

ORIGINAL

IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

**FILED**  
JUN 01 2009

**LAURA ROY**  
CLERK, MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

STATE OF MISSOURI, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 ROBERT WILLIAMS, )  
 )  
 Appellant. )

ED No. 91994

90501  
**FILED**  
JAN 11 2010

Thomas F. Simon  
CLERK, SUPREME COURT

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APPEAL TO THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT FROM THE CIRCUIT COURT  
OF THE CITY OF ST. LOUIS, MISSOURI  
DIVISION NUMBER 19  
BEFORE THE HONORABLE LISA S. VAN AMBERG,  
JUDGE AT JURY TRIAL AND SENTENCING

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APPELLANT'S STATEMENT, BRIEF, AND ARGUMENT

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GWENDA R. ROBINSON  
District Defender, Office B  
Missouri Bar No. 43213  
Grand Central Building  
1000 St. Louis Union Station,  
Suite 300  
St. Louis, Missouri 63103  
(314) 340-7662 - phone  
(314) 340-7685 - facsimile  
[Gwenda.Robinson@mspd.mo.gov](mailto:Gwenda.Robinson@mspd.mo.gov)

Attorney for Appellant

SCANNED

## INDEX

<u>Description</u>	<u>Page</u>
Table of Authorities	2-3
Jurisdictional Statement	4
Statement of Facts	5-9
Point	10
Argument	11-19
Conclusion	20
Certificates of Service and Compliance	21
Appendix	A1-8

## TABLE OF AUTHORITIES

### *Cases*

<i>Brooks v. State</i> , 51 S.W.3d 909 (Mo. App. W.D. 2001)	16
<i>Patterson v. State</i> , 110 S.W.3d 896 (Mo. App. W.D. 2003)	17, 19
<i>State v. Derenzy</i> , 89 S.W.3d 472 (Mo. banc 2002)	18
<i>State v. Duggar</i> , 710 S.W.2d 921 (Mo. App. S.D. 1986)	17
<i>State v. Hopson</i> , 891 S.W.2d 851 (Mo. App. E.D. 1995)	18
<i>State v. Jolly</i> , 820 S.W.2d 734 (Mo. App. E.D. 1991)	17
<i>State v. Moore</i> , 729 S.W.2d 239 (Mo. App. E.D. 1987)	15
<i>State v. Robinson</i> , 26 S.W.3d 414 (Mo. App. E.D. 2000)	18
<i>State v. Sims</i> , 684 S.W.2d 555 (Mo. App. E.D. 1984)	18
<i>State v. Smith</i> , 229 S.W.3d 85 (Mo. App. W.D. 2007)	16-17
<i>State v. Williams</i> , 784 S.W.2d 276 (Mo. App. E.D. 1989)	16
Mo. Const., Art. I, § 10	19
Mo. Const., Art. I, § 18(a)	19
Mo. Const., Art. V, § 3	4
U.S. Const., Amend V	19
U.S. Const., Amend VI	19
U.S. Const., Amend XIV	19
<i>Rules and Statutes</i>	
Rule 28.02	15

Rule 29.11	15
Rule 30.20	15
§ 477.050	4
§ 569.010	16
§ 556.046	16
§ 569.030	4, 16,
§ 570.030	17

## JURISDICTIONAL STATEMENT

The State charged Appellant Robert Earl Williams in St. Louis City Circuit No. 0622-CR05272-01 with one count of robbery in the second degree in violation of § 569.030. After a two-day trial, a jury convicted Mr. Williams of the charge. On September 25, 2008, the Honorable Lisa S. Van Amburg sentenced Mr. Williams as a persistent felony offender to fifteen years of imprisonment in the Missouri Department of Corrections. On October 1, 2008, Mr. Williams timely filed his notice of appeal.

As this appeal does not involve any of the categories reserved for exclusive jurisdiction of the Missouri Supreme Court, the Missouri Court of Appeals of the Eastern District has jurisdiction. Mo. Const., Art. V, § 3 (as amended 1982); § 477.050. All statutory references are to RSMo 2000 unless otherwise stated.

## STATEMENT OF FACTS

Appellant Robert Earl Williams (Mr. Williams) will cite to the appellate record as follows: Trial Transcript, "(Tr.)"; and Legal File, "(L.F.)." Mr. Williams states the following facts and will cite other facts as necessary in the argument portion of the brief.

At approximately 10:00 to 10:30 p.m., on October 17, 2006, Timothy Wagner stopped watching the Cardinal's World Series' game, and stepped outside his apartment at 3509 South Spring to drink a beer and smoke a cigarette (Tr. 153-155, 201). As he did so, he watched a car pull up between his apartment and the bar at the corner of the street (Tr. 155, 157). He did not think it unusual because cars come and go in that area frequently (Tr. 157).

