The Supreme Court of South Carolina

The State, Respondent,

v.

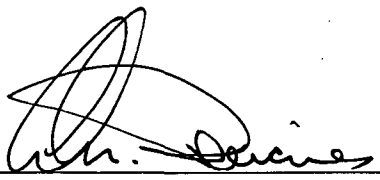
Lawrence Brown, Appellant.

Appellate Case No. 2011-193606

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



_____ J.
FOR THE COURT

Columbia, South Carolina

July 26, 2012

cc:
Wanda H. Carter
Mark Reynolds Farthing
Salley W. Elliott
The Honorable Jenny Kitchings

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

Respondent,

vs.

LAWRENCE BROWN, III,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) Trial Transcript, pages 3, and 21-133;

(2) Arrest Warrants; and

(3) State's Exhibit # 2 (Bill of Sale).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

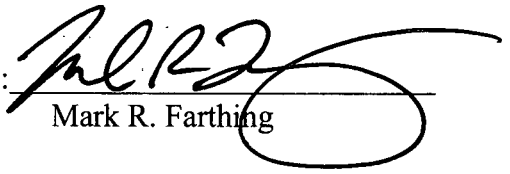
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

May 1, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

Respondent,

vs.

LAWRENCE BROWN, III,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, 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 1st day of May, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
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ALAN WILSON
ATTORNEY GENERAL

May 1, 2012

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

RE: State v. Lawrence Brown, III

Dear Ms. Carter:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

Respondent,

vs.

LAWRENCE BROWN, III,

Appellant.

INITIAL BRIEF OF RESPONDENT

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Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's directed verdict motion because evidence and testimony was presented during trial from which the jury could fairly and logically find Appellant guilty of the required elements of two counts of grand larceny, including that Appellant unlawfully took and carried away two vehicles valued at over $1,000 each.

II.

Any issues with the trial judge's jury instructions or failure to retroactively apply statutory amendments to Appellant's case were not preserved for appellate review because the issues were neither raised to nor ruled upon by the trial judge. Regardless, the trial judge properly instructed the jury on the law in effect at the time Appellant committed the thefts because the statutory amendments to the grand larceny statute that took effect after Appellant committed the crimes did not apply retroactively to Appellant's case.

STATEMENT OF THE CASE

In May of 2010, Appellant Lawrence Brown, III was arrested following an investigation into the theft of two automobiles. In October of 2010, the Williamsburg County grand jury indicted Appellant for two counts of grand larceny in an amount greater than $1,000 but less than $5,000. On May 12, 2011, a jury trial was commenced in the Williamsburg County court of general sessions with the Honorable DeAndrea G. Benjamin, circuit court judge, presiding. Appellant did not appear for trial, and the trial proceeded in his absence. At the conclusion of trial, the jury convicted Appellant as indicted. The trial judge sentenced Appellant for the convictions, and the sentences were sealed due to Appellant's absence. Subsequently, Appellant was apprehended. On May 16, 2011, Appellant appeared in the court of general sessions, and his sealed sentences were announced. The trial judge sentenced Appellant to consecutive terms of imprisonment of five years for one count of grand larceny and three years for the other count of grand larceny. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In April of 2010, Appellant Lawrence Brown, III contacted someone from Don's Car Crushing, a business that crushed cars for scrap metal, and indicated he had several cars that needed to be picked up. (Tr. pp. 22-24; pp. 37-38). Dakota Cooper, a tow truck operator who worked for Don's Car Crushing, called Appellant and arranged to meet him at a location in Salters, South Carolina. (Tr. p. 22; p. 24). During the phone conversation, Appellant stated he had four cars to be picked up. (Tr. p. 24).

After speaking with Appellant, Cooper drove to the address Appellant provided him and noticed "a bunch of cars around the property." (Tr. p. 24). The property also contained a mobile home and a shop, and it looked to Cooper like it was currently being used as a junk yard or salvage yard. (Tr. pp. 27-28; p. 34; p. 72). Appellant arrived shortly thereafter and claimed he had come from his mother's house nearby. (Tr. p. 26). Cooper spoke with Appellant about the cars and asked why there were so many on the property. (Tr. p. 28). Appellant claimed his father had recently died and, as his father's son, it was incumbent on him to clean up the property. (Tr. p. 28).

Cooper then negotiated with Appellant to purchase the four cars that Appellant indicated he wanted removed, and they agreed upon a price of $100 per car.[1] (Tr. pp. 26-27). Cooper paid Appellant $400 for the cars, prepared a bill of sale to memorialize the transaction, and had Appellant sign the document. (Tr. pp. 29-30). Cooper also checked Appellant's driver's license to confirm Appellant's identity and wrote the driver's license number on the bill of sale. (Tr. p. 30). Appellant listed the location of the meeting as his address on the bill of sale, but Cooper noticed Appellant's driver's license reflected a

[1] Cooper also negotiated to buy the rest of the cars on the property for $2,400 and agreed to bring the money to Appellant the next day. (Tr. p. 28).

different home address. (Tr. pp. 31-32). When questioned about the discrepancy, Appellant claimed he was in the process of completing the paperwork to transfer over to the new address. (Tr. p. 32).

After paying Appellant and completing the transaction, Cooper hauled two of the vehicles, a burgundy Chevrolet Corsica and a Ford Taurus, to Don's Crushing Company. (Tr. p. 27; p. 33; pp. 36-37). Cooper received $251 for one of the cars and $231 for the other. (Tr. p. 38). He then left the cars to be crushed into scrap metal, and he never saw either vehicle again. (Tr. pp. 36-38).

Later that day, Lawrence Williams ("Lawrence") returned to his home at the location where Cooper met Appellant to pick up the cars and haul them away.[2] (Tr. p. 69). Upon arriving at the home, Lawrence noticed several cars were missing, and he called his uncle, Robert Williams ("Robert"), to see if his uncle had removed them. (Tr. p. 45; p. 74). The missing cars were Robert's 1989 burgundy Chervolet Corsica and Lawrence's recently-deceased father's 1987 Ford Taurus. (Tr. pp. 44-45; pp. 71-72). After learning his uncle did not remove the cars, Lawrence called the police and reported the vehicles were stolen. (Tr. p. 74).

