

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Laurens County

SC Court of Appeals

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER WYMER,

APPELLANT

APPELLATE CASE NO. 2014-002234

AMENDED ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's motion for a directed verdict to the two charges of attempted carjacking when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was attempting to carjack the vehicles?

STATEMENT OF THE CASE

Appellant was convicted of two (2) counts of attempted carjacking after a jury trial held before the Honorable Donald B. Hocker in Laurens County on October 7-8, 2014. Concurrent sentences of 10 years, suspended upon service of 4 years, with 2 years of probation thereafter, were imposed. Elizabeth P. Wiygul, Esquire, was trial counsel. Christopher Dale Scott, Esquire, and O. Warren Mowry, Jr., Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying defense counsel's motion for a directed verdict to the two charges of attempted carjacking because the State failed to present any substantial evidence beyond a reasonable doubt that appellant was attempting to carjack the vehicles.

On April 27, 2011, in the early morning hours Brian Ortsheid was driving an F-350 Ford pickup truck with Eddie Bridges as a passenger. They were servicing cell phone towers and they were driving through Clinton up through highway 72. Appellant came driving up behind them with a passenger, Timothy Threatt, with the car dome light on. The car stayed beside them for quite sometime. Appellant then pulled out in front of the truck and then motioned the truck to stop. He stopped and the passenger of the car with his hands and his fists balled was coming toward the door. Ortscheid didn't like the situation so he pulled around them. (R. p. 87, line 17 – p. 90, line 15.) Appellant approached them several more times in his vehicle and Ortscheid had 9-1-1- on the line. He drove down some small roads to get away from them. Finally, dispatch contacted him and told him the police had appellant and Threatt in custody. (R. p. 91, line 14 – p. 97, line 14.)

Tylon Johnson, a truck driver, was driving an eighteen-wheeler that evening. He had a similar experience with appellant and Threatt. Threatt actually climbed up on the eighteen-wheeler. Johnson had a metal strap bar he used to tighten and ratchet down straps over the loads he carried. He struck Threatt several times with the last blow being to the head which incapacitated his attacker. R. p. 121, line 24 – p. 134, line 5.)

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charges because the State failed to prove appellant and his friend were attempting to highjack the

vehicle. The trial court denied the motion. (R. p. 197, line 15 – p. 199, line 6.) That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93,

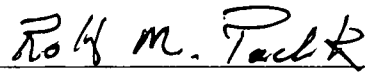
cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

As defense counsel noted, at no time did the victims testify that appellant or his friend try to get them out of their vehicles and take control of them. Tylon Johnson said he did know what Threatt’s intentions were. There was testimony about reckless driving, following too closely, about breaking, but nothing about anyone trying to take their vehicles. Therefore, it was error to deny the directed verdict motion.

CONCLUSION

A directed verdict should be granted to the two charges of attempted carjacking.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of March, 2015.

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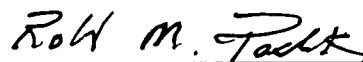
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Wymer states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Donald B. Hocker, which was held on October 6-8, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Christopher Wymer.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of March, 2015.

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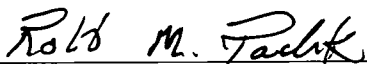
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript.

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

March 19, 2015



Robert M. Pachak
Appellate Defender


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Attorney for Appellant

CERTIFICATE OF COUNSEL

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

March 19, 2015



Robert M. Pachak
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Amended 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 Amended Anders Brief of Appellant and Designation of Matter and Record of Appeal have been served on Christopher Wymer, #295878 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 19th day of March, 2015.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of March, 2015.

Brendy Robinson Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.