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**Dec 21 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ROBERT LAWRENCE HAWKINS,

APPELLANT

APPELLATE CASE NO. 2021-000913

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ANDERS BRIEF OF APPELLANT

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### **STATEMENT OF ISSUE ON APPEAL**

Did The trial judge err in allowing a mug shot photograph of appellant into evidence at trial for the purpose of identifying appellant to the jury because he was being tried in his absence where the prejudicial value of the same outweighed any probative value since the store cashier at the scene, and three of appellant's family members (mother, father, and sister) all testified confirming and identifying appellant as the perpetrator based on the images that appeared on the video surveillance camera and social media postings?

## **STATEMENT OF THE CASE**

Appellant Robert Lawrence Hawkins was convicted of armed robbery per jury trial held in his absence during the April 2021 term of the Cherokee County General Sessions Court before Judge R. Keith Kelly. Assistant Solicitors Kim Leskanie and Matt Kendall appeared on behalf of the state at trial and Attorneys Tracy Racine and Russ Racine appeared on behalf of appellant. A sealed sentence was published during a sentencing hearing held on August 10, 2021, via a virtual proceeding before Judge Michael G. Nettles, who sentenced appellant to imprisonment for a period of twenty-five years. Appellant appealed. This brief follows.

### **STANDARD OF REVIEW**

The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion. State v. Dickinson, 395 S.C. 101, 716 S.E.2d 895 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012) see also State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (A trial judge's decision regarding the comparative probational value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstance.)"

## ARGUMENT

The trial judge erred in allowing a mug shot photograph of appellant into evidence at trial for the purpose of identifying appellant to the jury because he was being tried in his absence where the prejudicial value of the same outweighed any probative value since the store cashier at the scene, and three of appellant's family members (mother, father, and sister) all testified confirming and identifying appellant as the perpetrator based on the images that appeared on the video surveillance camera and social media postings.

At trial, Whitney Dunn testified that she was working as an employee at a Subway store in Cherokee County on July 3, 2019, around 9:00 pm when a male walked in, came up to the register, pulled out a gun, put a plastic bag on the counter, and ordered her to put the contents of the register into the bag. Dunn stated that she surrendered the money and the man departed. R. 56, 1.8.-p.60, 1.23. The police pulled the store video surveillance tape of the event and produced still photographs from it, which were sent out on Facebook postings. R. 62, 1.4-p.66, 1.25. Dunn gave an in-court identification of appellant as the perpetrator in this case. R. 83, 1.7-25. Subsequently, based on the Facebook posts, appellant's mother, father, and sister all identified the perpetrator on the posts as appellant, and all three testified at trial confirming the same. R. 85, 1.15-p. 92, 1.4; R. 98, 1.4-99, 1.11. R. 100, 1.8-p. 102, 1.8.

Prior to trial, the state sought to introduce a mug shot photograph of appellant upon his arrest to the jury in order to identify appellant's identity to the jury since he was being tried in his absence. The solicitor argued that this mug shot was necessary for the jury to see appellant so that when the family members testified, they could say that "the person who was arrested in this is the person who's on the video and it's [appellant.]" R. 36, 1.7-1.8. The defense objected to the admission of the mug shot into evidence because it was prejudicial and suggested guilt. R. 36,

l.20-p.37, l.1; R. 37, l.24-p.38, l.4. The state argued that it was a booking photo only and not a mug shot from a prior crime. R. 37, l.8-23. The Court ruled that the photograph in question was admissible as a booking photograph from appellant's arrest. R. 38, l.9-p. 40, l.11. At trial, appellant's mug shot photograph in question was received into evidence as state's exhibit #14 R. 53, l.18-p.55, l.14.

When state's exhibit #1 (appellant's mug shot) was offered into evidence at trial, defense counsel objected again, but was overruled by the trial judge. R. 69, l.7-17. Also, defense counsel renewed the same objection at the close of the state's case on the ground that the photo suggested that appellant had a prior criminal record. The court overruled the objection. R. 71, l.18-p.74, l.1.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury... or the needless presentation of cumulative evidence. Rule 403, SCRE. The introduction of a mug shot of a defendant is reversible error unless:

- 1.) The state has a demonstrable need to introduce the photograph,
- 2.) The photograph shown to the jury does not suggest the defendant has a criminal record,
- 3.) The photograph is not introduced in such a way as to draw attention to its origin

See State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004); State v. Denson, 269 S.C. 407, 237 S.E.2d 761 (1977); State v. Green, 412 S.C.65, 770 S.E.2d 424 (2015).

