

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

JUN 13 2014

SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT OF
BERNARD GROOMS,

APPELLANT

APPELLATE CASE NO. 2013-001626

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in granting the state's motion that Appellant Grooms not be allowed to question the expert, Dr. Gehle, about the treatment program at the Sexually Violent Predator Program although the statute required that treatment be provided?

2. Did the trial court err in allowing the state to call Assistant Solicitor Margaret Bodman, who prosecuted the last conviction of Appellant Grooms in 2011 which was not a sexually violent offense and was not considered by the expert in rendering her opinion, to testify as to the reason she allowed Grooms to plead to assault and battery which was a lesser included offense of his original charge of criminal sexual conduct?

STATEMENT OF THE CASE

In 1981, Bernard Grooms was indicted for the charge of criminal sexual conduct first degree (CSC) in Richland County. He appeared before the Honorable William Howell on August 13, 1981 and entered a guilty plea to the lesser included offense of committing a lewd act on a minor. He was sentenced to three years. R. 84, ll. 24 – R. 86, ll. 25; State's Exhibit No. 1. In 1990, Grooms appeared before the Honorable Carol Connor and entered a guilty plea to CSC first degree and received a sentence of twenty-one years. R. 87, ll. 1- R. 88, ll. 21; R. 282, State's Exhibit No. 2.

Prior to his release in March 2000, Grooms was reviewed by the Multidisciplinary Team and the Prosecutor's Review Committee and both found probable cause that he was a sexually violent predator pursuant to S.C. Code Section 44-48-10 *et seq.* A probable cause hearing was held but the circuit court judge found there was not sufficient probable cause that Grooms was a sexually violent predator under the law, and he was released. R. 174, ll. 14 – R. 175, ll. 11; R. 297, State's Petition 5(f).

In 2010, Grooms was charged with CSC second degree but the charge was dismissed because the woman did not cooperate with the police. In 2011, he was charged with CSC first degree, kidnapping and strong armed robbery. He was allowed to plead to the lesser included offense of assault and battery, and received a sentence of four years. R. 88, ll. 22 – R. 89, ll. 22; R. 287, State's Exhibit No. 3.

In 2012, he was reviewed again by the Multidisciplinary Team and the Prosecutor's Review Committee and probable cause was found that he met the definition of a sexually violent predator. Probable cause was found throughout the evaluation process. Dr. Marie

Gehle, chief psychologist in the forensic evaluation service at the Department of Mental health, was appointed by the court to conduct a mental evaluation of Grooms. R. 70, ll. 16 – R. 71, ll. 17; R. 75, ll. 12 – 20. Dr. Gehle found that Grooms did have a mental abnormality pursuant to the SVP Act at S.C. Code Sect. 44-48-10 *et seq.*

On July 29, 2013, Grooms proceeded to trial before the Honorable Diane S. Goodstein and a jury. Grooms was represented by David E. Belding, and the state was represented by Nicole T. Wetherton. The jury found that Grooms was a sexually violent predator. Judge Goodstein issued an order committing Grooms to the Sexually Violent Predator Program in the Department of Mental Health. R. 278, Order of Commitment. Grooms' attorney filed a notice of appeal. This appeal follows.

STATEMENT OF THE FACTS

Bernard Grooms was charged in 1981 of CSC first degree when he and a co-defendant followed an underage girl down the street, grabbed her and pulled her into the woods where both of them raped her, and forced her to perform oral sex on them. Grooms pled guilty to the lesser offense of committing a lewd act on a minor. R. 84, ll. 23 – R. 86, ll. 25; R. 295, State's petition 5(b).

In 1990, Grooms followed a seventeen year old girl around three o'clock in the morning who was walking to her grandmother's house. Grooms grabbed her, forced her into his car holding a knife to her throat, and stopped in a wooded area. He pulled a gun then and forced her to have intercourse with him. He then drove her to her grandmother's house. Grooms called her later and arranged to meet her at Pinehurst Park. When they did, the police arrested him and charged him with CSC first degree. He pled guilty and received a twenty year sentence. R. 87, ll. 1 – R. 88, ll. 21; R. 294, State's Petition 5(a).

Dr. Marie Gehle, chief psychologist with the forensic evaluation unit at the Department of Mental Health, was court appointed to evaluate Grooms. R. 70, ll. 16 – R. 71, ll. 25; R. 75, ll. 12 – 15. She diagnosed Grooms as having the mental abnormality of paraphilia not otherwise specified which meant he had a pattern of deviant sexual arousal. He was aroused by having sex with women who did not consent to it. R. 99, ll. 1 – 25. She also diagnosed him as having a personality disorder which was responding to others in a maladaptive way that caused distress or impairment to others. R. 99, ll. 1 – R. 101, ll. 15.