On the next day, Cooper returned to the address he met Appellant at on the preceding day to collect the remaining cars. (Tr. p. 33). After arriving at the property, Cooper did not see Appellant there. (Tr. p. 33). Cooper contacted Appellant, and Appellant assured him he would arrive within thirty minutes. (Tr. p. 33). However, Appellant did not appear after thirty minutes elapsed. (Tr. p. 33). Cooper again called Appellant, and Appellant assured Cooper he was on the way. (Tr. p. 33). While Cooper waited for Appellant to arrive, Cooper began walking around to determine what he

[2] Notably, Lawrence had the same first name as Appellant. (Tr. p. 69).

needed to do to haul the remaining cars and heard the sound of drums coming from the home on the property. (Tr. p. 33). Startled, Cooper called Appellant to notify him that someone was in his home, and Appellant stated he would take care of it when he arrived. (Tr. p. 33).

After speaking with Appellant, Cooper approached the house and knocked on the door to determine who was inside. (Tr. p. 34; pp. 74-75). Lawrence, who was inside playing music with his band, answered the door and asked Cooper what he was doing on the property. (Tr. p. 34; p. 74). Cooper advised him he was there to pick up the remaining cars that he had agreed to purchase from Appellant and haul away. (Tr. p. 34; pp. 74-75). Lawrence informed Cooper he had no authority to take the cars, and Cooper produced the bill of sale signed by Appellant. (Tr. p. 75). Lawrence then contacted the police, and Cooper waited for an officer to arrive. (Tr. p. 35). In the meantime, he attempted to again contact Appellant and have him come to the property. (Tr. pp. 35-36). However, Appellant stopped answering Cooper's phone calls and never returned. (Tr. pp. 35-36).

Thereafter, Deputy Lloyd Hayes of the Williamsburg County Sheriff's Office responded to the location and spoke with Cooper and Lawrence about the missing cars. (Tr. pp. 90-92). Based on the information he learned during his investigation, Deputy Hayes arrested Appellant and charged him with grand larceny for the theft of the two vehicles. (Tr. p. 92). Neither of the stolen vehicles was ever recovered or returned to Lawrence or Robert. (Tr. p. 49; p. 77). Appellant was subsequently indicted for two counts of grand larceny in an amount between $1,000 and $5,000, and his case was called for trial. (Tr. p. 3; Indictments). However, Appellant did not appear for trial, and the trial proceeded in his absence. (Tr. p. 5).

During trial, Cooper testified about his transaction with Appellant and his subsequent discovery that Appellant did not own the vehicles he sold. (Tr. pp. 24-27; pp. 29-30; pp. 33-34). Additionally, Robert testified about the stolen car that belonged to him and noted it was operational at the time of the theft. (Tr. p. 47). He stated he purchased the car for $700 several years earlier and spent $500 on parts for the vehicle. (Tr. p. 44; p. 47). Robert opined the stolen car was worth $1,200 in light of the price he paid for it and the amount of money he spent on the parts for it. (Tr. p. 48). He further noted his valuation did not include the cost of the labor he performed in repairing the vehicle. (Tr. p. 48). Furthermore, Lawrence testified about his father's stolen car. (Tr. p. 72). Lawrence stated the vehicle was operational, in good condition, and was priceless to him because it belonged to his recently-deceased father. (Tr. p. 72; pp. 78-79). He opined the fair market value of the car was $1,100, and he further noted a vehicle of the same make, model, and year had a minimum listed book value of $1,080. (Tr. pp. 78-79; pp. 88-89).

Subsequently, the State rested its case, and defense counsel moved for a directed verdict on Appellant's behalf. (Tr. pp. 93-94). In support of the motion, defense counsel argued:

> I make a motion for a direct verdict. The main reason is, they haven't come in here and proven anything. All they have done in here is come in here and talk. They haven't come in here and put any documents up which were available, to prove any of their assertions or whatever. So for that reason, I would ask that a verdict be directed at this time. If what they were saying is true, they could have easily proven it. They didn't because they are not telling the truth about whether these cars have been driven in the last 10 or 15 years.

(Tr. p. 94). Following defense counsel's argument, the trial judge denied the directed verdict motion. (Tr. p. 95). The trial judge ruled defense counsel's argument related

solely to the weight of the evidence and noted a property owner was entitled to provide an estimate on the value of stolen property. (Tr. p. 95).

After the trial judge denied the direct verdict motion, defense counsel rested his case, the parties presented closing arguments, and the trial judge instructed the jury on the applicable law.[3] (Tr. p. 96; p. 105; pp. 117). During the jury charge, the trial judge instructed the jury:

> The [S]tate must prove that the value of the motor vehicle taken was $1,000 or more. An owner of personal property may provide an estimate of the reasonable value of personal property. If the [S]tate has failed to prove the defendant guilty of grand larceny, you may consider whether the defendant is guilty of the offense of petty larceny. Proof of petty larceny includes proof of the same element[s] as grand larceny except that the value is $1,000 or less.

(Tr. pp. 122-123). Following the jury instructions, defense counsel asserted there were no objections to the jury charge. (Tr. pp. 124-125). At the conclusion of trial, the jury convicted Appellant of both counts of grand larceny. (Tr. p. 125). The trial judge then sentenced Appellant to an aggregate term of imprisonment of eight years for the convictions, and the sentence was imposed after Appellant was apprehended and brought to court four days later. (Tr. pp. 132-133).

[3] During his closing argument, defense counsel admitted Appellant stole the cars but argued the cars were not worth over $1,000. (R. p. 113; p. 115; p. 117).

ARGUMENT

I.

The trial judge properly denied Appellant's directed verdict motion because evidence and testimony was presented during trial from which the jury could fairly and logically find Appellant guilty of the required elements of two counts of grand larceny, including that Appellant unlawfully took and carried away two vehicles valued at over $1,000 each.

Appellant asserts his directed verdict motion was erroneously denied by the trial judge. Appellant maintains there was no proof that the value of the property stolen from the victims exceeded $1,000. To the contrary, the evidence presented during trial established Appellant unlawfully took and carried away two vehicles belonging to the victims, and the victims testified the stolen cars were each valued at over $1,000. The victim's testimony constituted direct evidence as to the value of the stolen property, and it was solely for the jury to decide what weight should be assigned to that testimony. In light of the direct evidence establishing the commission of the thefts and the value of the stolen property, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's convictions should be affirmed.

