STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARL CHAPLIN,

APPELLANT

APPELLATE CASE NO. 2012-213297

FINAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting the out of court statement of Appellant's alleged co-conspirator that "I don't want to because when I already been through [sic] something like that before. I got talked into doing it" by concluding that it was made in the course of and in furtherance of a burglary?

STATEMENT OF THE CASE

The Dorchester County grand jury indicted Appellant on one count of first-degree burglary and two counts of kidnapping. R. 353 – R. 358. On October 8, 2012, Appellant proceeded to trial before a jury and the Honorable Kristi Lea Harrington. James Smiley represented Appellant and Glenn Justis represented the State. R. 1. At the conclusion of the trial on October 11, 2012, the jury found Appellant guilty on all three counts. R. 342, l. 15 – R. 343, l. 4. Judge Harrington sentenced Appellant to concurrent twenty year sentences for each count. R. 351, l. 25 – R. 352, l. 7.

This appeal follows.

ARGUMENT

The trial court erred in admitting the hearsay testimony that Baty said he did not want to participate in a burglary because he did not make the statement in the course of and in furtherance of a conspiracy.

STATEMENT OF FACTS

At around 9:00 p.m. on December 3, 2011, two masked individuals armed with a shotgun and a rope burglarized a trailer on an unpaved road in Dorchester County. R. 2, l. 18 – R. 3, l. 21; R. 25, l. 13-16. The burglars used the rope to bind two occupants in the trailer, then took some weed, rolling papers, a digital scale, a pack of small blue baggies, a pill bottle, $400 in cash, and a number of valuables. R. 3, ll. 3-21; R. 19, ll. 18 – R. 20, l. 15; R. 162, l. 18 – R. 164, l. 12. Police managed to apprehend one of the intruders later that night. R. 125, l. 21 – R. 126, l. 8. One of the victims had identified him as sixteen year old Christopher Baty, who later pled guilty. R. 3, l. 22 – R. 5, l. 14; R. 136, ll. 2-14; R. 208, ll. 14-23.

The State accused Appellant Carl Chaplin of participating in the burglary. However, the only direct evidence of Appellant's involvement was Baty's statement. Baty originally would not talk to the police, but after he learned he would be charged as an adult rather than as a juvenile, he gave an account exonerating himself. R. 241, l. 24 – R. 242, l. 16. Baty claimed Appellant, for whom Baty worked selling washing machines at the flea market, recruited him and Dristin Johnson to perform the burglary while he would drive them in his pick-up to and from the scene. R. 3, l. 22 – R. 5, l. 14; R. 35, ll. 10-15; R. 188, ll. 1-8. The State later bartered for Baty to testify in court to the same story, offering to seek to reduce Baty's sentence from twenty years to fifteen. Supp. R. 1, ll. 7-16.

At trial, Baty equivocated and once more placed the blame on everyone but himself. First he flimsily muttered that Appellant was to blame:

> Q: Did Carl mention anything to you when you were at the flea market that day?
>
> A: Yeah. You could say that.
> Q: Okay. Well, what did he say? Did you talk about anything that day?
>
> A: Yeah.
>
> Q: Did you talk about any plans you had that day?
>
> A: Yeah.
>
> Q: And what were they?
>
> A: Robbery.
>
> Q: Speak up a little.
>
> A: A robbery.
>
> Q: A robbery. Was it your idea to do a robbery?
>
> A: No.
>
> . . .
>
> Q: [W]ho brought up the idea about the robbery?
>
> A: Carl.
>
> . . .
>
> Q: [A]nybody else there?
>
> A: Yeah.
>
> Q: Who?
>
> A: Dristin.

R. 189, l. 25 – R. 191, l. 14. However, he later said that Dristin came up with the idea of the burglary. R. 237, ll. 15-17. He also testified that Dristin provided the shotgun used in the robbery, even though two vendors specifically testified that Baty approached them at the flea market on the afternoon of the robbery to show off and discuss his new shotgun or similar looking rifle. R. 188, ll. 24-25; R. 273, l. 24 – R. 274, l. 20; R. 290, l. 4 – R. 291, l. 2.

He further testified that after leaving the flea market on the afternoon of the burglary, Appellant drove him and Dristin to Walmart to buy shotgun shells before stopping by Baty's home and eventually heading to the trailer-home of Baty's girlfriend, Caitlin Parker. R. 92, ll. 22-23; R. 192, l. 5 – R. 195, l. 24. Baty bought weed from the occupants of a nearby trailer, so he was aware that they would have drugs and cash inside. R. 196, ll. 7-23. Baty claimed that around 9:00 p.m., Appellant dropped him and Dristin off at the trailer. R. 202, l. 3 – R. 203, l. 5. After Baty and Dristin left the trailer, they caught back up with Appellant and rode to Baty's house. R. 205, l. 17 – R. 206, l. 6.

Karen Parker, the mother of Kelsey Parker, worried about Baty getting into trouble. R. 46, ll. 7-9. She appeared and testified at trial that before Appellant, Baty, and Dristin left her trailer for good on the night of the burglary, they drove her to a nearby gas station to pick up cigarettes. R. 36, ll. 9-21. Karen Parker alleged that on the way back, someone in the truck pointed to the victims' trailer and said, "That's them," although she somehow "wasn't even paying attention" enough to know who said it or pointed. R. 36, l. 2 – R. 37, l. 22; R. 45, ll. 1-4.