After he opened his beer and lit his cigarette, he saw the passenger of the car that had pulled up, get out, and walk towards his apartment (Tr. 157-158, 160). The man walked up to him and asked him for a cigarette (Tr. 158-159). Mr. Wagner descended his front steps and began reaching in his left pocket (Tr. 159, 187). But before he could retrieve a cigarette from his pocket, the man shoved Mr. Wagner face down to the ground (Tr. 159, 185, 188).

While he lay on the ground, a second man, who he recognized as the driver of the car that had pulled up, placed either an elbow, knee, or heel in the middle of his back to hold him down (Tr. 160, 162, 187-190). The men rifled through his pockets and took approximately two to three hundred dollars from him (Tr. 160, 162, 190). Then, the men gave him another quick shove and released him (Tr. 164).

Mr. Wagner stayed on the ground for a few seconds and waited (Tr. 162, 194). When he heard the men's footsteps running, he got up (Tr. 164, 194). The men's car was almost parked evenly with his apartment (Tr. 193). The driver was already behind the wheel of the car and the passenger was not far behind him (Tr. 164).

Mr. Wagner took a few quick steps toward the car as if to chase it, but stopped (Tr. 164). He decided to just get the license plate and a good look at the car (Tr. 164). He got all but one of the characters off the car's license plate, and watched the car speed off into the night (Tr. 164-165, 219). Then, he went back inside his apartment and dialed 911 (Tr. 165).

Police took a report and ran the license plate (Tr. 166, 220, 232, 243). Police discovered that the plate was registered to Rachel Bagby, the girlfriend of Robert Williams, and that the car belonged to her (Tr. 211, 213, 219-220). When police determined that both she and Mr. Williams shared use of the car, police conducted a background check on Mr. Williams (Tr. 213, 215-215, 220).

On November 5, 2006, Mr. Wagner called Detective Michael Venker (Tr. 169-171, 220). This time, Mr. Wagner reported that he had seen the car involved in the incident at the local 7-11 store at Bamberger and Gravois, and provided a complete license plate number to Detective Venker (Tr. 169-170, 221).

On November 10, 2006, Detective Venker had Mr. Wagner view a photo lineup containing black-and-white photos of seven men, including Mr. Williams (Tr. 166-167, 221-223, 238). Mr. Wagner identified Mr. Williams as the driver, or the man who had held him to the ground (Tr. 167, 223).

On November 13, 2006, police stopped Mr. Williams in his girlfriend's car (Tr. 215, 225). Mr. Williams had two passengers, his cousin, Anthony Cates, and a young girl (Tr. 225). Police arrested Mr. Williams for robbery and Detective Venker placed Mr. Williams and Mr. Cates in a physical lineup for Mr. Wagner to view (Tr. 171-172, 225-227, 240).

Upon viewing the physical lineup, Mr. Wagner identified Mr. Williams as the driver of the car involved in the robbery, and said Mr. Cates had the same height, weight, and skin complexion as the passenger (Tr. 173, 228-229). Though Mr. Wagner said he could not be sure about his identification of Mr. Cates, he said he was sure about his identification of Mr. Williams (Tr. 173, 228-229).

Police later interrogated Mr. Williams and obtained statements from him containing two different versions of the incident (Tr. 271). Mr. Williams' first statement to police stated that Mr. Williams happened to drive by and stop to talk to Sweets who told him that he was planning to rob a man for some marijuana (Tr. 270-271, 273). The statement indicated that Sweets walked over to the man, took something, and ran, but that Mr. Williams later drove by and told the man that he had nothing to do with what Sweets had done (Tr. 271).

The second written statement said that Mr. Williams drove Mr. Cates and Sweets to Mr. Wagner's neighborhood where they robbed Mr. Wagner, got back into the car, and rode away (Tr. 274-275).

The State charged Mr. Williams with robbery in the second degree (L.F. 13-14). The State tried Mr. Williams on the charge from July 16, 2008 to July 17, 2008 (L.F. 5-6).

At trial, Mr. Wagner, Detective Michael Venker, and Ms. Bagby, who by then was Mr. Williams' ex-girlfriend, testified for the prosecution (Tr. 153-248).

Mr. Williams testified in his own defense, denying the charge and exonerating Mr. Cates (Tr. 257-280). He told the jury that Mr. Cates was not with him when the charged robbery occurred (Tr. 264, 266, 272). He also told the jury that his friend, Sweets, had taken marijuana from Mr. Wagner at Mr. Wagner's apartment during a drug transaction that Mr. Wagner had arranged (Tr. 261-262).

