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CLERK, COURT OF
APPEALS OF GEORGIA

IN THE COURT OF APPEALS
STATE OF GEORGIA

ORIGINAL

TROY E. EDWARDS

v.

CASE NO. A08A1609

STATE OF GEORGIA

BRIEF OF APPELLANT

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IN THE COURT OF APPEALS

STATE OF GEORGIA

TROY E. EDWARDS

v.

CASE NO. A08A1609

STATE OF GEORGIA

BRIEF OF APPELLANT

PART I

A. STATEMENT OF PROCEEDINGS BELOW

Appellant Troy Emmanuel Edwards was named in a two-count indictment in Bartow Superior Court in Case No. 06-CR-1496 charging him with armed robbery and aggravated assault (R-11). Edwards was tried before The Hon. Scott Smith and a jury on November 14-15, 2006, and was convicted on both counts (R-56). He was sentenced on December 12, 2006, to twenty years to serve in prison for armed robbery and twenty years consecutive on probation for aggravated assault, in addition to an order to pay \$618.00 in restitution and a \$1,000.00

fine (R-56). Edwards's Motion for New Trial (R-68) was denied on March 12, 2008 (R-92). A Notice of Appeal was timely filed (R-1).

B. STATEMENT OF FACTS

Appellant Edwards was charged with and convicted of the armed robbery by knife of money from Gupreet Singh at Quick Fuel in the presence of Richard Dales and of the aggravated assault of Richard Dales with a knife, all on May 17, 2006.

Gupreet Singh, owner of Quick Fuel in Cartersville, testified that Richard Dales worked at Singh's station/convenience store and that Edwards, whom Singh said he did not recognize, did not have permission on May 17, 2006, or ever to take money from the cash register (T-79-80). Kanwal Jeet Kaur testified that she was Singh's wife and Quick Fuel's manager on May 17, 2006, and that her duties included book-keeping (T-84). She said she was called by police to come to the store on the evening employee Dales was robbed (T-85) and that she had reviewed the store's records, State's Exhibit 1, and had identified for police the last transaction of May 17, a purchase of beer for \$1.06 at 8:03 p.m. "by whoever did the burglary, and after that, the no sale

button was hit a couple of times trying to open the drawer" (T-86-87).

Kaur testified that "the beer bottle was lying there when we entered the store" (T-88). She said that the beer had been purchased with a credit card in the name of "Edward Troy E - Emmanuel," information she said she provided the Cartersville Police Department (T-88). Kaur testified that it was not normal procedure for someone to hit the no-sale button and that the record stated, "entering safe drop, drawer opened, exiting safe drop, drawer opened" (T-89). On cross-examination Kaur said she did not have a written receipt with signature for the \$1.06 transaction and had been unable to find it (T-92).

Richard Dales testified that on the evening of May 17, 2006, he was the clerk at Quick Fuel when he called police after "a gentleman came in and robbed me" (T-94-95), using the incongruous locution favored by witnesses at criminal trials. Dales said he was alone in the store when:

The gentleman walked back and got a beer and came up and paid for it, and then he walked around the counter and pulled a knife on me and told me to give me [sic] the money.

(T-95). Dales said that the gentleman pulled the knife, "a kitchen knife . . . like a bread knife" with a light brown handle, about twelve inches long, from his jacket (T-97, 117). Dales said that he told the gentleman no and that the not-so-gentle man lunged and "tried to stab me" (T-97),

and I come to find out later that he had nicked me, and the second time he went to stab me, I had pulled a chair up between me and him, and he stuck the knife in the back of the chair.

(T-97-98).

