

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM YORK COUNTY  
Court Of Common Pleas

Thomas Russo, Circuit Court Judge

Case No: 2012-212021

State Of South Carolina.....Respondant,  
v.  
O'Bryan Whitlock.....Appellant.

APPELLANT'S ISSUES HE BELIEVES SHOULD BE RAISED ON APPEAL PURSUANT  
TO ANDER'S v. CALIFORNIA

O'Bryan Whitlock  
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Appellant Pro-Se filing

Other:

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**RECEIVED**  
JUN 28 2013  
SC Court of Appeals

APPELLANT'S ISSUES HE BELIEVES SHOULD BE RAISED ON APPEAL PURSUANT TO  
ANDER'S v. CALIFORNIA

Appellant received Notice on about May 27, 2013 from this the South Carolina Court of Appeals stating Appellant had (45) days in which to make a reply to Appellant attorney's Lanelle C. Duran's Ander's Brief.

See Attorney Duran's (Appellant) Ander's Brief.

Appellant specifically raises two issues as follows,

I. The SCC Ann. 44-48-100 trial Court erred by not granting defense attorney's motion for Direct-verdict, when the State nor Court did not specifically name a disorder that Appellant is claimed to suffer which would make Appellant commit acts of sexual violence in the future.

II. The South Carolina Court Of Appeals is in error for not requiring Appellant's attorney's Ander's Brief, pursuant to Anders's v. California to contain an exacting statement as to why in Appellant's defense attorney's opinion Appellant's trial has no issues of legal merit for appeal.

(1) see Tr 184 at ln 17-18 states, the Court: "the one under section A, that it doesn't specifically name the disorder"

at ln 18 "it just says the Respondent is committed to the Dept. of Mental Health for long term control, care and treatment."

a) Appellant argues that the trial Court error-ed and abused it's discretion by not finding nor naming a specific diagnosable medical disorder pursuant to the DMS-IV Appellant is alleged to suffer to

qualify as a SCC Ann. 44-48-30 Mental Abnormality or Personality Disorder during trial or to present for the juries determination or in the Court's Order of civil commitment

And by not naming a specific disorder during trial or in the Courts Order Of Civil Commitment fails to meet the DMS-IV's (V) criteria to qualify as a medical certainty as given in testimony by the States expert, making the States case and witness, a Dr. Leonard Mulbry testimony with out professional / forensic legal merit.

(2) Appellant argues the Court erred and abused it's discretion by not granting a Directed Verdict when the State prosecution failed to present witnesses / evidence naming a specific diagnosisable medical disorder pursuant to the DMS-IV Appellant is alleged to suffer to qualify

as a SCC Ann. 44-48-30 Mental Abnormality or Personality Disorder during trial,

a) The Court's error basically is in using the SCC Ann. 44-48-30 to qualify itself as a presto medical meaning, against the South Carolina Legislatures intent defining SCC Ann. 44-48-30 "Mental Abnormality or Personality Disorder" as a legal term,

No where in the DMS-IV or DMS-V does the term "Mental Abnormality or Personality Disorder" meet or qualify by the general profession as a criteria for a medical term or diagnosis.

a) Dr. Mulbry testimony was qualified by the Court as a medical forensic expert, who was not qualified by the Court as a legal expert in or of himself to say what is or what is not a SCC Ann. 44-48-30

Mental Abnormality or Personality Disorder with out a named specific DMS-IV diagnosis.

In turn the Court by failing to name a specific medical term to which Appellant is claimed to suffer violates the United States mandated Kansas vs. Micheal Crane requirements to find Appellant suffers a future dangerousness which would make him sexually re-offend.

SCC Ann. 44-48-30 is not defined and was not intended by the South Carolina Legislature to be a presumption of dangerousness.

For this Court of Appeals to accept "Mental Abnormality or Personality Disorder", as reason to civil commit this Appellant, lowered the States burden of proof and in turn unconstitutionally raised Appellant's burden of proof denying Appellant a fair trial for the record is bare of a specific diagnosis which in turn wold qualify as a mental abnormality or personality disorder.

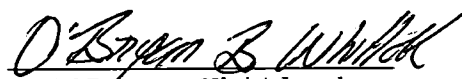
Conclusion: This Court should vacate the order of civil commitment and release Appellant for the Sates failure to present evidence of any future dangerousness of re-offending.

What evidence the State did present merely showed Appellant was a bad behaving child in the past, causing the jury to make speculative enferances.

This is re-enforced from the testimony of defense expert Dr. Jeffery Musick, Tr 112-118, and Re-direct 129-134.

Submitted by,

June , 2013

  
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PROOF OF SERVICE

I certify that I have served the "APPELLANT'S ISSUES HE BELIEVES SHOULD BE RAISED ON APPEAL PURSUANT TO ANDER'S v. CALIFORNIA", on Alan Wilson, by depositing a copy of it in the United States Mail, postage pre-paid, addressed to South Carolina Attorney Generals Office, PO Box 11549, Columbia, SC 29211 on this the below referenced date.

South Carolina Attorney General's Office  
Alan Wilson  
attn: D.R.J. Shupe  
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June , 2013

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Appellant Pro-Se filing

cc/ SC Court Of Appeal  
Appellant Defense  
Attorney Lanelle C. Durant

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