

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Hampton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE GREEN,

APPELLANT

APPELLATE CASE NO. 2014-001325

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL11

TABLE OF AUTHORITIES

Cases

State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004)..... 8

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004)..... 8

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)..... 8

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009)..... 8

State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012) 8

State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006)..... 8

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) 8

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Green's directed verdict motions on the burglary second degree and the arson third degree when the girlfriend/victim testified that he had permission to be in her apartment the day of the fire and the arson expert found no accelerants at the fire?

STATEMENT OF THE CASE

On February 3, 2014, the Hampton County Grand Jury indicted Andre Green on the charges of burglary second degree; malicious injury to personal property (MIPP) three counts; malicious injury to real property; and arson third degree. On June 11-13, 2014, Green proceeded to trial before the Honorable Perry M. Buckner and a jury. Green was represented by Stephanie Smart-Gittings, and the state was represented by Kelvin Wright. R.

1. The jury returned a verdict of guilty as indicted on these charges. R. 296, ll. 12 – R. 297, ll. 25. Judge Buckner sentenced Green to fifteen years on the arson third degree; ten years on the burglary second degree; five years on each of the MIPP over \$2000; and thirty days on the MIPP less than \$2000; and ten years on the malicious injury to real property. The five years on the MIPP over \$2000 on Indictment 2013-GS-25-00307 was to run consecutively to the other sentences which all ran concurrent for a total period of incarceration of twenty years. R. 305, ll. 3 – R. 306, ll. 24. Green's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant Green's directed verdict motions on the burglary second degree and the arson third degree when the girlfriend/victim testified that he had permission to be in her apartment the day of the fire and the arson expert found no accelerants at the fire.

Monica Haynes and Appellant Andre Green were dating during the summer of 2013. Monica lived in Varnville Housing Apartments with her six year old daughter. Green would spend the night sometimes. He did not have a key as she had the only key. The only way to lock the door was from the outside so she kept her key. R. 113, ll. 19 – R. 120, ll. 12.

Green had spent Thursday night with her the night before the fire. On Friday morning, August 2, 2013, Monica left for work about 8:30, and left Green in her apartment. He had permission to be in her apartment that day. R. 119, ll. 1 – 4. When she left work around three that afternoon, Green had called and wanted her to pick him up at a friend's house and take him to Ridgeland. She did not go into her apartment but went to get him. R. 118, ll. 9 – R. 120, ll. 25.

On the way to Ridgeland, she and Green got into an argument because he thought she was "playing" him. He hit her in the face. She saw her mother driving behind them. Monica stopped and went to her mother and got her mother's cell phone. She gave it to Green to use and told him to get out which he did. Monica then drove away and left him on the road. R. 121, ll. 1 – R. 123, ll. 24.

Monica went to the police and asked for help in retrieving her mother's phone. Green was gone when she and the police went back to look for him. The police said there was nothing to do but call 911. R. 124, ll. 11 – R. 127, ll. 24.

Between three- thirty and four on the afternoon of August 2, 2013, Eugene Jenkins, the Managing Administrator of Varnville Housing, received a message that there was a fire in H Building. He called 911 and went to the fire. The fire had started in Apartment 30 which was Monica Haynes' apartment. R. 74, ll. 1 – R. 76, ll. 25.

When Chief Tyrone Smith saw the fire, he realized that the entire building was engulfed. He noticed a broken window with a blood stain on the window. He called SLED and requested the arson team. R. 139, ll. 1 – R. 140, ll. 25.

Brian Wright was assigned to the Arson Division of SLED. He managed a K-9 black Labrador Retriever who was an accelerant dog. He investigated the scene of the fire with the K-9 to look for hydrocarbons or petroleum based products. The dog alerted at the bottom of the window in the back bedroom which was most heavily damaged. R. 155, ll. 12 – R. 158, ll. 16; R. 167, ll. 1 – 25. Wright took a sample from the floor to be analyzed. He was not trained nor qualified to give his opinion as to the location where the fire started. R. 164, ll. 1 – R. 166, ll. 25. He did not find a gas can. R. 168, ll. 16 – R. 169, ll. 25.

SLED agent Hue Tahe was a forensic chemist who examined trace evidence related to fires. He analyzed the sample taken by Agent Wright at the scene of the fire in H Building. However, he found no ignitable liquid in the sample. He did not detect any gasoline in the sample. R. 171, ll. 18 – R. 178, ll. 25.

Agent Daniel Russell, the arson investigator with SLED, investigated the fire scene. The master bedroom was the area of origin. He could not determine if anything was used to start the fire. However, he "believed" it was intentional. The apartment door was still in the locked position when he investigated. R. 211, ll. 10 – 25; R. 217, ll. 4 – R. 220, ll. 25.

Agent Russell interviewed numerous people. He developed the name of John Brown. R. 220, ll. 21 – R. 221, ll. 11. Chief Tyrone Smith obtained an arrest warrant for Green based on Agent Russell's interview with John Brown. Green was arrested at an apartment complex in Ridgeland. R. 142, ll. 23 – R. 143, ll. 4.

John Brown did not want to talk to the police. It was not until after Agent Russell said he may have to arrest Brown unless he talked because he would not know Brown's role in the incident. Brown then started talking. R. 225, ll. 9 – R. 229, ll. 25.

