

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

SAMUEL BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001477

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

LANELLE CANTEY DURANT
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in overruling defense attorney's objection to the state arguing facts not in evidence in his closing argument which was prejudicial and a violation of Petitioner Brown's due process right to a fair trial because the state presented the appearance that Petitioner Brown initiated the drug transaction?

STATEMENT OF THE CASE

In November 2012, the Charleston County Grand Jury indicted Samuel Brown, Jr., on the charge of trafficking cocaine more than ten grams but less than twenty-eight grams. App. 364-App. 365. On September 10-12, 2013, Brown proceeded to trial before the Honorable J.C. Nicholson, Jr. and a jury. Brown was represented by James W. Smiley and Laree Hensley. The state was represented by Randell Stoney and Stephanie Linder. App. 1.

The jury returned a verdict of guilty as indicted. The trial judge sentenced Brown to ten years imprisonment. App. 354; App. 366. Brown's trial attorney filed an untimely appeal which was dismissed. App. 308, ll. 3 – App. 309, ll. 4. On September 5, 2014, Brown filed an application for post-conviction relief (PCR). The state filed a return on November 6, 2015. An evidentiary hearing was held on April 18, 2016 before the Honorable Doyet A. Early. App. 353-App. 354. Brown was represented by William H. Nixon, and the state was represented by J. Rutledge Johnson. App. 276.

On June 21, 2016, Judge Early issued an order granting Brown a belated review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The PCR judge denied the PCR application otherwise and dismissed it with prejudice. App. 361-App. 362.

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

ARGUMENT

The trial court erred in overruling defense attorney's objection to the state arguing facts not in evidence in his closing argument which was prejudicial and a violation of Petitioner Brown's due process right to a fair trial because the state presented the appearance that Petitioner Brown initiated the drug transaction.

In September 2009, Sean O'Shea was caught by the Mt. Pleasant police for selling marijuana. He was offered the chance of having his charges dismissed if he helped the police "set up" other drug dealers which he agreed to do. App. 122, ll. 21 – App. 123, ll. 6; App. 109, ll. 14 – App. 110, ll. 1.

On October 11, 2010, Sean O'Shea, the confidential informant (CI), contacted Detective Alexander Blake with the Mt. Pleasant Police, and told him that the CI met a "subject" named "Nama" who said he could possibly sell the CI cocaine. Detective Blake gave the CI instructions on how to proceed. The CI called Detective Blake three times that night and on the third call said that the subject, "Nama" agreed to sell him cocaine the following day. App. 144, ll. 7 – App. 145, ll. 18; App. 140, ll. 5 – 22.

The following day, October 12, 2010, the set up was complete when the CI and Brown talked by telephone. The CI was fitted with an audio recording device to record the transaction. The police searched the CI and his car extensively. The CI was provided with one thousand dollars to purchase the cocaine. App. 145, ll. 19 – App. 148, ll. 21; App. 111, ll. 1 – 3.

The CI and "Nama" agreed to meet at a bar called "Locals" in Mt. Pleasant on October 12, 2010. App. 111, ll.1 – 24. Around six thirty in the late afternoon on October 12, 2010, the CI received a call from "Nama" that he was on the way. Detective Blake turned on the audio to record the transaction. The police saw the car matching the subject's car pull into the parking lot

where the CI was located. They saw “Nama” approach the driver’s side of the CI’s car. When Detective Blake, who was listening, heard the words from the CI: is this the “good stuff?”, the police moved in because those were the “takedown” signal. App. 149, ll. 5 – App. 151, ll. 23.

The police then moved in and saw “Nama” standing at the driver’s window talking with the CI. They took “Nama” into custody and identified him as Sam Brown from the South Carolina driver’s license that was in the wallet found on Brown. App. 149, ll. 24 – App. 152, ll. 25. The money and cocaine were found in the CI’s car which, according to the CI, Brown threw into the car when the police approached. Detective Blake claimed that he saw Brown make a “throwing motion into the vehicle and lean back and put his hands in the air.” The detective thought that was when Brown threw the items back into the car. App. 153, ll. 1 – 24.

