

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

James R. Barber, III, Circuit Court Judge

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MAR 23 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VINCENT MISSOURI,

APPELLANT

APPELLATE CASE NO. 2014-001176

ANDERS BRIEF OF APPELLANT

TIFFANY L. BUTLER
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

Whether the trial judge erred by failing to direct a verdict of acquittal on the charge of strong armed robbery where there was no direct or circumstantial evidence that Appellant coerced, intimidated, or threatened to harm Rachel White, the bank teller, when he entered the bank.

STATEMENT OF THE CASE

On November 12, 2013, a Pickens County Grand Jury indicted Appellant for entering a bank with intent to steal, armed robbery, and failure to stop for a blue light. R. 237 – 245. On May 19, 2014, Appellant's case proceeded to a jury trial before the Honorable James R. Barber, III. and a jury. R. 14. Aaron Angell represented Appellant. Doug Richardson represented the State. R. 14.

After a two-day trial, Appellant was found guilty of all charges. R. 224. Judge Barber sentenced Appellant to a concurrent twenty-year sentence. R. 234.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred by failing to direct a verdict of acquittal on the charge of strong armed robbery where there was no direct or circumstantial evidence that Appellant coerced, intimidated, or threatened to harm Rachel White, the bank teller, when he entered the bank.

The Charge

Strong armed robbery is “the felonious or unlawful taking of money, goods, or other personal property of value from the person of another or in his presence by violence or by putting such person in fear.” State v. Rosemond, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003) (citing State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996)). The “gravamen” of a robbery charge is a taking by “violence or intimidation.” Rosemond, 356 S.C. at 430, 589 S.E.2d at 758 – 59.

Relevant Facts

The State’s case consisted of bank employees and several police officers. On June 18, 2012, Rachel White, was working at the Bank of America in Pickens County, South Carolina, as the head bank teller. R. 79 – 80. At about “fifteen till five” White was getting ready for the bank to close when one last customer walked in. R. 81, lines 2 – 9. According to White, the man walked up to White’s teller station, handed her a note telling her to

“Place all the money in the bag. Keep left hand on top of camera. Empty drawer with right hand. No die pack. I know who you are.”

R. 84, lines 12 – 14.

White stated the customer gave her a grocery bag to put the money in and she managed to push alarm to alert police. R. 83, lines 8 – 11. The customer grabbed the bag from her and ran out the bank. R. 83, lines 12 – 13.

White stated that she was the only the teller at the front of the bank. R. 86, lines 21 – 22. She described the man as wearing “real dark sunglasses and a black shirt with white on it . . . [a]nd he was baldheaded.” R. 85, lines 5 – 6. White admitted that the man was not armed with a weapon nor did he indicate that he was armed. R. 96, lines 15 – 18. White also conceded that the man did not threaten her when he approached her teller station and gave her the note. R. 95, lines 3 – 5.

Officers from the Pickens County Sheriff’s Office responded to the Bank of America. After speaking with a witness who saw a black male running down the sidewalk near the bank and getting into a red truck, Officer Tim Morgan dispatched to other officers in the area that the suspect was in a red Ford pickup truck. R. 130 – 131. Pickens County, Pickens City, and Easley City officers located a truck matching the description with two black males inside. R. 135, lines 6 – 16. The truck was headed towards Greenville, South Carolina. R. 135, lines 6 – 16.

After a “two to three” minute pursuit by officers, the driver of the red truck stopped in a nearby front yard, got out of the truck, and ran into the woods. R. 140, lines 1 – 11; R. 143, lines 16 – 19. Officers arrested the passenger in the truck and tackled and arrested the driver in the woods. Appellant, the driver, was arrested and transported to the detention center. R. 148, lines 10 – 18. Money was recovered in the truck and in a plastic bag in the woods where Appellant was arrested which totaled \$1,750.00. R. 158 – 159.

At the jail, Appellant gave a written statement to Detective Samuel Byers of the Pickens City Police Department admitting to going in the bank. R. 172, line 5 – 175, line 1. No weapons were recovered during the search of the truck and Appellant's person.

