

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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OCT 17 2012

SC Court of Appeals

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Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

\_\_\_\_\_  
IN THE MATTER OF THE CARE AND  
TREATMENT OF JOHN E. DARNELL,

APPELLANT

APPELLATE CASE NO. 2012-210417

\_\_\_\_\_  
ANDERS BRIEF OF APPELLANT

\_\_\_\_\_  
LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

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**TABLE OF AUTHORITIES**

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err in committing Darnell to the Sexually Violent Predator Program which violated his due process rights because he completed his prison sentence and received the only available sex offender treatment offered to him by the Department of Corrections?

## STATEMENT OF THE CASE

In June 2004, the Greenville County Grand Jury indicted John Edward Darnell on the charge of criminal sexual conduct (CSC) with a minor second degree. In August 2006, Darnell entered a guilty plea to CSC with a minor second degree. He was sentenced to five years. Prior to his release from DOC, he was referred to the MultiDisciplinary Team to determine if there were probable cause that he was a sexually violent predator (SVP) pursuant to the Sexually Violent Predator Act, S.C. Code Section 44-48-30. After probable cause was found, the circuit court ordered an evaluation which was completed by Dr. Rebecca Jackson, a psychologist with the Department of Mental Health (DMH). Tr. 28, ll. 11 – Tr. 30, ll. 18. Dr. Jackson found that Darnell met the criteria of the SVP Act to be a sexually violent predator. Darnell proceeded to trial before the Honorable G. Edward Welmaker and a jury. Darnell was represented by Elizabeth P. Wiygul, and the state was represented by Lloyd V. Flores, Jr. The jury found that Darnell was a sexually violent predator. Judge Welmaker issued an order committing Darnell to the SVP Program at DMH for long-term control, care and treatment. Darnell's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in committing Darnell to the Sexually Violent Predator Program which violated the his due process rights because he completed his prison sentence and received the only available sex offender treatment offered to him by the Department of Corrections.

John Darnell pled guilty in 1993 to criminal sexual conduct (CSC) with a minor second degree and was sentenced to ten years. In this incident, he was charged with carrying his twelve year old stepdaughter into his bedroom, removing her clothes, and licking her between her legs. He then attempted to have vaginal intercourse with her, and slightly penetrated her. The girl said the abuse actually began when she was five. Tr. 32, ll. 1 – Tr. 33, ll. 25; Tr. 35, ll. 1 – 24.

Dr. Rebecca Jackson was the psychologist appointed by the court on May 18, 2010 to complete the mental evaluation on Darnell to determine if he had a mental abnormality that met the criteria for the Sexually Violent Predator Program. Tr. 25, ll. 1 – Tr. 29, ll. 25. She testified that Darnell was referred to the Multidisciplinary Team for a determination of probable cause if he were a sexually violent predator (SVP). However, the case was dropped for lack of probable cause. Tr. 32, ll. 1 – 8.

His second conviction occurred in 2006 when he pled guilty to CSC with a minor second degree. This incident involved his thirteen year old stepson who said the abuse occurred from the time he was eleven until thirteen. Darnell allegedly performed oral sex on the boy. Tr. 34, ll. 1 – Tr. 36, ll. 13.

Dr. Jackson testified at the SVP jury trial that she found that Darnell suffered from the mental abnormality of pedophilia, sexually attracted to both sexes, non-exclusive type,

and he was also attracted to adult females. Tr. 45, ll. 3 – 23. In her expert opinion, Darnell was predisposed to commit future sexually violent offenses; was a menace to the health and safety of other; and needed long term treatment, control, and care in a secure facility. She found that he met the legal criteria to be a sexually violent predator. Tr. 46, ll. 1- Tr. 48, ll. 11.

Darnell's attorney told the jury in her opening statement to them that Darnell had served his prison sentence, but the state wanted to lock him up longer. Therefore, the state brought this action calling it "treatment" instead of "punishment", but she said it was the same thing. Tr. 22, ll. 18 – Tr. 24, ll. 21.

Darnell's attorney presented three witnesses who testified on Darnell's behalf. The first one was his youngest brother, Ronald Darnell, who stated that Darnell could live with him and his wife as he trusted Darnell completely. He testified that none of them knew Darnell could go to the SVP program when he finished his sentence; they were "blindsided." Tr. 59, ll. 18 – Tr. 60, ll. 25.

Melvin King testified that he knew Darnell through his brother Ronald. He stated he did not know the state could give Darnell more time after he had served his sentence. He said the justice system was not fair in bringing Darnell back on the same incident and making him serve more time. Tr. 63, ll. 1 – Tr. 66, ll. 3.

