

 ORIGINAL

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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**RECEIVED**

OCT 22 2012

**SC Court of Appeals**

IN THE MATTER OF THE CARE AND  
TREATMENT OF QUENTIN D. MARKHAM,

APPELLANT

APPELLATE CASE NO. 2012-210428

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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 admitting the testimony of Dr. Leonard Mulbry, a forensic psychiatrist retained by the Attorney General's Office to give a second opinion that Markham met the legal criteria to be a sexually violent predator (SVP), because the court had appointed Dr. Rebecca Jackson, a psychologist with the State Department of Mental Health, who evaluated Markham and determined he did not meet the legal criteria to be a sexually violent predator?

## STATEMENT OF THE CASE

In February 2004, the Greenville County Grand Jury indicted Quentin Dale Markham on three counts of committing a lewd act upon a child. In October 2004, the Greenville County Grand Jury indicted Markham on one count of committing a lewd act on a child. In January 2005, Markham appeared before the Honorable G. Edward Welmaker and entered a guilty plea to four counts of committing a lewd act upon a child. Judge Welmaker sentenced Markham to fifteen years suspended to the service of ten years and five years probation. Prior to his release from prison, Markham was referred for an evaluation to determine if there was probable cause that he met the criteria to be a sexually violent predator pursuant to the Sexually Violent Predator Act, S.C. Code Section 44-48-30. Probable cause was found, and he was referred for a forensic evaluation. Dr. Rebecca Jackson was court appointed on January 28, 2011 to complete an evaluation. (See Order for Evaluation). Her opinion was that Markham did not meet the criteria to be a sexually violent predator. Tr. 83, ll. 1 – 11.

The Attorney General's Office then retained Dr. Leonard W. Mulbry, Jr. to perform a second evaluation for Markham. He found that Markham did meet the criteria to be a sexually violent predator. Tr. 21, ll. 1 – 25; Tr. 25, ll. 1 – 5; Tr. 57, ll. 19 – 25; Tr. 58, ll. 1.

Markham proceeded to trial on March 21, 2012 before the Honorable G. Edward Welmaker and a jury. Markham was represented by Elizabeth P. Wiygul, and the state was represented by Lloyd V. Flores, Jr. The jury found that Markham was a sexually violent predator. Judge Welmaker issued an order committing Markham to the Department of Mental Health (DMH) for long term control, care and treatment. Markham's attorney filed a notice of appeal. This appeal follows.

## ARGUMENT

The trial court erred in admitting the testimony of Dr. Leonard Mulbry, a forensic psychiatrist retained by the Attorney General's Office to give a second opinion that Markham met the legal criteria to be a sexually violent predator (SVP), because the court had appointed Dr. Rebecca Jackson, a psychologist with the State Department of Mental Health, who evaluated Markham and determined he did not meet the legal criteria to be a sexually violent predator.

Markham was charged with committing a lewd act on a four year old girl in 1998 in his home when he fondled the girl's genitalia and performed oral sex on her. This happened three or four times with this girl. Tr. 34, ll. 1 – 25; Tr. 35, ll. 15. He was arrested when it came to light, and then bonded out of jail. Tr. 8 – 18.

While he was out on bond, in 2002 and 2003, he was charged with three more counts of committing a lewd act on a child which involved three different girls around the ages of nine and eight and included fondling their genitalia and digital penetration. Tr. 36, ll. 19 – Tr. 38, ll. 11. He pled guilty to four counts of committing a lewd act in January 2005.

Dr. Rebecca Jackson, who was chief psychologist with DMH at the time, evaluated men pursuant to the SVP Act. Tr. 76, ll. 13 – Tr. 77, ll. 25. She was asked by the state, or was court appointed, to perform a SVP evaluation on Markham which she did. Tr. 85, ll. 23 – Tr. 86, ll. 16. She diagnosed him as having a mental abnormality of pedophilia, sexually attracted to young females. However, she found that his risk assessment for committing future acts of sexual violence to be in the low range. Her opinion was that he did not meet the criteria for civil commitment under the SVP Act. Tr. 88, ll. 1 – Tr. 89, ll. 23. Her opinion was that he did not rise to the level of dangerousness to be a menace to society. Tr.

83, ll. 1 – 11. She wrote in her report that Markham suffered from end stage renal disease and has to undergo dialysis which also reduced his risk of re-offending. Tr. 89, ll. 14 – 25.

Dr. Leonard Mulbry testified that he was retained by the Attorney General's Office to do a second evaluation of Markham. He was hired by the state. He found, after studying the risk assessments test administered by Dr. Dwyer, and completing his own evaluation, that Markham met the legal criteria to be a sexually violent predator. He diagnosed him with pedophilia as he was attracted to girls under the age of five which was very deviant. Tr. 34, ll. 1 – Tr. 50, ll. 25; Tr. 52, ll. 6 – Tr. 58, ll. 1. His opinion was that Markham was a menace to others as he had the propensity to commit future acts of sexual violence. Tr. 55, ll. 18 – Tr. 57, ll. 2.

He then described the health problems that Markham has. He reported that Markham has total renal failure as his kidneys don't work at all. He required dialysis three times a week. He also suffered from congestive heart failure. Tr. 51, ll. 1 – 22; Tr. 18, ll. 22 – Tr. 20, ll. 22.

Markham testified that he was guilty of these offenses, and he was embarrassed and ashamed. He had a very bad drinking problem during that time, and did not remember everything. He explained that he has no kidney function. Tr. 98, ll. 1 – Tr. 102, ll. 4.

S.C. Code Section 44-48-30, the Sexually Violent Predator Act, provides that sexually violent predator means a person who has been convicted of a sexually violent offense; and who 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.

Section 44-48-100 of the SVP Act provides that if the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

The Fourteenth Amendment provides that no State shall deprive a person of life, liberty, or property without due process of law. Quentin Markham was deprived of his personal freedom in a process that was not fair. He was caught in a Catch 22 situation that was not of his making. Two state agencies were in conflict over the decision as to whether Markham met the legal criteria to be a SVP. However, DMH was the state agency who provided the expert to evaluate Markham pursuant to the SVP statute. The Catch 22 was created by Section 44-48-120 which gives the attorney general the right to obtain another opinion when DMH recommended the person be released. It was not reasonable that DMH was designated as the state agency to evaluate Markham when their opinion can be disregarded by the committing agency. Markham was prejudiced by the attorney general being able to pay for another evaluation.

CONCLUSION

Based on the above reasons, the order of the trial court should be reversed, and the case dismissed, and Markham released.

Respectfully submitted,

A handwritten signature in black ink, reading "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 22th 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  
TREATMENT OF QUENTIN D. MARKHAM,

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PETITION TO BE RELIEVED AS COUNSEL

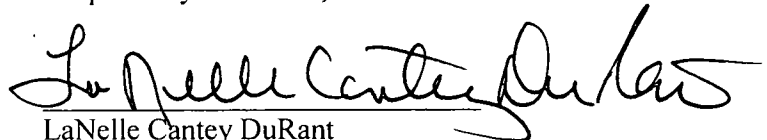
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Counsel for Quentin D. Markham states:

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 Quentin D. Markham.

Respectfully submitted,



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd 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  
TREATMENT OF QUENTIN D. MARKHAM,

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

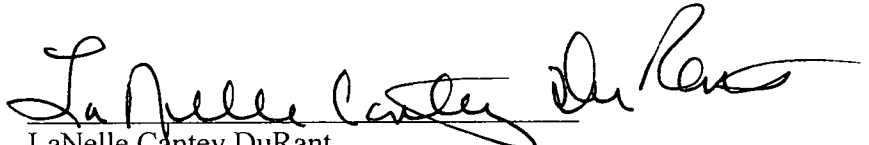
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s) (Exhibit Nos. P-1; P-2; P-3; P-4)
- (2) Trial Transcript
- (3) Order for Evaluation
- (4) Order of Commitment
- (5) Exhibit # D-1 (Medical Records)
- (6) Exhibit # C-1 (Letter by Mr. Markham)

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

October 22nd, 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

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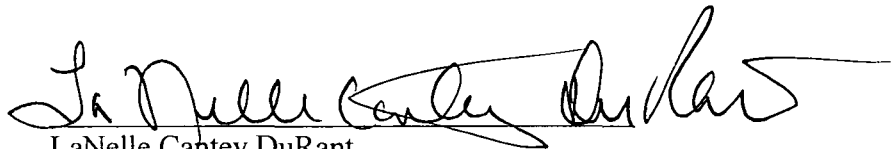
APPELLANT

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CERTIFICATE OF SERVICE

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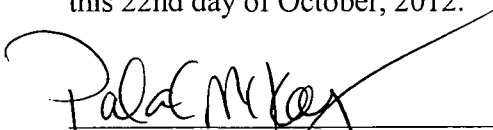
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief and Record on Appeal have been served on Quentin D. Markham, at the Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 22nd day of October, 2012.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 22nd day of October, 2012.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.