Dales said he did not get money from the register for the gentleman but that "I told him how to do it. I told him to hit the button that said no sale" and that after eight or nine tries, the register opened and the gentleman "cleaned out all the bills . . . six hundred and something" dollars (T-99). Dales said the gentleman then "went back around the counter and . . . headed out the door" (T-99). Dales said the gentleman turned and looked at him on the way out the door; Dales said that he had seen a "dark-colored Dodge Intrepid" in the parking lot before the gentleman entered the store (T-100). He said he tried to get the tag number as the car went "squealing off down the road" and

then called 911 (T-101). Dales identified Edwards in court as that gentleman and said he had told police the gentleman was "roughly that much taller than me ["about six something" (T-116)], black, short hair, a little bit of a stubble, and pockmarked face" (T-102). Dales said he went to the police station to view a photo lineup and that he had picked number two of the six photos in the lineup, State's Exhibit 8 (T-102-03).

On cross-examination, Dales further described what he had called "a pockmarked face" (T-102):

I was in the military, and a lot of black people,
when they shave, they get bumps on their face,
and I told [the police] it kind of looked like
that.

(T-116). He said the gentleman had been wearing "khaki pants . . . lighter, not black" and a blue T-shirt (T-116). He agreed he had not mentioned a jacket to police, although he had testified that the gentleman had pulled the knife from his jacket (T-116-17). He said that the knife was not serrated, that it had "a sharpened blade" (T-117). Dales agreed that a significant number of customers were tall African-

American males of the same body type as the gentleman that night (T-119-20). He said there was nothing unique or distinctive about the gentleman other than that he was taller than Dales, "but everybody is" (T-119). Dales said he was certain the vehicle was a Dodge Intrepid "because my sister-in-law owned one just like it" (T-121).

Officer Lynn Wade testified that she had responded to the robbery call at the Quick Fuel on May 17, 2006, and had tried to lift fingerprints from the cash register, the handle to the beer cooler, and the beer bottle (T-124-26) but that none could be obtained that were "of any value . . . for comparison purposes" (T-127). She also said she took photographs of tire tracks, State's Exhibits 11 and 12, and that she determined that the truck had, as Dales had told police, "jumped the curb, and went on the grass, and headed westbound onto Georgia Boulevard" (T-127-29). Wade testified that later she accompanied Officer Diprima to Herring Street to the residence of Pamela Maxwell to try to locate Edwards, which they did, and that she was present for a police interview of Edwards and for the showing of a photo lineup to Dales (T-133-34).

On cross-examination Wade said that she had not done any

further investigation regarding the tire tracks; that she had not searched the house; that she had not looked for money, a knife, or clothing; and that she had not looked inside the refrigerator (T-135-36). She said that she did not recall hearing Edwards, during the police interview, say that he had been at the house of a friend "G" and a couple other people on Wilkins Way that night at the time of the robbery or recall hearing him say that G and others had left in his Ford Taurus or other vehicle and that the men returned at about 10 o'clock that night, although Wade said she remembered "him referring to the friend as G" (T-137). She said she had not done any further investigation based on what Edwards had said during the police interview (T-138). She said she had not found out what kind of beer Edwards customarily drank (T-138).

Pamela Maxwell testified that she lived at 7 Herring Street and had known Edwards, whom she had been dating, for eleven years (T-140). She said that in May 2006 she had been driving a gray Dodge Intrepid, pictured in State's Exhibit 13, which Edwards sometimes would use (T-140-41). She said that she and Edwards were at her house on May 18, 2006, when police came to arrest him (T-142). She

said that Edwards had had her vehicle the morning of the 17th of May and that she did not recall having told police that she had not seen the car for two days before that (T-143-44). She said that police returned to get Edwards's wallet and that when the wallet's contents were later returned to her, the debit card was not returned until about a week after that (T-144-45). Maxwell said that Edwards had then banked at Bank of America (T-145). She said on cross-examination that her daughter owned a Ford Taurus and that Edwards would not borrow that car (T-149).

Roderick Carter testified that on May 17, 2006, he had been working around the corner from Quick Fuel when he went to lunch a little after eight o'clock when he saw " a dark blue or dark gray type car going up over the curb beside the building and cutting across the grass and it got onto . . . Georgia Avenue . . . it went up over the curb, and then it sped across the grass and hit that little side road and went off" (T-149-51). He said that he went to the Quick Fuel store and that the clerk came running out saying he had been robbed and asking Carter if he had seen anything (T-151). Carter said on cross-examination that the car was "a Grand Prix, Intrepid type model type car" and that he

could not see who or how many people were in the car (T-154).