When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On appeal from the denial of a directed verdict, 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 directed verdict motion if there is no evidence supporting the trial judge's ruling. 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).

Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without the owner's consent. State v. Condrey, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (Ct. App. 2002). If the value of the goods unlawfully taken and carried away during a theft exceeds $1,000, the theft constitutes the felony offense of grand larceny. See S.C. Code Ann. § 16-13-30 (2003) ("Larceny of goods, chattels, instruments, or other personalty valued in excess of one thousand dollars is grand larceny."). Specifically, grand larceny includes all of the elements of the lesser-included offense of petit larceny except grand larceny involves the theft of goods exceeding $1,000 in value. State v. Smith, 274 S.C. 622, 623, 266 S.E.2d 422, 423 (1980).

In order to establish the value of stolen goods, a property owner familiar with the stolen property and its value may offer an estimate as to the stolen property's value even though the owner might not ordinarily be an expert in such matters. See Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) ("[A] property owner, who is familiar with his property and its value, may give his estimate as to its value or the damage inflicted upon it even though he is not otherwise an expert."). A property owner is considered to be competent to offer testimony as to the value of the property he or she

owns. Abercrombie v. Abercrombie, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct. App. 2007). Such testimony is admissible unless the owner's want of qualification is so complete that the testimony would be entirely worthless. See Mali v. Odom, 295 S.C. 78, 83, 367 S.E.2d 166, 169 (Ct. App. 1988) ("In South Carolina, an owner is qualified by the fact of ownership to give his or her estimate as to the value of his or her property unless the owner's want of qualification is so complete that his or her testimony is entirely worthless.").

In the case sub judice, the trial judge properly denied Appellant's directed verdict motion because evidence was presented during trial establishing Appellant's guilt for each of the grand larceny charges. Initially, the evidence unquestionably established Appellant unlawfully took and carried away two vehicles that did not belong to him. During trial, Cooper testified Appellant sold him two vehicles to be hauled away and crushed for scrap metal. Furthermore, Robert and Lawrence testified Appellant did not own and had no right to sell those two vehicles. Accordingly, the evidence presented established Appellant was guilty of larceny, leaving only the issue of whether the evidence established the value of the property stolen exceeded $1,000.

Based on the testimony regarding the value of the stolen cars, the evidence presented during trial established the value of the two vehicles stolen by Appellant exceeded $1,000. In regards to one of the stolen vehicles, Robert testified he purchased his car for $700, spent $500 alone on parts for the vehicle, and repaired the car into working condition before it was unlawfully taken by Appellant. Based on Robert's personal knowledge of his stolen property, Robert opined the car Appellant stole from him was worth $1,200. Thus, the testimony presented established the stolen car's fair market value exceeded $1,000. In regards to the other stolen vehicle, Lawrence testified

his recently-deceased father's stolen car was operational and in good condition, and he estimated the fair market value of the car was $1,100. Lawrence further supported his estimate by noting the **minimum** listed book value of a vehicle of the same make, year, and model was $1,080. Thus, the testimony presented also established the value of the vehicle stolen from Lawrence exceeded $1,000.

On appeal, Appellant acknowledges Robert and Lawrence both testified that the value of the stolen vehicles exceeded $1,000. Nonetheless, Appellant contends there was no evidence presented establishing or corroborating that the value of those vehicles exceeded $1,000.[4] Initially, it is noteworthy that the victims' testimony as to the value of the vehicles could not be further verified because Appellant's unlawful actions directly led to the destruction of the stolen vehicles prior to trial, which greatly limited the victims' ability to corroborate their estimates on the value of the cars since the cars were no longer available as evidence. Regardless, the victims were fully permitted to offer estimates as to the value of their own property, and their testimony was not required to be corroborated by additional evidence before it could be accepted by the jury. See Abercrombie, 372 S.C. at 647, 643 S.E.2d at 699 ("[A] property owner is competent to offer testimony as to the value of his property."); see also South Carolina State Highway Dep't v. Grant, 265 S.C. 28, 32, 216 S.E.2d 758, 760 (1975) ("The jury is the tribunal to determine the weight to be accorded the testimony of the witnesses **and accept or reject the valuations placed thereupon**." (emphasis added)); see, e.g., State v. Rayfield, 369 S.C. 106, 120, 631 S.E.2d 244, 251 (2006) (Pleicones, J., dissenting in part) ("No witness's testimony need be corroborated."); 23 C.J.S. Criminal Law § 1485 ("Generally,

[4] In challenging the value of the stolen cars, Appellant characterizes one of the stolen cars as a "non-drivable" vehicle. (App. Br. p. 7). However, contrary to Appellant's contentions on appeal, the unrefuted testimony presented during trial established each of the vehicles was operational at the time of the thefts. (Tr. p. 47; p. 72).

one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion or conviction. . . . The testimony of a single witness may also be considered as sufficient for a conviction, although the testimony of such single witness is denied by accused, **is uncorroborated** or impeached, uncertain or inconsistent, or is contradicted by other witnesses." (emphasis added and footnotes omitted)). Unlike cases where no testimony or evidence was presented during trial from which the jury could determine the value of the stolen property, the victims' testimony in Appellant's case constituted direct evidence as to the value of the stolen property and required the trial judge to deny the directed verdict motion and submit the case to the jury. Cf. Smith, 274 S.C. at 624, 266 S.E.2d at 423 (holding the trial judge should have granted a directed verdict as to a grand larceny charge where there was "no testimony, circumstantial or direct," presented during trial in regards to the value of the stolen property).

Viewing the evidence in a light most favorable to the State without consideration to its weight, the evidence presented during trial established Appellant's guilt for two counts of grand larceny. Critically, the testimony showed Appellant unlawfully took and carried away two vehicles that did not belong to him, and the jury could have reasonably concluded the value of each of the stolen cars exceeded $1,000 based on Robert and Lawrence's unrefuted testimony. See Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 594-595, 493 S.E.2d 875, 880 (Ct. App. 1997) ("It is the well-settled law of this State that an owner is qualified by the fact of ownership to give his or her estimate of the value of damaged real and personal property."); see, e.g., State v. Avery, 302 N.C. 517, 526, 276 S.E.2d 699, 705 (N.C. 1981) (holding the victim's testimony as to the value of his stolen truck was admissible where he "had such knowledge and experience so as to enable him intelligently to value his truck"). Therefore, the trial judge properly denied Appellant's

directed verdict motion, submitted the case to the jury, and allowed the jury to resolve any factual issues regarding the credibility and strength of the testimony as to the value of the stolen vehicles. See State v. Pitts, 296 S.C. 420, 427, 182 S.E.2d 738, 742 (1971) ("A motion for a directed verdict of acquittal is properly refused where the determination of guilt is dependent upon the credibility of a witness, as this is a question that goes to the weight of evidence and is clearly for determination by a jury."). Appellant's convictions should be affirmed.

