

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Michael G. Nettles, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF CARL DURRELL COOK,

APPELLANT

APPELLATE CASE NO. 2012-206369

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

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing the state to question the expert on the underlying facts and circumstances of the two qualifying sexually violent offenses when the statute only required that the person have been convicted of a sexually violent offense and have a mental abnormality that required long term care, control and treatment?

STATEMENT OF THE CASE

In July 2002, the Lexington County Grand Jury indicted Carl Durrell Cook on the charge of criminal sexual conduct first degree (CSC). Tr. 54, ll. 2 – Tr. 55, ll. 9. In August 2003, the Lexington County Grand Jury indicted Cook on a second criminal sexual conduct first degree charge. Tr. 55, ll. 24 – Tr. 56, ll. 18. On July 20, 2004, Cook entered a guilty plea to the lesser offenses of CSC second degree and CSC third degree. He was sentenced to twenty years suspended to ten years and five years probation on the CSC second degree, and to five years on the CSC third degree. Prior to his release from prison, Cook 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 to complete an evaluation. Tr. 52, ll. 13 – 24. Her opinion was that Cook did meet the criteria to be a sexually violent predator. Tr. 75, ll. 13 – 25.

On December 5 and 7, 2011, Cook proceeded to trial before the Honorable Michael G. Nettles and a jury. Cook was represented by Ronald R. Hall, and the state was represented by James G. Bogle. The jury found that Cook was a sexually violent predator. Tr. 159, ll. 22 – Tr. 160, ll. 6. Judge Nettles issued an order committing Cook to the Department of Mental Health for long term care, control, and treatment. Cook's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in allowing the state to question the expert on the underlying facts and circumstances of the two qualifying sexually violent offenses when the statute only required that the person have been convicted of a sexually violent offense and have a mental abnormality that required long term care, control and treatment.

Carl Cook was charged with sexually assaulting a twenty-eight year old female acquaintance who gave him a ride home on November 17, 2001. After raping her once, he asked her if they could be a couple. When she told him she had a boyfriend, he allegedly raped her a second time. Tr. 61, ll. 2 – 24.

While out on bond for this offense, Cook was living with his seventy-three year old grandmother. On the evening of August 28, 2002, he entered his grandmother's bedroom while he was naked and said to her: "Grandma, I'm going to get me some." Tr. 59, ll. 6 – Tr. 60, ll. 2. According to the grandmother, he threatened her with a knife and raped her a second time. She believed he was intoxicated on drugs and alcohol. Tr. 60, ll. 3 – Tr. 61, ll. 1.

Dr. Rebecca Jackson, the court appointed forensic psychologist who evaluated Cook, testified that he had a mental abnormality of paraphilia not otherwise specified, non-consent. She explained that paraphilia was sexual behavior that fell outside the norm. Cook achieved sexual gratification by using coercion with his victims. Tr. 72, ll. 1 – 25. Her opinion was that met the criteria to be a sexually violent predator as she believed he would sexually re-offend unless he was confined for treatment. Tr. 74, ll. 15 – Tr. 75, ll. 25.

Cook testified at his trial that he did not need mental health treatment but he would do it just to prove that he was not a sexually violent predator. He said he had a problem with drugs during that time. Tr. 109, ll. 14 – Tr. 111, ll.1.

At his jury trial for the sexually violent predator determination, Cook's trial attorney objected when the state began to question Dr. Rebecca Jackson, the forensic psychologist who evaluated Cook, about the detailed circumstances of the sexually violent offenses, the CSC's. Defense counsel argued that the circumstances would be hearsay. The judge sustained the objection. Tr. 56, ll. 20 – Tr. 57, ll. 12.

The state asked for a bench conference which was held. Tr. 57, ll. 13 – Tr. 58, ll. 7. Following the bench conference, the judge allowed the expert to provide the underlying facts. The judge ruled:

I'm going to allow him to get into the underlying facts to the extent that it's relevant to her rendering an opinion, that very limited circumstance.

Tr. 58, ll. 8 – 14.

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.

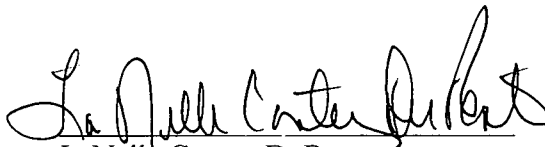
Rule 801(d), SCRE provides that hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 802, SCRE provides that hearsay is not admissible unless it meets one of the exceptions included in the hearsay exceptions rule.

The judge should not have allowed the circumstances of the offenses to come into evidence as they were hearsay offered to prove the truth of the matter asserted.

CONCLUSION

Based on the above reasons, the order of the trial court should be reversed, and the case dismissed, and Cook 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 large initial "L" and a long, sweeping underline.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of December, 2012.

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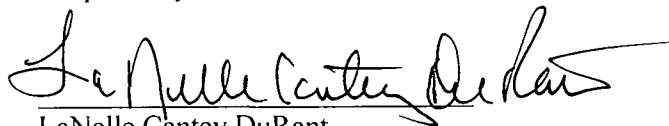
SC Court of Appeals

Counsel for Carl Durrell Cook 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 Michael G. Nettles, which was held on December 15, 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 Carl Durrell Cook.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of December, 2012.

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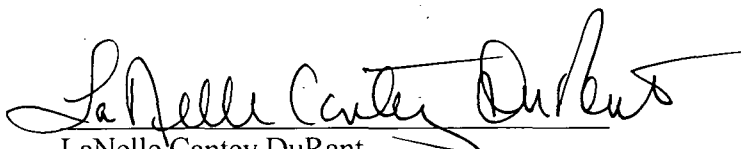
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript December 5 and 7, 2011.
- (2) State's Exhibits 1, 2 and 3.
- (3) Order of Commitment

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

December 10th, 2012


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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Attorney for Appellant

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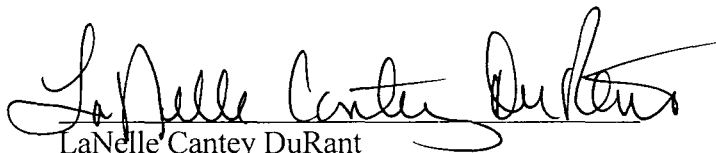
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CERTIFICATE OF SERVICE

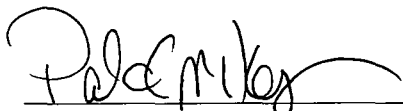
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellate and Designation of Matter, with accompanying Record on Appeal, was been served on Carl Durrell Cook, at Sexual Violent Predator Program, 7901 Farrow Road, Columbia, SC 29203, this 10th day of December, 2012.

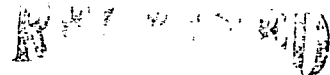


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of December, 2012.

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



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