Officer Jason Diprima testified that he investigated the Quick Fuel robbery and started by looking to connect the name and Visa credit card number from the store's last pre-robbery transaction to a dark-colored Dodge Intrepid (T-157-59). He said he traced the information to Pamela Maxwell at 7 Herring Street in Cartersville (T-159). He said he then put Edwards's photo into a photo lineup along with five other black males who were close in description to Edwards's "six-foot-three black male," 150 to 170 pounds (T-160-61). Diprima said that after Dales picked Edwards out of the photo lineup (T-162-65), Diprima got an arrest warrant for Edwards, found him at 7 Herring Street, and arrested him (T-165-66). He said that police did not search the house because they did not have a search warrant (T-166-67). He said that particular clothing would have been difficult to find because "this house was extremely in disarray" and that Edwards was not wearing any clothing when police showed up (T-166-67). Diprima said that the "standard" kitchen knife description meant that "that type knife would be in the residence would probably not be uncommon" (T-167). He said that police took Edwards's wallet wherein they found a

Visa check card/debit card from Bank of America in the name of Troy Edwards (T-167-68) and identified State's Exhibit 14 as photos of the front and back sides of the card (T-169). Diprima said that the name and number on the card matched the name and number on the Quick Fuel transaction from just before the robbery (T-169). He said he had returned the card to Pamela Maxwell after photographing it (T-171).

Diprima testified that after arresting Edwards, he interviewed him after Edwards waived his right to counsel (T-173-74), an interview that was videorecorded, State's Exhibit 16, which was played for the jury (T-176-78, 182). Diprima said he did not do any follow-up investigation about Edwards's friend "G" (T-182). On cross-examination he said he did not obtain a search warrant to look for or find \$618 or to locate a kitchen knife or any clothing (T-184-86). He said he did not look in the refrigerator to see if beer inside matched the Busch beer purchased at Quick Fuel (T-187-88). Diprima said he did not investigate Edwards's report during the police interview of having been with "G" and friends on Wilkins Way the night of the robbery because "the only information I had was G, and Wilkins Way is an apartment complex. . . . Mr. Edwards had stated that he didn't know what apartment

it was and that it was G, and he didn't know who the other two individuals were. . . An apartment complex looking for G is a pretty difficult procedure" (T-189).

Diprima testified that he had made no effort to obtain Edwards's Bank of America check card records (T-196). Presented with Defense Exhibit 1, to whose admission the State had stipulated (T-193-94), Diprima agreed that there appeared to be transactions on the debit card after the \$1.06 Quick Fuel beer transaction and after Edwards's arrest on May 18 (T-198-200) and agreed also that he had not investigated who may have been using the card after Edwards's arrest (T-200). He said he would not have been interested to learn if Bank of America had issued duplicate cards on the same account (T-202). Diprima said that he did not know anyone whose nickname was "G" and that he knew a Dexter Springer to be "six foot one" (T-208). He said that he knew Edwards to have a Jamaican accent and that Springer also was from the Virgin Islands and had a similar accent (T-208-09). Diprima agreed that the accent was obvious and would stand out; he agreed also that robbery victim Dales had not noted anything distinctive about the gentleman and had not noted any speech pattern (T-209). On redirect

examination, Diprima said he did not know Dexter Springer to be known by the street name of "G" (T-215).

As a rebuttal defense witness, Pamela Maxwell testified that she had her own debit card and never had used Edwards's card (T-217).

C. PRESERVATION OF ERRORS FOR APPEAL

The First Enumeration of Error was preserved for appeal when Edwards reserved objections to the jury charge (T-250).

PART II

ENUMERATION OF ERROR

The Court of Appeals, not the Supreme Court, of Georgia has jurisdiction because this appeal is from the judgment of a Superior Court and it is not a case exclusively reserved for the Supreme Court by Article VI, Section VI, Paragraph III of the Georgia Constitution of 1983.