He testified that when he and Sweets walked into the 7-11 at Gravois and Bamberger on October 17, 2006, Mr. Wagner approached Sweets to let him know that he had what he needed – some marijuana (Tr. 260-261, 268). In Mr. Williams' presence, Mr. Wagner told Sweets to meet him around the corner at his apartment in ten minutes and gave Sweets his address (Tr. 260-261). Mr. Williams drove Sweets to Mr. Wagner's apartment and waited in the car while Sweets went inside Mr. Wagner's downstairs' apartment to buy marijuana (Tr. 260-261, 269).

Mr. Williams told the jury that from his seat in the car, he watched Sweets enter Mr. Wagner's apartment, and saw Mr. Wagner place something on a scale and hands go down on the table (Tr. 264-265, 269-270, 280). Mr. Williams testified that he did not see Sweets forcibly take marijuana or money from Mr. Wagner (Tr. 265).

He said five to ten minutes later, Sweets ran out of the apartment and got into the car with the marijuana (Tr. 261). Mr. Williams started the car and left (Tr. 261, 271). Mr. Williams told the jury that when he dropped Sweets off, Sweets gave him a bag of the marijuana and told him how he had taken it (Tr. 261-262, 280).

Mr. Williams testified that he had not personally taken or forcibly taken the marijuana, money or anything from Mr. Wagner (Tr. 263, 265, 277-278). He said he had done nothing wrong and admitted seeing Mr. Wagner on the parking lot of the same 7-11 after October 17, 2006 (Tr. 263, 277-278). He said that he was sitting on the lot in his girlfriend's car, but drove off when he saw Mr. Wagner look over at him (Tr. 263).

Based on the above evidence, the jury convicted Mr. Williams of robbery in the second degree (Tr. 301; L.F. 55). On September 25, 2008, the Honorable Lisa S. Van Amburg sentenced Mr. Williams as a persistent felony offender to fifteen years of imprisonment in the Missouri Department of Corrections (Tr. 313; L.F. 59-62). On October 1, 2008, Mr. Williams timely filed his notice of appeal (L.F. 63-67). This appeal follows (L.F. 63-67).

## POINT

The trial court erred in failing to submit instruction A on the lesser-included offense of felony stealing from a person as requested because Mr. Williams' testimony provided a basis for a jury finding that a theft, or taking, occurred but that no force was used to accomplish the taking as required for conviction of the greater offense of robbery in the second degree. The trial court's error prejudiced Mr. Williams because, but for the trial court's error, reasonable jurors would have acquitted Mr. Williams of robbery in the second degree, and convicted him of felony stealing from a person. The error deprived Mr. Williams of his rights to due process of law, to present a defense, and to a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution. This Court must reverse Mr. Williams' conviction and remand for a new trial.

*Brooks v. State*, 51 S.W.3d 909 (Mo. App. W.D. 2001);

*Patterson v. State*, 110 S.W.3d 896 (Mo. App. W.D. 2003);

*State v. Jolly*, 820 S.W.2d 734 (Mo. App. E.D. 1991);

U.S. Const., Amends. V, VI & XIV;

Mo. Const., Art. I, §§ 10 & 18(a);

Rules 25.03 and 29.11.

## ARGUMENT

The trial court erred in failing to submit instruction A on the lesser-included offense of felony stealing from a person as requested because Mr. Williams' testimony provided a basis for a jury finding that a theft, or taking, occurred but that no force was used to accomplish the taking as required for conviction of the greater offense of robbery in the second degree. The trial court's error prejudiced Mr. Williams because, but for the trial court's error, reasonable jurors would have acquitted Mr. Williams of robbery in the second degree, and convicted him of felony stealing from a person. The error deprived Mr. Williams of his rights to due process of law, to present a defense, and to a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution. This Court must reverse Mr. Williams' conviction and remand for a new trial.

### *Facts*

The State charged Mr. Williams with robbery in the second degree for forcibly stealing – i.e., taking money from Mr. Wagner through physical force or the threat of the immediate use of physical force for the purpose of overcoming resistance to the taking (L.F. 13-14, 47). The State tried Mr. Williams on the charge from July 16, 2008 to July 17, 2008 (L.F. 5-6).

At trial, victim Timothy Wagner testified that his robbers used no guns, knives, or other weapons in the robbery and that he was not “incredibly hurt” (Tr. 185, 191, 194). He said that he “might have had a scrape on [him] or something” (Tr. 185).

