

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

FEB 21 2017

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

HONORABLE ROGER L. COUCH, CIRCUIT COURT JUDGE

THE STATE

RESPONDENT

v.

CALVIN TERRELL WILLIAMS

APPELLANT

APPELLATE CASE NO. 2016-001276

PRO SE BRIEF OF APPELLANT

CALVIN TERRELL WILLIAMS

PRO SE

BROAD RIVER CORRECTIONAL INST.

MONTICELLO B ROOM 197

4460 BROAD RIVER ROAD

COLUMBIA, SOUTH CAROLINA

29210

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STATUTE

SECTION 16-11-380 6

STATEMENT OF ISSUES OF APPEAL

WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT ON THE BANK ROBBERY CHARGE WHERE THE STATE PROSECUTION FAILED TO PRESENT SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLANT DID " ENTER A BUILDING OR PART OF A BUILDING OCCUPIED AS A BANK " IN ORDER TO PROVE THE CRITICAL ELEMENTS OF THE INDICTMENT AT TRIAL ?

WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT ON ACCESSORY BEFORE THE FACT TO BANK ROBBERY WHERE THE STATE PROSECUTION FAILED TO PRESENT SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLATE DID " AID ; ABET , COUNSEL , HIRE , OR HAD KNOWLEDGE OR IN ANY WAY SOLICITED THE BANK ROBBERY COMMITTED BY SHYQUONE WILLIAMS " IN ORDER TO PROVE THE CRITICAL ELEMENTS OF THE INDICTMENT AT TRIAL ?

WHETHER THE TRIAL ERRED IN VIOLATING THE APPELLANT'S DUE PROCESS AND FUNDAMENTAL RIGHT TO A FAIR TRIAL BY GIVEN CONFUSING INSTRUCTIONS TO THE JURY CONCERNING MERE PRESENCE AND CONSTRUCTIVE PRESENCE ?

WHETHER THE TRIAL COURT ERRED IN ABUSE OF DISCRETION OCCURRED WHEN AT THE CONCLUSION OF TRIAL THE JUDGE CHARGED THE JURY ON THE " CONSTRUCTIVE PRESENCE " THEORY OF LAW BASED ON UNSUPPORTED FACTUAL CONCLUSION ?

STATEMENT OF THE CASE

ON APRIL 30, 2015, THE SPARTANBURG COUNTY GRAND JURY RETURNED AN INDICTMENT AGAINST APPELLANT CALVIN TERRELL WILLIAMS FOR ONE COUNT OF ARMED ROBBERY AND ONE COUNT OF BANK ROBBERY. R. 370 (ARMED ROBBERY / BANK ROBBERY INDICTMENT). ON MAY 6, 2016, THE SPARTANBURG COUNTY GRAND JURY RETURNED ANOTHER INDICTMENT AGAINST WILLIAMS FOR ACCESSORY BEFORE THE FACT TO BANK ROBBERY. R. 372 (ACCESSORY INDICTMENT).

ON JUNE 6-8, 2016, WILLIAMS APPEARED FOR TRIAL BEFORE THE HONORABLE ROGER L. COUCH AND A JURY. WILLIAMS WAS REPRESENTED BY MATTHEW SHENY, AND THE STATE WAS REPRESENTED BY SOLICITOR BARRY BARNETTE. R. 1; R. 101; R, 291.

THE JURY RETURNED A VERDICT OF GUILTY OF THE OFFENSE OF BANK ROBBERY. R. 355, 1.22-356, 1.7. WILLIAMS WAS SENTENCED TO A MANDATORY TERM OF LIFE WITHOUT PAROLE PURSUANT TO S.C. CODE ANNS 17-25-45. R. 368, 11.11-16.

THIS APPEAL FOLLOWS.

ARGUMENTS

WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT ON THE BANK ROBBERY CHARGE WHERE THE STATE PROSECUTION FAILED TO PRESENT SUFFICIENT EVIDENCE THE APPELLANT DID " ENTER A BUILDING OR PART OF A BUILDING OCCUPIED AS A BANK " IN ORDER TO PROVE THE CRITICAL ELEMENTS OF THE INDICTMENT AT TRIAL ?

