

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMAAL RILEY,

APPELLANT

APPELLATE CASE NO. 2012-212930

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
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	7
CONCLUSION	9
PETITION TO BE RELIEVED AS COUNSEL	10

TABLE OF AUTHORITIES

Cases

<i>State v. Adams</i> , 319 S.C. 509, 462 S.E.2d 308 (Ct. App. 1995).....	7
<i>State v. Cooper</i> , 334 S.C. 540, 514 S.E.2d 584 (1999).....	7
<i>State v. Fulcher</i> , 243 S.E.2d 338 (N.C. 1978)	7
<i>State v. Hall</i> , 280 S.C. 74, 310 S.E.2d 429 (1983)	7
<i>State v. Vasquez</i> , 341 S.C. 648, 535 S.E.2d 465 (Ct. App. 2000).....	7

Statutes

S.C. Code Ann. § 16-3-910.....	7
--------------------------------	---

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a directed verdict as to his kidnapping charge where he was allegedly only a look-out for three others robbing a store and where the group had only agreed that the robbers would enter the store with guns and take money, but where in the course of the robbery one of the others decided to hold the store clerk at gunpoint and order her to open the cash register?

STATEMENT OF THE CASE

Late at night on Wednesday, July 21st, 2011, Jermaine Priester showed up at defendant Kevin Brown's house in Barnwell, South Carolina. Tr. 100; Tr. 198-203. Tagging along with Priester were two other codefendants, who Priester named as Kadeem Workman and Appellant Jamaal Riley, a teenaged high school student. Tr. 202-205; Tr. 347. According to Priester, Defendant Brown was being given a "rundown" of a plan to steal money from a local convenience store. Tr. 204. "The original plan was that [defendant Brown] was supposed to go in with the .38 snub nose. [Appellant] Riley was supposed to follow behind him with the BB gun. And [defendant Workman] was supposed to come behind him. And I was supposed to be the lookout" Tr. 205, ll. 6-9.

On foot, the group approached their target—a Texaco gas station. Tr. 205. "[Defendant Workman]. . . said it was too active. So that's when me, [defendant Brown] and [Appellant] Riley . . . suggested that we all go home And then Kadeem was like, no, you know, let's do Jim Bo's." Tr. 205, ll. 19-22. The others acquiesced.

The group walked to Jim Bo's local convenience store and stopped at a grill with a balcony across the street. Tr. 207. Priester said he and Appellant Riley sat off by themselves on the balcony, and they talked about school for two to three hours. Tr. 207-208. Eventually Priester asked to break up the plan, but defendant Workman and defendant Brown corralled the group: "[defendant Brown] got all – he got rowdy and he be like saying, now you ain't going nowhere, you know what I'm saying. You ain't about to snitch on us, this and that. And that's when Kadeem . . . he agreed with him." Tr. 209, ll. 8-13.

According to Priester, Appellant Riley managed to reduce his role in the amended plan from thief to a mere lookout by remaining across the street. Tr. 209. The other

three entered Jim Bo's—defendant Brown first, who pulled a gun on the clerk working away from the checkout counter, Priester second, and defendant Workman third, who hopped the checkout counter to open the cash register. Tr. 210-211. Defendant Workman yelled that he could not open it, so Defendant Brown ordered the clerk behind the counter to open it for him. Tr. 211. Defendant Workman filled up a bag with cash from the register, and the three took off out of the front entrance. Tr. 211-212. Priester said by this time, Appellant Riley had already disappeared from the scene, running “way up ahead.” Tr. 212, l. 20 – Tr. 213, l. 1.

The group allegedly met up later to share the spoils. Tr. 213-214. Any enjoyment did not last long, however, as the State made arrests for the crime a few days thereafter. *See* Tr. 169. For his alleged fleeting role in serving as a lookout from across the street, the State indicted Appellant Riley on one count of armed robbery and one count of conspiracy. R ___. To his further dismay, the State also indicted Appellant Riley on a third count: kidnapping. R ___.

Appellant Riley proceeded to a jury trial on September 4, 5, and 6, 2012 before the Honorable Clifton Newman to assert his innocence. Tr. 1. He was represented by Robert J. Harte, and the State was represented by Susanna M. Ringler and Jeffrey Alan Slocum. *Id.* In addition to Jermaine Priester, the State called the store clerk, Dona Corell, to testify. She gave the only other account of what happened inside Jim Bo's during the robbery, stating that she was stocking a drink cooler when she heard the door chime and looked up to see a gun pointed at her face. Tr. 111. Ms. Corell “was told not to look at the man that was holding the gun and not to look at the other people, to keep [her] eyes down and do what [she] was told.” Tr. 111, ll. 18-20. She said another

individual was standing at the door and another was already behind the register but could not open it. Tr. 112. "I was then instructed to go back behind the counter and open the register for him." Tr. 112, ll. 17-18. Specifically, "they — he told [her] to get behind the counter and open the register and open the register and then to get out of their way. And so that's exactly what [she] did." Tr. 113, ll. 10-12. She stated the individuals then took the money from the register along with a bank bag and cigarettes before running off. Tr. 113-114.

At the close of the State's case, Appellant Riley moved, inter alia, for a directed verdict on the kidnapping charge, Tr. 246, and Judge Newman denied the motion as to all matters, Tr. 261. All of the defendants then rested, and the case was sent to the jury. Tr. 266. The jury found Appellant Riley guilty on all three counts. Tr. 328. Appellant Riley then moved for a judgment for a new trial notwithstanding the verdict, which Judge Newman denied. Tr. 332-333. Judge Newman then sentenced Appellant Riley to concurrent sentences of ten years for armed robbery, five years for criminal conspiracy, and ten years for kidnapping. Tr. 357.

