

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WALTER MONROE LANCE,

APPELLANT

APPELLATE CASE NO. 2012-212558

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 refusing to grant a directed verdict to the charge of common-law robbery when the State failed to prove that appellant took Kerstin J.'s keys and car by force and without consent?

STATEMENT OF THE CASE

Appellant was convicted of attempted criminal sexual conduct in the first-degree, common law robbery, and kidnapping after a jury trial held before the Honorable J. Derham Cole in Spartanburg County on May 7 – 8, 2012. Respective sentences of thirty (30) years, fifteen (15) years consecutive, and five (5) years consecutive were imposed. Robert Hall, Esquire, was defense counsel. Barry Barnette, Esquire, and Timi Poulos, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of common-law robbery when the State failed to prove that appellant took Kerstin J's keys and car by force and without her consent.

On October 30, 2011, Kerstin S. took her dog to the Milliken park in Spartanburg for a walk. She said appellant attempted to assault her sexually. After he quit the assault he said to her, "You have to give me a ride to Boiling Springs." The appellant said, "Give me your—your car key, give me your key, give me your key." She replied, "I'll give you my key right away." And she gave him the key. (Tr. p. 82, line 23 – p. 83, line 10).

At the conclusion of the State's case, defense counsel moved for a directed verdict to all of the charges. The trial court denied the motion. (Tr. p. 193, lines 17 – 21). The court erred in failing to grant a directed verdict to the charge of common-law robbery.

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).

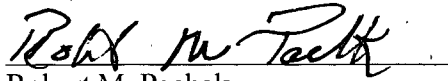
“The common-law offense of robbery is essentially the commission of larceny with force. Larceny involves the felonious taking and carrying away of the good of another, which must be accomplished against the will or without the consent of the owners.” State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979).

The State in this case failed to prove that appellant took the keys or the car with force or without the owner’s consent.

CONCLUSION

A directed verdict should be granted to the charge of common-law robbery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2013.

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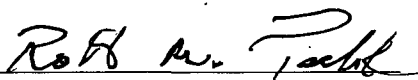
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Walter Monroe Lance 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 J. Derham Cole, which was held on May 8, 2012, 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 Walter Monroe Lance.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2013.

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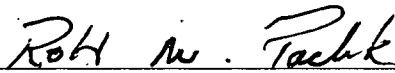
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Jury Qualification Transcript (May 7, 2012)
- (3) Entire Trial Transcript (May 7 – 8, 2012)

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

February 19th, 2013



Robert M. Pachak
Appellate Defender


South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

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 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."

February 19, 2013



Robert M. Pachak
Appellate Defender

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CERTIFICATE OF SERVICE


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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Walter Monroe Lance, #154185, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 19th day of February, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.