STATE V. PARRIS 353 S.C. 582 , 578 S.E. 2d 736. ON THE OTHER HAND , IF THE STATE FAILS TO PRESENT SUFFICIENT EVIDENCE OF THE OFFENSE , A DEFENDANT IS ENTITLED TO A DIRECT VERDICT FROM THE COURT. STATE V. WALKER , 349 S.C. 49 , 562 S.E. 2d 313 (2002) HENCE , " WHERE THE FACTS OF THE CASE , EVEN IF PROVED , DO NOT CONSTITUTE THE ALLEGED CRIMINAL CONDUCT , A DIRECT VERDICT MUST BE GRANTED. " STATE V. JACKSON 338 S.C. 565 , 569 , 527 S.E. 367 , 369.

THE STATE OF SOUTH CAROLINA FAILED TO PROVE ANY OF THE ELEMENTS OF BANK ROBBERY. THE STATUTE REQUIRE " ENTER A BUILDING OR PART OF A BUILDING OCCUPIED AS A BANK , DEPOSITORY , OR SAVINGS AND LOAN WITH THE INTENT TO STEAL MONIES , SECURITIES FOR MONEY , OR PROPERTY BY EITHER FORCE , INTIMIDATION , OR THREATS AND RECEIVED CURRENCY BY DEMAND , WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY , GOODS , OR MONIES , IN VIOLATION OF SECTION 16-11-380 OF SOUTH CAROLINA CODE OF LAW , 1976 AS AMENDED.

THE APPELLANT CALVIN TERRELL WILLIAMS DID NOT ENTER THE BUILDING OR PART OF A BUILDING OCCUPIED AS A BANK. THEREFORE , THE CRITICAL ELEMENT

OF ENTER WAS NOT PROVEN. THE TESTIMONY GIVEN THROUGH TRIAL DID NOT PROVE THE APPELLANT ENTERED. SEE APPELLATE CASE NO. 2016-001276, RECORD OF APPEAL (PAGE 177 LINE 12-25; PAGE 178 LINE 1-13, PAGE 182 LINE 19-25, AND PAGE 183 LINE 1-25). ALSO SEE EXHIBIT 22.

THE BANK ROBBERY VIDEO CLEAR SHOW ONE PERSON COMMITTING THE CRIME. THE APPELLANT DID NOT COMMIT THE CRIME. HE DID NOT ENTER THE CRIME SCENE. THE APPELLANT COULD NOT HAVE USED THREATS ARE INTIMIDATION. HE DID NOT AGREE TO RECEIVING MONEY. NEITHER DID SHYQUONE WILLIAMS TESTIFY TO IT.

STATE V. CAIN--- S.E. 2d --- 2017 WL 57159, IT IS A FUNDAMENTAL CONCEPT OF CRIMINAL LAW THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE OFFENSE CHARGED AGAINST THE DEFENDANT. STATE V. BROWN 360 S.C. 581, 590, 620 S.E. 2d 392, 397 (2002) THE STATE MAY NOT OBTAIN A CONVICTION WHEN ITS PROOF AS TO ANY ONE ELEMENT REQUIRES THE JURY TO SPECULATION OR GUESS WHETHER THE DEFENDANT ENGAGED IN THE CONDUCT THE LEGISLATURE SOUGHT TO CRIMINALIZE. STATE V. BROWN, 267 S.C. 311, 227 S.E. 2d 674, 677 (1976) (STATING " THE MOTION FOR DIRECT VERDICT SHOULD BE GRANTED WHERE EVIDENCE ... IS SUCH AS TO PERMIT THE JURY TO MERE CONJECTURE OR TO SPECULATE ") SEE HANAHAN V. SIMPSON, 326 S.C. 140, 149, 485 S.E. 2d 903, 908 (1997) (STATING " VERDICT MAY NOT BE PERMITTED TO REST UPON SURMISE, CONJECTURE, OR SPECULATION ") STATE V. HYDER, 242 S.C. 372, 379, 131 S.E. 2d 96, 100 (1963) (" WE HAVE HELD THAT SUSPICION. HOWEVER STRONG, DOES NOT SUFFICE TO SUSTAIN A CONVICTION.

