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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County

Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

APPELLANT

\_\_\_\_\_  
FINAL BRIEF OF APPELLANT  
\_\_\_\_\_

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South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the attempted armed robbery charge because there was no proof of any attempt to take any goods from the victim where the gunman simply pointed a firearm at the victim, pulled the trigger, and fled.

## STATEMENT OF THE CASE

Appellant Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm during the July 2009 term of the Charleston County General Sessions Court before the Honorable Roger M. Young, Sr., Judge. Appellant was sentenced to imprisonment for a period of thirty-five years.

Appellant appealed. This brief follows.

## ARGUMENT

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the attempted armed robbery charge because there was no proof of any attempt to take any goods from the victim where the gunman pointed a gun at the victim pulled the trigger and fled.

At trial, Michael Simmons testified that he was leaving his job at Ryan's Steak House around 11:45 p.m. on December 29, 2007, headed toward his car when a black male wearing a white hoody and ski mask approached him in the parking lot. As Simmons jumped in his car, the perpetrator came closer, held a gun to Simmons' face, and pulled the trigger twice, but the gun did not go off. The perpetrator spoke one word (that word being "hey") during the incident. At the end of a tug of war between Simmons and the perpetrator over the car door via opening and shutting it, Simmons managed to escape by driving off. Later, police officers found a suspect in the Summit Place Apartments nearby and conducted a show up identification. Simmons positively identified the suspect, i.e. appellant, as the perpetrator in the incident. R. p. 10, line 4 – p. 30, line 7. Fellow employer Ginger Cass witnessed this event and testified that she saw the perpetrator "rapping the gun a little bit into the car [as Simmons] was still trying to go forward" and that the perpetrator fled when Simmons drove off. R. p. 89, line 15 – p. 94, line 21. The remainder of the case included the testimony of the two police officers who described how appellant was apprehended, and a ballistics expert who attempted to explain why the gun (old gun) did not fire on that night. R. p. 97, line 1 – p. 106, line 3.

At the close of the state's case, the defense moved for a directed verdict on the attempted armed robbery charge on the ground that there was no evidence verbally or non

verbally in support of the attempted armed robbery charge. The facts of the case included a perpetrator who grabbed Simmons' car door, said "hey," and then pointed a gun and pulled the trigger. At best, the facts revealed that a gunman was trying to assault or shoot Simmons. R. p. 106, line 24 – p. 107, line 11; R. p. 111, line 17 – p. 112, line 16. The state argued that the perpetrator was trying to get in Simmons' car and take the car. R. p. 109, line 13 – p. 111, line 11. The court denied the motion. R. p. 114, lines 18 – 21.

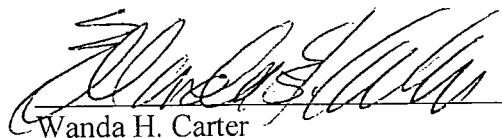
Robbery is larceny by force, i.e., larceny from the person or immediate presence of another by violence or intimidation. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966). Armed robbery is robbery while armed. S.C. Code Ann. § 16-11-350-370 (2003). Larceny is the felonious taking and carrying away of the goods of another which must be accomplished against the will or without the consent of the victim. State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979). The element of taking the goods with the intent to steal, or in this case, the attempt to take the goods with the intent to steal, was not present per these facts. See State v. Brown, supra. Here, the perpetrator never verbally ordered Simmons to surrender his wallet, car, or any item whatsoever. Furthermore, the word "hey" uttered by the perpetrator cannot be translated as a verbal command for the surrender of goods. Also, the perpetrator's non verbal cues or actions were not tantamount to a request for goods, money, or the car. Rather, the perpetrator's actions via pointing the gun and pulling the trigger indicated that he was trying to assault or shoot Simmons. The fact that the perpetrator tried to open the door and continued to pull on the door also indicated he was trying to get to get good gun aim at Simmons. It is untenable to contend that the perpetrators pull on the car and saying "hey" meant that he was attempting to steal the car. Had that been the case, the state would have charged him with carjacking.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. Here, there was insufficient evidence presented on the attempted armed robbery charge. The state failed to prove every element of the offense of attempted armed robbery beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979).

#### CONCLUSION

The lower court erred in denying appellant's motion for a directed verdict of acquittal on this charge in violation of the Fourteenth Amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

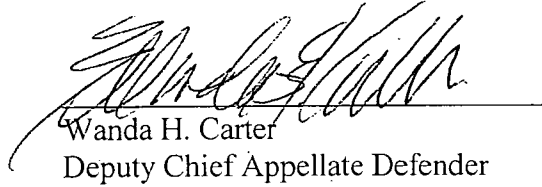
ATTORNEY FOR APPELLANT.

May 25, 2010

CERTIFICATE OF COUNSEL

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

May 25, 2010



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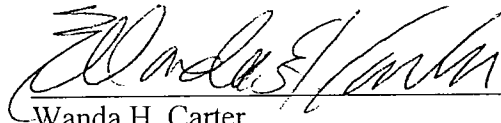
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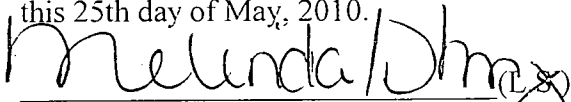
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, Senior Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 25th day of May, 2010.



\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 25th day of May, 2010.



\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: October 30, 2018.