

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 06 2013

SC Court of Appeals

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KOREY LOVE,

APPELLANT

APPELLATE CASE NO. 2012-213503

ANDERS 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
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a directed verdict where no eyewitnesses claimed to see the shooting except for Appellant's codefendant who had already plea bargained for reduced charges and who was waiting to be sentenced after he testified against Appellant?

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant Korey Lamar Love on one count of murder, one count of attempted armed robbery, one count of possession of a weapon during the commitment of a violent crime, and one count of possession of a pistol by a person under eighteen years of age. R. 506 – R. 511. On November 5, 2012, Appellant proceeded to trial before a jury and the Honorable Edward W. Miller. Fletcher N. Smith represented Appellant and Bryna S. Seay and Howard L. Steinberg represented the State. Tr. 1.

At the conclusion of the trial on November 8, 2012, the jury found Appellant guilty on all counts. Tr. 498, ll. 16-25. The court sentenced Appellant to fifty years imprisonment for murder, twenty years concurrent for attempted armed robbery, five years concurrent for possession of a weapon, and five years concurrent for possession of a pistol. Tr. 504, ll. 12-23.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT BECAUSE THE LYNCHPIN OF THE STATE'S CASE WAS THE TESTIMONY OF A CODEFENDANT WHO PLEA BARGAINED FOR LESSER CHARGES AND WHO WAS WAITING TO BE SENTENCED AFTER TESTIFYING AGAINST APPELLANT.

STATEMENT OF FACTS

At trial the State alleged that at around 1:30 a.m. on January 27, 2007, Appellant accosted an employee at a local Wendy's who had just exited the back door of the building. Appellant allegedly attempted to rob the employee, struggled with him, and shot the employee in the neck as he attempted to flee. Tr. 54, l. 7 – Tr. 55, l. 13. Despite nearly six years-worth of investigation, the services of four investigating Greenville police officers, two forensic investigators, a forensic firearms examiner, and a forensic pathologist, the State could not adduce a mere scintilla of physical evidence linking Appellant to the shooting. Tr. 88, l. 3 – Tr. 198, l. 20. Despite the assistance of three witnesses employed by Wendy's at the time of the shooting and the report of an unrelated bystander, the State could not produce any purported eyewitnesses of the shooting other than Appellant's codefendant. Tr. 64, l. 1 – Tr. 86, l. 25.

At the time of the trial, Appellant's codefendant Jarod Ransom had been in state custody since August of 2010, after a warrant for his arrest was issued in June of 2010 on charges of murder and attempted armed robbery. Tr. 188, l. 11 – Tr. 192, l. 3; Tr. 194, ll. 12-23. Ransom had already cut a deal with the State and pled guilty to attempted armed robbery with a deferred sentence, having earlier been told that "the first one who talk[s] is gonna get the deal." Tr. 343, ll. 16-22; Tr. 383, ll. 4-6. He testified that back in 2007, he and Appellant were high school students living in the same apartment complex. He alleged

that on the night of the shooting, Ransom, Appellant, and two peers, Ricky and Rashad Simmons, who lived in a nearby apartment complex, walked to the nearby Wendy's with a plan to rob it. Ransom and Appellant initially hid in the back while Ricky and Rashad lagged behind out of sight. Ransom said Appellant then attempted to rob the employee after he exited the back door, and Appellant shot the employee as he fled. Tr. 351, l. 11 – Tr. 367, l. 7. Ransom knew he could still face up to twenty years imprisonment for his robbery conviction, but he also knew that a judge, when imposing a sentence, would be able to consider his cooperation with the state in testifying against Appellant. Tr. 375, ll. 6-20.

The State called Ricky and Rashad Simmons, who both testified that they approached the Wendy's together but stopped behind an adjacent building. Neither saw the shooting, and they ran away once they heard gunshots. Tr. 270, l. 15 – Tr. 271, l. 16; Tr. 317, l. 16 – Tr. 318, l. 20.

After the State presented its evidence, Appellant moved for a directed verdict but the court denied the motion. Tr. 395, l. 22 – Tr. 396, l. 8.

DISCUSSION

The trial court erred in denying Appellant's motion for a directed verdict because the lynchpin of the State's case was the testimony of a codefendant who plea bargained for lesser charges and who was waiting to be sentenced after testifying against Appellant. A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E.2d 1 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion

for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000).

“Human experience has found that the testimony of a man who says that he is the accomplice of somebody else in crime—that is, that he is a confessed criminal—is not testimony of the highest credibility because it comes from a person confessing that he is guilty of committing a crime” *State v. Sowell*, 85 S.C. 278, 278, 67 S.E. 316, 317 (1910).

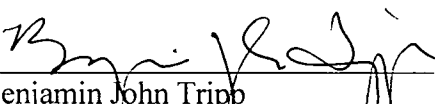
In this case, the State did not produce evidence reasonably tending to prove Appellant’s guilt. The only direct evidence that the State produced was the testimony of Ransom. At the time of his testifying, Ransom had already cut a deal with the State, which agreed to drop his murder charge in exchange for his testimony against Appellant. Ransom also received a deferred sentence for his attempted armed robbery charge. He knew that a judge would consider his testimony against Appellant in sentencing him. Thus, Ransom had a severe bias and immeasurable incentive to cooperate with the State and testify against Appellant consistent with the State’s theory, regardless of the true facts of the case.

Not only was the State unable to muster any credible direct evidence of Appellant’s guilt, but it also could not produce any physical evidence, direct or circumstantial, linking Appellant to the shooting. The State produced no firearm, surveillance video, fingerprints, or DNA evidence. The State’s four forensic specialists had no evidence to link Appellant to the crime. Accordingly, the gravamen of the State’s evidence did not reasonably tend to prove Appellant’s guilt.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's denial of his motion for a directed verdict and dismiss the charges against him.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2013.

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Edward W. Miller, Circuit Court Judge

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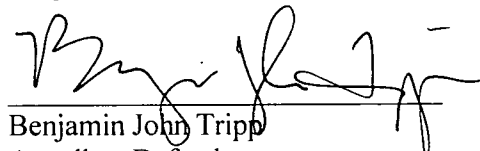
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Korey Love states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Edward W. Miller, which was held on November 5-8, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Korey Love.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2013.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of November 5-8, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 6th, 2013



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

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

November 6, 2013



Benjamin J. Tripp
Appellate Defender

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Division of Appellate Defense
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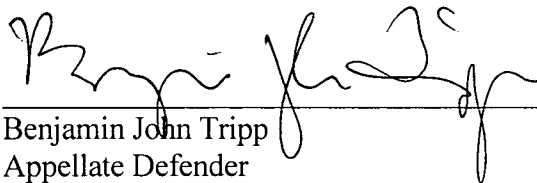
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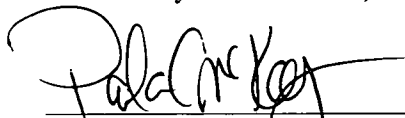
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Korey Love, #353157 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 4th day of November, 2013.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2013.


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