

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
EDWARD W. MILLER, CIRCUIT COURT JUDGE

Korey Love)
Appellant)
)
)
VS)
)
)
The State)
Respondent)
_____)

Appellant Case no. 2012-213503

Pro'se Brief of Appellant

RECEIVED

DEC 12 2013

SC Court of Appeals

s/ *Korey Love*

Korey Love SCDC#
McCormick C/I F-2-B
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TABLE OF CONTENTS

Table of Content 1
Tables of Authorities 2
Statements of Issues on Appeal 3
Statements of the Case 4
Argument 5-7
Conclusion 8

TABLES OF AUTHORITIES

Cases

(Dukes v. Smoak) 181 S.C. 182 186 S § 780 (1936) 6
(State v. Jackson) 265 S.C. 278 217 S.E. 2d 794 (1975) 6
(State v. Sowell) 85 S.C. 278, 278, 67 S.E. 316 317 (1916) 7
(State v. Burrough) 492 S.E. 2d 408 328 S.C. 498 (1997) 7
(State v. Lyles) 492 S.E. 2d 802 328 S.C. 458 (1997) 7

Statutes

16-9-10 5

Rules

South Carolina Rules of Criminal Procedures

Rule 106 5
Rule 106 6

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's objection that witness was coerced into giving statement? Did the court violate South Carolina rule of Criminal Procedure 106, where it played a part of something and the rest of it is unconstitutional?

STATEMENT OF THE CASE

The Greenville county grand jury indicted Appellant Korey Lamar Love on one (1) count of murder, one (1) count of attempted armed robbery, one (1) count of possession of a weapon during the commission of a violent crime, and one (1) count of possession of a pistol by a person under eighteen years of age.

On November 5, 2012, Appellant proceeded to trial before a jury and the Honorable Judge Edward W. Miller. The Appellant was represented by Fletcher N. Smith, the State was represented by both Bryna S. Seay and Howard L. Steinberg.

At the conclusion of the trial on November 8, 2012, the jury found the Appellant guilty on all counts. The court sentenced Appellant to fifty-five (55) years imprisonment for murder, twenty (20) years for attempted armed robbery, five (5) years concurrent for possession of a weapon, and five (5) years concurrent for possession of a pistol.

ARGUMENT

The trial court erred in denying appellants objection that the witness was coerced into giving a statement. The trial court violated the South Carolina Rules of Criminal Procedure (SCRCP) 106 where it played part of something where the rest of it was unconstitutional.

STATEMENT OF FACTS

During pre-trial motions, counsel for the appellant stated that there was no physical evidence with regards to appellant and that the witness for the State, Rashida Peters, had been trying to contact his office because she felt she was being coerced to testify against appellant and against her will.

ROA pg. 10 L-20-24

The witness, Rashida Peters, who feels like she is being coerced to testify, had already given two statements that the appellant was not involved in this and she had no knowledge of it either. Appellant counsel stated there was proof through the transcript that the witness was pressured and counsel was left with a situation under 16-9-10, perjured testimony.

ROA pg. 14 L-2-14

The solicitor only took five to six seconds to get the information they wanted in that they think is positive to their case. The State failed to redact it to the extent to give the defence the information they needed in their case to show the positive aspects of its case where the witness denies that Appellant had any involvement even after she gave that statement.

ROA pg. 15 L-13-19

Counsel for appellant pointed out to the trial court that the witness, Rashida Peters, was not instructed of her fifth amendment right of jeopardy, because " we are going to impeach her it that is part of his (Prosecution's) case in chief." The court admitted, " I'm operating in a vacuum here.".

ROA pg. 16 L-14-16, ROA pg. 16 L-17

The appellant respectfully submits there was no ruling by the court upon the motions before it and the court proceeded to jury qualification.

At trial, appellant counsel again objected to the witness being coerced into giving a statement.

ROA pg.231 L-4-25, ROA pg. 232 L-1-17

The trial court violated (SCRCP) 106 which denied the appellant due process rights. The trial court allowed the prosecution to submit information that they wanted and that they thought was positive to the State's case, but denied the appellant his due process rights by failing to give the defence the information they needed in their case to show the positive aspects of its case where the witness denies that the appellant had any involvement even after she gave that statement.

ROA pg. 15 L-13-19, ROA pg. 232 L-15-17

The court: " Uh, we don't, just cause they play a part of something and the rest of it is unconstitutional, we don't let it in just to show completeness." (SCRCP) 106 - When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

The jury requested to hear state exhibits (39) Reshida Peters statement. The appellant was denied due process of law because the jury was not allowed to hear or to consider contemporaneously with it Rashida Peters two prior statements that the appellant had nothing to do with it.

The law in this State is, and has been, when a part of a document or writing is introduced into evidence, the remainder may be introduced by the other party. (Dukes vs. Smoak) 181 S.C. 182 186 S.E. 780 (1986). The same rule was applicable to conversations (State vs. Jackson) 265 S.C. 278 217 S.E. 2d 794 (1975).

However, the party seeking to bring out the remainder had to wait until cross examination or the presentation of that case to do so. This rule, which is identical to the Federal rule, changes the prior law as to written or recorded

statements. The party seeking to introduce the remainder of a written or recorded statement can now require the remainder to be introduced at the same time the other part of the written or recorded statement is introduced. The rule does not change the order of proof as to the remainder of an unrecorded conversation. The party seeking to bring out the remainder must do so during cross examination or during the party's case.

" 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 a crime" (State vs. Sowell) 85 S.C. 278, 278 67 S.E. 316, 317 (1910).

The State was unable to muster any credible direct evidence of appellants guilt, the State could not produce any physical evidence, direct or circumstantial evidence linking appellant to the shooting. The State produced no firearm, surveillance video, finger prints, or DNA evidence. The States four forensic specialist had no evidence to link appellant to the crime, the State's evidence did not reasonably tent to prove appellant's guilt.

(State vs. Burroughs) 492 S.E. 2d 408 328 S.C. 498 (1997) When ruling on a motion for a directed verdict the trial court is concerned with the existence of the evidence and not its weight.

(State vs. Lyes) 492 S.E. 2d 802 328 S.C. 458 (1997) The trial court should grant a directed verdict in a criminal case if the evidence fails to raise more than a mere suspicion of the accused guilt.

In the case at bar the appellant was constitutionally entitled to a directed verdict.

CONCLUSION

The appellant respectfully submits that this court should order appellant counsel to fully brief this issue and any other issue this court deems just and proper and failure of this court to order appellant counsel to fully brief this issue could result in a complete miscarriage of justice.

s/ Korey Love
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This 10 day of December 2013

Sworn or affirmed before me
this 10 day of Dec, 2013

J. Rankin
Notary Public for South Carolina
My commission expires 12-16-2015

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