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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SHANE ROBERT CLAMP,

APPELLANT

APPELLATE CASE NO. 2022-001115

---

ANDERS BRIEF OF APPELLANT

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DAVID ALEXANDER  
Appellate Defender

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PO Box 11589  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err in admitting expert testimony without qualifying the witness and allowing the witness to testify beyond the scope of his expertise?

## STATEMENT OF THE CASE

Appellant was indicted in Lexington County for domestic violence of a high and aggravated nature, and tried on August 1-2, 2022 before the Honorable Debra R. McCaslin and a jury. R. 1 Whitney Taylor and Player Long represented the State. R. 1. James Snell, Jr. represented appellant. R. 1. The jury acquitted appellant of domestic violence of a high and aggravated nature (DVHAN). R. 257, l. 4-6. The jury convicted appellant of the lesser-included charge of first-degree domestic violence (DV1). R. 257, l. 6-8. Judge McCaslin sentenced appellant to ten years' imprisonment provided upon the service of five years, and two years' probation. R. 288, l. 11-14. This appeal follows.

### **STANDARD OF REVIEW**

The trial court is required to make a finding of an expert witness's qualification under Rule 702, SCRE. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "We review evidentiary rulings for abuse of discretion, meaning we will only disturb them if they have caused prejudice and are the result of legal error or have inadequate factual support." State v. Warner, 430 S.C. 76, 83, 842 S.E.2d 361, 364 (Ct. App. 2020), aff'd in part and remanded in part on other grounds, 436 S.C. 395, 407, 872 S.E.2d 638, 644 (2022). Error is found where expert testimony is offered absent a finding of expert qualification under Rule 702. Hamrick v. State, 426 S.C. 638, 650, 828 S.E.2d 596, 602 (2019).

## ARGUMENT

The trial court erred in qualifying the witness, and by allowing the witness to testify beyond the scope of his expertise.

The State charged appellant with domestic violence of a high and aggravated nature (“DVHAN”) based on an alleged choking incident. R. 3, l. 8-10. The State stipulated that “great bodily harm” as defined in the statute did not occur and proceeded under the theory that the choking reasonably created fear of imminent peril by impeding the complainant’s breathing. R. 116, l. 7-8; R. 205, l. 21-25. The jury acquitted appellant of DVHAN, but convicted him of first-degree domestic violence.

Appellant and complainant resided in Lexington County with their two children. R. 49, l. 7-21; R. 123, l. 14-16. Complainant testified that on the morning of January 17, 2022, when she and the children woke up and began their morning routine, complainant noticed that appellant was “angry” and “picking a fight.” R. 125, l. 8-9. Complainant continued making breakfast, and feeling that appellant was “out of control,” she began a video recording on her cell phone in her pocket while appellant was outside on the back porch. R. 125, l. 17-23; R. 127, l. 14-23.

Complainant alleged that while she was in the kitchen, appellant returned from the back porch and strangled her. R. 128, l. 2-17. Complainant testified, “I couldn’t breathe and it was so hard that that’s when I was so scared that I thought I was gonna die in front of the boys.” R. 129, l. 2-4. After appellant released her, he began pacing and trashing the kitchen. R. 23, l. 1-11. She was able to use a second phone to send a short text to a friend before appellant struck her in the head. R. 134, l. 22-23 -- 135, l. 20-23. The friend called 911, and a responding officer

testified that he noticed complainant was limping and had a neck injury. R. 81, l. 1; R. 179; l. 25, R. 180, l. 4-6.

The day after the incident, complainant went to an urgent care for pain in the right foot, pain in the right rib, and neck injuries. R. 83, l. 21-23. Jeremy Stiles, the nurse practitioner who evaluated complainant, diagnosed a fractured foot and noted bruising consistent with applied force. R. 84, l. 19-20; R.85, l. 6-7. He referred complainant to Lexington Orthopedics, where she was examined by Dr. Matison Boyer, a foot and ankle specialist. R. 84; l. 22-23; R. 94, l. 2-4.

It was undisputed that the complainant suffered a broken foot, but Dr. Boyer admitted the injury was a “dancer’s fracture” that can happen without trauma. R. 97, l. 17-22. Complainant initially said she was unsure how her foot was hurt. R. 98, l. 4-9. The State asked the foot doctor whether bruises on the victim’s neck were consistent with strangulation. R. 99, l. 16-18.