STATE V. JACKSON 358 S.C. 565, 527 S.E. 2d 367, THE STATE IS REQUIRED TO

PROVE EVERY ELEMENT OF A CHARGED OFFENSE TO OBTAIN A CONVICTION. STATE V. ATTARDO
263 S.C. 546, 211 S.E. 2d 868 (1975)

THE TRIAL COURT ABUSED DISCRETION BY NOT GRANTING A DIRECT VERDICT BASED ON THE BELIEF "ASPORTATION IS A PART OF THE OFFENSE WHERE THINGS ARE CARRIED OFF, CARRIED AWAY, SO THE CARRYING AWAY OF THE LOOT IS, IN ANY ROBBERY, IS PART OF THE OFFENSE." SEE APPELLATE CASE NO. 2016-001276, RECORD OF APPEAL (PAGE 297 LINE 16-18) CONTRARY TO THE COURT BELIEF THAT ASPORTATION IS NOT AN ELEMENT OF BANK ROBBERY.

E.

STATE V. MOORE 347 S.C. 468 649 S.E. 2d 84. THE ELEMENTS OF ROBBERY AND ARMED ROBBERY INCLUDE ASPORTATION OF THE PROPERTY. STATE V. KEITH, 283 S.C. 597, 598, 325 S.E. 2d 325, 326 (1985)

STATE V. KEITH, 283 S.C. 597, 598, 325 S.E. 2d 325, 326. WHILE LARCENY IS THE " FELONIOUS TAKING AND CARRYING AWAY OF THE GOODS OF ANOTHER " AGAINST THE OWNER'S WILL OR WITHOUT HIS CONSENT. Id THUS, ASPORTATION IS AN ELEMENT OF ROBBERY AND ARMED ROBBERY.

WORDS IN STATUTE MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING. SMITH
V. EAGLE CONSTRUCTION COMPANY, 282 S.C. 140, 318 S.E. 2d 8 (1984)

ASPORTATION DOES NOT PROVE THE ELEMENT OF ENTER. NEITHER DOES IT PROVE THE APPELLANT ENTERED INTO THE BANK. THE APPELLANT DID NOT RECEIVE NO MONEY. THERE WAS NO PART OF THE APPELLANT ENTERED THE BANK. THAT INCLUDE THE BOOK BAG. THIS WILL BE AN ASSUMPTION, SPECULATION, AND SUSPICION TO THE ACTUAL INTENT. THE APPELLANT DID NOT CARRY NOTHING AWAY. THE TRIAL COURT DENIAL OF DIRECT VERDICT

BECAUSE ASPORTATION WAS NOT A SUFFICIENT REASON FOR PROOF OF ENTRY. THIS CREATED A FUNDAMENTAL UNFAIRNESS IN THE TRIAL COURT DENIAL FOR A DIRECT VERDICT. THE BODY OF ELEMENTS GIVEN IN THE STATUTE WAS NOT PROVEN.

STATE V. MOORE, 374 S.C. 468, 649 S.E. 2d 84. AN ABUSE OF DISCRETION OCCURS WHEN A RULING IS BASED ON AN ERROR OF LAW OR A FACTUAL CONCLUSION THAT IS WITHOUT EVIDENTIARY SUPPORT. FIELD V. REGIONAL MEDICAL . CTR. ORANGEBURG, 363 S.C. 19, 609 S.E. 2d 506 (2005).

U.S. V. JORDAN, 509 F.3d 191. THIS STATEMENT REFLECTS THE GOVERNMENT'S PERFECTLY CORRECT UNDERSTANDING OF THE HORNBOOK PRINCIPLE OF CRIMINAL LAW THAT ONE ELEMENT OF A CRIME IS NO MORE "ESSENTIAL" THAN ANOTHER. SEE PATTERSON V. NEW YORK, 432 U.S. 197, 210, 97 S.Ct. 2319, 53 L.Ed 2d 281 (1977) (" [T]HE DUE PROCESS CLAUSE REQUIRES THE PROSECUTION TO PROVE BEYOND A REASONABLE DOUBT ALL ELEMENTS INCLUDING IN THE DEFINITION OF THE OFFENSE OF WHICH THE DEFENDANT IS CHARGED.

THERE IS ONLY ONE WAY TO ENTER INTO A BUILDING, OR A PART OF A BUILDING. THIS IS DONE PHYSICALLY. IT'S IMPOSSIBLE FOR THE ELEMENTS TO BE SATISFIED WITHOUT GOING INTO. THERE IS NO PROOF GIVEN THROUGH TESTIMONY THE APPELLANT USED THREATS OR INTIMIDATION.

U.S. V. WINSHIP, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed 368, 51 O.O. 2d 323. EXPRESSION IS MANY OPINION OF THIS COURT INDICATE THAT IT HAS LONG BEEN ASSUMED THAT PROOF OF A CRIMINAL CHARGE BEYOND A REASONABLE DOUBT IS CONSTITUTIONALLY REQUIRED.

