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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED B. BLUFORD,

APPELLANT

Appellate Case No. 2012-212488

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT

Trial counsel erred in denying appellant’s motion for a directed
verdict on the offense of armed robbery charged against him
because the element of asportation was not proved in the case as the
property in question was not taken or carried away, but rather
abandoned by appellant.....5

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

Jackson v. Virginia, 443 U.S. 307 (1979)..... 7

State v. Al-Amin, 353 SC 405, 578 S.E. 2d 32 (Ct. App. 2003) 6

State v. Bullard, 348 SC 611, 560 S.E. 2d 436 (2002)..... 6

State v. Keith, 283 S.C. 597, 325 S.E. 2d 325 (1985)..... 6

State v. Mitchell, 382 SC 1, 675 S.E. 2d 435 (2009) 6

State v. Moore, 374 SC 468, 649 S.E. 2d 84 (2008)..... 6, 7

Statutes

S.C. Code Ann §16-11-330 (A) 6

Constitutional Provisions

S.C. Const. art. I, §3 7

U. S. Const. amend. XIV 7

STATEMENT OF ISSUE ON APPEAL

Trial counsel erred in denying appellant's motion for a directed verdict on the offense of armed robbery charged against him because the element of asportation was not proved in the case as the property in question was not taken or carried away, but rather abandoned by appellant.

STATEMENT OF THE CASE

Appellant Alfred B. Bluford was convicted of armed robbery and assault and battery (first degree) per a jury trial held at the July 2012 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin. Appellant received an aggregate twelve-year prison sentence for his convictions. Jake Erwin represented appellant at trial.

Appellant appealed his trial court convictions. This brief follows.

ARGUMENT

Trial counsel erred in denying appellant's motion for a directed verdict on the offense of armed robbery charged against him because the element of asportation was not proved in the case as the property in question was not taken or carried away, but rather abandoned by appellant.

The trial in this case consisted of the testimony of two witnesses: Bi-Lo Store Manager Patrick Barr and Police Officer Michael Hammett. Appellant did not testify at trial and presented no witnesses in his defense.

Store Manager Barr testified that he was watching the store videotapes around 9:00 p.m. on July 29, 2012, when he saw a customer, later identified as the appellant, bring a pack of beer to the sales counter. Barr testified that he then saw appellant depart from that line, migrate to another line, and finally return to the original line, and commence walking past the point of sale with beer in his possession without paying for the beer. Barr stated he left his office and went to the lobby of the store to confront appellant. Barr stated that appellant claimed that his wife was paying for the beer. Barr stated that he tried to block appellant from leaving and at one point had appellant on the floor, but that he backed away when appellant started swinging a knife. Barr's left ring finger was cut in the melee. Barr added that when appellant stepped outside of the store, police officer Michael Hammett stopped, detained, and cuffed appellant. R. 44, l. 10-68, l. 13; R. 74, l. 23-p. 81, l. 21.

At the close of the state's case in chief, appellant's counsel moved for a directed verdict on the ground that the state failed to prove the asportation element of armed robbery because appellant never left the store with the beer, but rather abandoned the beer (the beer did not leave the store with appellant), and then engaged in a struggle with Barr. R. 83, l. 5-23, R. 85, l. 24-p. 86, l. 10. The court denied the directed verdict motion. R. 86, lines 11-22.

Armed robbery is robbery while armed with a deadly weapon. S.C. Code Ann §16-11-330 (A).¹ Robbery, which is the lesser offense of armed robbery, is defined as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another presence by violence or by putting such a person in fear. State v. Al-Amin, 353 SC 405, 578 S.E. 2d 32 (Ct. App. 2003). Also, larceny, which is the lesser offense of robbery, is the felonious taking and carrying away of the goods of another against the owner’s will or without his consent. State v. Mitchell, 382 SC 1, 675 S.E. 2d 435 (2009). Note that asportation is central to armed robbery and robbery because it (asportation) is the taking or carrying away of the goods or monies from the victim. State v. Mitchell, supra; State v. Bullard, 348 SC 611, 560 S.E. 2d 436 (2002).

No asportation occurred in this case because appellant did not take or carry away the beer from the store. Rather, appellant abandoned the beer after Barr engaged him in a fight. The beer never left the Bi-Lo store. Hence, there was no taking or carrying away of the property in this instance and thus no asportation was established in this case.

This case is distinguishable from the continuous offense theory applicable to armed robbery cases per State v. Keith, 283 S.C. 597, 325 S.E. 2d 325 (1985) and its progeny.² Under the continuous offense theory, the robber need not be armed at all times during the robbery in order to be guilty of armed robbery, but rather he is guilty if he arms himself or becomes armed with a deadly weapon at anytime during the progress of “the taking” or while the robbery is being perpetrated or during the escape or attempt to escape. This theory presupposes that the asportation

¹ Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon. S.C. Code Ann §16-11-330 (2003).

² State v. Moore, 374 SC 468, 649 S.E. 2d 84 (2008); and State v. Mitchell, 382 SC 1, 675 S.E. 2d 435 (2009).

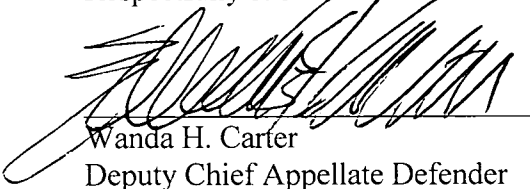
element of “the taking” exists. Here, there was insufficient proof of asportation as an element of the offense of armed robbery charged against him.

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). Here, there was insufficient proof of the element of asportation in connection with the offense of armed robbery offense charged against appellant. Thus, the court erred in denying appellant’s motion for a directed verdict on the offense of armed robbery charged against him. Appellant’s armed robbery conviction violated due process as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina Constitution because per Jackson v. Virginia, 443 U.S. 307 (1979), because every element of the offense charged, i.e. asportation, was not proved beyond a reasonable doubt in the case.

CONCLUSION

Based on the foregoing argument, appellant requests that his burglary conviction be reversed and a directed verdict of acquittal entered.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2013.

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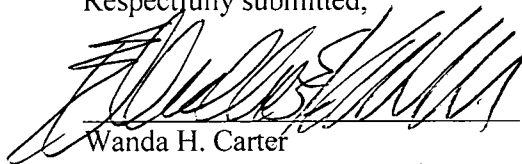
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alfred B. Bluford states:

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 Letitia H. Verdin, which was held on July 10, 2012, 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 Alfred B. Bluford.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2013.

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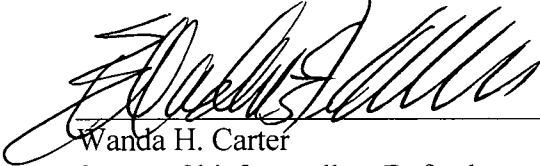
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

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

February 26th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

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Attorney for Appellant

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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 on Alfred B. Bluford, #220219 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 26th day of February, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 26th day of February, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.