FIRST ENUMERATION OF ERROR: The trial court committed reversible error in not charging the jury on Edwards's sole defense of alibi.

PART III

ARGUMENT AND CITATION OF AUTHORITIES

FIRST ENUMERATION OF ERROR: The trial court committed reversible error in not charging the jury on Edwards's sole defense of alibi.

STANDARD OF REVIEW: Whether the disputes over the facts raised an issue or invoked a theory the jury should have been adverted

to and instructed upon, so that the verdict or findings may not be regarded as having settled the issue. Chandler v. State, 204 Ga. App. 816, 820-21(3), 421 S.E.2d 288 (1992). Reversible error to fail to charge on appellant's only defense despite counsel's failures to request such a charge and to reserve objections. Laney v. State, 184 Ga. App. 463, 361 S.E.2d 841 (1987).

Information about Appellant Edwards's sole defense of alibi on the night of May 17, 2006, was wrongly withheld from the jury. The trial court's failure to charge the jury on alibi was reversible error because alibi was Edwards's only defense and the defense was raised by the evidence. See Printup v. State, 217 Ga. App. 495, 496(3), 458 S.E.2d 662 (1995) (trial counsel's failure to request in writing a jury charge on self-defense did not alter the court's duty to instruct the jury on the sole defense where this was the only defense offered by the defendant and his testimony adequately raised the defense); Laney v. State, 184 Ga. App. 463, 361 S.E.2d 841 (1987) (trial court's failure to charge on appellant's only defense was reversible error despite trial counsel's failure to request such a charge and failure to reserve objections to the charge).

The rule governing the situation in which Edwards found himself is that "If an affirmative defense is raised by the evidence, . . . the trial court must present the affirmative defense to the jury as part of the case in its charge, even absent a request." Ellzey v. State, 272 Ga. App. 253, 257(1), 612 S.E.2d 77 (2005) (emphasis added). Edwards's case is distinguishable from the permutation of this rule that lifts alibi out of the "affirmative defense" category because his alibi of not having been present and having been somewhere else meant that he could not have been implicated in the crimes of armed robbery and aggravated assault; these were not alleged to have been conspiracies or parties to the crime or aiding and abetting scenarios wherein someone could have been implicated despite his absence from the scene of the crime.

The particulars of Edwards's defense came before the jury in Officers Wade's (T-137-38) and Diprima's (T-182, 189, 208-09) testimony about Edwards's statement to police, State's Exhibit 16. Officer Wade testified that she did not recall Edwards, during the police interview, saying that he had been at the house of a friend "G" and a couple other people on Wilkins Way that night at the time of the robbery and that G and others had left in his Ford Taurus or other

reversible error, and Ellzey's conviction is reversed.

Id. at 257 (footnotes omitted).

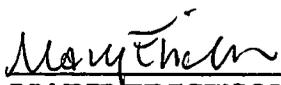
The same result should obtain in Edwards's case: that his convictions be reversed because his jury was not charged on his sole defense of alibi.

CONCLUSION

WHEREFORE, Appellant Troy Edwards asks that his convictions be overturned.

This the 21st day of April, 2008.

Respectfully submitted,



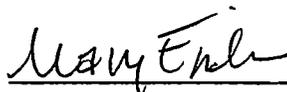
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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing Brief of Appellant upon the Office of the District Attorney, Bartow County Courthouse, 135 W. Cherokee Ave., Cartersville GA 30120.

This the 21st day of April, 2008.



MARY ERICKSON

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IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

TROY EMANUEL EDWARDS,
Appellant,

*

CASE NO. A08A1609

*

vs.

STATE OF GEORGIA,
Appellee.

*

BRIEF ON BEHALF OF
STATE OF GEORGIA,
APPELLEE HEREIN

T. JOSEPH CAMPBELL
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CHEROKEE JUDICIAL CIRCUIT
STATE BAR NO. 106950

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IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

TROY EMANUEL EDWARDS,
Appellant,

*

CASE NO. A08A1609

*

vs.