Prior to the burglary, Caitlin Parker's eleven year-old sister Kelsey had also been at their trailer-home with Appellant, Baty, and Dristin. R. 54, ll. 17-19; R. 63, ll. 5-12; R. 92,

ll. 22-23. After Baty was charged, Kelsey Parker became worried because the two were close—he was really nice to her and slept over at times. R. 92, l. 24 – R. 93, l. 11. Kelsey did not want him to get in trouble. R. 110, ll. 19-21. So she also testified to exonerate Baty and implicate Appellant. She testified that she overheard Appellant, Baty, and Dristin discussing a plan outside before they left. R. 66, l. 17 – R. 67, l. 19. She described them as standing next to Appellant's truck thirty to forty feet away from the trailer while she was in a bedroom inside. *Id.*

> Q: What, if anything, did you hear any of those individuals say?
>
> A: [Dristin], he was talking about going to this girl that used to walk up and down the street . . . and he could go into a house.
>
> Q: Okay. And did anybody else say anything when he said that?
>
> A: Yes, sir.
>
> Q: [Baty]. He was saying that, well, I don't want to because when I already been through [sic] something like that before. I got talked into doing it.

R. 87, ll. 9-20. She said they later left in Appellant's truck. R. 88, ll. 16-24.

Appellant had preemptively objected to Kelsey's testimony on grounds of hearsay. R. 59, ll. 10-23. The State then proffered Kelsey's testimony, arguing the statements by Baty and Dristin that she claimed to overhear were made in furtherance of a conspiracy. R. 60, ll. 1-19. After the proffer, Appellant argued the State had not established that Baty and Dristin made the statements in furtherance of a conspiracy. R. 65, ll. 3-22. The court

disagreed and permitted the testimony,[1] and the jury ultimately found Appellant guilty on all three charges. R. 75, l. 23 – R. 76, l. 4; R. 342, l. 15 – R. 343, l. 4.

DISCUSSION

The trial court erred in admitting Kelsey's testimony that Baty said he did not want to participate in a burglary because he did not make the statement in furtherance of a conspiracy, and it was therefore hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Generally, hearsay is not admissible evidence "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

A conspiracy is "a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. . . . The essence of a conspiracy is the agreement." *State v. Buckmon*, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001) (citation omitted). A statement that is offered against a party for the truth of the matter asserted and that is "a statement by a coconspirator of [the] party during the course and in furtherance of the conspiracy" is defined as not hearsay. Rule 801(d)(2)(E), SCRE.

"Concerning the 'in furtherance of" prong, our law provides that 'a statement by a co-conspirator must advance the conspiracy to be admissible under Rule 801(d)(2)(E)." *State v. Sims*, 387 S.C. 557, 565-66, 694 S.E.2d 9, 14 (2010) (quoting *State v. Gilchrist,* 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000)). "'While mere conversation or narrative declarations are not admissible under this rule, statements made to induce enlistment,

[1] Appellant renewed his objection just before Kelsey was permitted to testify in front of the jury. R. 87, ll. 3-7.

further participation, prompt further action, allay fears, or keep coconspirators abreast of an ongoing conspiracy's activities are admissible.'" *Id.* (quoting *Gilchrist* at 372, 536 S.E.2d at 869).

In this case, Kelsey Parker was allowed to testify that Baty told Appellant and Dristin, "[W]ell, I don't want to because when I already been through [sic] something like that before. I got talked into doing it." Assuming arguendo Baty was referring to a burglary, the statement was to prevent it, not advance it. The statement was further removed from advancing a conspiracy than mere conversation or narrative declarations, which are expressly inadmissible under the rule. Therefore it was inadmissible as hearsay.

More generally, the testimony was inadmissible because it bared the exact indicators of unreliability that undergird the hearsay rule. The State formulated a theory that Appellant was the mastermind behind a conspiracy to commit burglary, and he preyed on Baty by recruiting him to do the dirty work. The only direct evidence to support this theory was Baty's testimony, which was highly suspect based on the adult time he was facing and the deal he cut. Needing circumstantial evidence to buttress its case, the State reached for Kelsey Parker's testimony. Kelsey's testimony was based on a statement she overheard in an unfamiliar conversation, in an unknown context, and through obstacles, such as the trailer wall and the forty-foot separation, impeding accurate perception. In admitting the statement, the trial court improperly allowed the State exploit the jury's emotions by making a victim of Baty, which obliged the jury to deem Appellant the condemnable antagonizer.

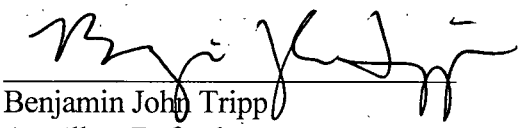
Minus Baty's hearsay statement, the circumstantial evidence presented to the jury suggests nothing more than an intent on Appellant's part to spend his time off hobnobbing around with Dristin and Baty, during which time Baty took a notion to visit

his drug dealer with whatever personal agenda. Thus, the jury should have therefore been in the narrow position determining reasonable doubt of the defendant's guilt based on the credibility of his codefendant's exculpatory and inconsistent confessions, not on the psychological and cognitive variegations of somebody who heard a friend of a friend say something.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 23, 2014

Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of January, 2014.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of January, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.