

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRED WOODROW CRIBB,

APPELLANT

APPELLANT CASE NO. 2012-213533

ANDERS BRIEF OF APPELLANT

CARMEN V. GANJEHSANI

Appellate Defender

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Division of Appellate Defense

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant is entitled to a directed verdict on the charge of first degree burglary where the State failed to present evidence that Appellant entered a dwelling with the intent to commit a crime therein.

STATEMENT OF THE CASE

On May 16, 2012, Appellant Fred Woodrow Cribb was indicted by the Berkeley County Grand Jury for (1) first degree burglary; (2) financial transaction card fraud as a third or subsequent offense; and (3) financial transaction card theft. R. 242-250.

Appellant was tried before the Honorable R. Markley Dennis, Jr. and a jury on November 28, 2012. R. 1. Appellant was represented by Patricia A. Kennedy and Debra K. Littlejohn, and the State was represented by Assistant Solicitor Ashley Cornwell. Id.

The jury found Appellant guilty on all counts. R. 233, ll. 6-23. Judge Dennis sentenced Appellant to (1) twenty-one years for first degree burglary; (2) eight years for third offense financial transaction card fraud; and (3) five years for financial transaction card theft, with all sentences to run concurrently. R. 240, ll. 5-16; 244; 247; 250.

Appellant timely filed and served his Notice of Appeal on December 3, 2012.

ARGUMENT

Appellant is entitled to a directed verdict on the charge of first degree burglary where the State failed to present evidence that Appellant entered a dwelling with the intent to commit a crime therein.

Under South Carolina law, “[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . (3) the entering or remaining occurs in the nighttime.” S.C. CODE ANN. § 16-11-311(A). In this case, the State failed to present evidence that Appellant entered a dwelling with the intent to commit a crime therein. Accordingly, the Trial Court erred in failing to grant Appellant’s motion for a directed verdict on the first degree burglary charge.

A defendant is entitled to a directed verdict at trial when the State fails to present evidence on a material element of the offense charged. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The grant of a directed verdict motion for acquittal by a defendant is proper if there is a failure of competent evidence tending to prove the charge. State v. Jackson, 395 S.C. 250, 254, 717 S.E.2d 609, 611 (Ct. App. 2011).

If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court should submit the case to the jury. Otherwise, “a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.” “Suspicion” implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Buckmon, 347 S.C. 316, 321-22, 555 S.E.2d 402, 404-05 (2001; see also State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011; State v. James, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

At trial, the State presented the following evidence. Raymond Kiley met Appellant when the Appellant was looking for work. Mr. Kiley offered Appellant work and paid him for those jobs. R. 125, l. 20 – 126, l. 16. At one point, Appellant came to Mr. Kiley and said he had a lawnmower to sell. Mr. Kiley looked at the lawnmower and gave Appellant some money for the lawnmower. R. 127, l. 2 – 128, l. 2.

During the early morning hours of February 5, 2012, Mr. Kiley said he awoke and someone was standing at the foot of his bed. Mr. Kiley told the person to get out of the bedroom and the person went into the living room of Mr. Kiley's home. Mr. Kiley recognized the person as Appellant and went out to talk to Appellant to find out why he was in Mr. Kiley's home. R. 129, l. 3 – 130, l. 2. Mr. Kiley was not sure what Appellant was doing in his house, and he made Appellant go outside. Mr. Kiley joined Appellant in the yard, and the two of them talked about the lawnmower for a little while. R. 130, ll. 3-7; 133, ll. 7-16.

Mr. Kiley testified that Appellant did not try to attack him or do anything to him. R. 130, ll. 3-13. Mr. Kiley further testified that while he was speaking with Appellant outside, he did not observe Appellant carrying his wife's purse which she normally left by the door. R. 112, ll. 4-6; 133, l. 17 – 134, l. 23; 136, ll. 2-10. Mr. Kiley did not call the police at that time. R. 130, ll. 17-22.

Roberta Kiley, the wife of Raymond Kiley, also testified at trial. She said that around 2:30 in the morning, she heard her dogs barking and woke up her husband. About that time, the door to the bedroom opened, and Appellant was standing in the doorway. Mrs. Kiley testified that she and her husband never locked their front door, and

Appellant was able to enter their home through the unlocked front door. R. 110, ll. 14-20.

Appellant said to the Kileys, "I thought I heard you tell me to come in." R. 109, ll. 9-11. Mrs. Kiley further testified that Appellant also said something along the lines of finding the lawnmower. R. 111, ll. 16-18. Mr. Kiley then got out of bed to walk Appellant out of the house. R. 109, ll. 12-16.