*

STATE OF GEORGIA,
Appellee.

*

PART I

STATEMENT OF THE CASE

The Appellant, Troy Emanuel Edwards, was indicted by a Bartow County Grand Jury on August 15, 2006 for Armed Robbery and Aggravated Assault (R. 11-13).¹ Appellant was tried before a jury on November 14, 2006. (T., Vols. I). The jury convicted Appellant of Armed Robbery and Aggravated Assault on November 15, 2006. (R. 56-60). Appellant was sentenced on December 12, 2006 to a total of forty years with twenty to serve incarcerated by the Honorable D. Scott Smith. (T. Vol. II).

The Appellant filed a motion for a new trial on December 20, 2006. (R.68-69). Appellant filed a notice of appeal on March 13, 2008. (R. 1-3). This appeal follows.

¹ All references to the clerk's record for this appeal are denoted as "R.," all references to the trial transcript are hereafter denoted "T."

PART II
STATEMENT OF FACTS

On May 17, 2006, Richard Scott Dales was working as the cashier at the Quick Fuel at 445 South Erwin Street, Cartersville. (T. 94). Around eight that evening, the Appellant entered the store and purchased a beer (T. 95). As Mr. Dales was placing the single beer in a bag the Appellant walked behind the counter pulled out a kitchen knife and demanded money. (T. 96-97). The Appellant then lunged toward Mr. Dales with the knife in his hand. On the second lunge forward Mr. Dales pulled a chair up between them and the knife stuck into the chair. (T. 97-98).

The Appellant then attempted to open the register and hit the “no sale button” several times. (T. 99). After eight or more attempts the register opened and the Appellant took all the cash, approximately six hundred dollars. (T. 99). He then walked toward the door, turned and looked at Mr. Dales and quickly left the store parking lot in a dark colored vehicle. (T. 100-101). Mr. Dales then contacted Cartersville Police Department. (T. 102).

Detective DiPrima with the Cartersville Police Department was assigned the case and next day meet with Mr. Dales and followed up investigating the crime scene. (T. 157, 158). Upon viewing the register tape Detective DiPrima was able to obtain the last transaction made before the robbery and get the credit card number from the transaction. (T. 159). He then followed up with the vehicle description and was able to link the

vehicle to Ms. Pamela Maxwell residing at 7 Herring Street Cartersville. (T. 159). He then constructed a line, following the procedures and protocols of the police department and presented that to Mr. Dales. (T. 160-161). Mr. Dales then indicated he observed the individual that assaulted him with a knife and stole the money in the lineup, that individual being the Appellant. (T. 164). He also identified the defendant in open court as the individual who stole the money. (T. 102).

The Cartersville Police Department then went to the home of Pamela Maxwell and took the Appellant into custody. While at the home they collected the Appellant's wallet. (T. 166-167). In the wallet were the Appellant's driver's license and a Visa credit card. The number on the credit card matched the number of the last transaction from the Quick Fuel before the robbery. (T. 169).

Mr. Edwards then went to the Cartersville Police Department and spoke with Detective DiPrima. (T. 173). After being read his Miranda rights and signing a waiver form the Appellant agreed to speak with the officer. (T. 175-176). During the course of the interview the Appellant advised Detective DiPrima that he was with a man named "G." (T. 182). However, the Detective testified the only information he had pertaining to this "G" was he lived in Wilkins Way, an apartment complex, and was accompanied by two other unknown individuals. (T. 189). Therefore he was unable to obtain anymore information to follow up on this "G." person. (T.182).

Gupreet Singh, owner of Quick Fuel testified that he did not know the Appellant nor did he give him permission to take the cash from the register. (T. 79-80). Kanwal Jeet Kaur, the owner's wife secured the tape register from the time of the incident. The last transaction was from Troy Emanuel's credit card in the amount of \$1.06 for a beer.