THE TRIAL COURT FAILED TO GRANT THE DIRECT VERDICT ON THE APPELLANT'S MOTION
ERRONEOUS. THE JUDGE CONFESS TO THE STATE NO PROVING THE ELEMENT OF ENTER, THE
TRIAL REFUSED TO ACQUIT THE APPELLANT ON BANK ROBBERY. SEE APPELLATE'S CASE
NO. 2016-001276, RECORD OF APPEAL " PAGE 298 LINE 19-24

APPELLATE'S CASE NO. 2016-001276

PAGE 298 LINE 19-24

THE COURT: WELL, THERE MAY -- I'M A LITTLE BIT CONCERNED WHERE WE'RE CHARGING HIM WITH THE ACT AND ALSO
BEING AN ACCESSORY BEFORE THAT ACT. AS YOU STATED; AN
ACCESSORY IS NOT -- NOT NORMALLY NOT PRESENT WHEN THE ACT IS
PERFORMED. HERE HE WAS IN THE VICINITY, HE WAS CLOSE
ENOUGH TO BE IN THE GETAWAY VEHICLE.

THE TRIAL COURT ADMITTED THE APPELLANT DIDN'T ENTER THE BANK. BEING
IN THE VICINITY IS NOT A CRIME. NEITHER IS IT AN ELEMENT OF THE OFFENSE. THE
TRIAL COURT'S NEGLIGENCE RELIEVE THE STATE OF THE BURDEN TO PROVE ALL THE ELEMENTS
OF THE OFFENSE BEYOND A REASONABLE DOUBT. THE TRIAL COURT'S COMMENT TO MR.
SHEALY CLEAR SUPPORT THE APPELLANT'S ARGUMENT CONCERNING THE ERROR OF FAILING
TO GRANT A DIRECT VERDICT ON BANK ROBBERY. THERE WAS NO WAY THE APPELLANT COMMITTED
THE UNLAWFUL ACT. THE ELEMENTS OF BANK ROBBERY DOES NOT REQUIRE A PERSON
TO BE IN THE VICINITY. THE TRIAL COURT UNDERSTAND IN ALL FAIRNESS THE
APPELLANT'S CONSTITUTIONAL RIGHTS HAS TO BE PROTECTED. THEREFORE, THE
JUDGE SHOULD NOT HAVE DENY THE DIRECT VERDICT, BECAUSE HIS STATEMENT
SUPPORT THE DEFENSE COUNSEL'S REASON FOR THE MOTION.

ISSUE 2

WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT ON ACCESSORY BEFORE THE FACT TO BANK ROBBERY WHERE THE STATE PROSECUTION FAILED TO PRESENT SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLANT DID "AID, ABET, COUNSEL, HIRE, OR HAD KNOWLEDGE, OR IN ANY WAY SOLICITED THE BANK ROBBERY COMMITTED BY SHYQUONE WILLIAMS" IN ORDER TO PROVE THE CRITICAL ELEMENTS OF THE INDICTMENT AT TRIAL?

STATE V. PRINCE, 316 S.C. 57, 447 S.E. 2d 177. A CONVICTION FOR THE CRIME OF ACCESSORY BEFORE THE FACT REQUIRES PROOF THAT THE ACCUSED (1) EITHER ADVISED AND AGREED, URGED, OR IN SOME WAY AIDED SOME OTHER PERSON TO COMMIT THE OFFENSE; (2) WAS NOT PRESENT WHEN THE OFFENSE WAS COMMITTED, AND (3) THAT SOME PRINCIPAL COMMITTED THE OFFENSE. STATE V. FARNE, 190 S.C. 75, 1 S.E. 2d 912 (1939)