II.

Any issues with the trial judge's jury instructions or failure to retroactively apply statutory amendments to Appellant's case were not preserved for appellate review because the issues were neither raised to nor ruled upon by the trial judge. Regardless, the trial judge properly instructed the jury on the law in effect at the time Appellant committed the thefts because the statutory amendments to the grand larceny statute that took effect after Appellant committed the crimes did not apply retroactively to Appellant's case.

Appellant contends the trial judge improperly instructed the jury on the wrong elements of grand larceny in light of the fact the grand larceny statute was amended prior to trial. Appellant maintains the statutory amendments should have been applied retroactively to his case despite the fact the amendments took effect **after** he committed the thefts. Initially, any issues with the trial judge's jury instructions or failure to retroactively apply the statutory amendments to Appellant's case were not preserved for appellate review because Appellant never raised those issues to the trial judge. Regardless, the trial judge properly instructed the jury on the statute in effect at the time Appellant committed the thefts because statutory changes that amend criminal statutes do not impact pending prosecutions arising before the effective date of those changes. Furthermore, the legislature specifically included a savings clause in the act amending the grand larceny statute to preclude retroactive application of the statutory changes. Thus, regardless of any issue preservation concerns, the trial judge properly instructed the jury on the law in effect at the time Appellant committed the thefts, and the statutory amendments to the grand larceny statute had no bearing on Appellant's case. Appellant's convictions should be affirmed.

A. Issue Preservation

In order to properly preserve an issue for appellate review, a defendant must make a contemporaneous objection to a perceived error during trial. State v. Blalock, 357 S.C.

74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); see In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000).

In Appellant's case, Appellant did **not** object to the trial judge's jury instruction during trial and did **not** argue to the trial judge that a legislative amendment to the grand larceny statute subsequent to his arrest applied retroactively to his case. Without raising such objections or arguments during trial, Appellant is precluded from raising those objections or arguments for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Accordingly, Appellant failed to preserve for appellate review any issues with the trial judge's jury charge or failure to retroactively apply any legislative changes to Appellant's case, and Appellant's argument on those issues should not and cannot be considered for the first time on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."). Therefore, Appellant's convictions should be affirmed.

B. Propriety of the Jury Charge and the Effect of the Statutory Changes

When a criminal statute is amended while a prosecution for a violation of that statute is currently pending, the criminal prosecution can continue unless the violated statute is repealed. See State v. Charron, 351 S.C. 319, 325, 569 S.E.2d 388, 391 (Ct. App. 2002) ("[A] pending prosecution of a defendant may continue when a criminal statute is amended, but not repealed."). Thereafter, the prosecution should proceed under the statute in effect at the time of the commission of the underlying criminal offense and **not** the amended statute. See Pierce v. State, 338 S.C. 139, 148, 526 S.E.2d 222, 226 (2000) ("[A] prosecution for an offense occurring prior to the effective date of [an act amending an earlier statute] should proceed under the former statute.").

At the time Appellant stole the two vehicles belonging to the victims, grand larceny was statutorily defined as the "[l]arceny of goods, chattels, instruments, or other personalty valued in excess of one thousand dollars[.]" S.C. Code Ann. § 16-13-30 (2003). However, subsequent to Appellant's commission of the crimes, the South Carolina General Assembly amended Section 16-13-30 through the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 ("the Act"). See Act No. 273, § 16.E, 2010 S.C. Acts & Joint Resolutions (amending S.C. Code Ann. § 16-13-30). Pursuant to the Act, the definition of grand larceny was amended to define the offense as the "[l]arceny of goods, chattels, instruments, or other personalty valued in excess of **two thousand dollars**[.]" S.C. Code Ann. § 16-13-30 (Supp. 2010) (emphasis added).

Notably, in enacting the statutory changes to the grand larceny statute, the General Assembly expressly included a savings clause in the Act to restrict the effect that the amendments would have on any pending cases. Critically, the legislature specifically included the following statutory language in the Act:

Savings clause

> SECTION 65. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Act No. 273, § 65, 2010 S.C. Acts & Joint Resolutions; see also Act No. 273, § 66, 2010 S.C. Acts & Joint Resolutions ("Cases and appeals arising or pending under the law as it existed prior to the effective date of this act are saved.").

"Generally, a savings clause is intended to be 'a restriction in a repealing act, which is intended to save rights, **pending prosecutions**, penalties, etc., from the annihilation which would result from an unrestricted appeal.' " State v. Bryant, 382 S.C. 505, 509, 675 S.E.2d 816, 817 (Ct. App. 2009) (emphasis added and citations omitted). Thus, by including the savings clause in the Act, the General Assembly clearly manifested its intent to preserve the statutes in effect prior to the statutory amendments and for the amendments to apply prospectively and not retroactively. See, e.g., Warden v. Marrero, 417 U.S. 653, 661 (1974) (referring to general federal savings clause codified under 1 U.S.C. § 109, which contains highly similar language to the savings clause included in the Act, and instructing: "[T]he savings clause has been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.").

In the case at bar, Appellant committed two counts of grand larceny prior to the effective date of the legislative act that subsequently amended the grand larceny statute. Because Appellant committed his crimes prior to the effective date of the statutory amendments, the criminal prosecution of Appellant's case properly proceeded under the statute in effect at the time of Appellant's crimes. See Pierce, 338 S.C. at 148, 526 S.E.2d at 226 ("[A] prosecution for an offense occurring prior to the effective date of [an act amending an earlier statute] should proceed under the former statute.").

Furthermore, the amendments to Section 16-13-30 **also** did not apply to Appellant's crimes based on the plain language of the savings clause contained in the Act. Looking to the plain language of the savings clause, the legislature clearly and unambiguously stated: "After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending . . . criminal prosecution . . . existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws." Act No. 273, § 65, 2010 S.C. Acts & Joint Resolutions. Thus, the legislature manifested its clear intention that the amendments be applied only to cases arising **after** the amendments took effect. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language.").

