

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF ALPHONSO
HAYNESWORTH,

APPELLANT

APPELLATE CASE NO. 2013-0004869

AMENDED ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a directed verdict when the state did not prove beyond a reasonable doubt that Appellant was likely to reoffend because the only qualifying offense pursuant to the Sexually Violent Predator Act was a criminal sexual conduct third degree that occurred seventeen years earlier in 1996?

STATEMENT OF THE CASE

In March 1996, the Sumter County Grand Jury indicted Alfonso Joseph Haynesworth on the charges of kidnapping; criminal sexual conduct (CSC) first degree; attempted murder; assault and battery with intent to kill (ABWIK). On July 31, 1996, Haynesworth appeared before the Honorable Thomas W. Cooper, Jr. and entered a guilty plea to the lesser charges of CSC third degree and assault and battery of a high and aggravated nature (ABHAN). Haynesworth was represented by Jack Howle. Judge Cooper sentenced Haynesworth to ten years on the CSC third degree suspended to time served and five years probation; and to ten years on the ABHAN suspended to time served and five years probation. State's Exhibit One.

In 1998, Appellant Haynesworth's probation was revoked for six years due to various violations of probation. State's Exhibit One. In 2001, prior to his release from SCDC, Haynesworth was reviewed by the Multidisciplinary Team of SCDC in July 2001, but his case was dismissed at the probable cause hearing on September 27, 2001. State's Petition:

On December 13, 2005, Haynesworth was charged with CSC with a minor Second Degree but pled guilty to the lesser charge of ABHAN. He was sentenced to time served and three years probation. State's Petition.

In July 2006, Haynesworth was charged with criminal domestic violence (CDC) third with an incident involving his wife. In September 2006, Judge Clifton Newman sentenced Haynesworth to SCDC for ten years based on the revocation of the prior probation and the CDV charge. State's Petition.

In October 2011, Appellant's case was reviewed again by the Multidisciplinary Team who found probable cause that Appellant met the definition of a sexually violent predator pursuant to the SVP Act. State's Petition. The court appointed psychologist, Dr. Kim Harrison, found that Appellant Haynesworth had two mental abnormalities and met the criteria to be a sexually violent predator. R. 61, ll. 13 – R. 62, ll. 25.

On February 4, 2013, Haynesworth proceeded to trial before the Honorable Jeffrey Young and a jury. Haynesworth was represented by Charles Brooks, III, and the state was represented by Lloyd Flores. Judge Young declared a mistrial after the verdict a juror failed to affirm the verdict form. February 4, 2013, R. 1-3; R. 4, ll. 1 – R. 5, ll. 14.

On March 4, 2013, Haynesworth again proceeded to trial before Judge Jeffrey Young and a jury. Haynesworth was again represented by Charles Brooks, III, and the state was represented by Lloyd Flores. The jury found that Haynesworth met the criteria to be a sexually violent predator pursuant to the SVP Act. R. 117, ll. 1 – 20. Judge Young signed an order committing Haynesworth to the SVP Program within the Department of Mental Health (DMH) for long term control, care, and treatment. Haynesworth's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion for a directed verdict when the state did not prove beyond a reasonable doubt that Appellant was likely to reoffend because the only qualifying offense pursuant to the Sexually Violent Predator Act was a criminal sexual conduct third degree that occurred seventeen years earlier in 1996.

Dr. Kimberly Harrison, chief psychologist with the Department of Mental Health, the Forensic Evaluation Service, testified as an expert for the state as she was appointed by the court to conduct an evaluation of Haynesworth. R. 37, ll. 1 – 23; R. 41, ll. 1 – 4. she described the process she used to conduct the evaluation which included an interview with Haynesworth, and a review of numerous records. R. 41, ll. 5 – R. 45, ll. 18.

Dr. Harrison described the sexual offenses that Haynesworth allegedly committed. Only one of these offenses was the qualifying offense under the SVP Act. In 1996, he was indicted for kidnapping, criminal sexual conduct first degree (CSC), attempted murder, and assault and battery with intent to kill. He pled guilty to the lesser charges of CSC third degree and assault and battery of a high and aggravated nature (ABHAN). He was sentenced to ten years on each suspended to time served with five years probation. R. 47, ll. 8 – R. 48, ll. 12; R. 49, ll. 2 – 7; Plaintiff's Exhibit 1.

Dr. Harrison presented the details of the offenses. In 1996, Haynesworth offered a twenty-two year old woman a ride which she accepted. He choked her and held her against her will and performed sexual intercourse with her. The woman escaped and ran to a nearby house. R. 48, ll. 13 – R. 49, ll. 13.

Dr. Harrison then described other sexual offenses for which Haynesworth had been arrested but not convicted. In 1988 when he was eighteen, he was accused of sexually

assaulting his fifteen year old cousin. He was charged with statutory rape but the charge was dismissed when the girl did not want to testify. Haynesworth denied committing the offense because he said the girl's mother was trying to get back at him. R. 49, ll. 17 – R. 50, ll. 16.

Also in 1988, he was convicted of committing simple assault on a nineteen year old prostitute when he hit her after she wanted to see the money first. R. 50, ll. 19 – R. 51, ll. 3. In another 1998 incident in Washington State, he was arrested for physically assaulting a woman when he offered a woman drugs for sex and she refused. That charge was dismissed. R. 51, ll. 4 – 16.

In 1989 in Sumter County, he was charged with sexually assaulting a woman in the woods near a grocery store by forcing her to have sexual intercourse. He was charged with CSC first degree, but the charge was dismissed. R. 51, ll. 17 – R. 52, ll. 8.