THE STATE FAILED TO PROVE THE ELEMENTS OF ACCESSORY BEFORE THE FACT OF BANK ROBBERY. THE STATE DID NOT SHOW THE APPELLANT AGREED, URGED, OR IN SOME WAY AIDED SOME OTHER PERSON TO COMMIT THE OFFENSE. THE TESTIMONY GIVEN DURING TRIAL BY THE STATE WITNESSES DOES NOT MENTION NO COMMUNICATION PERTAINING A CRIME. THE CONFLICTING TESTIMONY GIVEN BY THE STATE STAR WITNESS SHYQUONE WILLIAMS WITHOUT COLLABORATING EVIDENCE ONLY GIVES GROUND TO SPECULATION. THE WITNESSES HAD ONE COMMON AGREEMENT OUTSIDE OF THE APPELLANT'S ABSENCE FROM THE CRIME. THAT WAS HE DID NOT COMMUNICATE, OR AID IN THE ROBBERY. SEE (PAGE 177 LINE 12-15, PAGE 185 LINE 12-15, PAGE 186 LINE 1-10, PAGE 201 LINE 1-9, PAGE 204 LINE 24-25, PAGE 205 LINE 1-5, PAGE 216 LINE 1-8, PAGE 236 LINE 23-25, AND

PAGE 237 LINE 1-2)

INDEED, A NUMBER OF LONGSTANDING DOCTRINES OF CRIMINAL PROCEDURE ARE PREMISED ON THE NOTION THAT EACH OFFENSE WHOSE ELEMENTS ARE FULLY SET OUT IN AN INDICTMENT CAN INDEPENDENTLY SUSTAIN A CONVICTION. SEE e.g. TURNER V. UNITED STATES 398, 420, 96 S.Ct 642, 654, 24 L.Ed 2d 610 (1970)

STATE V. SMITH, 406 S.C. 547, 782 S.E. 2d 795. A DEFENDANT IS ENTITLED TO A DIRECTED VERDICT WHEN THE STATE FAIL TO PRODUCE EVIDENCE OF THE OFFENSE CHARGED. STATE V. WESTON, 367 S.C. 274, 292, 625 S.E. 2d 641, 648 (2006)

STATE V. MASSEY, 267 S.C. 432, 229 S.E. 2d 352. WHEN SUCH MOTION IS MADE THE TRIAL COURT IS CONCERNED WITH THE EXISTENCE OR NONEXISTENCE OF EVIDENCE NOT WITH THE WEIGHT. THE COURT SHOULD NOT REFUSE TO GRANT THE MOTION WHERE THE EVIDENCE MERELY RAISES SUSPICION THAT THE ACCUSED IS GUILTY.

ISSUE 3

WHETHER THE TRIAL COURT ERRED IN VIOLATING THE APPELLANT'S DUE PROCESS AND FUNDAMENTAL RIGHT TO A FAIR TRIAL BY GIVEN CONFUSING INSTRUCTIONS TO THE JURY CONCERNING MERE PRESENCE AND CONSTRUCTIVE PRESENCE?

STATE V. JAMES 386 S.C. 650 689 S.E. 2d 643. THE LAW TO BE CHARGED TO THE JURY IS TO BE DETERMINED BY THE EVIDENCE PRESENTED AT TRIAL. STATE V. LEE, 298 S.C. 364, 380 S.E. 2d 834, 835 (1989)

IN STATE V. DENNIS, 321 S.C. 413, 420, 468 S.E. 2d 674, 675. "MERE PRESENCE"

IS GENERALLY APPLICABLE IN TWO CIRCUMSTANCES. FIRST, IN INSTANCES WHERE THERE IS SOME DOUBT OVER WHETHER A PERSON IS GUILTY OF A CRIME BY VIRTUE OF ACCOMPLICE LIABILITY. THE TRIAL COURT MAY BE REQUIRED TO INSTRUCT THE JURY THAT THE PERSON MUST PERSONALLY COMMIT THE CRIME, OR BE PRESENT AT THE SCENE OF THE CRIME THROUGH SOME OVERT ACT. SECONDLY, MERE PRESENCE IS GENERALLY AN ISSUE WHERE THE STATE ATTEMPTS TO ESTABLISH DEFENDANT'S POSSESSION OF CONTRABAND BECAUSE THE DEFENDANT IS PRESENT WHERE THE CONTRABAND IS FOUND.

STATE V. ZEIGLER 364 S.C. 94, 610 S.E. 2d 859. MERE PRESENCE AT THE SCENE OF THE CRIME IS INSUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. STATE V. JOHNSON, 291 S.C. 127, 352 S.E. 2d 480 (1987)
CONDREY V. STATE 348 S.C. 184, 562 S.E. 2d 320.