In light of the fact the statutory amendments to the grand larceny statute took effect after the crimes were committed coupled with the fact the legislature specifically elected to preclude retroactive application of the statutory changes through the inclusion of a savings clause, the trial judge properly instructed the jury on the elements of grand

larceny as defined by the statute in effect at the time Appellant committed his crimes, including that the jury had to find Appellant unlawfully took and carried away two vehicles valued at over $1,000 each before returning guilty verdicts. See State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002) ("In general, the trial judge is required to charge only the current and correct law of South Carolina. A jury charge is correct if it contains the correct definition of the law when read as a whole." (citations omitted)). The jury was properly instructed on the applicable law, and the trial judge committed no error in instructing the jury. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) ("A jury charge which is substantially correct and covers the law does not require reversal."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

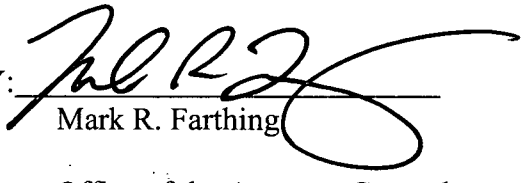
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

May 1, 2012

The South Carolina Court of Appeals

The State, Respondent,

v.

Lawrence Brown, Appellant.

The Honorable DeAndrea G. Benjamin
Williamsburg County
Trial Court Case No. 2010-GS-45-00197

ORDER

The request for an extension to serve and file Respondent's Initial Brief and Designation of Matter is granted until May 14, 2012. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY Jenny A. Kitchings
CLERK

Columbia, South Carolina

cc: Deputy Chief Appellate Defender Wanda H. Carter
Senior Assistant Deputy Attorney General Salley W. Elliott

FILED
4-11-12

White, Della

From: COA Extensions
Sent: Friday, April 13, 2012 6:39 AM
To: White, Della
Subject: FW: State v. Lawrence Brown, III

1st RIB 4.12.12 5.14.12

From: Kimberly McCall [mailto:kmccall@sccid.sc.gov]
Sent: Thursday, April 12, 2012 2:30 PM
To: Ellen DuBois; COA Extensions
Cc: Mark Farthing; Wanda H. Carter
Subject: RE: State v. Lawrence Brown, III

We consent.

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Thursday, April 12, 2012 1:50 PM
To: coaextensions@sccourts.org
Cc: Mark Farthing; Kimberly McCall; Wanda H. Carter
Subject: State v. Lawrence Brown, III

Clerk's Office
South Carolina Court of Appeals

RE: State v. Lawrence Brown, III

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served April 12, 2012. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **first** extension request in this case, and it is not intended for the purpose of delay. By copy of this email, I am asking that counsel for Appellant, Wanda H. Carter, Esquire, consent to this extension request.

Sincerely,
Mark R. Farthing
Assistant Attorney General

MRF/erd

White, Della

From: COA Extensions
Sent: Friday, April 13, 2012 6:39 AM
To: White, Della
Subject: FW: State v. Lawrence Brown, III

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Thursday, April 12, 2012 1:50 PM
To: COA Extensions
Cc: Mark Farthing; kmccall@sccid.sc.gov; wcarter@sccid.sc.gov
Subject: State v. Lawrence Brown, III

Clerk's Office
South Carolina Court of Appeals

RE: State v. Lawrence Brown, III

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served April 12, 2012. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **first** extension request in this case, and it is not intended for the purpose of delay. By copy of this email, I am asking that counsel for Appellant, Wanda H. Carter, Esquire, consent to this extension request.

Sincerely,
Mark R. Farthing
Assistant Attorney General

MRF/erd

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE BROWN,

APPELLANT

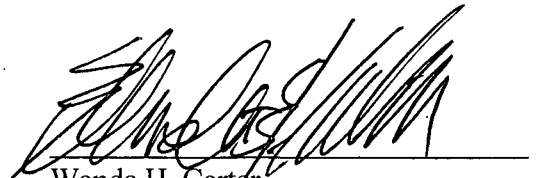
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictment(s);
(2) Sentencing Sheets
(3) Transcript Tr. 21-117; 125; 132-133

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

February 27th, 2012



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE BROWN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of February, 2012.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of February, 2012.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

ORIGINAL

RECEIVED
FEB 27 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE BROWN,

APPELLANT

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

Constitutional Provisions

STATEMENT OF ISSUES ON APPEAL

I

The trial judge erred in denying appellant's motions for directed verdicts on the grand larceny charges because the state failed to establish sufficient proof that each of the two automobiles found in appellant's possession held value in excess of $1,000.00.[1]

II

Appellant's convictions should have been vacated as a matter of law after the trial judge charged the jury that the state had to prove that each of the motor vehicles taken valued $1,000 or more because the grand larceny statute was amended in 2010 to the extent that the dollar amount of goods required to establish a grand larceny offense rose from in excess of $1,000.00 to in excess of $2,000.00 or more and it appears that the statute should be applied retroactively.

[1] In 2010, S.C. Code Ann. §16-13-30 was amended to the extent that the dollar amount of goods required to establish a grand larceny offense rose from in excess of $1,000.00 to in excess of $2,000.00.

STATEMENT OF THE CASE

Appellant Lawrence Brown was tried in absentia by jury and found guilty of two counts of grand larceny at the May 2011 term of the Sumter County General Sessions Court before Judge DeAndrea Benjamin. Appellant was found guilty as charged. Judge Benjamin imposed a sealed sentence. Appellant's eight-year prison sentence was published on May 16, 2011, at the Sumter County Courthouse. Appellant was represented at trial and sentencing by W. Legrand Carraway. Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT I

The trial judge erred in denying appellant's motions for directed verdicts on the grand larceny charges because the state failed to establish sufficient proof that each of the two automobiles found in appellant's possession held value in excess of $1,000.00.[2]

At trial, Dakota Cooper testified that while he was working for Don's Car Crushing Company on April 29, 2010, a call came through from appellant offering two automobiles for sale. Cooper stated that he met appellant at the agreed upon location (a residence) that was provided and agreed to give him $200.00 in exchange for the two cars (Chevrolet Corsica and Ford Taurus) appellant presented to him at that time and then another $200.00 in exchange for the two cars which he was supposed to have received when he returned the next day. In other words, the deal was for $100.00 for each of the four automobiles to be taken in and crushed. A bill of sale, which included appellant's address and driver's license number, was drawn and signed by appellant. Cooper proceeded to take in the Chevrolet and Ford, which were crushed thereafter. Tr. 21, l. 23–p. 33, l. 3. On the next day, Cooper went to the residence to retrieve the two other cars per the arrangement, but the deal fell through. Tr. 36, ll. 18-25.

