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**Jan 20 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

FREDERICK ROBERT CHAPPELL,

APPELLANT.

APPELLATE CASE NO. 2022-000446

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ANDERS BRIEF OF APPELLANT

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DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in admitting the testimony of an expert in child sexual abuse dynamics because her testimony was neither relevant nor beyond the scope of a juror's knowledge?

## STATEMENT OF THE CASE

A Greenville County jury indicted appellant for first-degree criminal sexual conduct with a minor and lewd act upon a child in 2010. R. 370-371. In 2012, Appellant was convicted on both counts and his conviction was affirmed by this Court. State v. Chappell, Op. No. 2014-UP-272 (S.C. Ct. App. June 30, 2014). The dismissal of appellant's PCR was reversed by this Court and appellant was granted a new trial. Chappell v. State, 429 S.C. 68, 837, S.E.2d 496 (Ct. App. 2019).

On April 4, 2022, appellant was tried before the Honorable Perry H. Gravely and a jury. R. 1. Jeff Phillips represented the State. R. 1. Rachel Kepley represented appellant. R. 1. The jury convicted appellant. R. 362, l. 19 – 363, l. 8. Judge Gravely sentenced appellant to forty-five years' imprisonment for CSC and a consecutive fifteen years' imprisonment for lewd act. R. 367, l. 15 – 18. This appeal follows.

### **STANDARD OF REVIEW**

“An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law.” Maybank v. BB&T Corp., 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016). “A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.” Id.

## ARGUMENT

The trial judge erred in admitting the testimony of an expert in child sexual abuse dynamics because her testimony was neither relevant nor beyond the scope of a juror's knowledge.

Appellant's first conviction was ultimately reversed by this Court in his appeal from a PCR for improper bolstering by a child sexual abuse expert. Chappell v. State, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019). This case again should be reversed because of the improper admission of a child sexual abuse expert's testimony.

No physical evidence exists in this case. The conviction depended upon the credibility of Minor. Minor, who was an adult at the time of this trial, testified and a forensic interview recorded when she was seven years old was played for the jury. Appellant was Minor's grandmother's boyfriend and lived at the grandmother's trailer. R. 130, l. 19 – 131, l. 22.

Minor claimed that while her grandmother was asleep mere feet away, appellant would carry her into the grandmother's bedroom and sexually abuse her at the foot of the grandmother's bed. R. 132, l. 2 – 24. Minor never called out to her grandmother during the abuse. R. 145, l. 22 – 24. Grandmother never woke up during the abuse. R. 145, l. 25 – 146, l. 2.

Minor said that appellant performed oral sex on her, digitally penetrated her, and had sexual intercourse with her. R. 132, l. 2 – 18. She also claimed that appellant would video himself abusing her and traded the videos with a friend named "Smiley" who would send videos of him doing the same things to a teenager. R. 133, l. 17 – 136, l. 12.

Appellant voluntarily talked with the police. R. 165, l. 3 – 13. He denied abusing Minor. R. 165, l. 3 – 13. Appellant also voluntarily surrendered his phone to the police and nothing

incriminating was found. R. 165, l. 14 – 25. The police also located “Smiley” and searched his phone and found nothing. R. 171, l. 15 – 172, l. 1.

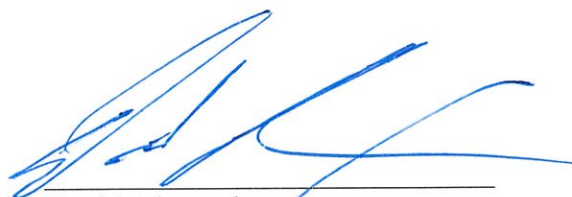
The State proffered the testimony of Erica Van Wagner as an expert in “the treatment of children with trauma and sexual abuse dynamics.” R. 232, l. 20 – 23. After the proffer, appellant objected to the admission of her testimony as irrelevant, improper bolstering, and more unfairly prejudicial than probative. R. 245, l. 2 – 247, l. 15. Minor told her mother about the abuse after her mother caught her and her sister having oral sex. R. 109, l. 15 – 22. As appellant argued, Minor’s disclosure was not delayed, but during an ongoing allegation of abuse, making the bulk of Wagner’s testimony about delayed disclosure irrelevant. R. 245, l. 2 – 247, l. 15. Because the disclosure was accidental, the testimony about purposeful versus accidental disclosure was also irrelevant and not something the jury needed expert testimony to understand. R. 245, l. 2 – 247, l. 15. No evidence of grooming existed, therefore the expert’s extensive discussion of grooming was irrelevant. R. 245, l. 2 – 247, l. 15. The judge allowed Wagner’s testimony, but called the decision “a very close call.” R. 250, l. 20 – 24.