Brown told the police that Green came to his house and asked Brown to take him to his girlfriend's house. Green had \$20 for him so Brown took him. On the way, Green, who had a red jug with him, asked to stop and get gas. They stopped and got gas, and Green put the red jug in the trunk. They got to Hampton, and Brown waited down a dirt road until Green came back. Green's hand was cut and bleeding when he returned. Green told Brown that he burned his girlfriend's apartment because she was "playing" him. R. 187, ll. 7 - R. 193, ll. 20.

According to the housing administrator, Eugene Jenkins, H building with four apartments was destroyed. The value was \$318,000. That did not include the personal property of the four tenants which was lost. R. 77, ll. 22 – R. 78, ll. 4. Chief Allen Dean of the Varnville Fire Department, related that the entire building was destroyed. R. 81, ll. 14 – R. 84, ll. 24.

At the close of the state's case, defense counsel moved for a directed verdict. Counsel argued that the state did not prove the burglary charge because Monica Haynes testified that Green had permission to be in her apartment on August 2, 2013. The arson charge was not proven because Special Agent Russell could not determine how the fire

started. Regarding the MIPP for Teresa Pope, she testified that the value of her personal property was less than \$2000. Therefore, the DV should be granted. R. 233, ll. 1 -25.

The judge submitted the MIPP that was less than \$2000 as a magistrate's charge. He denied the DV as related to the burglary and arson charges. R. 234, ll. 1 – R. 243, ll. 2.

At the close of the evidence, the judge put on the record that defense counsel had said in chambers that she needed to make a DV motion at the close of the evidence. The judge agreed and then said for the record that he did not give her a chance to make that DV motion. He said the record would be reflective of her request for a DV. R. 300, ll. 18 – R. 301, ll. 9.

On appeal of a denial of a directed verdict of acquittal, the 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); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

A directed verdict motion should not be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). 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); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

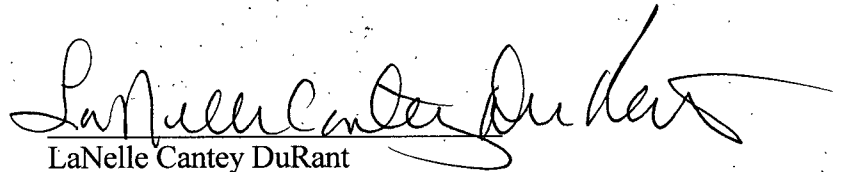
The trial judge erred in denying the directed verdict motions because the evidence only raised a mere suspicion that Green started the fire. The girlfriend testified that Green had permission to be in her apartment the day of the fire. Although, the chief said the door

was locked, it was possible that the heat of the fire activated the lock. The only evidence that Green started the fire came from John Brown who was a biased witness. The police had threatened to charge him and send him to jail unless he talked. Consequently, he felt compelled to blame Green rather than assume responsibility for the fire.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for the entry of a directed verdict on the burglary second degree and the arson third degree.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "LaNelle Cantey DuRant".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

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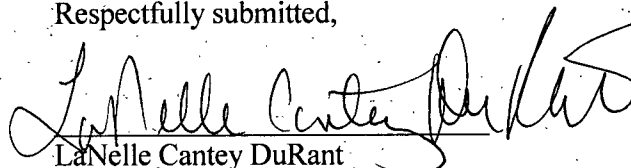
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andre Green 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 Perry M. Buckner, which was held on June 11, 2014, 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 Andre Green.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2015.

STATE OF SOUTH CAROLINA

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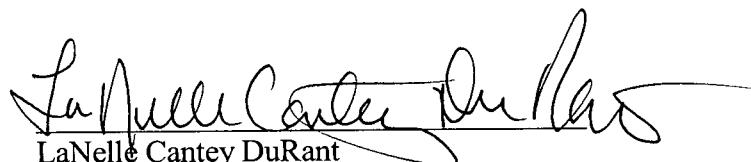
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Sentence Sheet(s);
- (3) Trial Transcript June 11-13, 2014

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

March 18th, 2015


LaNelle Cantey DuRant
Appellate Defender

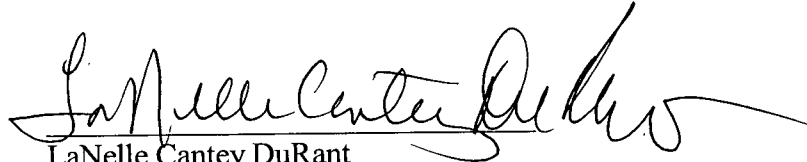
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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."

March 18th, 2015

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant
Appellate Defender

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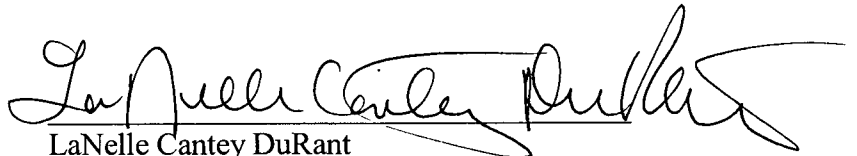
V.

ANDRE GREEN,

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 Andre Green, #301221, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of March, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of March, 2015.


(L.S.)

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