Robert Williams stated that after April 29, 2010, he noticed that someone had obviously come to his address in Williamsburg County and stolen his 1989 Chevrolet Corsica automobile. Robert Williams provided paperwork at trial showing he was the registered owner of the car. Tr. 42, l. 17–p. 46, l. 21. Then, Robert Williams testified that when Cooper returned thereafter to pick up the remaining two cars, Lawrence Williams was

present on the property. After the two men talked to Cooper and examined the paperwork (presumably the bill of sale), it was discovered that appellant was connected to the disappearance of the Chevrolet and Ford automobiles. Tr. 46, ll. 12-21; Tr. 44, ll. 2-14.

Lawrence Williams testified that he noticed that his Ford Taurus was missing from his residence/shop in Williamsburg County around the same time frame in April 2010. Lawrence Williams added that since he had not given anyone permission to take the car, then he reported the missing automobile to local police. Lawrence Williams stated that's Cooper's return for more cars revealed the mystery. Tr. 69, l. 12–p. 77, l. 24.

Police Officer Lloyd Hayes testified that he was assigned to investigate into the case and spoke to Cooper and the Williamses about the missing automobiles in question. As a result, appellant was charged with two counts of grand larceny of an automobile. Tr. 90, l. 15–p. 92, l. 15; Tr. 35, ll. 11-24.

At the close of the state's case, defense counsel moved for directed verdicts on the charges in effect because there was insufficient proof that the threshold value amount was met with respect to the worth of each of the automobiles that were taken in the case. Tr. 94, l. 7–p. 95, l. 3. The trial judge denied the directed verdict motions. Tr. 95, ll. 4-13.

Grand larceny is larceny of goods in excess of $1,000.00. State v. Barnett, 358 S.C. 199, 594 S.E.2d 534 (2005); S.C. Code Ann. §16-13-30. In 2010, S.C. Code Ann.16-13-30 was amended to the extent that the dollar amount required to establish grand larceny rose from in excess of $1,000.00 to in excess of $2,000.00. At trial, Robert Williams stated that he paid $700.00 for his Chevrolet Corsica and put $500.00 of his money into the engine and

[2] In 2010, S.C. Code Ann. §16-13-30 was amended to the extent that the dollar amount of goods required to establish a grand larceny offense rose from in excess of $1,000.00 to in

that the car was worth $1,200.00. Tr. 47, l. 9–p. 48, l. 16. Lawrence Williams stated that his Ford Taurus was worth $1,100.00. Tr. 78, l. 3–p. 79, l. 6.

During cross the examination of Robert Williams, who said he bought his Chevrolet five or six years ago, and Lawrence Williams, who said the Ford belonged to his father, it was revealed that there was neither a bill of sale available to prove how much the cars were bought for nor any information provided with respect to the blue book value of the cars. Tr., 53, ll. 13-15; Tr. 54, ll. 10-11; Tr. 56, ll. 15-18; Tr. 58, l. 17–p. 59, l. 6; Tr. 63, l. 12–p. 64, l. 15; Tr. 85, ll. 16-21; Tr. 87, ll. 23-25.

In a grand larceny case where the undisputed evidence fixes the value incontestably above the amount necessary to constitute the offense charged, then no "value of the goods" problems would exist in such cases. State v. Humphrey, 276 S.C. 42, 274 S.E.2d 918 (1981). However, the state must present credible evidence establishing each element of the crime charged in a grand larceny case, including the value of the stolen article. State v. Smith, 274 S.C. 622, 266 S.E.2d 422 (1980). In Smith, the Court reversed a grand larceny conviction where the value of a stolen watch was left to conjecture and speculation because no testimony, either circumstantial or direct, was given to the jury regarding the value of the watch. Here, in the case at bar, the state presented no evidence establishing or corroborating that a twenty-two-year old Chevrolet Corsica or a twenty-four-year old non-drivable Ford Taurus were both valued in excess of $1,000.00 each. Tr. 63, l. 23–p. 64, l. 23; Tr. 81, ll. 9-25. Thus, there was insufficient evidence presented to prove that appellant was guilty of two counts of grand larceny because there was no proof that each car held a value in excess of $1,000.

---

excess of $2,000.00.

Due process requires the prosecution to prove beyond a reasonable doubt every element of the offense charged against a defendant. Jackson v. Virginia, 443 U.S. 307 (1979). The value elements on the state's grand larceny charges were not present in the case. The trial judge violated appellant's right to due process under the Fourteenth Amendment by denying his directed verdict motions on the grand larceny charges.

ARGUMENT II

Appellant's convictions should have been vacated as a matter of law after the trial judge charged the jury that the state had to prove that each of the motor vehicles taken valued $1,000 or more because the grand larceny statute was amended in 2010 to the extent that the dollar amount of goods required to establish a grand larceny offense rose from in excess of $1,000.00 to in excess of $2,000.00 or more[3] and it appears that the statutory amendment should be applied retroactively.

The trial judge charged the jury as follows:

> The state must prove that the value of the motor vehicle taken was $1,000 or more. An owner of personal property may provide an estimate of the reasonable value of personal property. If the state has failed to prove the defendant guilty of grand larceny, you may consider whether the defendant is guilty of the offense of petty larceny. Proof of petty larceny includes proof of the same element as grand larceny except that the value is $1,000 or less.

Tr. 122, l. 22 – Tr. 123, l. 5.

S.C. Code Ann. §16-13-30 reads as follows:

> A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of

[3] See S.C. Code Ann. §16-13-30.

