

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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ORIGINAL

Appeal from Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RECEIVED  
NOV 03 2017  
SC Court of Appeals  
RESPONDENT,

V.

KEVIN MAURICE WARD,

APPELLANT

APPELLATE CASE NO. 2017-000819

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ANDERS BRIEF OF APPELLANT

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LANELLE CANTEY DURANT  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err in denying Appellant Ward's motion for a directed verdict when the state did not prove that Appellant received the mandatory notification that he was determined to be an habitual traffic offender (HTO) which was a required element of the statute S.C. Code Section 56-1-1030?

## STATEMENT OF THE CASE

On October 26, 2016, the Spartanburg County Grand Jury indicted Kevin M. Ward on the charge of violating S.C. Code Section 56-1-1100 by operating a vehicle after having been declared an habitual traffic offender (HTO). On March 29-30, 2017, Ward proceeded to trial before the Honorable Robin B. Stilwell and a jury. Appellant Ward was represented by Roger Poole, and the state was represented by Jennifer Jordan. R. 1. The jury returned a verdict of guilty. R. 140, ll. 6 – 16. Judge Stilwell sentenced Ward to thirty months incarceration. R. 147, ll. 19 – 24. Ward's attorney filed a timely notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in denying Appellant Ward's motion for a directed verdict when the state did not prove that Appellant received the mandatory notification that he was determined to be an habitual traffic offender (HTO) which was a required element of the statute S.C. Code Section 56-1-1030.

Officer Chindar Ryant of the Spartanburg City Police was on patrol on July 6, 2016 near the apartments where she lived. R. 42, ll. 20 – R. 43, ll. 24. As she turned onto Crescent Avenue about seven o'clock in the evening, she allegedly saw Appellant Ward driving a burgundy Tahoe driving slowly. She recognized the car from previous encounters she had with Ward. R. 44, ll. 1 – 25. She recognized Ward from previous encounters with him and he also lived in the same apartment complex as the officer. R. ll. 17 – 25.

Officer Ryant knew that Ward had been declared an habitual traffic offender (HTO) previously. R. 44, ll. 1 -2. She did not have time to stop him as by the time she had turned her vehicle around to follow Ward, he had disappeared down another street. She never activated her blue lights. R. 46, ll. 18 – R. 47, ll. 4. The officer did go to Ward's apartment and talked to his girlfriend. She asked the girlfriend who was driving her car as the burgundy Tahoe was not there. However, according to the officer, the girlfriend became quiet. R. 48, ll. 1 – 23.

Officer Ryant admitted that Ward was not speeding and was not committing any traffic violations. However, she did request a warrant for his arrest which was served two days later. She also determined that the burgundy Tahoe belonged to Ward's girlfriend. R. 50, ll. 6 – R. 52, ll. 25.

Marie Wearing worked with the Department of Motor Vehicles as custodian of drivers' records. R. 53, ll. 11 – 20. She described how records were kept. When a citation came into the

records department, the employees would key it into the computer and a suspension notice was automatically generated. R. 53, ll. 21 – 25. She explained that once three suspensions had been generated, a letter of HTO declaration was automatically generated, that letter was sent by regular mail to the address provided on the defendant's driver's license. R. 54, ll. 13 –24; R. 57, ll. 22 – R. 58, ll. 23. Ms. Wearing also explained that notice of suspension was mailed to the defendant as certified mail. R. 57, ll. 22 – R. 58, ll. 1.

In Appellant Ward's case, a packet with the notice of suspension and letter of declaration of HTO were mailed to Ward on March 13, 2015. A certificate of mailing was also sent with a return receipt to DMV. However, the return receipt was not signed. R. 56, ll. 1 – R. 57, ll. 21. On cross-examination, Ms. Wearing again stated that the letter was sent certified with a return receipt requested. The receipt was returned but was not signed by Ward. R. 60, ll. 14 – 25.

At the close of the state's case, defense counsel moved for a directed motion based on the Department of Motor Vehicles (DMV) "not complying with the mandates of the statute." Counsel argued that the statute was clear that it was mandatory and not regulatory that DMV must provide notice to the defendant of an HTO status. In Ward's case, the return receipt was returned unsigned. Therefore, counsel argued that there was a question as to whether DMV had complied with that statute. R. 62, ll. 9 – R. 63, ll. 9

The state argued that the notice stated that a certificate by the director of the department or his designee that the notice had been sent as required was "presumptive proof" that the requirements as to notice of suspension had been met even if the notice was not received by the addressee. The judge denied the directed verdict motion. R. 63, ll. 12 – R. 65, ll. 20.