PART III

ARGUMENT AND CITATION TO AUTHORITY

THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN NOT CHARGING ALIBI BASED ON THE FACT IT WAS NEVER REQUESTED BY TRIAL COUNSEL AND THE CHARGE OF THE COURT SUFFICIENTLY COVERED THE FACTS PRESENTED AT TRIAL.

The appropriate standard of review is whether there is enough evidence for a rational trier of fact to find the Appellant guilty beyond a reasonable doubt of the offense charged. Jackson vs. Virginia, 443 U.S. 307 (1979). On appeal, this Court must view the evidence in the light most favorable to the verdict and the Appellant no longer enjoys the presumption of innocence. The appellate court determines evidence sufficiency and does not weigh evidence or determine witness credibility. Williams vs. State, 217 Ga. App. 636 (1995).

“It is not error for the court to fail to charge on alibi absent a request. This is true even if alibi is the ‘sole defense’”. Matthews vs. State, 285 Ga. App. 859, 862 (2007). The purpose of an alibi defense is to traverse the state’s proof that the accused actually committed the crime. See id at 862. The charge the court gives that the burden to prove the defendant guilty beyond a reasonable doubt necessarily covers the question of whether or not the evidence of alibi was sufficient to create a reasonable doubt. See id. at 862. See also Rivers vs. State, 250 Ga. 288 (1982).

Alibi is not an affirmative defense, under statute or common law and generally challenges the assertion of the accused’s presence at the scene of the crime. Seese vs. State, 235 Ga. App. 181, 182-83 (1998). The rationale is that “since the true effect of an alibi defense is to traverse the state’s proof that the defendant committed the crime, the charge that the burden is on the state to prove that the defendant committed the crime beyond a reasonable doubt itself necessarily covers the question of whether the evidence of alibi was sufficient to create a reasonable doubt.” Id. at 183.

In Rivers vs. State, 250 Ga. 288, the State produced enough evidence to prove beyond a reasonable doubt that the defendant committed the crimes charged, even though the defendant testified he did not do so and could not have been there because he was traveling out of state at the time. The court held that the absence of a charge on alibi did not change the fact that no juror who believed the defendant’s testimony could find the State had met its burden of beyond a reasonable doubt. See Rivers at 300.

Here the court fully charged the jury on the presumption of innocence, burden of proof and reasonable doubt. (T. 232, 233). The court stated in its charge there was no burden of proof on the defendant and that burden never shifted onto the defendant to prove his innocence. (T. 233 lines 7-11). The court fully went over the fact the state must prove the guilt of the accused beyond a reasonable doubt. Also if the jury's mind is wavering or unsettled that is a doubt of the law and they should acquit. (T. 233 lines 12-23).

The trial court also charged the jury on the issue of identification. (T. 236). Covering the factors the jury could use to determine the reliability of the identification which included the opportunity of witnesses to view the alleged perpetrator, the witness's degree of attention to the perpetrator, possibility of mistaken identity, outside factors affecting the identification, and prior contact with the perpetrator. (T. 236 lines 14-25). The court then instructed the jury it was up to them to determine if "the facts of the case sufficiently identified the Defendant beyond a reasonable doubt as the perpetrator of the alleged crime." (T. 237 lines 2-5).

At no point in the trial did trial counsel ever request the alibi charge. Simply reserving objections after the court concluded the charge to the jury. (T. 250 line 7). (See also T. 222- 224 and 226). However it is not error, absent a request, for the court to fail to charge alibi. Matthews vs. State, 285 Ga. App. 859, 862.

CONCLUSION

WHEREFORE, for all of the above and foregoing reasons, Appellee prays that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,
This 7 day of May, 2008.

Office of District Attorney
Cherokee Judicial Circuit

T. Joseph Campbell
District Attorney

BY: *Rosemary Greene Heidmann*
Rosemary Greene Heidmann
Assistant District Attorney
State Bar No. 343457

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IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

TROY EMMANUEL EDWARDS,
Appellant,

*

CASE NO. A08A1609

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vs.