At trial, Mr. Williams also testified, denying the charge (Tr. 257). He told the jury that on the date of the charged robbery, his friend, Sweets, had taken marijuana from Mr. Wagner at Mr. Wagner's apartment during a drug transaction that Mr. Wagner had arranged (Tr. 261-262). He testified that when he and Sweets walked into the 7-11 at Gravois and Bamberger on October 17, 2006, Mr. Wagner approached Sweets to let him know that he had what he needed – some marijuana (Tr. 260-261, 268). In Mr. Williams' presence, Mr. Wagner told Sweets to meet him at his apartment in ten minutes and gave Sweets his address (Tr. 261). Mr. Williams drove Sweets to Mr. Wagner's apartment and waited in the car while Sweets went inside Mr. Wagner's downstairs' apartment to buy marijuana (Tr. 260-261, 269).

Mr. Williams told the jury that from his seat in the car, he watched Sweets enter Mr. Wagner's apartment, and saw Mr. Wagner place something on a scale and hands go down on the table (Tr. 264-265, 269-270, 280). Mr. Williams testified that he did not see Sweets forcibly take marijuana or money from Mr. Wagner (Tr. 265).

He said five to ten minutes later, Sweets ran out of the apartment and got into the car with the marijuana (Tr. 261). Mr. Williams started the car and left (Tr. 261, 271). Mr. Williams told the jury that when he dropped Sweets off, Sweets gave him a bag of the marijuana and told him how he had taken it (Tr. 261-262, 280).

Mr. Williams testified that he had not personally taken or forcibly taken the marijuana, money or anything from Mr. Wagner (Tr. 263, 265, 277-278). He said he had done nothing wrong (Tr. 277-278).

At trial, defense counsel submitted instruction A on the lesser-included offense of stealing (Tr. 255, 282; L.F. 51-52). Instruction A read:

Instruction No. A

A person is responsible for his own conduct and he is also responsible for the conduct of another person in committing an offense if he acts with the other person with the common purpose of committing that offense or if, for the purpose of committing that offense, he aids or encourages the other person in committing it.

If you do not find the defendant guilty of robbery in the second degree as submitted in Instruction No. 5, you must consider whether he is guilty of stealing under this instruction.

If you find and believe from the evidence beyond a reasonable doubt:

First, that on or about October 17, 2006, in the State of Missouri, the defendant or another took money, which was property owned by Timothy Wagner, and

Second, that defendant or another did so for the purpose of withholding it from the owner permanently, and

Third, that the property was physically taken from the person of Timothy Wagner, then you are instructed that the offense of stealing has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Fourth, that with the purpose of promoting or furthering the commission of that stealing, the defendant acted together with or aided another person in committing the offense, then you will find the defendant guilty of stealing under this instruction.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

(L.F. 51-52).

The trial court refused to submit instruction A (Tr. 282; L.F. 51-52). Later, in closing argument, defense counsel argued, “Yes, [Mr. Wagner’s] marijuana was taken. It was definitely taken, but it wasn’t taken by force. It was taken out of his possession” (Tr. 294). The defense also argued, “It was about marijuana, and it was never forcibly taken” (Tr. 296). “It was supposed to be a transaction, but instead someone took marijuana from him” (Tr. 296).

The jury retired to deliberate at 4:05 p.m. on July 17, 2008 after closing argument (Tr. 299). At 5:35 p.m., the jury asked for a “printed statement of the definition of robbery in the 2<sup>nd</sup> degree” (Tr. 300; L.F. 54). After determining that the verdict director for robbery in the second degree was in the jury’s possession, the trial court responded, “You must be guided by the evidence as you recall it and the instructions I have given you” (Tr. 300; L.F. 54). At 6:45 p.m., the jury returned with its verdict finding Mr. Williams guilty of robbery in the second degree (Tr. 301; L.F. 55).

After Mr. Williams’ conviction, defense counsel included an assignment of trial court error in Mr. Williams’ timely filed new trial motion (L.F. 57). Defense counsel alleged, “The court erred in denying the defendant’s proffered lesser included offense instruction (Defendant’s Exhibit A) of stealing in that defendant’s testimony provided support for finding that a theft occurred but no force was used to accomplish the theft” (L.F. 57).

#### *Preservation of the Error*

This assignment of trial court error is properly preserved for appellate review because defense counsel requested the instruction in writing at trial and preserved the issue in Mr. Williams’ new trial motion. *See, e.g., State v. Moore*, 729 S.W.2d 239, 240(Mo. App. E.D. 1987); Rules 28.02(b) and 29.11(d). Should this Court find that this assignment of error was not properly preserved for appellate review, Mr. Williams requests plain error review under Rule 30.20.

#### *Standard of Review and Applicable Law*

Due process requires that the defendant not be convicted of an offense that the State did not charge in its indictment or information. *Brooks v. State*, 51 S.W.3d 909, 914 (Mo. App. W.D. 2001). Consequently, the trial court cannot instruct on an uncharged offense unless it is a lesser-included offense. *Id.* An offense is a lesser-included offense when (1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged, (2) it is specifically denominated by statute as a lesser degree of the offense charged, or (3) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein. § 556.046.1.