Michael Darnell was the nephew of John Darnell. He grew up around Darnell and said his uncle never touched him. It was shocking to him that a person could admit their guilt, serve their sentence, and be brought back for the same thing and give it a new name. Nevertheless, he said it was the same thing. He believed that Darnell should go home. Tr. 66, ll. 12 – 68, ll. 16.

Darnell's attorney argued in her closing to the jury that the state was saying it was okay to "let somebody plead guilty in a criminal court and then after they've finished their sentence decide they suffer from a mental illness and better get locked up." She argued that what if the state decided that people who committed drug crimes in their twenties were too dangerous to have on the streets and they better keep them locked up forever so they can't do drugs anymore. She said if past behavior is the best predictor of future behavior, they just keep them locked up. She told the jury that was what the state was asking them to approve. Tr. 75, ll. 25 – Tr. 78, ll. 15.

The jury found that Darnell was a sexually violent predator. Tr. 87, ll. 1 – 18.

The Sexually Violent Predator Act, South Carolina Code Section 44-48-30 provides that a sexually violent predator (SVP) is a person who has been convicted of a sexually violent offense, and 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.

The due process clause of the United States Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV.

In the case of In the Matter of the Treatment And Care of Clair Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002), the South Carolina Supreme Court held that the purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them. The Court held that the SVP Act did not violate due process and did comply with the requirements of the substantive due process clause. The court wrote that "it was enough to

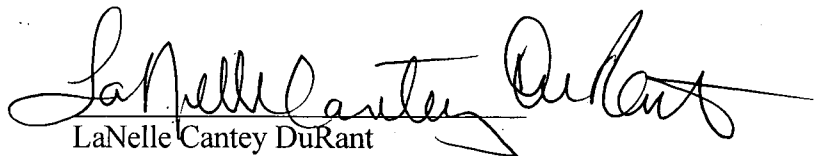
say that the evidence presented at the hearing must show the individual has “serious difficulty in controlling their behavior.”

Darnell’s case is distinguished from Luckabaugh in that Luckabaugh, a nurse, was sentenced for assaulting a comatose patient in his care. He was diagnosed as suffering from sexual sadism, and had thoughts of torturing others. In the Matter of the Treatment And Care of Clair Luckabaugh, id. There was no evidence of sadism in the case of Darnell.

CONCLUSION

The order of commitment should be vacated, and Darnell should be released.

Respectfully submitted,

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

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of October, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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IN THE MATTER OF THE CARE AND  
TREATMENT OF JOHN E. DARNELL,

APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

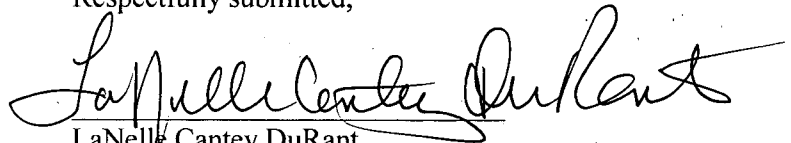
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Counsel for John E. Darnell states:

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 G. Edward Welmaker, which was held on March 21, 2012, 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 John E. Darnell.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of October, 2012.

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G. Edward Welmaker, Circuit Court Judge

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IN THE MATTER OF THE CARE AND  
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

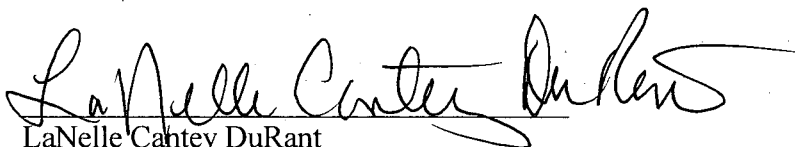
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript
- (3) P-1 Indictment 93-7111
- (4) P-2 Indictment 04-4548
- (5) Order of Commitment

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

October 17th, 2012

  
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

STATE OF SOUTH CAROLINA

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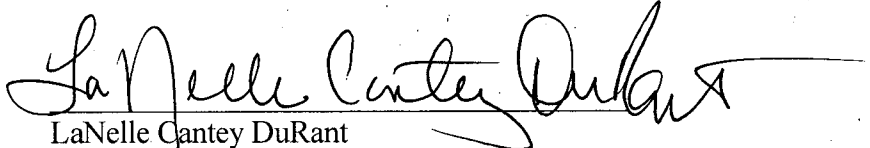
APPELLANT

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CERTIFICATE OF SERVICE

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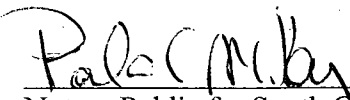
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at P.O. Box 50666, Columbia, SC; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served upon John E. Darnell, at Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 17th day of October, 2012.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 17th day of October, 2012.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.