

No. SC94154

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**In the  
Supreme Court of Missouri**

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**STATE OF MISSOURI,**

**Respondent,**

**v.**

**CLAUDE D. BROOKS,**

**Appellant.**

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**Appeal from St. Charles County Circuit Court  
Eleventh Judicial Circuit, Division Five  
The Honorable Jon A. Cunningham, Judge**

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**RESPONDENT'S SUBSTITUTE BRIEF**

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## STATEMENT OF FACTS

Appellant was charged, as a prior and persistent offender, in the Circuit Court of St. Charles County with robbery in the second degree. (L.F. 34-35). Appellant was convicted following a bench trial held October 30, 2012. (Tr. 4-141).

Appellant contests the sufficiency of the evidence to support his conviction. Viewed in the light most favorable to the verdict, the evidence at trial showed the following:

On August 25, 2011, Angela Ebaugh was working as a teller at the drive-through window at Regions Bank in St. Charles. (Tr. 12-13). Ms. Ebaugh would also fill in on the counter side if it became busy. (Tr. 13-14). A man, later identified as Appellant, entered the bank and approached the window where Ms. Ebaugh was working. (Tr. 14-15). Appellant was wearing a very long wig with dreadlocks and a baseball cap and sunglasses, which were not permitted in the bank. (Tr. 14-15, 56). He was also wearing a hoodie. (Tr. 17).

Before Ms. Ebaugh could say anything to Appellant, he handed her a note which read: "Fifties, hundreds, no bait money<sup>1</sup> and bottom drawer." (Tr.

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<sup>1</sup> The term "bait money" refers to a stack of twenties that are attached to a device that alerts bank security and law enforcement of a problem. (Tr. 15).

15). Ms. Ebaugh was terrified, and she believed that she needed to comply with the note's demands to keep her and her co-workers safe. (Tr. 15-16). She was also concerned that Appellant knew what "bait money" was and that the bottom drawer contained larger denominations. (Tr. 15-16).

When Ms. Ebaugh started to leave her station in the lobby to go to her drawer near the drive-up window to get more money, Appellant slammed his hand down hard on the counter and raised his voice, ordering Ms. Ebaugh to "get back here" and that he wanted the money from her drawer in the lobby. (Tr. 16-17, 44-45, 49, 58). This terrified Ms. Ebaugh even more, as Appellant was wearing bulky clothing and she believed that he could have had a weapon under his hoodie or in the shopping bag he was carrying. (Tr. 17-18). Since she was uncertain as to what could happen, she felt she had to protect herself and everyone else in the bank. (Tr. 19).

Ms. Ebaugh explained to Appellant that she had no money in her lobby drawer and that she needed to go to her other station at the drive-through. (Tr. 17-18). When Ms. Ebaugh went to that station, she noticed Appellant watching her intently, which kept her in fear. (Tr. 17-18, 46). Ms. Ebaugh took the money from the bottom of her drawer, took it back, and laid it on the

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Bait money is also logged with serial numbers and is kept in the top drawer. (Tr.60).

counter in front of Appellant. (Tr. 18). Appellant also demanded that Ms. Ebaugh give him back his note, and she complied. (Tr. 59). Appellant grabbed the money, stuck it in his shopping bag, and left the bank on foot. (Tr. 18, 48). After Appellant left, Ms. Ebaugh went back to her station and laid her bait money on the counter to signal police. (Tr. 19).