In State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986), the Court reversed where the state introduced a photographic line-up that included a mug shot of the defendant that had an identifier indicating that it was a county sheriff department photograph. In State v. Lawson, 424 S.C. 51, 817 S.E.2d 509, the Court reversed where the state elicited testimony showing the defendant's print card originated from Kirkland Correctional Institution because it showed that he had a prior record and it was unnecessary to authenticate his fingerprints. In Traylor, supra, the Court

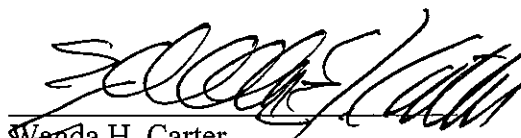
held that there was no demonstrable need to introduce the photographic line up mug shot into evidence because the victims testified and described the assailants and because one codefendant identified appellant as an accomplice. The Traylor Court strongly admonished the state against the utilization of [mug shots] except in the rarest of cases.” In Green, the booking photograph did not suggest a criminal record because the photo was taken as a result of his arrest in the case, and did not draw attention to its “origin or implication” and was cut off to avoid that problem.

In the case at bar, there was no need for the booking photograph because the family members (three of them) viewed the Facebook posts from the surveillance tape and identified the perpetrator as their family member, i.e., the appellant. Also, the cashier who worked on the date of the robbery identified the man in the video surveillance and the Facebook post/still photographs as appellant, i.e., the perpetrator she saw on the date of the robbery. Thus, four witnesses identified appellant was the perpetrator, Therefore, there was no probative value in the booking/mug photograph, and clearly, the prejudicial value far outweighed any conceivable reason to show the jury the same in light of the four witnesses’ identification testimony at trial. See Rule 403, SCRE. The photograph in question did not make more or less probable any matter in controversy in the case. See State v. Schmidt, 288 S.C. 391, 342 S.E.2d 401 (1986), where the Court held that evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.

The trial judge erred in allowing appellant’s arrest mug shot photograph into evidence at trial because the prejudicial value of the same outweighed any probative value.

**CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant's conviction be reversed and his case remanded to the lower court for a new proceeding.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21<sup>st</sup> day of December, 2021.

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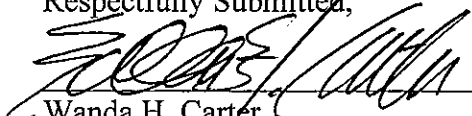
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Counsel for Robert Lawrence Hawkins states:

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 R. Keith Kelly, which was held on April 15-16, 2021, 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 Robert Lawrence Hawkins.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of December, 2021.

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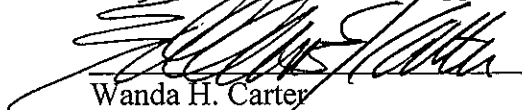
APPELLANT

**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
- (3) Jury Selection Sheets
- (4) Sentencing Hearing Transcript
- (5) Rejection of Plea Offer Transcript
- (6) State's Exhibits No. 5, 7, 8, 9, 14, and 15

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



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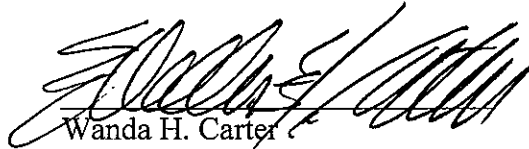
**CERTIFICATE OF COUNSEL**

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."

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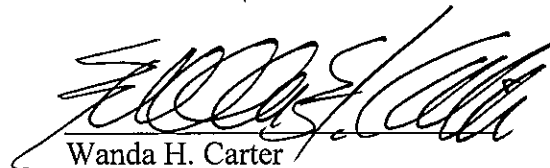
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CERTIFICATE OF SERVICE

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Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case have been served upon William M. Blicht, Jr., Esquire at the primary e-mail address listed in the Attorney Information System (AIS); and on Robert Lawrence Hawkins, #385781, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 21<sup>st</sup> day of December, 2021.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT