

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

RANDALL PRICE,

APPELLANT

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

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

**RECEIVED**

MAY 29 2012

**SC Court of Appeals**

TABLE OF CONTENTS

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF ISSUE ON APPEAL..... 3

STATEMENT OF THE CASE ..... 4

ARGUMENT..... 5

CONCLUSION..... 10

PETITION TO BE RELIEVED AS COUNSEL ..... 11

CERTIFICATE OF COUNSEL..... 12

TABLE OF AUTHORITIES

**Cases**

State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011) .....9

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010) .....9

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting the four photographs of the two victims showing their injuries from the alleged assault by Appellant Price which were prejudicial, inflammatory to the jury and cumulative since the two victims testified concerning their injuries?

## STATEMENT OF THE CASE

On June 7, 2007, the Spartanburg County Grand Jury indicted Randall Price on two counts of assault and battery with intent to kill (ABWIK). On June 8-10, 2011, Price proceeded to trial before the Honorable J. Derham Cole and a jury. Price was represented by Richard H. Whelchel, and the state was represented by Ryan F. McCarty. The jury returned verdicts of guilty on both charges as indicted. Judge Cole sentenced price to twenty years suspended to twelve years incarceration with three years probation on one charge. On the second charge, Judge Cole sentenced price to twelve years suspended to run consecutive with three years probation. Tr. 275, ll. 14- 25; Tr. 276, ll. 1 – 10. Price’s attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in admitting the four photographs of the two victims showing their injuries from the alleged assault by Appellant Price which were prejudicial, inflammatory to the jury and cumulative since the two victims testified concerning their injuries.

On January 12, 2007, Randall Price received a settlement check for almost \$9000 from a car accident where he was involved. He deposited all except \$3000 which he kept in thirty 100 dollar bills. Tr. 161, ll. 1 – 19; Tr. 163, ll. 6 – 25; Tr. 164, ll. 1 8.

That same night, Dawn and Dewayne Henson, neighbors he had known for a few months, came over and invited him to come to their house to party for a while. They knew that Price was receiving this money. Tr. 161, ll. 14 – 25; Tr. 162, ll. 1 – 25; Tr. 164, ll. 9 – 23. Price went with them to their home. Tr. 165, ll. 1 – 17.

The three of them proceeded to use drugs, mostly crack cocaine, for a while. Then Dewayne and Price went to buy more drugs where they met Pam Massey and a man named Rodney who was with Pam. Price had never met them before, but Dewayne invited them to come back to his house to party which they did. Tr. 166, ll. 1 – 25; Tr. 167, ll. 1 – 25. Price paid for the drugs with part of the \$3000 he had with him. He had also paid for items earlier in the evening which Dewayne and Dawn purchased at the Texaco store nearby. Tr. 168, ll. 1 – 19.

When they returned to the Henson's trailer home, the five of them continued to party. When Price told them he had to leave, Dewayne and Rodney grabbed him and said he was not leaving with that money. A fight started and Price just threw some money at them, but some was ripped in half during the fight. Tr. 170, ll. 1 – 25.

Dewayne, Rodney and Dawn were fighting over the money, but Pam came at Price with a knife, and said she was going to kill him. He took the knife from her and started swinging. He just wanted to get out of the house because he feared they were going to kill him. Tr. 171, ll. 1 – 24. When he cut her, she ran out of the house screaming, and Dewayne went after her. Tr. 172, ll. 1 – 25; Tr. 173, ll. 1 – 2.

Dawn and the other man, Rodney, came after Price. The three of them fought until they got out of the door. Rodney ran away, and Dawn ran another way. Price went towards the only light he saw which was the neighbor across the street so he could call the police. Tr. 173, ll. 1 – 25. When he got to the house, Pam, Dawn, and Dewayne were there with the neighbor. Price then started running but fell across a stump and was knocked out until he awoke with the police standing over him. He was arrested although he told them he wanted to make a statement that these people tried to rob and kill him. Tr. 174, ll.1 – 25.

Dawn Henson testified that Price was a friend of the family, but they had not known him long. Tr. 63, ll. 1 – 25. On January 13, 2007, she and her husband, Dewayne, were just sitting around partying which meant some drinking but mostly using crack cocaine. Tr. 64, ll. 1 – 23. Then Price showed up with Pam Massey and Rodney. Dawn had never seen either of those two people before. Tr. 65, ll. 1 – 25. They were all partying, playing cards and having a good time. Tr. 66, ll. 1- 25.

Dewayne and Rodney left to buy more drugs. Dawn, Pam and Price were playing cards when Price got up from the table and stood behind Pam. He suddenly pulled a knife and cut Pam's throat with no provocation. Pam ran out of the door. Tr. 67, ll. 1 – 25; Tr. 71, ll. 1 – 25; Tr.72, ll. 1 – 25; Tr. 73, ll. 1 – 13.

Price then came after her. She was stabbed in her ribs which punctured her left lung. She was also cut on two fingers, and her neck. Tr. 74, ll. 16 – 25; Tr. 75, ll. 1 – 25; Tr. 76, ll. 1 – 23. She identified two photographs that were taken of her the night of the incident showing her injuries. These were published to the jury. Tr. 77, ll. 1 – 25; Tr. 78, ll. 1 – 25; Tr. 79, ll. 1 – 13.

Dawn managed to get out of the house and ran across the street to her neighbor's storage building where her neighbor, Mr. Brewington, was. Pam was already there also. Price followed her, and tried to get into the house, but he saw the gun Mr. Brewington had so Price ran. Then they called 911. Tr.80, l. 1 – 25; Tr. 81, ll. 1 – 25.

On cross-examination, Dawn testified she was not working at the time. Tr. 87, l.l. 24-25; Tr.88, ll. 1 – 8. Later, she again said she did not have any money that night, and denied having seven one hundred dollar bills. Tr. 93, ll. 5 – 19. The custodian of the Spartanburg Regional Hospital business records, where Dawn was treated the night of the incident, testified that the hospital records indicated that Dawn had seven one hundred dollar bills on her when she was admitted, and that same money was returned to her when she left. Tr. 203, ll. 7 – 25; Tr. 204, ll. 1 – 25.

On cross examination during the reply testimony, Dawn said she did not have \$700 the night of the incident. When told she had \$700 on her when she left the hospital, she claimed: "I don't recall that." Tr. 212, ll. 1 – 18.

Pam Massey's testimony was similar to Dawn's. Pam admitted they were all using drugs, but she brought her own crack which consisted of three 20's. Tr. 98, ll. 1 – 25; Tr. 99, ll. 1 – 25; Tr. 112, ll. 14 – 18. She said that she, Dawn, and Price were playing cards when Price got up, stood behind her, and suddenly cut her throat. Tr. 99, ll. 14 – 25; Tr. 101, ll. 1 –

25; Tr. 102, ll. 1 – 23. She identified two photographs taken of her the night of the incident before EMS treated her. The photographs showed her injuries. They were published to the jury. Tr. 104, ll. 1 – 25; Tr. 105, ll. 1 – 13.

Pam ran outside and went to Mr. Brewington's storage building behind his house where the light was because Mr. Brewington was there. Price followed them there and tried to get in, but ran away. Tr. 106, ll. 1 – 25; Tr. 107, ll. 14 – 25; Tr. 108, ll. 1 – 25; Tr. 109, ll. 1 – 24.

In a pretrial motion, defense counsel objected to the state wanting to admit the four photographs of the two alleged victims, Dawn Henson and Pam Massey, which showed their injuries. Tr. 37, ll. 1 – 25; Tr. 38, ll. 1 – 11. Counsel argued that the photographs would be used to “inflamm[e] the jurors’ passions, and would be duplicative to their testimony.” Tr. 38, ll. 12 – 25. Counsel argued that the photographs would inflame the jury because they were “quite graphic and quite bloody.” Tr. 39, ll. 1 – 10.

The state argued that the photographs would prove one of the elements of ABWIK which was malice because the photographs would show the excessive nature of the injuries. Tr. 39, ll. 9 – 21.

The judge asked defense counsel if the injuries were being contested, and counsel responded they were not as the only issue was whether the injuries were inflicted as a result of ABWIK or self-defense. Tr. 39, ll. 22 – 25; Tr. 40, ll. 1 – 2.

The judge said he would address the issue when the witnesses testified. Tr. 40, ll. 3 – 14. However, when the two witnesses testified, the photographs were admitted without further discussion.<sup>1</sup> Tr. 78, ll. 7 – 25; Tr. 79, ll. 1 – 10; Tr. 104, ll. 1 – 25; Tr. 105, ll. 1 – 12.

---

<sup>1</sup> Defense counsel did not object when the four photographs were admitted into evidence.

The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion. State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011).

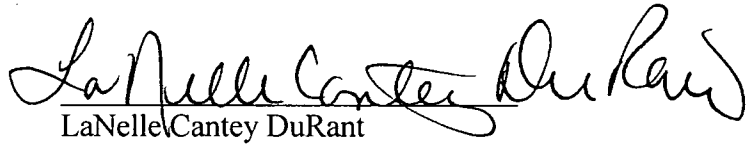
The Supreme Court held in State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010) that photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not necessary to substantiate material facts or conditions.

The photographs depicting the injuries of the two victims in Price's case were not necessary to substantiate a material fact or condition. The two alleged victims testified and discussed their injuries. They had scars to show the jury. The bloody photographs were not necessary to show malice as the testimony of the victims was sufficient. The photographs had no purpose other than to inflame the passions of the jury.

CONCLUSION

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

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of May, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RANDALL PRICE,

APPELLANT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Randall Price 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 J. Derham Cole, which was held on June 13, 2011, 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 Randall Price.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender

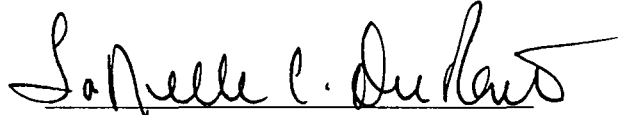
ATTORNEY FOR APPELLANT

This 29th day of May, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 29, 2012

A handwritten signature in black ink, reading "LaNelle C. Durant". The signature is written in a cursive style with a long horizontal flourish extending to the right.

LaNelle C. Durant  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

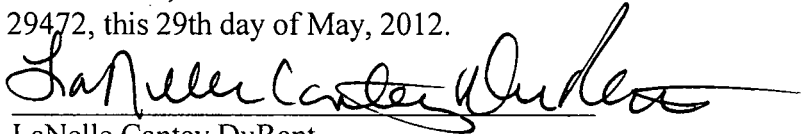
V.

RANDALL PRICE,

APPELLANT

CERTIFICATE OF SERVICE

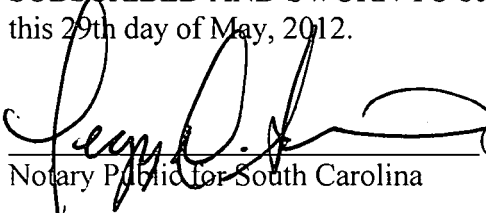
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Randall Price, #346410 at Lieber Correctional Institution PO Box 205, Ridgeville, SC 29472, this 29th day of May, 2012.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 29th day of May, 2012.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: December 4, 2017.