

STATE OF SOUTH CAROLINA	)	IN THE COURT OF APPEALS
	)	
APPEAL FROM GEORGETOWN COUNTY	)	
	)	
D. Garrison Hill	)	
Circuit Court Judge	)	Docket No. 2012-212037
THE STATE,	)	
	)	
RESPONDENT,	)	
	)	
vs.	)	APPELLANT'S PRO SE
	)	ANDERS' BRIEF
PRINTISS LOVE,	)	
	)	
APPELLANT.	)	
	)	

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In compliance with the Court of Appeals' directive dated August 5, 2013, the Appellant, Prentis Love, submits his Pro Se brief under Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), addressing those issues Appellant respectfully requests the Court to consider.

GROUND'S FOR APPEAL

1. At the opening of Appellant's trial the State requested a voir dire on whether any member of the jury had ever been the victim of a violent crime. (Tran. p.5, LL.17-24). The defense also requested voir dire on this same issue. (Tran. p.6, LL.4-10). However, the trail court failed to charge the jury on this issue, thereby denying the Appellant a qualified jury.

2. On two separate occasions in Appellant's trial, and during critical testimony of witnesses, one or more jurors were sleeping. (Tran. p.99, LL.2-5; and p.242, LL.20-25). These sleeping jurors denied Appellant a constitutionally adequate trial.

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3. The victim's mother, Shannon Bellamy, testified that she confiscated her daughter's cell phone after her daughter was caught with cigarettes and a vicodin pill. (Tran. p.115, L.14 thru p.117, L.3). After confiscating the victim's cell phone, the mother searched the phone to discover her daughter's contacts. (Tran. p.117, LL.19-22). Upon searching the phone, the mother discovered that her daughter (the victim) had texted the Appellant many times. (Tran. p.121, L.18 thru p.123, L.10). The mother then testified she printed out a copy of the volume of texts between the victim and the Appellant. (Tran. p.124, LL.2-17). When the state moved to introduce the alleged phone records into evidence, the defense objected. (Tran. p.124, L.22 thru p.125, L.5). The trial court sustained the defense objection to introduction of the alleged computer phone records, but but did not forbid the jury's consideration of the testimony regarding the volume of calls alleged by the mother.

This was error, for the jury left with the impression that the mother's calculation of the volume of calls was correct, without the substantiating evidence of the actual records. The alleged number of calls between the victim and Appellant supported a theory of impropriety. No one from the cell phone carrier was there to authenticate the alleged records of number of calls between the victim and Appellant. Consequently, testimony regarding what the records contained was improper without authentication.

4. The Appellant was charged with two offenses: Criminal sexual conduct, 2d degree, and lewd act on a minor. (Tran. p.8, L.25 thru p.9, L.22). The lewd act charge arose from events which occurred on a boat during a fishing tournament (Tran. p.153, L.12 thru p.154, L.24), and at the Appellant's home (Tran. p.151, p.14 thru p.152, L.19). The CSC charges stemmed from events which occurred on September 11, 2010, at the victim's home. (Tran. p.161, L.2-22). The CSC events at the victim's home are known as the 9/11 events.

The state rested after the testimony of Dr. Carol Rather, who interviewed the victim based on a referral from the police department. (Tran. p.263, L.25 thru p.264, L.1). The defense then made a directed verdict motion, which the court denied. (Tran. p.264, LL.12-18). The defense then opened with its first witness, Tabitha Love, the Appellant's wife. Ms. Love testified only to the events surrounding the lewd act allegations, which occurred at the Appellant's home. Ms. Love was not questioned, nor did she offer information with regard to the 9/11 events at the victim's home, or of events surrounding the fishing tournament. (Tran p.277, L.3 thru p.278, L.17).

On cross examination by the State, the prosecutor delved into the 9/11 events and uncovered information which was detrimental to the state's case. Ms. Love testified that the Appellant could not have been at the victim's home on 9/11, because he was at home with Ms. Love. (Tran. p.287, L.5 thru p.292, L.11). The information brought out on cross examination by the state severally undermined the state's version of events.

Once Ms. Love left the witness stand, the state began to

argue that the defense withheld alibi information from the state. (Tran. p.195, L.18), and that it was the defense who opened the subject of the 9/11 events. The Defense accused the state of opening the 9/11 event testimony. (Tran. p.313, L.20 thru p.314, L.8). The trial court examined the record and determined that it was the state who opened the 9/11 event testimony; not the defense. (Tran. p.317, L.17 thru p.319, L.6).

Notwithstanding the fact that the state broached the subject of the 9/11 events with Ms. Love, the trial Court permitted the state to re-open their case. Ms. Love was recalled as a witness (Tran. p.324, L.23). The state sent out investigator's and produced an entirely new witness never seen or heard before (Tran. p.412, L.6), and introduced telephone recordings from the county jail between the Appellant and his wife. (Tran. p.328, L.10 thru p.344, L.1). The defense objected to each of the state's attempts to unfairly and prejudicially re-open their case based on facts which the state brought out.

As Appellant's attorney argued to the court, the state could blame no one but themselves for bringing out the 9/11 information during Ms. Love's testimony, and therefore they were stuck with the answer. (Tran. p.313, L.20 thru p.317, p.4). In spite of defense arguments, the trial court allowed the state to go back and retry their case. All issues raised related to credibility, which was key to the Appellant's defense. The jury found Appellant not guilty of the CSC allegations, which verify some belief in the Appellant's testimony. Had the state not been allowed to improperly re-open their case, the jury would have also found the Appellant not guilty of the lewd act allegations.

CONCLUSION

The Petitioner respectfully moves this Court to vacate Appellant's conviction and sentence, and remand this case to Georgetown County for further proceedings.

Respectfully submitted,

Dated: 9-11-13 .

131 Prentiss Love

Prentiss Love, Appellant