reasonably perceived that he had a handgun.” (emphasis added)).

Based on the evidence presented, the jury could find Petitioner guilty of each element of first-degree burglary, including that Petitioner was armed with a deadly weapon, used or threatened the use of a dangerous instrument, or displayed what appeared to be a firearm during the crime. The evidence presented created a factual dispute that could only appropriately be resolved by the jury. The Court of Appeals properly affirmed the trial judge’s denial of Petitioner’s directed verdict motion, and Petitioner has failed to identify any grounds necessitating further review of his case. Petitioner’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 22, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

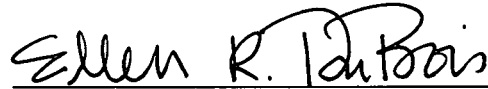
Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, 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 22nd day of July, 2011.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

July 22, 2011

RECEIVED

JUL 22 2011

S.C. Supreme Court

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Emmith Allen Williams

Dear Ms. Hudgins:

I am enclosing two (2) copies of the Return to Petition for Certiorari, along with proof of service, in the above-referenced case.

Please note the Record on Appeal contains personal data identifiers in the form of the victims' home address on the following pages: 68, 139, 141, 149, 178, 216, 228, 389, 404, and 419. Pursuant to the Order of the South Carolina Supreme Court, dated August 13, 2007, entitled RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, these references, along with any others, must be redacted from the Record on Appeal in a manner consistent with the order.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: ~~cHonorable Daniel E. Shearouse (original and six enclosed)~~
Victim Services

The Supreme Court of South Carolina

The State,

Respondent,

v.

Emmith Williams,

Petitioner.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2007-GS-40-04518
2007-GS-40-04668; 2007-GS-40-05451

ORDER

The request for an extension to serve and file the Return to Petition for Writ of Certiorari is granted and extended until July 27, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

Brenda J. Shealy
Chief Deputy Clerk

Columbia, South Carolina

June 28, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mark Farthing



ALAN WILSON
ATTORNEY GENERAL

June 27, 2011

RECEIVED

JUN 27 2011

VIA HAND-DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

Re: State v. Emmith Allen Williams

Dear Mr. Shearouse:

The Return to Petition to Writ of Certiorari in the above appeal is due to be served and filed June 27, 2011. However, due to a heavy workload, I am requesting a 30-day extension to file this document. This is the first extension request at this stage in the process, and it is not intended for the purpose of delay.

I appreciate your consideration of this request and ask that you hold the filing time in abeyance during the time in which this request is pending.

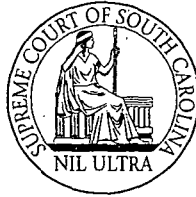
By copy of this letter, I am informing counsel for Appellant of this extension request.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd

cc: Kathrine H. Hudgins, Esquire
Victim Services



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 27, 2011

Appellate Defender Kathrine H. Hudgins
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Williams, Emmith Allen
Case Tracking No. 2011-188488

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Assistant Attorney General Mark Farthing
The Honorable Tanya Gee

The Supreme Court of South Carolina

The State,

Respondent,

v.

Emmith Williams,

Petitioner.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2007-GS-40-04518
2007-GS-40-04668; 2007-GS-40-05451

ORDER

For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until May 27, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 28, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mark Farthing

MAILED



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 27, 2011

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

APR 27 2011

Re: The State v. Emmith Williams
County: Richland
Indictment: 07-GS-40-04668, 4518, and 5451
Judge: G. Thomas Cooper
Trial Date: December 18, 2008

S.C. Supreme Court

(2)

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Mark Farthing, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Court of Appeals
Mark Farthing, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Emmith Williams,

Petitioner.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2007-GS-40-04518
2007-GS-40-04668; 2007-GS-40-05451

ORDER

The request for an extension to serve and file Petition for Writ of Certiorari and Appendix is granted and extended until April 27, 2011.

Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

Brenda J. Shealy

Clerk

Chief Deputy

Columbia, South Carolina

March 30, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Mark Farthing
The Honorable Tanya Gee



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 28, 2011

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

MAR 28 2011

S.C. Supreme Court

Re: The State v. Emmith Williams
County: Richland
Indictment: 07-GS-40-04668, 4518, and 5451
Judge: G. Thomas Cooper
Trial Date: December 18, 2008

(1)

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Mark Farthing, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Court of Appeals
Mark Farthing, Esquire