*

STATE OF GEORGIA,
Appellee.

*

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing **BRIEF ON BEHALF OF APPELLEE**, prior to filing the same, by depositing a copy thereof, Postage prepaid, in the United States Mail, properly addressed, upon:

Ms. Mary Erickson
2786 N. Decatur Road
Suite 240
Decatur GA 30033

This 7 day of May, 2008.

OFFICE OF DISTRICT ATTORNEY
CHEROKEE JUDICIAL CIRCUIT

BY: *Rosemary Greene Heidmann*
ROSEMARY GREENE. HEIDMANN

BARTOW COUNTY DIVISION
135 WEST CHEROKEE AVENUE
SUITE 368
CARTERSVILLE, GA 30120

**THIRD DIVISION
BLACKBURN, P. J.,
MILLER and ELLINGTON, JJ.**

**NOTICE: Motions for reconsideration must be
physically received in our clerk's office within ten
days of the date of decision to be deemed timely filed.
(Court of Appeals Rule 4 (b) and Rule 37 (b), February 21, 2008)
<http://www.gaappeals.us/rules/>**

July 30, 2008

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A08A1609. EDWARDS v. THE STATE.

ELLINGTON, Judge.

On appeal from his conviction for armed robbery and aggravated assault, Troy Edwards argues that the trial court erred when it failed to charge the jury on alibi. We find no error and affirm.

“On appeal from a criminal conviction, we view the evidence in the light most favorable to the verdict, with the defendant no longer enjoying a presumption of innocence.” *Reese v. State*, 270 Ga. App. 522, 523 (607 SE2d 165) (2004). We neither weigh the evidence nor judge the credibility of witnesses, but determine only whether the evidence was sufficient for a rational trier of fact to find the defendant guilty of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U. S. 307, 318-319 (III) (C) (99 SC 2781, 61 LE2d 560) (1979).

So viewed, the record shows that on the evening of May 17, 2006, Edwards walked into a Cartersville convenience store and bought a beer with his credit card. As the cashier was placing the beer bottle in a bag, Edwards walked around the counter, pulled out a kitchen knife, and demanded money. Edwards then lunged towards the cashier with the knife in his hand, nicking him. The cashier pulled a chair between himself and Edwards, whose second lunge lodged the knife in the back of the chair. After numerous attempts, Edwards got the cash register open and took the cash in it, amounting to about \$600. Edwards left the scene in his girlfriend's car and was apprehended at her house. The cashier identified Edwards at trial.

Edwards's only argument on appeal is that the trial court erred when it failed sua sponte to charge the jury on his sole defense of alibi. We disagree.

"[I]t is ordinarily not error to fail to charge specifically on alibi absent a request." *Rivers v. State*, 250 Ga. 288, 300 (8) (298 SE2d 10) (1982). This is true even when alibi is the defendant's sole "defense" because alibi is not an affirmative defense. See *Matthews v. State*, 285 Ga. App. 859, 862 (2) (648 SE2d 160) (2007).

Since the true effect of an alibi defense is to traverse the state's proof that the defendant committed the crime, the charge that the burden is on the state to prove that the defendant committed the crime beyond a

reasonable doubt itself necessarily covers the question of whether the evidence of alibi was sufficient to create a reasonable doubt.

Rivers, 250 Ga. at 300 (8).

Here, the State provided evidence sufficient to prove beyond a reasonable doubt that Edwards committed the charged crimes. Edwards told police that he was at a friend's apartment at the time of the incident, but could not recall what time he and three other men left the apartment and could not say where they went or what they did. And Edwards does not argue that the trial court failed to charged the jury correctly on the presumption of innocence, the State's burden of proof, and the credibility of witnesses. "The absence of a charge on alibi did not change the fact that no juror who believed the defendant's testimony could find that the [S]tate had carried its burden of proof." *Rivers*, 250 Ga. at 300 (8). There was no error here.

Judgment affirmed. Blackburn, P. J., and Miller, J., concur.

