

CERTIFICATE OF INTERESTED PERSONS

MARION CHAD SPEARS

VS.

STATE OF MISSISSIPPI

2010-KA-02059-SCT

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Hon. Jim Hood,
Attorney General,
State of Mississippi

Hon. Mark Duncan,
District Attorney

Marion Chad Spears,
Appellant

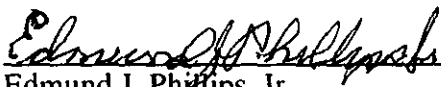

Edmund J. Phillips, Jr.,
Attorney of record Marion Chad Spears

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STATEMENT OF THE ISSUES

1. As to Count II the verdict is against the overwhelming weight of the evidence.
2. Lindsey Memorandum

STATEMENT OF THE CASE

Appellant appeals his conviction of (1) kidnapping, (2) robbery and (3) carjacking and sentence on each count to fifteen (15) years confinement to be served consecutively, as a habitual criminal under Sec. 99-19-81, Miss. Code of 1972, without parole, probation, suspension or reduction of sentence.

Laurie Goodin, a secretary in the office of B & G Wood Products, Inc., Philadelphia, MS (T-37), was working in the office on August 14, 2009 accompanied by another secretary. Her responsibilities included writing checks to loggers when they presented to her tickets for logs delivered to the B& G work yard. Appellant entered the office, demanded \$15,000.00 or more (T-42) and threatened the ladies. He did not at any time brandish or display a weapon. (T-44)

While he was in the office, other loggers came in and were waited on and paid by the other secretary.

Laurie Goodin wrote a check to herself in her maiden name, Laurie Wand, for \$15,000.00. Appellant and Laurie Goodin rode in her car to a branch of Citizens Bank in Philadelphia and went in the bank together. Ms. Goodin testified that Appellant threatened to kill her if she did not cooperate with him (he never displayed a weapon).

With Appellant beside her, she presented the check for payment. A teller went to the vault for the money, put it in an envelope. Appellant took it and they walked out. Laurie Goodin drove out of town following his directions, stopped and exited the car (T-53). She went to a nearby house for help and he drove off, later leaving the car.

Appellant was later arrested in Alabama. He was interviewed by Marsha Bavetta, who wrote his statement (Exhibit 53) because he was functionally illiterate. After the conviction was announced the State presented copies of two prior convictions for uttering forgery, and appellant was sentenced as a habitual criminal to fifteen years confinement on each count without possibility of parole, suspension or other type sentence reduction.

SUMMARY OF ARGUMENT

1. The taking of property by deceit in part or in whole is not robbery, but grand larceny.

ARGUMENT I

AS TO COUNT II THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

Appellant asserts that he was improperly charged and convicted of robbery and that he was instead guilty of grand larceny.

The fifteen thousand dollars taken was paid by Citizens Bank from an account in the name of B & G Wood Products, Inc. It was taken by Appellant, but there was no evidence it was in the possession of Laurie Goodin, Citizens Bank or B & G Wood Products, Inc.

Sec. 97-3-73, Miss. Code of 1973 reads:

Every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery.

At the time the money was delivered to Laurie Goodwin and Appellant, it had been taken from the account of B & G by deceit, and was no longer the property of B&G.

The taking of property by deceit in part or in whole is not robbery, but grand larceny. Therefore the crime Appellant was guilty of was grand larceny per Sec. 97-17-41, Miss. Code of 1972.

At the motion for a directed verdict the court erred in failing to reduce the charge and at the motion for a new trial the Court erred in failing to reduce the conviction grand larceny.

LINDSEY MEMORANDUM

Appellant's counsel was appointed by the Circuit Court of Neshoba County, Mississippi. to conduct appeal, *in forma pauperis*..

Per the provisions of *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), Appellant's counsel would show that other than the argument presented here are no arguable issues supporting Appellant's appeal, and after scouring the record thoroughly, specifically examining (a) the reason for arrest and the circumstances surrounding arrest; (b) any possible violations of client's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing. *See Robbins v. State*, 528 U.S. 259, 273-74, 120 S. ct. 746, 145 L.Ed. 2d 756 (2000), so asserts.

The undersigned asks that Appellant be granted twenty days additional time from the date of receipt of this brief within which to submit a supplemental brief

CONCLUSION

The verdict in Count II should be reduced to grand larceny and Appellant resentenced on this count. Appellant should be allowed twenty days to file a supplemental brief as to Counts I and III.


Respectfully submitted,


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that on this date a true and exact copy of this Reply Brief was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39530, District Attorney, the Honorable Marcus Gordon, P.O. Drawer 220, Decatur, MS 39327, Circuit Court Judge and to the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.


DATED: July 19, 2011


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that on this date a true and exact copy of this Reply Brief was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39530, District Attorney, the Honorable Marcus Gordon, P.O. Drawer 220, Decatur, MS 39327, Circuit Court Judge, the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi and to Appellant, Marion Chad Spears, AIS 268042, Bullock Correctional Facility, P.O. Box 5107, Union Springs, AL 36085..

DATED: July 19, 2011


EDMUND J. PHILLIPS, JR.
Attorney for Appellant