In 2003 in Sumter, he was charged with CSC with a minor second degree when he was accused of sexually assaulting his thirteen year old stepdaughter. He pled guilty to the lesser charge of ABHAN. Haynesworth denied the incident, and said the girl's mother just wanted money from him. He was charged with criminal domestic violence (CDV) against the girl's mother when he went to the residence and threatened to shoot the mother. R. 54, ll. 2 – 19.

Dr. Harrison described the "Static-99R" which was the tool she used to estimate Haynesworth's risk of reoffending. Haynesworth's score, when compared with other sex offenders, was in the high range. This meant that of the sex offenders who had Haynesworth's score, twenty-five percent of them committed another sex offense over five years. R. 58, ll. 1 – ll. 24.

Dr. Harrison diagnosed Haynesworth with two mental disorders. The first was “paraphilia, not otherwise specified.” This was based on Haynesworth being aroused by forcing women to have sex with him. R. 61, ll. 13 – R. 62, ll. 18.

The second mental disorder was antisocial personality disorder. R. 62, ll. 19 – R. 63, ll. 24. It was her opinion that Haynesworth was in the group of “extremely dangerous sex offenders who were likely to reoffend in the future.” It was her opinion that he met the criteria to be found a sexually violent predator. R. 67, ll. 1 – 10.

On cross examination, Dr. Harrison admitted that the only conviction that Haynesworth had was the 1996 conviction that was the qualifying offense that triggered the SVP statute. That offense was seventeen years ago. She also admitted that the majority of the other offenses were dismissed. Dr. Harrison said it was possible that the other offenses did not actually happen. R. 68, ll. 11 – R. 70, ll. 23.

At the close of the state’s case, defense counsel made a motion for a directed verdict (DV) based on the state not putting forth sufficient evidence that Haynesworth was a sexually violent predator. The judge denied the motion. R. 81, ll. 24 – R. 82, ll. 22.

Haynesworth testified on his own behalf. In 1996, he said he took his girlfriend’s two sons, ages 15 and 17, out to pick up a prostitute. However, he paid for that crime. He did not know that seventeen years later, he would be in court facing a life sentence for the same crime. R. 83, ll. 17 – R. 86, ll. 25. The reports of the offenses were fabricated because he filed a lawsuit against the Department of Corrections. R. 84, ll. 17 – R. 85, ll. 21. The SVP statute was created in 1998, and he was “grandfathered” in because his offense was in 1996. R. 88, ll. 21 – R. 89, ll. 17.

Defense counsel moved for a directed verdict again at the close of the respondent's case based on the same grounds as before. The judge denied the motion. R. 94, ll. 4 – 14.

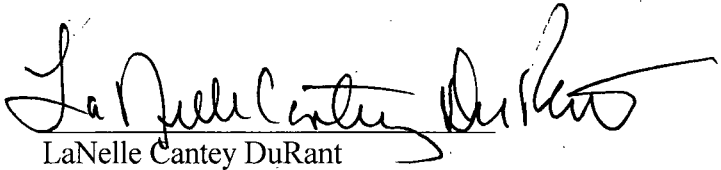
On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error. State v. Arnold, *supra*. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The Sexually Violent Predator Act provides that a person must have a conviction for a sexually violent offense, and must have a mental abnormality that requires long term control, care, and treatment to prevent the person from committing future sexually violent offenses. The only qualifying conviction pursuant to the SVP Act was seventeen years old. It was a CSC third degree. This was not sufficient evidence, and the trial judge should have granted the directed verdict.

CONCLUSION

Based on the above, the commitment order of the trial court should be vacated, and Haynesworth should be released.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of February, 2014.

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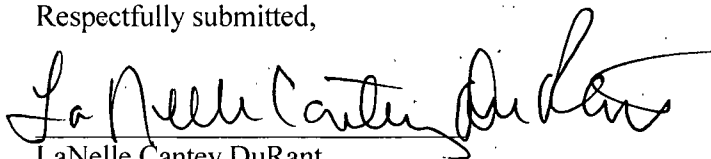
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alphonso Haynesworth states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on March 4, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Alphonso Haynesworth.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of February, 2014.

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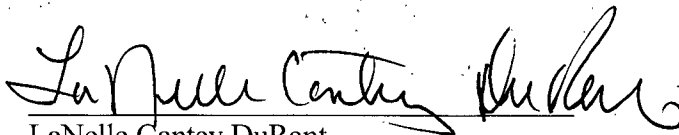
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) March 4, 2013 Trial Transcript.
- (3) February 4, 2013 Trial transcript Pages 1-3, and pages 119 – 122.
- (4) Order of Commitment
- (5) State's Petition Pursuant to the SVP Act*

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

February 5th, 2014


LaNelle Cantey DuRant
Appellate Defender

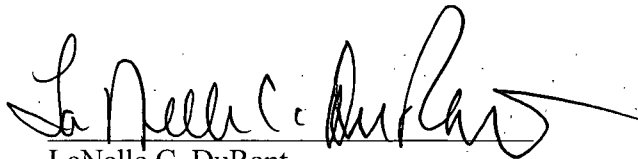
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Attorney for Appellant

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."

February 5th, 2014



LaNelle C. DuRant

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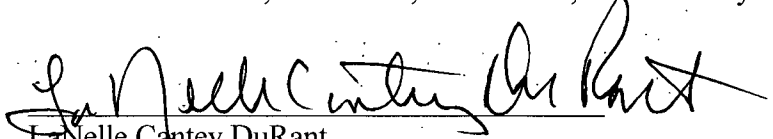
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Amended Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Amended Anders Brief of Appellant and Designation of Matter have been served on Mr. Alphonso Haynesworth, at Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 5th day of February, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of February, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.