Brown was indicted by the Charleston County Grand Jury on November 13, 2012 for trafficking cocaine more than ten grams but less than twenty-eight grams. App. 364-App. 365. On September 10-12, 2013, Brown proceeded to trial before the Honorable J.C. Nicholson, Jr. and a jury. Brown was represented by James W. Smiley and Laree Hensley. The state was represented by Randell Stoney and Stephanie Linder. App. 1.

During the trial Detective Blake admitted that he did not see the actual “hand to hand drug transaction, but he listened to it. He said that “based on his training and experience, he knew what a drug transaction sounded like.” He believed that a drug transaction took place. App. 173, ll. 1- 11. Detective Blake also admitted that he did not call forensic services so no forensics were done such as fingerprints. No pictures were taken either. App. 165, ll. 10 – 23.

The CI testified during the trial that the audio account was accurate. App. 114, ll. 21 – App. 115, ll. 12. He also testified that he saw Brown throw the money back into the car when the police “rushed in.” App. 138, ll. 16 – 25.

During the solicitor's closing argument, he stated:

You heard about how he (CI) met the defendant the night before. He and this defendant were talking, met through a friend of a friend. This defendant indicated, hey, I can get some weed.

App. 224, ll. 22 – 25.

Defense counsel objected by stating that these were facts not in evidence. The judge overruled his objection. App. 225, ll. 1 – 3.

The jury returned a verdict of guilty as indicted. App. 250, ll. 22 – App. 251, ll. 4. The solicitor told the judge that this was a trafficking second offense for Brown. App. 254, ll. 13 – 25. The judge sentenced Petitioner Brown to ten years imprisonment. App. 263, ll. 6 – 12.

In Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561(2010), the Supreme Court ruled that the relevant question regarding an allegedly improper closing argument was whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.

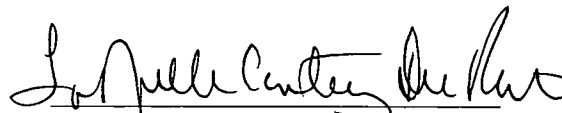
The Supreme Court in Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002), held that the State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.

The trial court in Brown's case erred in overruling defense counsel's objection to the state's closing argument when the state argued facts that were not in evidence. There was no evidence in the record that Brown offered to get some "weed" or marijuana for the CI. This was prejudicial because it made the jury believe that Brown initiated the drug transaction involving the sale of cocaine. It made Brown appear to be a drug dealer of multiple drugs. The evidence presented at trial was that Brown was "set up" by the CI and the police for a drug transaction. The CI approached Brown to initiate the drug deal in order to help the CI with a pending charge.

Brown was denied a fair trial due to the state's closing argument which painted him as a drug dealer who was soliciting clients to buy drugs.

CONCLUSION

Based on the above, the conviction and sentence 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 written in a cursive style with a horizontal line underneath the name.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of November, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

SAMUEL BROWN,

PETITIONER

V.

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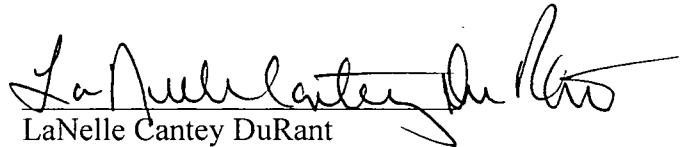
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Samuel Brown states:

1. She is an 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 the Honorable J. C. Buddy Nicholson, which was held on April 18, 2016 (Evidentiary 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 Samuel Brown.

Respectfully Submitted,

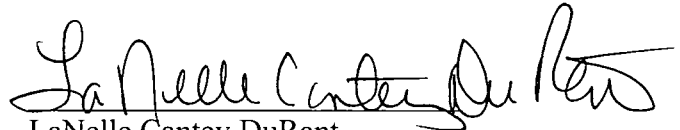

LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 23rd day of November, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant pursuant to White v. State 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."

November 23, 2016.



LaNelle Cantey DuRant
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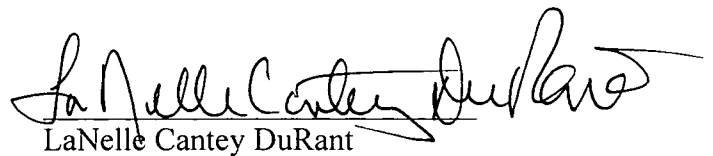
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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State have been served on Samuel Brown, #118629, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 23rd day of November, 2016.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of November, 2016.



(L.S)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.