The defense called three witnesses to testify for Ward that he was not driving the burgundy Tahoe. The first witness was Anthony Makerson who was the son of Ward's

girlfriend, Pashana Johnson. He said that he and Ward were friends. R. 73, ll. 16 – R. 75, ll. 2. Makerson testified that on July 6, 2016, his mother had given him permission to drive her car, the burgundy Tahoe, that afternoon around five. He worked out at the gym and went to get food afterwards. R. 74, ll. 10 – R. 75, ll. 23. Makerson also testified that Ward did not drive that car at any time during that night. R. 76, ll. 1 – R. 77, ll. 19.

Howard Davis testified that he was friends with Ward, and was with Ward on July 6, 2016. Davis explained that he picked Ward up from his house and they went to play basketball at Peach Valley First Baptist Church. R. 84, ll. 11 – R. 85, ll. 25. They played ball from about 6:15 until about 8:30. Davis took Ward home about 9:15 that evening. He said that at no point that evening was Ward driving a truck. R. 86, ll. 1 – R. 87, ll. 25.

Pashana Johnson testified for Ward that she had given her son permission to use her burgundy Tahoe during the evening of July 6, 2016. She did not give Ward permission at any time that day to use her Tahoe truck. R. 96, ll. 15 – R. 98, ll. 19. Ms. Johnson stated that Officer Ryant came to her apartment that day and told her that the officer saw Ms. Johnson's boyfriend, Ward, driving Ms. Johnson's truck. Ms. Johnson said she told the officer that it was not Ward because her son had her truck. R. 98, ll. 20 – R. 100, ll. 7.

At the close of the evidence, defense counsel again moved for a directed verdict based on the same grounds as the first directed verdict motion. The judge again denied the motion. R. 108, ll. 9 – 20.

The jury found Ward guilty as indicted. R. 140, ll. 6 – 16. The judge sentenced Ward to thirty months. R. 147, ll. 19 – 24.

## Discussion

South Carolina Code Section 56-1-1030(B) provides:

If the department determines that a person is an habitual offender, the department **shall** [emphasis added] give notice of its determination to the person and direct the person not to operate a motor vehicle on the highways of the state and to surrender his driver's license or permit to the department.

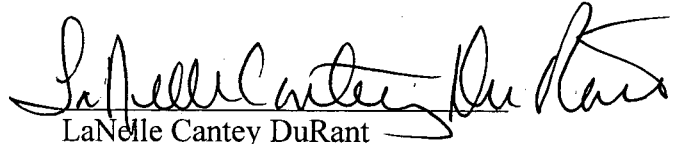
In State v. Foster, 277 S.C. 211, 284 S.E.2d 780 (1981), the Supreme Court held that the word "shall" in the Habitual Offender Act is mandatory and requires the judge to impose the penalty where he finds the individual before him is an habitual offender.

The trial judge erred in not granting Appellant Ward's motion for a directed verdict. The state was required by statute to give notice to Ward of his HTO status. The fact that the return receipt was not signed indicated that Ward was not noticed. The DMV relied on their own regulations instead of following the statute. The word "shall" was used by the Legislature in this statute to ensure that the person knew he no longer could drive as his license was suspended.

The state did not prove the elements of the statute: that Ward knew his license was suspended and he was an HTO.

CONCLUSION

Based on the above, Appellant's conviction and sentence should be reversed, and his case remanded for the entry of a directed verdict.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2017.

STATE OF SOUTH CAROLINA

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Appeal from Spartanburg County

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kevin Maurice Ward 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 Judge Robin B. Stilwell, which was held on March 29 - 30, 2017, 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 Kevin Maurice Ward.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2017.

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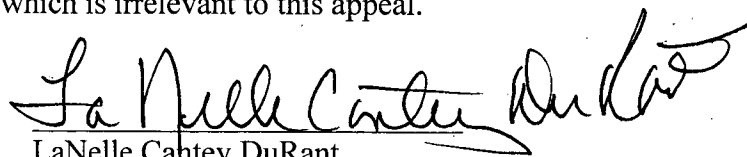
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

- (1) True-billed indictment
- (2) Sentence Sheet
- (3) Trial Transcript (March 29-30, 2017)

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

November 3, 2017

  
LaNelle Cahtey DuRant  
Appellate Defender

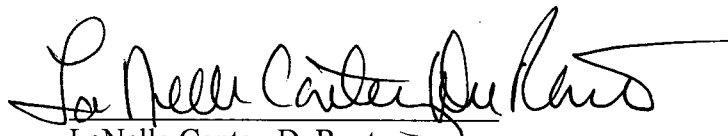
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**CERTIFICATE OF COUNSEL**

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."

November 3, 2017.



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