

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

Honorable Thomas A. Russo, Circuit Court Judge

CHARLTON L. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002428

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE v. STATE

LANELLE CANTEY DURANT
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting State's Exhibit 121 into evidence which was the video of the car chase and subsequent car crash with a fatality which was overly cumulative and more prejudicial than probative pursuant to Rule 403, SCORE?

STATEMENT OF THE CASE

In September 2010, the Darlington County Grand Jury indicted Charlton Hill on the charges of felony driving under the influence with death resulting; and driving under suspension (DUS). In April 2011, the Darlington County Grand Jury indicted Hill on the charges of failure to stop for a blue light with death resulting (FTSBL); reckless homicide; and involuntary manslaughter. App. 589-App. 614. On April 13, 2011, Hill proceeded to trial before the Honorable J. Michael Baxley and a jury. Hill was represented by Emily Crayton and Matthew S. Swilley. The state was represented by John Holt, Kendall Burch, and Patti McKenzie-Parker. App. 1. The jury found Hill guilty of all charges as indicted. App. 323, ll. 1-25. The judge sentenced Hill to twenty-five years on the felony DUI with death; to ten years on the reckless homicide; and five years on the involuntary manslaughter. These sentences were to run concurrent. The judge then sentenced Hill to ten years on the FTSBL with death to run consecutive to the other charges. App. 341, ll. 8 – App. 343, ll. 23.

Hill's trial attorney filed a notice of appeal which was dismissed by the South Carolina Court of Appeals on May 24, 2012 as untimely. It was filed one day late. App. 590; App. 403-App. 406.

On March 25, 2013, Petitioner Hill filed an application for post-conviction relief (PCR). The state filed a return on April 1, 2014. An evidentiary hearing was held on July 27, 2015 before the Honorable Thomas A. Russo. Hill was represented by Tristan Shaffer, and the state was represented by Joshua L. Thomas. App. 511.

At the PCR hearing, Hill's PCR attorney asked the court for a belated appeal pursuant to White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974) because the notice of appeal was filed one day late. The state did not object. App. 514, ll. 25 – App. 515, ll. 25.

On October 7, 2015, Judge Russo issued an order granting Hill a belated direct appeal review pursuant to White v. State, id. The judge denied the PCR application otherwise and dismissed it with prejudice. App. 589 – App. 599.

This brief is submitted pursuant to White v. State, *supra*, accompanied by a petition for a writ of certiorari.

ARGUMENT

The trial court erred in admitting State's Exhibit 121 into evidence which was the video of the car chase and subsequent car crash with a fatality which was overly cumulative and more prejudicial than probative pursuant to Rule 403, SCRE.

On January 8, 2010 in Darlington County, Trooper David Gainey with the South Carolina Highway Patrol, observed a 2005 Chevy Cobalt run off the shoulder of the road several time which made the trooper think the driver might have been under the influence. Trooper Gainey followed the car and activated his car camera mounted in the windshield to record evidence as he did with every traffic stop. App. 130, ll. 17 – App. 134, ll. 25.

Trooper Gainey activated his blue light and the car appeared to be slowing down to stop. As the trooper exited his car, he testified that he could see the driver whom he described as a “gentleman with short hair, kind of salt and pepper.” App. 137, ll. 11 – 24. Suddenly, the Cobalt sped away with Trooper Gainey in pursuit. The trooper reached speeds of around one hundred miles per hour. The Cobalt vehicle did not make a bend in the road and ran off the road flipping end over end several times. App. 91, ll. 1 – 24. The Cobalt vehicle traveled two hundred and three feet when it hit a dead pine tree lying in the ditch line. The car continued to travel eighty-eight more feet before it stopped two hundred and ninety-one feet from the time the car left the roadway. App. 196, ll. 16 – App. 201, ll. 12.

When Trooper Gainey approached the crashed car, he found Petitioner Hill in the driver's seat holding the steering wheel. The trooper said that Hill smelled of alcohol. About thirty seconds later, Trooper Gainey found the body of Hill's wife, Sylvia Hill, about six feet from the car. She was deceased at that point due to extensive injuries. App. 137, ll. 25 – App. 138, ll. 22; App. 105, ll. 1 – 25.

The forensic pathologist who performed the autopsy testified that something hit Sylvia Hill very hard in her upper body. Her head and neck were almost detached from her body when she was found outside of the car. The top of her head was torn away, and she had severe tearing on her body. Death was due to the avulsion of the brain, heart, and lung which were “torn out of the body due to blunt force trauma of the upper body due to a motor vehicle collision.” App. 252, ll. 1-23; App. 254, ll. 15 – App. 256, ll. 7. The toxicologist was not able to test the victim’s blood because they were unable to obtain blood from her because she “bled out.” App. 236, ll. 17 – App. 237, ll. 11.

The forensic investigator, Russ Harrell, testified at trial that he found in the crashed car four beer cans. Three were empty and the fourth was partially empty. He found the passenger seat completely pushed down to the rear with the head rest missing. He also found two logs in the car; one was hanging out of the back door. The end of one of the logs had some fabric; what appeared to be hair; and apparent blood. App. 167, ll. 10 – App. 168, ll. 24; App. 178, ll. 3 – App. 179, ll. 23; App. 184, ll. 15 – App. 185, ll. 12.

Petitioner Hill was transported to the hospital by EMS. On the way while he was in the ambulance, the EMS worker, Michelle Quick, asked Hill if he had consumed any alcohol. Hill responded to her that he had consumed two twenty-two ounce beers, Xanax, and Soma which was a muscle relaxer. Defense counsel objected. App. 102, ll. 1 – App. 104, ll. 25.