Stealing from a person is a lesser-included offense of robbery in the second degree because stealing is proven by fewer facts than that required to prove robbery in the second degree. *State v. Williams*, 784 S.W.2d 276, 281 (Mo. App. E.D. 1989); *see also State v. Smith*, 229 S.W.3d 85, 91-92 (Mo. App. W.D. 2007) (stating “an offense is a lesser-included offense if it is impossible to commit the charged offense without necessarily committing the lesser”).

To support a conviction of robbery in the second degree, the State must prove beyond a reasonable doubt that the defendant *forcibly* stole property – i.e., used or threatened the immediate use of physical force upon another person for the purpose of preventing or overcoming resistance to the taking of the property or compelling the owner of the property or another person to deliver up the property. §§ 569.010 & 569.030.1. But to support a conviction of stealing, the State doesn’t have to prove the element of force, and only has to prove beyond a reasonable doubt that the defendant

stole, or took property from another person without that person's consent for the purpose of depriving the other person of it. § 570.030.1.

A trial court is required to instruct on the lesser-included offense of stealing if the defense requests it, and the evidence, in fact or by inference, provides a basis for both an acquittal of the greater offense of robbery in the second degree and a conviction of the lesser-included offense of stealing from a person. *Patterson v. State*, 110 S.W.3d 896, 904 (Mo. App. W.D. 2003). In determining whether to give the lesser-included offense instruction, the trial court must view the evidence in the light most favorable to the defendant, and resolve any doubt about whether to submit the instruction in favor of instructing. *Id.*; *Smith*, 229 S.W.3d at 92. If there is substantial evidence that the taking was accomplished without violence or the threat of violence, the trial court must submit the instruction on the lesser-included offense of stealing from a person upon request. *State v. Jolly*, 820 S.W.2d 734, 736 (Mo. App. E.D. 1991); *see also State v. Duggar*, 710 S.W.2d 921, 922 (Mo. App. S.D. 1986).

#### *Argument*

The trial court erred in failing to submit instruction A on the lesser-included offense of felony stealing from a person as requested because Mr. Williams' testimony provided a basis for a jury finding that a theft, or taking, occurred but that no force was used to accomplish the taking as required for conviction of the greater offense of robbery in the second degree. Mr. Williams testified that there was no robbery, just a drug deal gone bad, or a business transaction in which the buyer reneged on his promise to pay (Tr. 261-262; *see also* Tr. 294, 296). Mr. Williams further testified that he did not see Sweets

forcibly take marijuana or money from Mr. Wagner (Tr. 265), and that he (Mr. Williams) had not personally taken or forcibly taken the marijuana, money or anything from Mr. Wagner (Tr. 263, 265, 277-278).

This testimony alone provided a sufficient basis for Mr. Williams' acquittal of robbery in the second degree and his conviction of stealing. The defendant's testimony is all that is required to support the submission of a lesser-included instruction, *State v. Sims*, 684 S.W.2d 555, 558 (Mo. App. E.D. 1984), and "[a] defendant is entitled to an instruction on any theory which the evidence tends to establish." *State v. Hopson*, 891 S.W.2d 851, 852 (Mo. App. E.D. 1995).

Moreover, if a reasonable juror could infer from the defendant's testimony that the defendant did not commit any one of the essential elements of the higher offense, the trial court should instruct on the lesser-included offense. *State v. Robinson*, 26 S.W.3d 414, 417 (Mo. App. E.D. 2000); *State v. Derenzy*, 89 S.W.3d 472, 474 (Mo. banc 2002). Under such circumstances, the trial court commits reversible error if it fails to do so. See, e.g., *Sims*, 684 S.W.2d at 557-558 (reversing for failure to submit second-degree robbery instruction because jurors could have believed the defendant's testimony that he used no weapons in the robbery).

Here, the trial court committed reversible error. If the jury could reasonably have believed that the defendant used neither force nor the threat of physical force to prevent resistance to the taking, then there is a sufficient basis for the submission of the lesser-included offense of stealing from a person. See, e.g., *Brooks*, 51 S.W.3d at 914-915

(remanding for an evidentiary hearing on whether trial counsel was ineffective for failing to request a lesser-included instruction on felony stealing); *Patterson*, 110 S.W.3d at 906-907 (reversing for trial counsel's failure to submit a properly worded lesser-included instruction on felony stealing).

In this case, jurors could have believed Mr. Williams was complicit in the taking of money from Mr. Wagner, believed Mr. Wagner's testimony that no gun or knife was used, and disbelieved Mr. Wagner's testimony about the use of physical force. A jury may accept part of a witness's testimony while disbelieving other portions. *Robinson*, 26 S.W.3d at 417.