REMITTITUR

Court of Appeals of the State of Georgia

ATLANTA, JULY 30, 2008

The Court of Appeals having met, the following judgment was rendered:

COURT OF APPEALS CASE NO. A08A1609
TROY E. EDWARDS V. THE STATE

This case came before this court on appeal from the SUPERIOR Court of BARTOW County; it is considered and adjudged that

THE JUDGMENT OF THE COURT BELOW BE AFFIRMED.

BLACKBURN, P.J., MILLER AND ELLINGTON, JJ., CONCUR.

LC NUMBERS: 2006SUCR1496

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, AUG 15, 2008

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

*Court of Appeals Cost \$80.00. O.C.G.A. Sec. 5-6-10.
No costs are payable to the Court of Appeals.*

Willie L. Martin

COURT OF APPEALS OF GEORGIA

47 Trinity Avenue, SW, Suite 501
ATLANTA, GEORGIA 30334
(404) 656-3450

APPEAL SUMMARY PAGE

CLASSIFICATION: ARMED ROBBERY

CASE NUMBER: A08A1609 DATE OF DOCKETING: APRIL 17, 2008

STYLE: TROY E. EDWARDS V. THE STATE

LOWER COURT SUMMARY INFORMATION:

BARTOW County SUPERIOR COURT 2006SUCR1496

TRIAL JUDGE: HON D. SCOTT SMITH

RECORDS	DESCRIPTION:	PARTS:
2008-04-17	LOWERCOURT RECORDS.	01
2008-04-17	TRANSCRIPTS.	02

DATE OF JUDGMENT: 2008-03-11 NOTICE OF APPEAL DATE: 2008-03-13

COURT OF APPEALS CODE: 91-061 C
TERM: Sep. Cal. Mo.: SEP/08

DIVISION 3 PANEL CIR PATH: 98, 71, 91.
DIVISION 3 PANEL CIR PATH: 98, 71, 91, 90, 92, 94, 97.

COURT OF APPEALS OF GEORGIA
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APPEAL SUMMARY PAGE

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STYLE: TROY E. EDWARDS V. THE STATE

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NOTICE OF DOCKETING

Ms. Mary Erickson
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APPEAL CASE NUMBER: A08A1609 DATE OF DOCKETING: APRIL 17, 2008

STYLE: TROY E. EDWARDS V. THE STATE

IMPORTANT RULE REQUIREMENTS AND INFORMATION

Appellant's brief, including as Part II an Enumeration of Errors, shall be filed within 20 days of docketing. No appellant's brief shall be received for filing without the \$80.00 filing fee or sufficient pauper's affidavit.

Appellee's brief shall be filed within 40 days after the docketing date or 20 days after the filing of the appellant's brief, whichever is LATER.

Failure to timely file briefs or to follow any Court rules or orders may cause the appeal to be dismissed or may cause non-consideration of the brief, and may subject the offender to contempt.

The contents of a properly addressed registered or certified mailing shall be deemed filed on the U.S. Postal Service hand stamped, postmark date if it is stamped on the envelope or container. A document received from an overnight delivery service is deemed filed on the date it was delivered to the Post Office or a commercial delivery company as shown by the receipt of the U.S. Postal Service or overnight delivery company.

Motions for reconsideration are deemed filed on the date actually received in the clerk's office.

If oral argument is requested and approved by this Court this case will be scheduled for oral argument on SEP 04, 2008, before the THIRD Division: Blackburn, P.J., Miller, J., Ellington, J. A printed calendar showing the exact date of argument will be mailed to counsel of record. If a calendar is not received at least ten days prior to the tentative oral argument date, contact the Clerk's Office.

There shall be no communications relating to pending appeals to any judge or member of the judge's staff.

**FOR MORE INFORMATION CONTACT OUR WEBSITE AT WWW.GAAPPEALS.US.
IF YOU HAVE A QUESTION OR PROBLEM, PLEASE CALL THIS OFFICE.**

WILLIAM L. MARTIN, III, CLERK

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