Appellant objected, arguing the State’s question went beyond the scope of the doctor’s involvement in diagnosing and treating the complainant. R. 99, l. 19-23. The trial court overruled the objection. R. 100, l. 11. Over the defense’s objection, Dr. Boyer testified, “Yeah. **I’m not an expert on strangulation**, but based on previous testimony and review of the notes, that seems appropriate.” R. 100, l. 22-24. (emphasis added).

The court erred in allowing Dr. Boyer’s testimony regarding whether the bruises on complainant’s neck were consistent with strangulation. First, Dr. Boyer’s statements regarding complainant’s injuries were inadmissible as expert testimony because he was not qualified as an expert. South Carolina case law has demonstrated that SCRE 702 requires a finding of expert qualification before admission of expert testimony. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518. The record here demonstrates no finding of Dr. Boyer as an expert witness; as such his

testimony regarding complainant's injuries should be disqualified. Dr. Boyer—a foot doctor--admitted that he was “no expert” on strangulation. R. 100, l. 22-24.

Second, ignoring the lack of qualification, defense counsel correctly objected to Dr. Boyer's testimony asserting consistency between strangulation and the bruising on complainant's neck. As the foot doctor admitted, it exceeded the scope of his relevant knowledge. Dr. Boyer is an orthopedic foot and ankle specialist, with intensive training in orthopedic surgery and foot and ankle injuries. R. 92, l. 18-23. These are high qualifications, but do not equate to expertise in bruising of the neck.

Though Dr. Boyer's general medical education may have touched on either of those topics, expert qualification is not established by broad overview study of a subject. See Hamrick v. State, 426 S.C. at 649, 828 S.E.2d at 602. Dr. Boyer's specialized knowledge of orthopedics and foot and ankle injuries did not show he was better able than a jury to form an opinion about the consistency of neck bruising with strangulation. See State v. Prather, 429 S.C. at 598, 840 S.E.2d at 559 (“To be competent to testify as an expert, ‘a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony’” (internal citation omitted)). Due to this lack of expert qualification and the doctor exceeding the scope of his expertise, it was error for the court to admit Dr. Boyer's testimony about complainant's neck injuries. Because this error contributed to the jury's finding of an element of DV1, Appellant's conviction should be reversed.

**CONCLUSION**

Due to error in the admission of expert witness testimony, appellant's DV1 conviction should be reversed and this case remanded for a new trial.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shane Robert Clamp 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 Debra R. Mccaslin, which was held on August 2, 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 Shane Robert Clamp.

Respectfully Submitted,



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2023.

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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) True-billed indictment
- (2) Sentence Sheet
- (3) Trial Transcript August 1, 2022
- (4) Trial Transcript August 2, 2022
- (5) State's Exhibit #11-#14 (TEXT MESSAGES)
- (6) State's Exhibit #5 (AUDIO)

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 5th day of July, 2023.

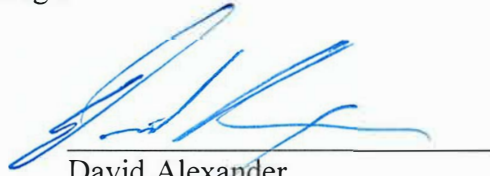
**CERTIFICATE OF COUNSEL**

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."

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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 Shane Robert Clamp, #388609, at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 5th day of July, 2023.



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Appellate Defender

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ATTORNEY FOR APPELLANT

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**Subject:** 2022-001115 The State v. Shane Robert Clamp Anders Brief of Appellant  
**Date:** Wednesday, July 5, 2023 11:23:00 AM  
**Attachments:** [Ltr to AG Anders Brief 07.05.23.pdf](#)  
[2022-001115 The State v. Shane Robert Clamp Anders Brief of Appellant.pdf](#)  
[2022-001115 The State v. Shane Robert Clamp Record on Appeal.pdf](#)

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Good Morning,

Please find attached for service in the above-referenced case the Anders Brief of Appellant and Record on Appeal which will be filed today, July 5, 2023, with the Court of Appeals via email filing.

Thank you,  
Shelby

**Shelby Pollard**

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