In Dr. Gehle's opinion, Grooms had a high risk of reoffending. Based on the risk assessment tool called the Static 99R, 30% of the people with the same score as Grooms reoffended in five years, and 39.7% reoffended in ten years. Grooms was one of the extremely dangerous offenders in Dr. Gehle's opinion. R. 80, ll. 6 – R. 82, ll. 25.

Dr. Gehle relied on the two convictions from 1981 and 1990 in making her diagnosis. R. 174, ll. 5-8. She discussed the charge that occurred in 2011 for CSC first degree but he pled guilty to assault and battery which was not a sexually violent offense. In that incident, Grooms grabbed a woman walking down the street and dragged her to an abandoned house. He beat her some, raped her, and held her there until the next morning. When he left, the woman went to the hospital. While she was at the hospital, she saw Grooms at the hospital also. She told the police who arrested him. R. 91, ll. 11 – R. 92, ll. 3. Dr. Gehle talked to the victim in that case who described basically a CSC offense. R. 170, ll. 18 - R. 171, ll. 1.

On cross examination, Grooms' attorney asked the doctor why wouldn't the state prosecute Grooms for that horrible offense. He asked her a second time, and she responded that it would be pure speculation on her part as to why the state did not prosecute him for those crimes. The doctor did say that after talking to the victim, the doctor believed that the victim would not be a good witness and she was not very cooperative. R. 171, ll. 2 – 25.

Grooms testified on his behalf that he was fifth-seven years old and had been a painter and roofer. R. 212, ll. 18 – R. 213, ll. 25. He admitted the convictions but explained that in 1981, he was not guilty of rape and found out later the girl was a

minor. In 1990, he guessed he was guilty because he did not stop when the girl said no. In 2011, he entered an Alford plea because he did not commit a crime. That incident was a case of sex for drugs because the woman was a prostitute. When he ran out of drugs, he left her there. He went to the hospital because he was having trouble breathing due to his emphysema. When the state served him with papers trying to sentence him to life without parole (LWOP) based on his prior convictions, he took the plea. He did not want a jury trial. R. 215, ll. 1 – R. 224, ll. 21.

In a pretrial motion, the state asked the court to prohibit Grooms' attorney from asking any questions about the treatment that Grooms would receive in the SVP Program. The state argued that it was not relevant. R. 4, ll. 10 – R. 7, ll. 1.

Grooms' attorney argued that the SVP statute has the word treatment in it at 44-48-30. Therefore, treatment was an issue. The judge would be charging it, and everyone would be wondering about it. Counsel objected to the motion. R. 7, ll. 4 – R. 8, ll. 18.

The judge said counsel could ask if there was treatment, but could not go into it any further because it was irrelevant to the issues the jury must determine. R. 8, ll. 19 – R. 9, ll. 13.

In another pretrial motion, Grooms' attorney argued to the judge that it was inappropriate for the state to have the assistant solicitor, Margaret Bodman, who prosecuted the 2011 assault and battery, testify as a witness for the state as to the reason the state allowed Grooms to plead guilty to the A&B. The state argued that Bodman would be a reply witness to Grooms testifying because there was a prior trial that ended in a mistrial because there was an indication that the case was not a

good one and that was why it pled down to A&B from a CSC. The judge ruled that in the event that the door was opened, the judge would take Ms. Bodman's testimony outside the presence of the jury to make sure her testimony did not go outside the scope of the door that was opened. Grooms' attorney agreed to that resolution. R. 17, ll. 12 – R. 20, ll. 12.

After Dr. Gehle's cross examination when Grooms' attorney asked the doctor why the state did not prosecute Grooms for a CSC in 2011, the state told the court that the door had been opened and she was going to call Ms. Bodman to testify. Grooms' attorney argued that all he did was ask Dr. Gehle if got any information about what happened in that crime. The judge told him that he opened the door when he asked her why the state did not prosecute this very serious crime. Grooms' attorney said: "All right." R. 189, ll. 20 – R. 193, ll. 1.

Margaret Bodman testified that she was the assistant solicitor responsible for prosecuting sexual assault cases, and she did prosecute Grooms' 2011 A&B case. R. 194, ll. 1 – R. 195, ll. 11. Grooms' DNA was found on the victim. He was initially charged with CSC and she served him with notice that he was eligible for LWOP. She agreed to the plea to the lesser offense because she was concerned about the victim having to testify about the horrors of the rape. She also considered the fact that there would be a commitment hearing for the sexually violent predator program and she wanted to provide the tools to the attorney general's office to do something else with this case. She did believe she had sufficient proof to get a conviction. R. 197, ll. 2 – R. 202, ll. 11.

ARGUMENT

1.

The trial court erred in granting the state's motion that Appellant Grooms not be allowed to question the expert, Dr. Gehle, about the treatment program at the Sexually Violent Predator Program although the statute required that treatment be provided.

South Carolina Code Section 44-48-20 provides:

The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long-term control, care and treatment. The General Assembly further finds that the likelihood these sexually violent predators will engage in repeated acts of sexual violence if not treated for their mental conditions is significant....

