

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
R. Keith Kelly, Circuit Court Judge

ORIGINAL

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MAR 13 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

O'BRYANT TERRELLE GLADDEN,

APPELLANT

APPELLATE CASE NO 2016-002099

ANDERS 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) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict of acquittal at the close of the state's case because there was no proof of every element of the offense of petit larceny charged against him at trial.

STATEMENT OF THE CASE

Appellant O'Bryant Terrelle Gladden was convicted of petit larceny per jury trial held during the August 2016 term of the Lancaster County General Sessions Court before Judge R. Keith Kelly. Appellant was sentenced to imprisonment for a period of ten years. Russell Parker represented appellant at trial and Assistant Solicitor Cara Walker appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion for a directed verdict of acquittal at the close of the state's case because the state did not prove every element of the offense of petit larceny charged against him at trial.

At trial, Crystal Beckham testified that she allowed Hank¹ and Amanda Railey to use her trailer, but learned on October 11, 2015, that the trailer had been taken from the couples' possession. Tr. 35, l. 12 – p. 40, l. 10.

Amanda Railey testified that she was returning home on October 11, 2015, when she saw her trailer attached to a green trailblazer that was driving away from her property. Railey recognized the driver as Nikki Moore, and she also recognized appellant seated inside the vehicle also. Railey stated that they speeded up and drove off when they saw her, but that the trailer became unhooked as a result. The police arrived on the scene after she reported that incident.

Henry Bernard "Hank" Duncan testified that when police contacted him about this event, he stated that he had not given anyone permission to take the trailer off the property where it was parked. Tr. 61, l. 15 – p. 64, l. 18.

Nikki Moore testified that she picked up appellant on the day in question and took him to Railey's house to get "the stuff that he had there" because Railey owed him money. Then, appellant hooked the trailer to her trailblazer. Moore stated that the trailer unhooked after Railey appeared, and that appellant told her (Moore) to keep driving. Tr. 66, l. 14 – p. 72, l. 3.

At the close of the state's case, defense counsel moved for a directed verdict of acquittal on the petit larceny charge because the state did not introduce any evidence at trial identifying

¹ Hank is Henry Bernard "Hank" Duncan.

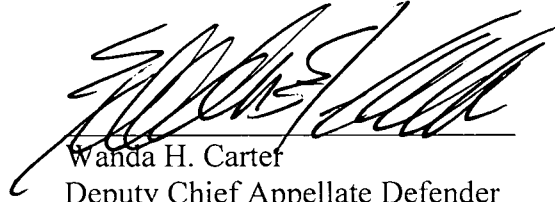
the value of the trailer on Railey's property as being \$2,000 or less. Tr. 80, l. 24 – Tr. 81, l. 11. The solicitor stated that “you can infer the value of a trailer if it is over \$0.” Tr. 81, l. 13 – 19. The trial judge denied the motion. Tr. 81, l. 20 – 21; Tr. 89, l. 1-4; Tr. 89, l. 5-10.

Petit larceny is defined as the larceny of goods valued at \$2,000.00 or less. See S.C. Code Ann § 16-13-30 (as amended June 2, 2010). Larceny is the taking away of the goods of another without consent. State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013). Thus, the two main elements that should have been proved at appellant's trial were larceny and the value of the trailer being \$2,000.00 or less. Here, the record is devoid of any proof of the value of the trailer in question. Also, under S.C. Code Ann. § 16-1-57 (1995), a sentence is contingent upon the value of the property involved². State v. Lews, 325 S.C. 324, 478 S.E.2d 696 (1996). Since appellant's instant charge was susceptible to a property enhancement sentence as a third or subsequent property offense, which meant he faced a ten-year sentence if convicted, then it was imperative that the state presented the value of the trailer as proof of one of the elements of a petit larceny at appellant's trial. The failure of the state to prove value as an element of the crime of petit larceny for which appellant was on trial meant that the trial judge erred in denying petitioner's directed verdict motion. Due process requires the proof of every element charged before a conviction can be obtained. Thus, appellant's conviction was obtained in violation of the Fourteenth Amendment Due Process Clause. See Jackson v. Virginia, 443 U.S. 307 (1979).

² Under S.C. Code Ann 16-1-57, a person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a class E felony.

CONCLUSION

Based on the foregoing argument, appellant requests that his conviction and sentence be vacated.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of March, 2017.

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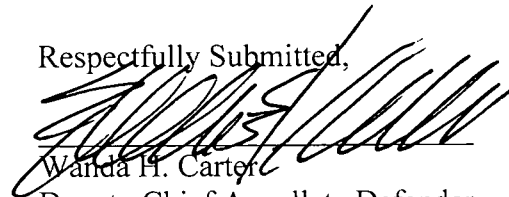
PETITION TO BE RELIEVED AS COUNSEL

Counsel for O'Bryant Terrelle Gladden states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Keith Kelly, which was held on September 30, 2016, 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 O'Bryant Terrelle Gladden.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of March, 2017.

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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) Entire Trial Transcript

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

March 13, 2017



Wanda H. Carter
Deputy Chief Appellate Defender

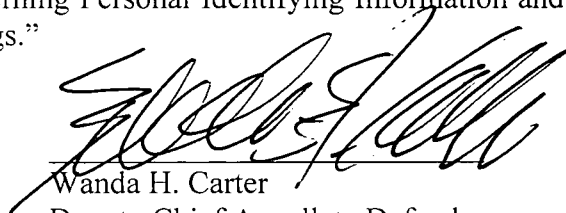
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Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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 13, 2017.



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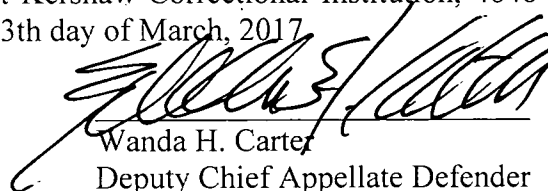
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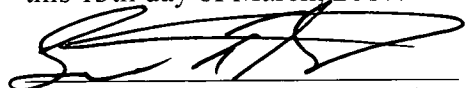
APPELLANT

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on O'Bryant Terrelle Gladden, #324878, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 13th day of March, 2017.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of March, 2017.


(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.