When Police Officer Deborah Young arrived at the bank, Ms. Ebaugh was very upset and nervous, wringing her hands and teary-eyed. (Tr. 100-102). Officer Steven Eisenbath went to the area where Appellant was last seen running. (Tr. 74-75). Officer Eisenbath initially encountered Appellant, who had discarded his ball cap and dreadlocks wig. (Tr. 76). Appellant told the officer that he had seen a black male with dreadlocks and a baseball cap run through the area and pointed in the direction that he purportedly had run. (Tr. 76). As they talked, Officer Eisenbath noticed that Appellant was quite nervous, sweaty, and trying to control his breathing as if he had been running. (Tr. 76-77). As Appellant started to walk away, Officer Eisenbath told him to stop and said that he needed more information from him. (Tr. 76-77). Appellant ignored the officer and continued to walk down the sidewalk, whereupon Officer Eisenbath yelled at him to stop. (Tr. 77). Appellant continued to walk and then suddenly took off in a sprint. (Tr. 77). Officer Brett Duncan jumped out of his patrol car and drew his gun on Appellant, whereupon Appellant was taken into custody. (Tr. 78, 90-92). During the pat

down, officers recovered a brown plastic grocery bag which contained \$5,150.00. (Tr. 20, 72-73, 78-79). Officers recovered Appellant's hoodie, ball cap, and wig in a storm sewer in the area. (Tr. 80-81).

Appellant waived jury trial and did not testify or present any evidence. (Tr. 4-6, 118-121). After hearing all of the evidence, the court found Appellant guilty of robbery in the second degree. (Tr. 138-141). The court, having previously found Appellant to be a prior and persistent offender, (Tr. 6-8, 139), sentenced Appellant to twenty-five years imprisonment. (Sent. Tr. 9-10, L.F. 41-43).

The court of appeals, Eastern District, reversed Appellant's conviction and sentence on February 18, 2014. *State v. Brooks*, 2014 WL 606526 (Mo. App. E.D. 2014). This Court ordered this cause transferred on June 24, 2014.

## ARGUMENT

**The trial court did not err in overruling Appellant's motions for judgment of acquittal for the charge of robbery in the second degree because the evidence was sufficient to prove that Appellant threatened the immediate use of physical force against Angela Ebaugh.**

### **A. Standard of Review.**

In reviewing the sufficiency of the evidence in a judge-trying case, an appellate court must determine whether there was sufficient evidence from which the trial court could have found the defendant guilty beyond a reasonable doubt. *State v. Young*, 172 S.W.3d 494, 496 (Mo. App. W.D. 2005). Under Supreme Court Rule 27.01(b), the findings of the court in a bench-trying criminal case shall have the same force and effect of the verdict of a jury. *State v. Crawford*, 68 S.W.3d 406, 408 (Mo. banc 2002).

The appellate court must accept as true all evidence tending to prove guilt, together with all reasonable inferences that support the finding, and must ignore all contrary evidence and inferences. *Young*, 172 S.W.3d at 497. The appellate court does not weigh the evidence or decide the credibility of the witnesses, but defers to the trial court. *Id.* Reasonable inferences may be drawn from both direct and circumstantial evidence. *State v. Salmon*, 89 S.W.3d 540, 546 (Mo. App. W.D. 2002), and circumstantial evidence alone can

be sufficient to support a conviction. *State v. Mosely*, 873 S.W.2d 879, 881 (Mo. App. E.D. 1994).

In *Jackson v. Virginia*, 443 U.S. 307 (1979), the United States Supreme Court emphasized the deference given to the trier of fact. The Court stated:

This inquiry does not require a court to ask itself whether it believes that the evidence at trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

*Id.* at 318-319.

**B. Sufficient evidence that Appellant threatened the immediate use of physical force.**

Appellant contests the sufficiency of the evidence to support his conviction for robbery in the second degree. Specifically, Appellant claims that the State failed to prove that in the course of stealing money he threatened the immediate use of physical force upon the victim. This point is without merit.

Section 569.030, RSMo., 2000 provides that a person is guilty of the offense of robbery in the second degree when that person “forcibly steals property.” Section 569.010, RSMo., 2000 provides that a person “forcibly

steals” when “in the course of stealing” that person “uses or *threatens the immediate use of physical force upon another person*” either to defeat resistance to the theft or to compel the surrender of the property. (emphasis added).