The South Carolina Constitution provides:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or both.

S.C. Const. Art. 1, Sec. 14.

The word treatment is used in the very first part of the Sexually Violent Predator Act at Section 44-48-20. The statute makes it clear that people admitted to the program must receive treatment for their mental conditions. The jury had a right to know what the treatment was as part of their finding that he was a sexually violent predator if they were to meet the statute.

Grooms was prevented from presenting a complete defense when he was not allowed to show the jury the treatment he would receive. The argument exists that the state did not want the jury to know how limited the treatment might be for a person with a serious and dangerous mental illness.

ARGUMENT

2.

The trial court erred in allowing the state to call Assistant Solicitor Margaret Bodman, who prosecuted the last conviction of Appellant Grooms in 2011 which was not a sexually violent offense and was not considered by the expert in rendering her opinion, to testify as to the reason she allowed Grooms to plead to assault and battery which was a lesser included offense of his original charge of criminal sexual conduct.

South Carolina Code Section 44-48-30(1) provides that a sexually violent predator means a person who (a) who has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. Section 44-48-30(2) provides a list of sexually violent offenses. Assault and battery is not listed as a sexually violent offense.

Rule 401, SCRE, provides that relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

The testimony of Ms. Bodman, the assistant solicitor who prosecuted Grooms for the A&B in 2011, was not relevant to the determination of whether grooms met the definition of a sexually violent predator pursuant to the SVP Act. The expert, Dr. Gehle, had already named the two convictions that she relied on for determining that he had been convicted of a

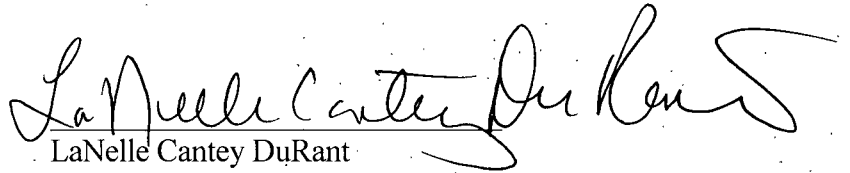
sexually violent offense which were the lewd act from 1981 and the CSC from 1990. R. 174, ll. 5-8; R. 84, ll. 23- R. 86, ll. 25; R. 87, ll. 1 – R. 88, ll. 21.

It was prejudicial to Grooms when Ms. Bodman testified that she did not prosecute the original charge of CSC because she thought he would be considered for the sexually violent predator program. R. 197, ll. 2 – R. 207, ll. 11. This was basically her giving her opinion that he was a sexually violent predator. This was prejudicial to Grooms and should not have been allowed.

CONCLUSION

Based on the above, the order of the trial court commitment Grooms to the Sexually Violent Predator Program should be vacated, and Grooms released.

Respectfully submitted,

A handwritten signature in cursive script that reads "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name and title.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of June, 2014.

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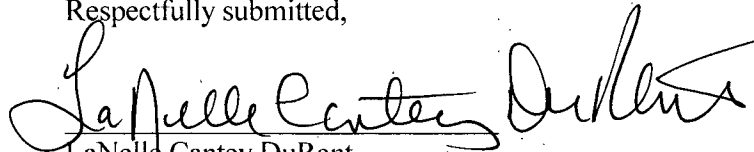
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bernard Grooms 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 Diane Schafer Goodstein, which was held on July 30, 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 Bernard Grooms.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of June, 2014.

STATE OF SOUTH CAROLINA

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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) Trial Transcript July 29, 2013
- (2) Order of Commitment
- (3) State's Exhibits 1-3
- (4) Respondent's Exhibit 1
- (5) Court's Exhibit 2-4
- (6) State's Petition 1-8

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

June 13th, 2014

Handwritten Signature: LaNelle Cantey DuRant
LaNelle Cantey DuRant
Appellate Defender

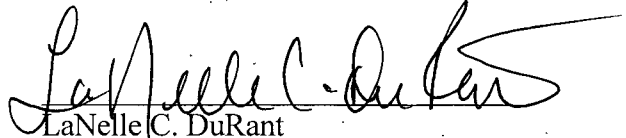
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 13th, 2014


LaNelle C. DuRant
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

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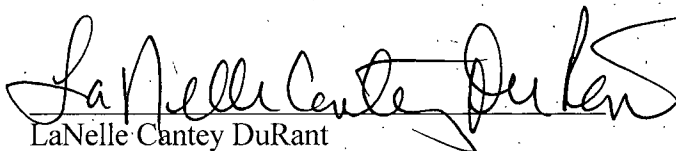
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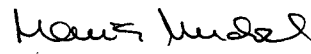
CERTIFICATE OF SERVICE

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 Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Mr. Bernard Groom, Sexual Violent Predator Program, 7901 Farrow Road, Columbia, Sc 29203, this 13th day of June, 2014.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2014.



Notary Public for South Carolina
My Commission Expires: July 3, 2023.