Consequently, the trial court erred in failing to submit instruction A on the lesser-included offense of stealing from a person and prejudiced Mr. Williams. The prosecution's evidence of Mr. Williams' guilt was not overwhelming and the prosecution's case rested precariously on the credibility of a man accused of dealing illegal drugs, Mr. Wagner, the prosecution's sole eyewitness to the charged offense. Under the circumstances, but for the trial court's error, reasonable jurors would have acquitted Mr. Williams of robbery in the second degree, and convicted him of felony stealing from a person.

The error deprived Mr. Williams of his rights to due process of law, to present a defense, and to a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution. This Court must reverse Mr. Williams' conviction and remand for a new trial.

CONCLUSION

WHEREFORE, based on his arguments in Point I of this brief, Mr. Williams respectfully requests that this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Gwenda R. Robinson  
District Defender, Office B/Area 68  
Missouri Bar No. 43213  
Grand Central Building  
1000 St. Louis Union Station,  
Suite 300  
St. Louis, Missouri 63103  
(314) 340-7662 – phone  
(314) 340-7685 – facsimile  
Gwenda.Robinson@mspd.mo.gov

CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that on this 18<sup>th</sup> day of June, 2009, a true and correct copy of the foregoing brief and a floppy disk containing the foregoing brief were mailed postage prepaid to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102. Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the limitations of Special Rule 360. The word-processing software identified that this brief contains 3,972 words, 330 lines, or 17 pages, excluding the cover page, signature block, table of contents, table of authorities, and certificates of service and of compliance. In addition, I hereby certify that the enclosed diskette has been scanned for viruses with McAfee VirusScan Enterprise 7.1.0 software and found virus-free.

Respectfully submitted,



GWENDA R. ROBINSON  
District Defender, Office B - 68  
Missouri Bar No. 43213  
Grand Central Building  
1000 St. Louis Union Station  
Suite 300  
St. Louis, Missouri 63103  
(314) 340-7662 - phone  
(314) 340-7685 - facsimile  
[Gwenda.Robinson@mspd.mo.gov](mailto:Gwenda.Robinson@mspd.mo.gov)

APPENDIX

<u>Description</u>	<u>Page</u>
Sentence and Judgment	A1-4
Motion for New Trial	A5-6
Instruction A	A7-8





IN THE 22ND JUDICIAL CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI

Judge or Division: <b>Van Amburg</b>  <b>21</b>		Case Number: <b>0622-CR05272-01</b>	NARRATION CLERK, CIRCUIT COURT SEP 25 2008 <b>FILED</b>
		<input type="checkbox"/> Change of Venue	
		County: _____	
		Case Number: _____	
		Offense Cycle No.: _____	
State of Missouri		Prosecuting Attorney/MO Bar No.:	
Defendant: <b>Robert E. Williams</b>		<b>47654 Minniquerod</b>	
vs.		Defense Attorney/MO Bar No.:	
		<b>Hewellyn/49038</b>	
DOB: <b>1.2.50</b> SSN: <b>495-82-3388</b> SEX: <b>M</b>		Appeal Bond Set Date:	
<input checked="" type="checkbox"/> Pre-Sentence Assessment Report Ordered		Amount:	
<input type="checkbox"/> Pre-Sentence Assessment Report Waived			(Date File Stamp)

Judgment

Count No. <b>I</b> Charge Description: <b>Robbery 2nd</b> Charge Code: Statute: <b>569.030</b> Date of Offense: <b>10.17.06</b>	Count No. Charge Description: Charge Code: Statute: Date of Offense:	Count No. Charge Description: Charge Code: Statute: Date of Offense:
<input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/> Felony Class <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified	<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified	<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified
On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found Guilty upon a plea of guilty <input checked="" type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found Guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found Guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty

Count No. Charge Description: Charge Code: Statute: Date of Offense:	Count No. Charge Description: Charge Code: Statute: Date of Offense:	Count No. Charge Description: Charge Code: Statute: Date of Offense:
<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified	<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified	<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> A B C D Unclassified
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The defendant has been found beyond a reasonable doubt to be a:

- Persistent Sexual Offender (558.018 RSMo)
- Persistent Drug Offender (195.285, .291, .292, .295, or .296 RSMo)
- Persistent Misdemeanor Offender (558.016 RSMo)
- Persistent Offender (558.016 RSMo)
- Persistent Domestic Violence Offender (565.063 RSMo)
- Persistent Offender (Intoxication-related Traffic Offense) (577.023 RSMo)
- Aggravated Offender (577.023 RSMo)
- Not Applicable
- Predatory Sexual Offender (558.018 RSMo)
- Prior Drug Offender (195.285, .291, .295, or .296 RSMo)
- Dangerous Offender (558.016 RSMo)
- Prior Offender (558.016 RSMo)
- Prior Domestic Violence Offender (565.063 RSMo)
- Prior Offender (Intoxication-related Traffic Offense) (577.023 RSMo)
- Chronic Offender (577.023 RSMo)

on 7.17.08 (date).