CONTRARY TO STATE V. CHAVIS, 277 S.C. 521, 522-23, 290 S.E. 2d 412, 412-13 (1982), THE APPELLANT DID NOT DRIVE SHYQUONE WILLIAMS TO THE BANK. THE APPELLANT DID NOT GIVE HIM A WEAPON. HE DID NOT GIVE HIM A MASK, OR TOOLS. THESE WERE THINGS CHAVIS GAVE HIS CO-DEFENDANT TO USE IN THE CRIME. THESE THINGS MAKE CHAVIS CONSTRUCTIVELY PRESENT BY DEFINITION. THE TESTIMONY GIVEN BY HIS THREE CO-DEFENDANTS SUPPORTED THE THEORY OF CONSTRUCTIVE PRESENCE. THERE IS NOTHING BELONGING TO THE APPELLANT ENTERED THE CRIME SCENE (BANK). ALTHOUGH CHAVIS WAS THREE MILES AWAY, HE WAS THE DRIVER. CHAVIS ALSO AIDED AND ABETTED THEM. THE CRIME OF ROBBERY REQUIRE PRESENCE, BUT NOT ENTER. THEREFORE, ENTRY IS NOT AN ELEMENT OF ROBBERY OR ARMED ROBBERY. ENTRY AND PRESENCE ARE DIFFERENT. ENTRY REQUIRE A PHYSICAL PRESENCE. PRESENCE DOES NOT REQUIRE ENTRY. THERE'S NO WAY TO MAKE THE TWO WORDS MIRROR EACH OTHER. THE WORDS ARE NOT SYNONYMS. THE WORD "PRESENCE" IS BROADENING

THE WORD "ENTRY" BEYOND THE BANK.

IF THE VEHICLE WAS A PART OF THE CRIME SCENE, THE DRIVER KENNETH BLASSINGAME WAS A PART OF THE CRIME. THE DRIVER STATED HE HAD NO KNOWLEDGE OF THE BANK ROBBERY. NEITHER WAS THE BANK ROBBERY EVER DISCUSSED IN HIS PRESENCE. THE APPELLANT ALSO STATED HE KNEW NOTHING ABOUT THE BANK ROBBERY. SHYQUONE WILLIAMS CONFESSED TO GIVEN VOLUNTARY STATEMENTS THE DRIVER OR THE PASSENGER HAD NO KNOWLEDGE. THEN SHYQUONE WILLIAMS CHANGED HIS STORY. BEING THE DRIVER OF THE GETAWAY VEHICLE WAS NEVER CHARGED; THIS RAISE AN EYEBROW TO SELECTIVE PROSECUTION; OR VINDICTIVE PROSECUTION. IF THE DRIVER IS NOT CONSTRUCTIVELY PRESENT, NEITHER WAS THE PASSENGER. WITH THE CONFLICTING TESTIMONY GIVEN BY SHYQUONE WILLIAMS; THE STATE FAILED TO PRODUCE COLLABORATING EVIDENCE. THE BOOK BAG WAS NOT USED IN A CRIME, IT DOES NOT SUPPORT THE THEORY OF CONSTRUCTIVE PRESENCE. CONSTRUCTIVE PRESENCE IS NOT AN ELEMENT OF "PRINCIPAL." THEREFORE, THE TRIAL COURT SHOULD NOT HAVE CHARGED THE JURY ON CONSTRUCTIVE PRESENCE. THIS IS WHAT WAS CONFUSING TO THE JURY.

ISSUE 4

WHETHER THE TRIAL COURT ERRED IN ABUSE OF DISCRETION OCCURRED WHEN AT THE CONCLUSION OF THE TRIAL THE JUDGE CHARGED THE JURY ON THE "CONSTRUCTIVE PRESENCE" THEORY OF LAW BASED ON UNSUPPORTED FACTUAL CONCLUSIONS?

AN ERROR OF LAW IN THE JUDGE CHARGE TO THE JURY ON CONSTRUCTIVE PRESENCE ENCOURAGED AND PROMPTED THE JURY TO MAKE THAT ERRONEOUS FINDING OF FACT BASED ON VAGUE AND CONCLUSORY ALLEGATIONS UNSUPPORTED BY THE EVIDENCE.