At trial, Appellant testified. R. 189. He admitted to going into the bank, but explained that he was high on crack cocaine and had been addicted to drugs for several years. R. 190, lines 1 – 19. He also stated that he did not have a weapon and that he did not threaten to harm White. R. 193, lines 5 – 9.

Motion for Directed Verdict of Acquittal

After Appellant testified, defense counsel moved for a directed verdict of acquittal on Appellant's charges.¹ Counsel argued that the State had failed to present enough evidence to show that Appellant was guilty. R. 204 – 205. The trial judge denied counsel's motion. R. 205.

Discussion

The trial judge erred by failing to direct a verdict of acquittal on the charge of strong armed robbery. There was no direct or circumstantial evidence that Appellant intimidated, coerced, or threatened to harm Rachel White, the bank teller, when he entered the bank.

A criminal defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When reviewing the trial judge's denial of a directed verdict, an appellate court must review the evidence presented at trial in

¹ Defense counsel failed to move for a directed verdict of acquittal at the close of the State's case.

the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Buckmon, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). An appellate court is concerned with the existence or non-existence of evidence. State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct. App. 1997).

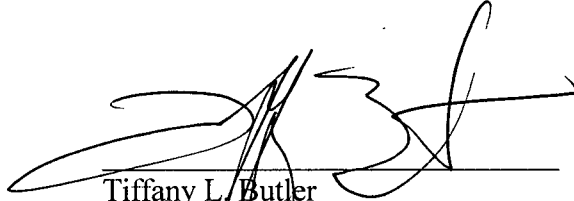
Where the State relies “exclusively” on circumstantial evidence, such evidence must be “substantial” before the judge submits the case to a jury. State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2001). When the evidence merely raises a suspicion that the defendant is guilty, the trial judge should grant a directed verdict motion. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001).

Here, there was no evidence presented that Appellant threatened to harm the bank teller. White even admitted that Appellant did not threaten to harm her when he walked up to her counter and passed her the note. Detective Byars also conceded that Appellant did not indicate that he threatened or coerced White during Appellant’s interview and in his written statement. Because there was no direct or circumstantial evidence that Appellant used intimidation or force to take the money from the bank, Appellant was entitled to a directed verdict of acquittal on the charge of strong armed robbery.

CONCLUSION

For the reasons argued, Appellant Vincent Missouri respectfully requests this Court to direct a verdict of acquittal on the charge of strong arm robbery.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of March, 2015.

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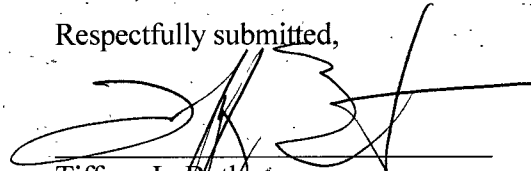
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vincent Missouri 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 James R. Barber, III, which was held on May 19-20, 2014, 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 Vincent Missouri.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd 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) Transcript dated May 19 – 20, 2014
- (3) Transcript dated December 19, 2013

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

March 23rd, 2015



Tiffany L. Butler
Appellate Defender

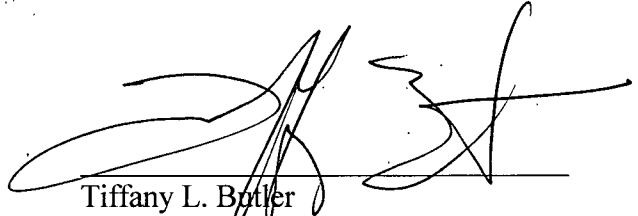
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PO Box 11589
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Attorney for Appellant

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 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 23, 2015



Tiffany L. Butler
Appellate Defender

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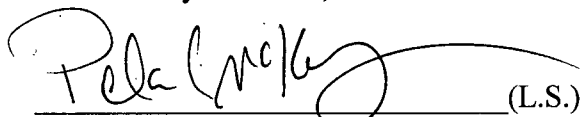
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Vincent Missouri, #197996 at Broad River Correctional Institution, this 23rd day of March, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of March, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022