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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 19 2014
SC Court of Appeals

Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY CROMER,

APPELLANT

APPELLATE CASE NO. 2014-000050

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) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's post-trial motion regarding the sufficiency of the state's evidence in the case because the jury's robbery verdict was clearly against the weight of the evidence presented at trial.

STATEMENT OF THE CASE

Appellant Timothy Lamar Cromer was convicted of robbery per jury trial held during the January 2014 term of the Newberry County General Sessions Court before Judge Eugene C. Griffith, Jr., who sentenced appellant to fifteen years, suspended upon the service of twelve years and three years probation. Earnest Deon O'Neal represented appellant at trial, and Assistant Solicitors Christopher Dale Scott and Taylor Wilson Daniel appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The lower court erred in denying appellant's post-trial motion regarding the sufficiency of the state's evidence in the case because the jury's robbery verdict was clearly against the weight of the evidence presented at trial.

Appellant was arrested and charged with kidnapping and armed robbery per David Williams' report to police that on January 16, 2013, he was put in a position of giving appellant a ride in his car to a Food Lion Store in Newberry and that he gave him (appellant) money as well. The jury found appellant guilty of robbery only.

At trial, David Williams testified that a man, who was later identified as appellant, approached him at the local Sphinx gas station in Newberry on January 16, 2013. Williams explained that when he got in his car to leave, then appellant got in the car on the passenger side with him and told him to drive to Food Lion, which Williams did; and that once they arrived at Food Lion, appellant asked for five dollars, which Williams handed over to appellant. Tr. 156, 1.11-p. 163, 1.17. Williams reported the incident to police after he left Food Lion and returned home.

Police Officer Terrance Matthews testified that he and Officer Michael Wood arrived at Williams' home in response to a report of this incident and took a statement from Williams. Williams explained what happened and described the perpetrator as a black, bald-headed male wearing a black jacket, black pants, and a red shirt. Tr. 201, 1.17-p. 202, 1.2. Tr. 225, 1.19-p. 228, 1.23. Officer Matthews added that shortly after taking Williams' statement, Officer Loynes informed him that a suspect matching the description in question had been found around the Food Lion area in question. Tr. 228, 1.24-p. 229, 1.23. Thereafter, Williams was taken to the scene per a show-identification procedure, and at that time the suspect, who was identified as appellant, was

identified by Williams as the perpetrator in the case. Appellant was then arrested immediately. Tr. 229, 1.24-p. 233, 1.24, Tr. 171. 1.1-24. There were no eyewitnesses or corroborating witness presented in the case. Thus, the case hinged on the testimony of one David Williams. Appellant did not testify at trial or present witnesses in his defense.

At the close of the case, after the robbery verdict had been delivered by the jury, defense counsel moved for a new trial based in effect on the sufficiency of the evidence to support that verdict. Tr. 362. 1.8-p.363, 1.22. The court denied the motion. Tr. 363, 1.23-25.

Robbery is the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another by violence or by putting such a person in fear; and larceny, which is the lesser offense of robbery, is the felonious taking and carrying away of goods of another against the owner's will or without his consent. See S.C. Code Ann. § 16-11-325 (2003). See also, State v. Moore, 374 S.C. 468, 649 S.C. Tr. 84(2007); 382 S.C. 1, 675 S.C. 2d 435 (2009); State v. Bullard, 348 S.C.611, 560 S.C. Td. 436 (2002). In Moore, the gravamen of a robbery charge was set forth as "a taking from the person or immediate presence of another by violence or intimidation." See also State v. Rosemond, 356 S.C. 426, 589 S.C. Tr. 757 (2003).

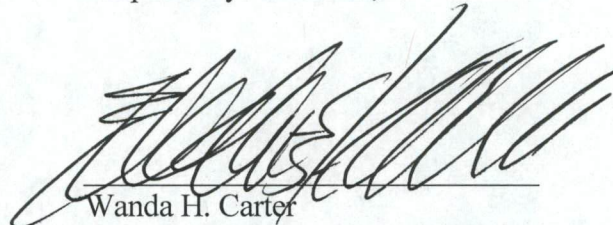
In the case at bar, the facts uncovered on cross-examination of Williams undoubtedly supported appellant's position that no robbery occurred in the case because the money Williams handed over to appellant was not done so as a result of fear or violence perpetrated upon him. To the contrary, Williams clearly voluntarily gave appellant the money because appellant asked for money. Tr. 198, 1.5-6. This was a gift and/or good deed displayed by Williams. This was not a robbery. Williams admitted that appellant never demanded or threatened or screamed or yelled for money. Tr. p.188, 1.11- p. 189, 1.9. Also, Williams stated that appellant referred to a gun, but never showed him a gun or threatened him with a gun. Tr. 190, 1.11-p. 191, 1.17; Tr. 196, 1.3-5.

Since the money William handed over to appellant was neither turned over against his will or consent nor turned over via fear, then the state's evidence did not present sufficient facts upon which to convict appellant of robbery or larceny. Appellant's robbery conviction violated due process as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina State Constitution because per Jackson v. Virginia, 443 U.S. 307 (1979), the state failed to prove every element of the crime of robbery for which appellant was convicted of at trial.

CONCLUSION

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

Respectfully submitted,

A large, stylized 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 19th day of August, 2014.

STATE OF SOUTH CAROLINA

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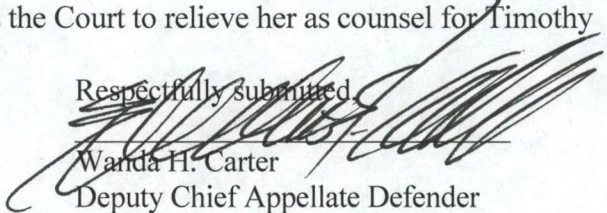
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Cromer 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 Eugene C. Griffith, Jr., which was held on January 8, 2014, 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 Timothy Cromer.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of August, 2014.

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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.

August 19th, 2014



Wanda H. Carter

Deputy Chief Appellate Defender

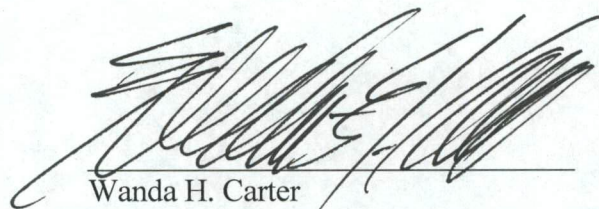
South Carolina Commission on Indigent Defense
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Attorney for Appellant

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."

August 19, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

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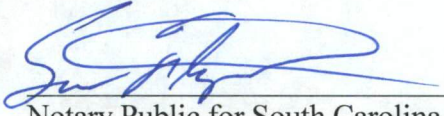
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and the Record on Appeal in the above referenced case has been served upon Salley Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Timothy Cromer, #278323 at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 19th day of August, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of August, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022 .