The trial court erred in allowing the expert’s testimony. While the admission of expert testimony of the behavior of sex abuse victims may be “settled,” the testimony here was simply irrelevant to the factual circumstances of the case and did not fall outside the jury’s knowledge. See State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 271 (2018). In Jones, the Supreme Court wrote, “We caution this holding does not create a categorical rule establishing this as a recognized area of expertise in every case. If such an expert is challenged, the proper course of action for the trial court remains to hear a proffer of the proposed expert's testimony and determine whether the all of the requirements of Rule 702, SCRE, have been satisfied.” Id. at n. 1.

This case falls outside of the holding of Jones. The expert discussed general principles of child sexual abuse that bore no relevance to the facts of the case. The disclosure was not delayed. Minor told her mother about her allegations when she was caught with her sister. The only delay was in telling the police because of the mother's prior history as a sexual abuse victim. R. 110, l. 3 – 112, l. 15. Minor did not testify about any grooming. This simply was not a case where a child sexual abuse expert was needed for the jury to understand the allegations. Jones warned that the admission of these experts' testimony should not become routine. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's convictions and grant him a new trial.



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David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2023.

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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Frederick Robert Chappell states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Perry H. Gravely, which was held on April 4 - 7, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Frederick Robert Chappell.

Respectfully Submitted,



\_\_\_\_\_  
David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2023.

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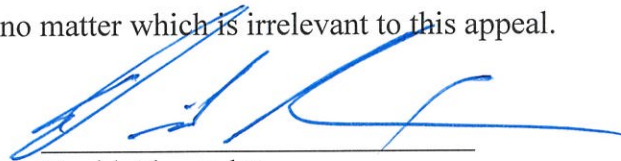
APPELLATE CASE NO. 2022-000446

**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(s) and sentence sheet(s);
- (2) Trial transcript dated April 4-7, 2022; and
- (3) State's exhibit #2 (CD).

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



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

This 20th day of January, 2023.

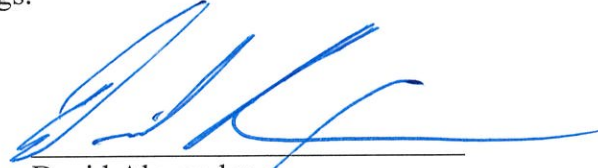
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**CERTIFICATE OF COUNSEL**

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.”



David Alexander  
Appellate Defender

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Frederick Robert Chappell, #214069, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 20th day of January, 2023.



\_\_\_\_\_  
David Alexander  
Appellate Defender

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ATTORNEY FOR APPELLANT

**From:** [Stock, Chris](#)  
**To:** [SC - BLITCH WILLIAM](#); [SC - COLLINS CAROLINE](#)  
**Cc:** [Alexander, David](#)  
**Subject:** Chappell, F. - Anders Brief of Appellant, Designation of Matter, Record on Appeal and Proposed Transportation Order - 2022-000446  
**Date:** Friday, January 20, 2023 3:36:00 PM  
**Attachments:** [Chappell, F. - Proposed Transportation Order - 2022-000446.pdf](#)  
[Chappell, F. - Record on Appeal - 2022-000446.pdf](#)  
[Chappell, F. - Anders Brief of Appellant - 2022-000446 - AG Cover Letter.pdf](#)  
[Chappell, F. - Anders Brief of Appellant - 2022-000446.pdf](#)

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Mr. Blitch,

Please find attached for service the Anders Brief of Appellant, Designation of Matter, Record on Appeal and Proposed Transportation Order for Frederick Robert Chappell's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

**Chris Stock**  
Administrative Assistant  
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