> personality of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny.
>
> (B) Larceny of goods, chattels, instruments, or other personality valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

As a rule, the retroactive operation of a statute is not favored by the courts, and the statutes are presumed to be prospective in effect unless the statute is remedial or procedural. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (2010), reversed on other grounds in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011). A statute can be applied retroactively if the result is so clearly compelled as to leave no room for doubt that it is to be applied retroactively. State v. Dickey, supra. Since the statutory amendment in question concerns a monetary amount, then the amended grand larceny statute qualifies as a statutory change that should be applied retroactively. Moreover, there was no savings clause here to show that the statute should be applied prospectively. State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011).

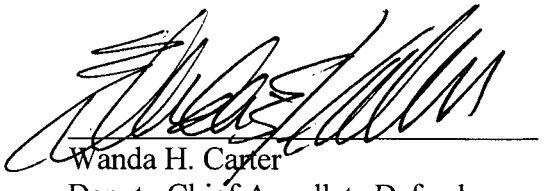
A trial judge must charge the correct law of South Carolina. State v. Faust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Buckner, 341 S.C. 241, 534 S.E.2d 15 (2001). A trial judge's instruction must contain the correct definition and adequately cover the law. In Buckner, the court reversed where the trial judge erroneously instructed the jury on the offense of unlawful use of a telephone and found that the error was not harmless.

Here, since the statutory amendment is retroactively applicable, the trial judge erred in failing to charge the correct law when she stated that grand larceny required the property taken to be valued at "$1,000.00 or more," when as of 2010, the offense of grand larceny mandated that the property taken be valued in excess of $2,000.00 or more. The erroneous charge was not harmless error because a due process burden of proof violation occurred as the incorrect definition changed the threshold of proof by requiring the jurors to find that the value of each car exceeded a threshold amount ($1,000.00) rather than requiring them to find that the value of each car exceeded a threshold amount that exceeded $2,000.00. This meant that appellant was guilty of petty larceny at best. The error is even more flagrant in light of counsel's request for directed verdicts of acquittal on both counts of grand larceny on the ground that the threshold value amounts were not met with respect to the worth of the two automobiles taken in the case. (See Argument I). Appellant's grand larceny convictions should have been vacated as a matter of law due to the trial judge's improper jury charge on the law in the case.

CONCLUSION

Based on the foregoing argument, appellant's convictions and sentences should be vacated.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of February, 2012.

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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February 2, 2012

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

Re: The State v. Brown, Lawrence
2011193606

Dear Counsel:

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal.

"Granted.

John C. Few, C.J.
For the Court

By s/ Tanya A. Gee
Clerk

February 2, 2012."

The Appellant's Initial Brief and Designation of Matter are now due on February 27, 2012. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

Very truly yours,

Tanya A. Gee
CLERK

TAG/dw
cc: Senior Assistant Deputy Attorney General Salley W. Elliott

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE BROWN,

APPELLANT

PETITION FOR EXTENSION TO FILE INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER

The undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in the above–referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed today having been extended by two prior orders of this Court.

2. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of James Blanding v. State with this court on January 20, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Trenton Bennett v. State with this court on January 17, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Bobby Gibson v. State with this court on January 9, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jorge Rodriguez v. State with this court on January 3, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Jonathan Vick v. State with this court, as well as the initial briefs

of appellant and designations of matter in the cases of John Henry Stokes v. State and Lewis C. Landreth v. State with the Court of Appeals on December 19, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of John Lewis Mills v. State with the Supreme Court on December 15, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Mark Daniel Cureton v. State in the Supreme Court on December 9, 2011. Counsel filed the brief of petitioner in the case of Tommy Novack Lloyd v. State in the Supreme Court on December 2, 2011. In November 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Leonard G. Stanfield v. State, William Avinger v. State, Mark Bolte v. State and Stanley DeHart v. State, as well as the initial brief of appellant and designation of matter in the case of State v. Randy Edward Anderson.

3. This request is made in good faith, and not for purposes of delay.

4. As indicated by her consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the initial brief of appellant and designation of matter in this case. Counsel requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion.

Respectfully submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

Robert M. Dudek
Chief Appellate Defender

FILED
2.2.12 DW

January 27, 2012

I DO NOT OPPOSE:

Salley Elliott, Esquire

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: _____
(Clerk) (Deputy Clerk)

The South Carolina Court of Appeals

The State, Respondent,

v.

Lawrence Brown, Appellant.

The Honorable DeAndrea G. Benjamin
Williamsburg County
Trial Court Case No. 2010-GS-45-00197

ORDER

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until January 27, 2012. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Wanda H. Carter
Assistant Deputy Attorney General Salley W. Elliott

FILED
4.12 DW

White, Della

From: COA Extensions
Sent: Friday, December 30, 2011 7:16 AM
To: White, Della
Subject: FW: Lawrence Brown
Attachments: Pie Charts Bkgrd.JPG

AIB 2nd
12.28.11
1.27.12

From: Kimberly McCall [mailto:kmccall@sccid.sc.gov]
Sent: Wednesday, December 28, 2011 9:04 AM
To: COA Extensions
Cc: Sharon A. Graham; Salley Elliott; Angela Bennett
Subject: Lawrence Brown

Clerk's Office

South Carolina Court of Appeals

Re: The State v. Lawrence Brown

Dear Ms. Gee:

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief. The Court has granted one previous extension.

By copy of this email, I am asking that Salley Elliott, Esquire, of the Attorney General's office consent to my request.

Sincerely,

White, Della

From: COA Extensions
Sent: Friday, December 30, 2011 7:17 AM
To: White, Della
Subject: FW: Lawrence Brown
Attachments: ATT00001.jpg; Elliott, Salley.vcf

From: Salley Elliott [mailto:Selliott@scag.gov]
Sent: Wednesday, December 28, 2011 11:18 AM
To: COA Extensions; McCall, Kimberly
Cc: Bennett, Angela; Graham, Sharon A.
Subject: Re: Lawrence Brown

I consent.

Salley W. Elliott
Assistant Deputy Attorney General
South Carolina Attorney General's Office
(803) 734-3727
selliott@scag.gov
>>> "Kimberly McCall" <kmccall@sccid.sc.gov> 12/28/2011 9:04 AM >>>

Clerk's Office

South Carolina Court of Appeals

Re: The State v. Lawrence Brown

Dear Ms. Gee:

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief. The Court has granted one previous extension.

By copy of this email, I am asking that Salley Elliott, Esquire, of the Attorney General's office consent to my request.