Appellant Riley served on the State his notice of appeal on September 13, 2012.

ARGUMENT

Standard of Review

“[I]n reviewing the denial of a directed verdict motion, this Court must view the evidence in the light most favorable to the State and affirm ‘if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused’” *State v. Vasquez*, 341 S.C. 648, 652, 535 S.E.2d 465, 466-67 (Ct. App. 2000) (quoting *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999)).

Discussion

This Court should reverse the trial court’s denial of Appellant’s motion for a directed verdict as to his kidnapping charge because the state provided no evidence that the kidnapping by defendant Brown was anything more than his independent act in the course of the robbery for which Appellant could not be responsible. South Carolina code section 16-3-910 makes it a crime to “unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law” If a defendant restrains a victim incidental to but independent of another crime, the restraint need not be substantial in itself to constitute kidnapping. *State v. Hall*, 280 S.C. 74, 77, 310 S.E.2d 429, 431 (1983) (citing *State v. Fulcher*, 243 S.E.2d 338 (N.C. 1978).

“The acts and declarations of any conspirator made during the pendency of the conspiracy, and in furtherance thereof, are deemed acts and declarations of every other conspirator.” *State v. Adams*, 319 S.C. 509, 511, 462 S.E.2d 308, 309 (Ct. App. 1995). However, “conspirators are not responsible for the independent acts of any one conspirator.” *Id.*

In this case, nothing in Jermaine Priester's testimony shows that the seizure of the store clerk was anything more than Defendant Brown's independent act. He testified that the group's original plan was merely for three of the four to enter a convenience store with weapons and for the last man to serve as a lookout. He never testified or otherwise indicated that the group contemplated anything beyond a grab-and-go theft.

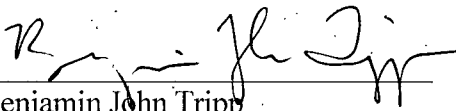
Indeed, only after defendant Workman took command did three of the individuals acquiesce to entering Jim Bo's. Priester described how defendant Brown then pulled a gun on the clerk and ordered her to stay put without ever testifying that the others had contemplated holding anyone in the store at gunpoint or using the guns for more than deterring interference with their taking the money from the register. Additionally, when defendant Brown ordered the clerk behind the counter to open the register, he did so without any request or command from the others. Defendant Workman had merely exclaimed that he was unable open the register. All the while, Appellant Riley sat across the street with no indication given that he was expecting more than a grab-and-go theft.

Thus, by Priester's account, defendant Brown independently held the clerk at gunpoint and ordered her to move to the cash register. Further, the State presented no evidence that the others foresaw his actions. Priester gave the only testimony describing the conferences between the individuals before the robbery. The only other witness providing an account of the robbery itself was the store clerk, who testified only that she was held at gunpoint and that she reacted to the gunman's demands. Therefore, no evidence in the record supported the trial court's ruling that Appellant could foresee and be responsible for defendant Brown's independent, spur of the moment decision to kidnap the store clerk.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's denial of Appellant's motion for a directed verdict with respect to the kidnapping charge against him.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of June, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Clifton Newman, Circuit Court Judge

RECEIVED

JUN 28 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMAAL RILEY,

APPELLANT

APPELLATE CASE NO. 2012-212930

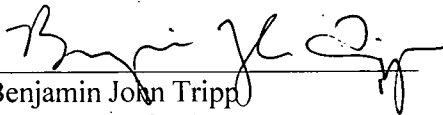
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamaal Riley 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 Clifton Newman, which was held on September 6, 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 Jamaal Riley.

Respectfully submitted,


Benjamin John Tripp

Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of June, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Clifton Newman, Circuit Court Judge

RECEIVED

JUN 28 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JAMAAL RILEY,

APPELLANT

APPELLATE CASE NO. 2012-212930

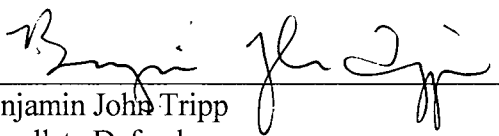
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (September 4 – 6, 2012)

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

June 28th, 2013



Benjamin John Tripp
Appellate Defender

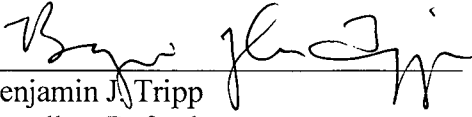
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

June 28, 2013


Benjamin J. Tripp
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

JUN 28 2013

SC COURT OF APPEALS

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 28 2013

Appeal from Barnwell County
Clifton Newman, Circuit Court Judge

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

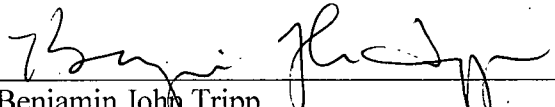
V.

JAMAAL RILEY,

APPELLANT

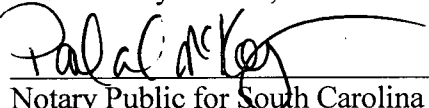
CERTIFICATE OF SERVICE

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 Salley W. Elliott, 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 Jamaal Riley, #352269 at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 28th day of June, 2013.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of June, 2013.

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