Mrs. Kiley said that it did not dawn on her or her husband to call the police after Appellant left their house. R. 111, ll. 11-21. The next day, Mrs. Kiley noticed that her purse was gone. R. 111, ll. 9-10. She and her husband called the police when she could not find her purse anywhere. R. 112, ll. 6-7.

Mrs. Kiley's credit card company also called her that day to let her know that her credit card had been used in four different places. R. 112, ll. 8-12.

Detective Michael Cortte with the Berkeley County Sheriff's Office was the assigned detective on this case, and he took Appellant's statement after giving Appellant his Miranda rights. R. 155, l. 17 - 156, l. 18; 159, ll. 2 - 14. Detective Cortte contended that during this interview, which was not videotaped, Appellant stated that he found Mrs. Kiley's credit cards in a bag with some cigarettes by the powerlines near the Sedgefield School. At first, Appellant only took the cigarettes, but then realized he was hungry and decided to take the credit cards and use them. R. 171, ll. 15-17; 173, ll. 13-25. Appellant told Detective Cortte that he did not commit a burglary to steal Mrs. Kiley's credit cards. R. 175, l. 18 - 176, l. 9. Appellant was adamant that he did not commit a burglary, but rather found the credit cards and decided to use the cards after he found them. R. 176, ll. 1-17.

After hearing Appellant's explanation for how he came into possession of Mrs. Kiley's credit cards, Detective Cortte conducted no further investigation. Detective Cortte neither visited the site of the pathway near the Sedgefield School where Appellant said he found the bag containing Mrs. Kiley's credit cards, nor did Detective Cortte determine how far this pathway was from the Kileys' home. R. 176, l. 23 – 177, l. 15.

At trial, Appellant moved for a directed verdict on the first degree burglary charge because there was no evidence that Appellant ever took Mrs. Kiley's purse when he visited the Kileys' home and thus there was no evidence that Appellant had any intent to commit a crime in the Kileys' dwelling. R. 178, l. 14 – 179, l. 3. The Trial Court denied Appellant's motion. R. 179, ll. 4-20. Appellant renewed his directed verdict motion, which the Trial Court also denied. R. 188, ll. 17-21.

The Trial Court should have granted Appellant's directed verdict motion on the first degree burglary charge where the State failed to present evidence on a material element of first degree burglary, namely the intent of Appellant to commit a crime in the Kileys' dwelling. The evidence at trial showed that when Appellant came to the Kileys' home in the early morning hours of February 5, 2012, he told the Kileys that he thought he heard someone tell him to come in. R. 109, ll. 9-11. Appellant also wanted to discuss the lawnmower that he had sold to Mr. Kiley. R. 111, ll. 15-18. Mr. Kiley went outside to talk about the lawnmower with Appellant for little while. R. 133, ll. 7-16.

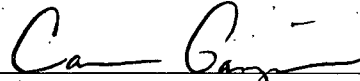
Mr. and Mrs. Kiley saw no need to call the police. R. 111, ll. 11-21; 130, ll. 17-22. While speaking with Appellant outside that night, Mr. Kiley never saw Appellant with Mrs. Kiley's purse. R. 133, l. 17 – 134, l. 23. If the State cannot show that Appellant took Mrs. Kiley's purse that night when he entered the Kileys' home, then the

State cannot show that Appellant had any intent to commit a crime in the Kileys' dwelling as required for a first degree burglary conviction. Accordingly, where the State failed to present evidence as to this material element of first degree burglary, Appellant was entitled to a directed verdict on the first degree burglary charge.

CONCLUSION

For the reasons set forth herein, Appellant Fred Woodrow Cribb respectfully requests that this Court reverse his conviction for first degree burglary and issue an Order of Acquittal as to that offense.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Carmen V. Ganjehsani', written over a horizontal line.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

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FRED WOODROW CRIBB,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Fred Woodrow Cribb states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Markley Dennis, Jr., which was held on November 28, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Fred Woodrow Cribb.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2013.

STATE OF SOUTH CAROLINA

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R. Markley Dennis, Jr., Circuit Court Judge

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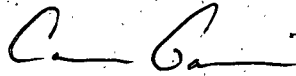
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Entire transcript of trial held November 28, 2012; and
- (3) Sentencing sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 6th, 2013



Carmen V. Ganjehsani
Appellate Defender

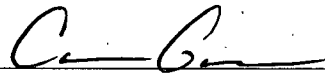
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 6th, 2013



Carmen V. Ganjeshani
Appellate Defender

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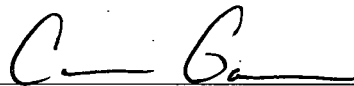
V.

FRED WOODROW CRIBB,

APPELLANT

CERTIFICATE OF SERVICE

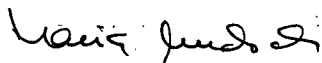
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Fred Woodrow Cribb, #238796, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of November, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of November, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.