Sincerely,

Wanda H. Carter

Deputy Chief Appellate Defender

WHC/kam

Kimberly McCall
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29201-1589
(803) 734-1330 - Telephone
(803) 734-1397 - Fax

The South Carolina Court of Appeals

The State, Respondent,

v.

Lawrence Brown, Appellant.

The Honorable DeAndrea G. Benjamin
Williamsburg County
Trial Court Case No. 2010-GS-45-00197

ORDER

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until December 28, 2011. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Wanda H. Carter
Assistant Deputy Attorney General Salley W. Elliott

FILED
11-30-11

White, Della

From: COA Extensions
Sent: Monday, November 28, 2011 1:49 PM
To: White, Della
Subject: FW: Lawrence Brown
Attachments: ATT00001.jpg

AMB
1st
11.28.11
12.28.11

From: Angela Bennett [mailto:ABennett@scag.gov]
Sent: Monday, November 28, 2011 11:29 AM
To: COA Extensions; McCall, Kimberly
Cc: Elliott, Salley; Graham, Sharon A.
Subject: Re: Lawrence Brown

we consent

>>> "Kimberly McCall" <kmccall@sccid.sc.gov> 11/28/2011 10:15 AM >>>

Clerk's Office

South Carolina Court of Appeals

Re: The State v. Lawrence Brown

Dear Ms. Gee:

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief.

By copy of this email, I am informing Salley Elliott, Esquire, of the Attorney General's office of my request.

Sincerely,

Wanda H. Carter

Deputy Chief Appellate Defender

WHC/kam

Kimberly McCall
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29201-1589
(803) 734-1330 - Telephone
(803) 734-1397 - Fax

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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) 734-1343
Facsimile: (803) 734-1397

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

September 29, 2011

The Honorable Tanya A. Gee
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Dear Ms. Gee:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Lawrence Brown 9/29/1981

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French

Loriene French
Legal Services Coordinator

The Supreme Court of South Carolina

TITLE OF CASE	(State ((((V. ((((Lawerence Brown ((	2010GS4500197

Notice

Upon request and for good cause shown, Margaret Sullivan, Court Reporter, is hereby granted an extension up to and including September 28, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
08/29/2011

cc: Division of Appellate Defense
Margaret Sullivan

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

June 27, 2011

Ms. Margaret T. Sullivan
Circuit Court Reporter
504 Henderson Street
Sumter, SC 29150-3167

Dear Ms. Sullivan:

Please provide us with the following transcript:

The State v. Lawrence Brown Case #: 10-GS-4-197

County: Williamsburg Date of Trial: May 16, 2011

Presiding Judge: DeAndrea G. Benjamin

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Lorene French
Legal Services Coordinator

cc: S.C. Court of Appeals
Attorney General's Office

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 16, 2011

William LeGrand Carraway, Esquire
124 South Academy St.
Kingstree, SC 29556

Re: The State v. Brown, Lawerence

Dear Mr. Carraway:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

It appears that we received the copy of the Notice of Appeal not the original. It will be necessary for you to file an Amended Notice of Appeal and Proof of Service within ten (10) days of the date of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's

responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

1) any final judgment from the circuit court which includes a sentence of death;

2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;

3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;

4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;

5) any final judgment from the circuit court pertaining to elections and election procedure;

6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;

7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allan

V. Claire Allan
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
Chip Finney, Solicitor

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 16, 2011

William LeGrand Carraway, Esquire
124 South Academy St.
Kingstree, SC 29556

Re: The State v. Brown, Lawerence
2011193606

Dear Mr. Carraway:

This office has received your Notice of Appeal 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,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
Chip Finney, Solicitor

2011193606

POS 5-25-V
PM 5.25.11

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

DeANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

Case No. 2010-GS-45-197

---

trans. by Sup. Ct
order dated 6/1/11

The State.....Respondent

v.

Lawrence Brown.....Appellant

NOTICE OF APPEAL

Lawrence Brown appeals his Guilty Verdict and Sentence on 2 charges of Grand Larceny on May 16, 2011.

LeGrand Carraway
Public Defender
P. O. Box 819
Kingstree, South Carolina 29556
(843) 355-7222
Attorney for Appellant

OTHER COUNSEL OF RECORD:
Chip Finney, Solicitor
P. O. Box 86
Kingstree, South Carolina 29556
(843) 355-9312
Attorney for the Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	CASE NO. 2010-GS-45-197
COUNTY OF WILLIAMSBURG	)	
The State,	)	
Respondent,	)	
vs.	)	ACCEPTANCE OF SERVICE
Lawrence Brown,	)	
Appellant.	)	

Receipt of the Notice of Appeal in the above titled action is hereby accepted and a copy retained by me, this the 25th day of May, 2011 at Kingstree, South Carolina.

Linda S. Woods
Solicitor's Office

Williamsburg County Courthouse

Kingstree, SC 29556

LEGRAND CARRAWAY
ATTORNEY AT LAW
P. O. BOX 819
KINGSTREE, SOUTH CAROLINA 29556-0819

124 SOUTH ACADEMY STREET
carrawaylaw@ftc-i.net

TELEPHONE:
OFFICE: (843) 355-7222
FAX: (843) 354-3206

May 25, 2011

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P. O. Box 11330
Columbia, SC 29211

Re: Appeal of Lawrence Brown
Case No. 2010-GS-45-197
General Sessions

Dear Mr. Shearouse:

I enclose certified copies of the Notice of Appeal and the Acceptance of Service in the above matter.

I represented Mr. Brown in my position as Public Defender for Williamsburg County.

Sincerely,

LeGrand Carraway
Public Defender
P. O. Box 819
Kingstree, SC 29556
(843)-355-7222 PHONE
(843) 354-3206 FAX

Enclosures as stated

LeGrand Carraway
ATTORNEY AT LAW
P. O. BOX 819
124 SOUTH ACADEMY STREET
KINGSTREE, SOUTH CAROLINA 29556-0819

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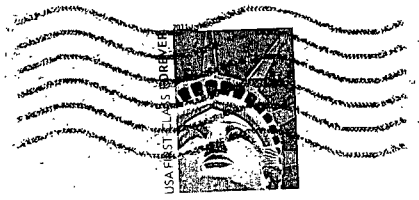

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P. O. Box 11330
Columbia, SC 29211

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