The court:

- Informs the defendant of verdict/~~finding~~, asks the defendant whether ~~he~~ she has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.
- Defendant has been advised of his/~~her~~ rights to file a motion for post-conviction relief pursuant to Rule 24.02/29.15 and the court has found
  - Probable cause
  - No probable cause to believe that defendant has received ineffective assistance of counsel.
- Finds the defendant has pled or been found guilty of a dangerous felony, as defined in Section 556.061 RSMo, and if committed to the Department of Corrections, must serve at least 85% of the sentence.
- Finds the defendant has pled or been found guilty of an offense for which probation and parole are not authorized.

On count I, the Court:

Suspends imposition of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.

Sentences and commits the defendant to the custody of MO. Dept of Corr for a period of 15 years. Sentence to be served concurrent with ~~all previous sentences imposed~~

Probation Time Credit: \_\_\_\_\_

Suspends execution of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.

Fines the defendant \$ \_\_\_\_\_ The court stays \$ \_\_\_\_\_ with the remainder due by \_\_\_\_\_ (date).

On count \_\_\_\_\_, the Court:

Suspends imposition of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.

Sentences and commits the defendant to the custody of \_\_\_\_\_ for a period of \_\_\_\_\_ Sentence to be served

Concurrent  Consecutive with \_\_\_\_\_

Probation Time Credit: \_\_\_\_\_

Suspends execution of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.

Fines the defendant \$ \_\_\_\_\_ The court stays \$ \_\_\_\_\_ with the remainder due by \_\_\_\_\_ (date).

BY CLERK, CIRCUIT COURT DEPUTY  
HARRIS V. HARRIS  
SEP 25 2008  
1717

On count \_\_\_\_\_, the Court:

- Suspends imposition of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.
- Sentences and commits the defendant to the custody of \_\_\_\_\_ for a period of \_\_\_\_\_. Sentence to be served
  - Concurrent       Consecutive      with \_\_\_\_\_
- Probation Time Credit: \_\_\_\_\_
- Suspends execution of sentence. Defendant is placed on probation for a period of \_\_\_\_\_ under the supervision of \_\_\_\_\_. Defendant shall comply with the conditions set forth in the separate Order of Probation.
- Fines the defendant \$ \_\_\_\_\_. The court stays \$ \_\_\_\_\_ with the remainder due by \_\_\_\_\_ (date).

The court orders:

- The clerk to deliver a certified copy of the judgment and commitment to the sheriff.
- The sheriff to authorize one additional officer/guard to transport defendant to the Department of Corrections.
- That judgment is entered in favor of the state of Missouri and against the defendant for the crime victims compensation fund for the sum of
  - \$10.00     \$46.00     \$68.00.
  - Satisfied       Unsatisfied
- Judgment for the State of Missouri and against the defendant for appointed counsel services in the sum of \$ \_\_\_\_\_
  - Satisfied       Unsatisfied

Costs taxed against defendant

Costs waived.

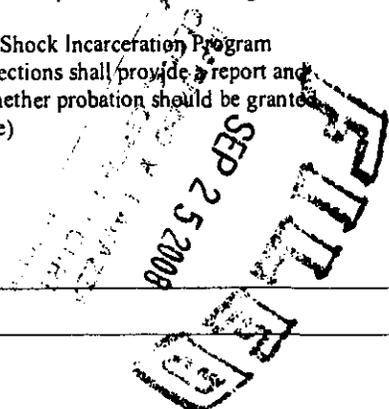
- Defendant to report immediately to the \_\_\_\_\_ Department for fingerprinting. The Defendant is ordered to submit to the fingerprinting, and is further ordered to provide all information necessary for the officer taking the fingerprints to fully complete all identification and photograph portions of the standard fingerprint cards.

- §217.785 RSMo Missouri Post Conviction Drug Treatment Program
  - Non-Institutional       Institutional
- §217.362 RSMo Court Ordered Long-Term Substance Abuse Program
- §217.378 RSMo Regimented Discipline Program
- The court sentences §559.115(2) RSMo General Population Department of Corrections shall provide a report and recommendation whether probation should be granted.

The court recommends placement to:

- §559.115(3) RSMo Institutional Treatment Program Department of Corrections shall provide a report and recommendation whether probation should be granted. (Statutory Discharge)
- §559.115(3) RSMo Sexual Offender Assessment Unit Department of Corrections shall provide a report and recommendation whether probation should be granted.
- §559.115(3) RSMo Shock Incarceration Program Department of Corrections shall provide a report and recommendation whether probation should be granted. (Statutory Discharge)

The court further orders: \_\_\_\_\_



So Ordered:

9-25-08  
Date

796

24758  
Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.