The threat of physical harm need not be explicit; it can be implied by words, physical behavior, or both. *State v. Rounds*, 796 S.W.2d 84, 86 (Mo. App. E.D. 1990); *State v. Duggar*, 710 S.W.2d 921, 922 (Mo. App. S.D. 1986). The force necessary to constitute robbery may be “constructive as well as actual, and may consist [of] the intimidation of the victim, or putting him in fear.” *Rounds*, 796 S.W.2d at 86. An implicit threat of immediate physical force may be communicated by the defendant's words, behavior, or both. *Patterson v. State*, 110 S.W.3d 896, 904 (Mo. App. W.D. 2003).

In the present case, the court heard evidence that Appellant entered the bank wearing a disguise that included a long wig with dreadlocks, baseball cap, sunglasses, and hoodie. (Tr. 14-15, 17, 56). Appellant approached Angela Ebaugh and handed her a note which read: “Fifties, hundreds, no bait money and bottom drawer.” (Tr. 15). Ms. Ebaugh testified that she was concerned that the note demonstrated that Appellant understood the workings of the bank; specifically, the meaning of “bait money” and that the bottom drawer contained larger denominations. (Tr. 15-

16). She believed that she needed to comply with the note's demands to keep her and her co-workers safe. (Tr. 15-16).

The implicit threat of physical force to make Ms. Ebaugh comply with Appellant's demands occurred when Ms. Ebaugh started to leave her station in the lobby to go to her drawer near the drive-up window to get more money, whereupon Appellant slammed his hand down hard on the counter and raised his voice and ordered Ms. Ebaugh to "get back here" and that he wanted the money from her drawer in the lobby. (Tr. 16-17, 44-45, 49, 58). While Ms. Ebaugh was getting the money, Appellant watched her intently, which kept her in fear. (Tr. 17-18, 46). Appellant's actions - slamming his hand forcefully on the counter, raising his voice, and ordering Ms. Ebaugh to "get back here" - could reasonably be seen as a threat of physical force to the teller should she refuse to comply. These actions, coupled with Appellant's specific demands regarding money, implied a consequence should Ms. Ebaugh ignore him.

No Missouri case has held that actions similar to Appellant's in the present case do not constitute robbery. Contrary to Appellant's suggestions, actions similar to Appellant's actions have previously been held to be sufficient evidence of a threat to support a finding that a defendant has forcibly stolen property. In *State v. Clark*, 790 S.W.2d 495, 497 (Mo. App. E.D.1990), the court held that giving an employee a note stating "This is a

holdup” satisfied the requirement of “forcibly steals,” as the message was at least a threat to use immediate physical force for the purpose of compelling the employee to deliver up the money. In *State v. Lybarger*, 165 S.W.3d 180 (Mo. App. W.D. 2005), the defendant told the store clerk that this was a robbery and had his hand in his pocket. *Id.* at 186. There was no evidence that the defendant made any gestures with that hand that would suggest that there actually was a weapon, nor did the defendant ever expressly threaten physical force. *Id.* The *Lybarger* court found that the threat of physical harm could be supplied by words or behavior and did not have to be express. *Id.* at 187.

Appellant’s note demanding money, together with his actions, was not so different than a note which stated, “This is a holdup.” Despite the fact that the term “holdup” was not written down, the note was coupled with Appellant slamming his hand forcefully on the counter, raising his voice, and ordering Ms. Ebaugh to “get back here” – which taken together amounted to an implicit threat that Appellant had the single-minded purpose to steal money from the bank and that he possessed the knowledge and the means to accomplish that. Here, the context of the business setting, Appellant’s attire, the note demanding money (which demonstrated Appellant’s familiarity with the bank’s security procedures) and his act of slamming his hand on the counter, raising his voice, and ordering Ms. Ebaugh to “get back here” could

reasonably be seen as a threat of physical force to the teller should she refuse to comply. It was reasonable to infer that Appellant would do harm if his demands were ignored, and the bank teller should not have been required to test his intent.