THE TRIAL COURT'S CHARGE TO THE JURY ON "CONSTRUCTIVE PRESENCE" WAS AN ABUSE OF DISCRETION IN THE CASE SUB JUDICE AND UNSUPPORTED BY THE EVIDENCE; WAS SO VAGUE THAT IT PROVIDE NO GUIDANCE WHATEVER UPON THE LIMITS WHICH THE JURY MAY HAVE REGARD TO LIBERAL INTERPRETATION OF ACCOMPLICE LIABILITY; NO UNDERLYING PRINCIPLE WHICH THUS FORMS ITS AUTHORITATIVE ELEMENTS THAT APPELLANT IS NOT GUILTY AS CHARGED MERELY BY ASSOCIATION WITH CO-DEFENDANT.

THE TRIAL COURT'S CHARGE TO THE JURY INDUCED THE CONCLUSIVE PRESUMPTION THAT CRIME HAS BEEN COMMITTED BY APPELLANT THROUGH GUILT BY ASSOCIATION.

THERE IS IN SOUTH CAROLINA JURISPRUDENCE NO LEGAL IMPUTATION OF "CONSTRUCTIVE PRESENCE", OF HAVING BEEN AT A CRIME SCENE, AN ELEMENT OF THE OFFENSE CHARGED, BASED SOLELY ON THE TESTIMONY OF THE CO-DEFENDANT, BUT OF WHICH THERE IS NO DIRECT PROOF CONNECTED WITH SOME OTHER RELATED FACTS.

IN WEIGHING THE MERITS, AND PONDERING THE FATE OF THE CASE, THERE IS NO LEGAL SUFFICIENT EVIDENTIARY BASIS ON WHICH THE JURY'S VERDICT SHOULD STAND. THE TRIAL COURT'S DEFINITION OF CONSTRUCTIVE PRESENCE, OR ACCOMPLICE LIABILITY, IN CHARGING THE JURY APPLIED MORE WIDELY THAN ITS MEANING LITERALLY, AND LAWFULLY JUSTIFIES.

CONCLUSION

THE NEED FOR FORCEFUL ADVOCACY DOES NOT COME TO AN ABRUPT HALT AS THE LEGAL PROCEEDING MOVES FROM THE TRIAL TO APPELLATE STATE... BOTH STAGES OF THE

PROSECUTION ALTHOUGH PERHAPS INVOLVING UNIQUE LEGAL SKILLS REQUIRES CAREFUL ADVOCACY TO ENSURE THAT RIGHTS ARE NOT FOREGONE AND THAT SUBSTANTIAL LEGAL AND FACTUAL ARGUMENTS ARE NOT INADVERTENTLY PASSED OVER.

BASED ON THE FOREGOING , THE APPELLANT CALVIN TERRELL WILLIAMS RESPECTFULLY REQUEST THAT THE COURT OF APPEAL REVERSE THE TRIAL COURT'S DECISION BY GRANTING HIM A DIRECTED VERDICT.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY

HONORABLE ROGER L. COUCH, CIRCUIT COURT JUDGE

THE STATE

RESPONDENT

v.

CALVIN TERRELL WILLIAMS.

APPELLANT

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE PRO SE BRIEF OF APPELLANT IN THE ABOVE REFERENCE CASE HAS BEEN SERVED UPON J. BENJAMIN APLIN, ESQUIRE, AT THE REMBERT DENNIS BUILDING, 1000 ASSEMBLY STREET, ROOM 519, COLUMBIA, SOUTH CAROLINA 29210, AND JENNY ABBOTT KITCHINGS, CLERK, 1220 SENATE STREET, COLUMBIA, SOUTH CAROLINA 29201.



CALVIN TERRELL WILLIAMS

PRO SE

SUBSCRIBED AND SWORN TO BEFORE ME

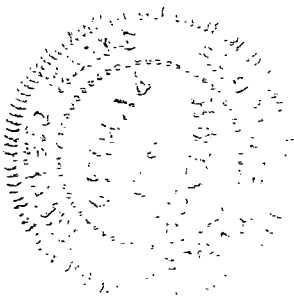
THIS DAY OF 16 MONTH OF February YEAR OF 2017



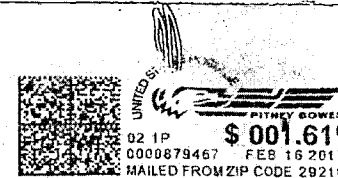
(L.S)

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 9/16/2026



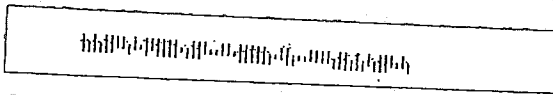
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JENNY ABBOTT KITCHINGS
CLERK

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