Issued on 9-25-08  
Date

M J  
Clerk

~~Robert E. Williams~~  
Robert E. Williams, defendant

~~Annette Jewell~~  
Defendant's attorney

~~M J~~ 47654  
Circuit Attorney.

SEP 25 2008  
MARGARET A. LAMARCA  
CLERK, CIRCUIT COURT  
DEPUTY

IN THE CIRCUIT COURT OF ST. LOUIS CITY  
STATE OF MISSOURI

ENTERED

STATE OF MISSOURI,  
Plaintiff

Cause No. 0622-CR05272-01

v.

Division No. 19

ROBERT EARL WILLIAMS,  
Defendant

**FILED**  
JUL 17 2008  
MARLENE W. FAVAZZA  
CLERK CIRCUIT COURT  
BY \_\_\_\_\_ DEPUTY

MOTION FOR NEW TRIAL

COMES now, the defendant and renews his Motion for Judgment of Acquittal pursuant to Missouri Supreme Court Rule 27.07 and makes his Motion for New Trial pursuant to Missouri Supreme Court Rule 29.11. In support thereof defendant states as follows:

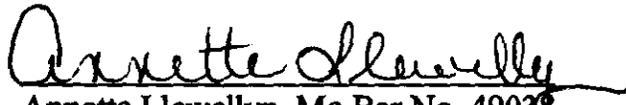
1. The Court erred in overruling defendant's motion to suppress the out-of-court identification and all subsequent in court identifications. The circumstances of any out-of-court identification were inherently suggestive and conducive to mistaken identification. Any in-court identification of defendant was tainted by the impermissible and suggestive identification procedures and would give rise to a substantial likelihood of mis-identification in violation of defendant's rights as guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, sections 2, 10, 15 and 18(a) of the Missouri State Constitution.

2. The Court erred in denying defendant's Motion for a judgment of acquittal at the close of the State's case and the close of all the evidence, in that, accepting as true all the testimony the state witness, the contradictions developed between their testimony revealed contradictions that should have prevented a reasonable jury from finding a verdict of guilt thus preventing the defendant from obtaining a fair and impartial trial as

guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 2, 10, 15, 18(a) and 21 of the Missouri Constitution.

3. The court erred in denying the defendant's proffered lesser included offense instruction (Defendant's Exhibit A) of stealing in that defendant's testimony provided support for a finding that a theft occurred but no force was used to accomplish that theft. By excluded Defendant's Exhibit A, the court violated defendant's rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Missouri State Constitution.

Respectfully submitted,



Annette Llewellyn, Mo Bar No. 49038

Attorney for Defendant

1114 Market Street

Suite 602

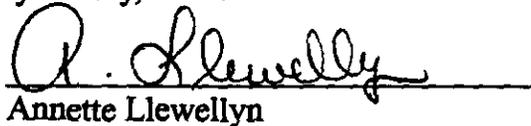
St. Louis, MO 63101

Phone 314-340-7625

Fax 314-340-7595

**Certificate of Service**

I certify that a true copy of the above and foregoing was served on Martin Minnigerode, Assistant Circuit Attorney, on this 18th day of July, 2008.



Annette Llewellyn

INSTRUCTION NO. A

A person is responsible for his own conduct and he is also responsible for the conduct of another person in committing an offense if he acts with the other person with the common purpose of committing that offense or if, for the purpose of committing that offense, he aids or encourages the other person in committing it.

If you do not find the defendant guilty of robbery in the second degree as submitted in Instruction No. 5, you must consider whether he is guilty of stealing under this instruction.

If you find and believe from the evidence beyond a reasonable doubt:

First, that on or about October 17, 2006, in the State of Missouri, the defendant or another took money, which was property owned by Timothy Wagner, and

Second, that defendant or another did so for the purpose of withholding it from the owner permanently, and

Third, that the property was physically taken from the person of Timothy Wagner, then you are instructed that the offense of stealing has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Fourth, that with the purpose of promoting or furthering the commission of that stealing, the defendant acted together with or aided another person in committing the offense, then you will find the defendant guilty of stealing under this instruction.

However, unless you find and believe from the

*Returned by Judge Venables 24758 7-17-07*

MARINOS V. SANCHEZ  
CLERK, CIRCUIT COURT  
BY \_\_\_\_\_ DEPUTY

JUL 17 2008

**FILED**

*AA*

evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

MAI-CR3d 324.02.1 modified by 304.04  
Submitted by Defendant

AR