Moreover, a bank is an environment that is regularly a target of robberies, in which there exists a heightened awareness of security threats, such that a demand for money in that context is an implicit threat of harm in and of itself. *See United States v. Gillmore*, 282 F.3d 398, 402 (6<sup>th</sup> Cir. 2002) (which stated that written or verbal demands for money in a bank “carry with them an implicit threat: if the money is not produced, harm to the teller or other bank employee may result”). Thus, at least one other court has acknowledged that a demand for money in a bank is an inherently threatening action.

In claiming that his actions in this case were not a sufficient threat, Appellant cites to *State v. Tivis*, 884 S.W.2d 28 (Mo. App. W.D. 1994), *State v. Henderson*, 310 S.W.3d 307 (Mo. App. S.D. 2010), and *State v. Carter*, 967 S.W.2d 308 (Mo. App. E.D. 1998). (App. Br. 15-17). All three of these cases are factually distinguishable. In *Tivis*, the defendant, after a conversation on the street, yanked the purse from the victim without making any demands for the purse. 884 S.W.2d at 29. In *Henderson*, the defendant brushed the

store clerk's arm as he was grabbing money from the cash register. 310 S.W.3d at 309.

The factual issue in *Tivis* and *Henderson* was not whether there was a threat of force: rather, it was whether the defendant had used physical force. Logically, before a demand can imply the potential for force, a demand has to be made. A case in which no demand was made is not relevant to the issue of what must be said to imply a threat of force.

In *Carter*, the defendant approached the victim on the street and, after a brief, friendly conversation, demanded her purse. 967 S.W.2d at 308. While *Carter* did involve a demand, the State conceded that there was no evidence the defendant used or threatened the immediate use of physical force upon the victim and that *Tivis* applied. 967 S.W.2d at 309. As such, without significant analysis of whether the demand implied the possibility of force, the Eastern District found that the evidence was insufficient. *Id.* The present case is factually distinguishable from *Carter* in several regards – most notably, the setting of the bank as opposed to a street encounter, Appellant’s use of a disguise, his note demanding money, hand slam on the counter, and his raised voice and demand that the clerk “get back here.”

Appellant seeks a cramped and narrow definition of “forcibly steals” as applied to robbery that would make it impossible to convict individuals such as Appellant, who demanded the property of another and avoided the use of

physical force, did not display a weapon or specifically threaten physical force but rather implicitly threatened immediate use of physical force through other means. Appellant's view would require, among other things, that a victim test the resolve of a defendant who demands property by refusing to co-operate absent an overt threat of force (such as the display of a weapon) or even the actual use of physical force. Moreover, a person contemplating a bank robbery would recognize that he could avoid a robbery conviction if he modulates his voice, does not display or pretend to display a weapon, and merely avoids such terms as "holdup" or "stickup" in his oral or written demands for money.

Respondent respectfully submits that here, the evidence of force or the threat of force was sufficient to meet the requirements of robbery in the second degree and that the trial court did not err in finding Appellant guilty. A defendant who enters a bank and demands money without issuing an explicit verbal threat and without indicating he was armed may nevertheless imply the threat of immediate physical force by his words and actions. The reasonable inference raised by Appellant's actions was that he threatened the

immediate use of physical force and thus forcibly stole money. This point should be denied.<sup>2</sup>

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<sup>2</sup>Appellant seeks reversal of his judgment and sentence. (App. Br. 16-17). Should this Court find that Appellant is entitled to any remedy, this Court should enter a conviction for the class C felony of stealing pursuant to § 570.030, RSMo, 2000., and remand to allow the trial court to sentence Appellant on that charge as a prior and persistent offender. *See State v. Ecford*, 239 S.W.3d 125, 130 (Mo. App. E.D. 2007).

## CONCLUSION

The trial court did not commit reversible error in this case. Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 3,082 words, excluding the cover and certification, as determined by Microsoft Word 2010 software; and

2. That a true and correct copy of the attached brief, was sent through the eFiling system on this 25<sup>th</sup> day of August, 2014, to:

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