A blood sample was taken from Hill by implied consent after he was arrested for felony DUI with death. App. 121, ll. 1 – 25. The toxicology report indicated that Hill’s blood alcohol level was .152. The report also indicated that other chemicals were found such as metabolites of cocaine and marijuana, hydrocodone, Benadryl, tramadol, Soma. App. 218, ll. 1 – App. 219, ll. 2. On September 10, 2010, the Darlington County Grand Jury Indicted Hill for felony driving

under the influence with death resulting and driving under suspension (DUS). On April 11, 2011, he was indicted for failure to stop for a blue light (FTSBL) with death resulting; reckless homicide; and involuntary manslaughter. App. 600 – App. 614.

On April 13, 2011, Hill proceeded to trial before the Honorable J. Michael Baxley and a jury. At trial, Hill's defense was that he was not driving the Chevy Cobalt vehicle. App. 95, ll. 15 – App. 96, ll. 25. In a pretrial motion, defense counsel moved for a continuance in order for him to talk to witnesses who would testify in defense of Hill. One was his mother who was in a nursing facility but who was lucid as counsel said he did visit her and talk with her the day before. Counsel believed she was competent to testify. However, she needed more time to “convalesce” due to the physical condition in order to attend court. App. 76, ll. 6 – 23.

The other witness was Mackie Tomlinson who would testify as to what he observed when Hill and his wife left Tomlinson's home just prior to the accident. Counsel had talked to Tomlinson's brother the week before trial who said Tomlinson was in a rehabilitation facility but would not say where. Counsel said to the court: “I think a continuance would allow the defense to speak to Mr. Tomlinson as well. And I would move for a continuance on these grounds.” App. 76, ll. 23 – App. 77, ll. 9.

The judge denied the motion because counsel admitted that he learned on March 7, 2011 that Hill's trial would be this term which was April 13, 2011. The judge said that was almost five weeks before trial so he denied the motion. App. 77, ll. 10 – App. 78, ll. 14.

At trial, when the video from Trooper Gainey's car, State's Exhibit 121, was entered into evidence, defense counsel objected pursuant to Rule 403, SCRE as being more prejudicial than probative and “overly cumulative.” The judge overruled this objection and the video was published to the jury. App. 135, ll. 12 – 23.

The jury found Hill guilty on all charges as indicted. App. 323, ll. 1 – 25. The judge sentenced Hill to twenty-five years on the felony DUI with death; to ten years on the reckless homicide; five years on the involuntary manslaughter. These sentences were to run concurrent. On the FTSBL with death, the judge sentenced him to a consecutive sentence of ten years. App. 341, ll. 8 – App. 343, ll. 23.

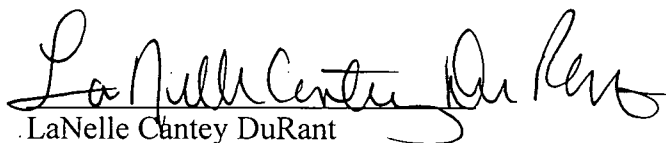
Rule 403, SCRE, provides that although evidence may be relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

When balancing the danger of unfair prejudice against the probative value, when determining whether to admit evidence, the determination must be based on the entire record and will turn on the facts of each case. State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014).

The trial court erred in admitting the video from Trooper Gainey's car which showed the car chase and accident. It was prejudicial and had the danger of eliciting an emotional reaction from the jury since there was a death resulting from the accident. Based on the entire record and testimony at trial, it was cumulative. The testimony of the forensic pathologist as to the victim's injuries was sufficient to arouse the passions of the jury. The pathologist's description of the victim's injuries included the fact that her brain was found feet away from the body; and her heart, one lung, and parts of her liver were found away from the body. The car video was not necessary to tell the jury what happened. The trooper's testimony; the pathologist's report; and Hill's blood alcohol were sufficient and the video was only cumulative to this other evidence.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is fluid and cursive, with a large initial "L" and "D".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of August, 2016.

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IN THE SUPREME COURT

Appeal from Darlington County

Honorable Thomas A. Russo, Circuit Court Judge

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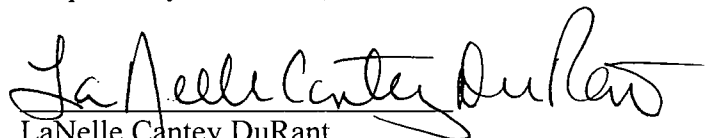
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charlton L. Hill 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 Thomas A. Russo, which was held on July 27, 2015 (PCR Hearing), 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 Charlton L. Hill.

Respectfully Submitted,



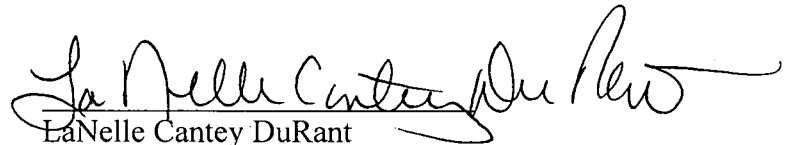
LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of August, 2016.

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."

August 17, 2016.


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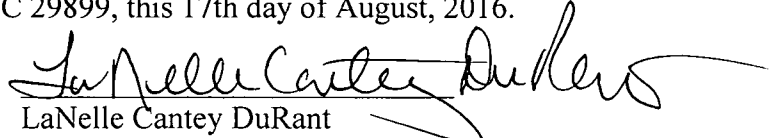
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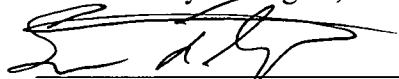
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Caitlin Hastings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant have been served on Charlton L. Hill, 152778, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 17th day of August, 2016.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.