STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL C. ANDES,

APPELLANT

APPELLATE CASE NO. 2011-204706

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in allowing the State's psychological expert to testify about violence and reports of sexual assaults in domestic relationships where she did not examine or have any understanding of the facts of the case; where she repeatedly used the term "sexual assault" to refer to subjective, unverified reports and did not distinguish the term's legal meaning; where she testified to a few general dynamics of trauma in domestic relationships but did not offer specialized or technical information; and where the effect of her testimony was calculated to reconcile the unexpected behavior of the accuser in the minds of the jurors?

STATEMENT OF THE CASE

Appellant was indicted by the Berkeley County grand jury on one counts of first-degree criminal sexual conduct. R. *. On November 28, 2011, Appellant proceeded to trial before a jury and the Honorable Kristi L. Harrington. Tr. 1. Appellant was represented by Grover Seaton, IV, and Anne Williams and Ben Shelton represented the State. Tr. 1.

At the conclusion of the trial on through December 2, 2011, the jury found Appellant guilty. Tr. 854, ll. 12-17. Judge Harrington sentenced Appellant to thirty years imprisonment, provided a suspended balance after twelve years with five years of probation. Tr. 873, ll. 11-16. Appellant was also to be placed on the sex offender registry. Tr. 873, ll. 18-19.

This appeal follows.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE STATE'S PSYCHOLOGICAL EXPERT TO TESTIFY BECAUSE NONE OF HER TESTIMONY WAS HELPFUL TO THE JURY.

STATEMENT OF FACTS

At the trial in this case, the State called an expert in the field of "psychology and in the field of impact of trauma in domestic violence" to explain the curious behavior of LeAnne Blanche, who was making an accusation of sexual assault. Tr. 520, ll. 6 – 10. The expert witness knew nothing about the case itself and had met neither Ms. Blanche nor Appellant Michaels Christopher Andes, whom she was accusing. Tr. 532, ll. 13-22; Tr. 533, ll. 23-24. Nevertheless, the State had to provide answers to a number of glaring questions in its theory, like how could Ms. Blanche accuse Appellant of sexual assault when the two plainly had a long, intimate history together?

> Q: What is the power and control dynamic in a relationship that has domestic violence?
>
> A: Within domestic violence relationships it is not necessarily all just about the physical assaults that might go on. There's a dynamic of power and control a lot of times in these relationships. . . .
>
> Q: And how common is sexual assault in domestic violence relationships?
>
> A: When folks think of sexual assault . . . what we more commonly think . . . is that someone gets raped, pulled into bushes and that does occur in about twenty percent of sexual assault cases; however, the rest . . . usually [occur] by someone who the victim actually knows. So it's more likely that someone will be assaulted by someone that they know than by a stranger.
>
> In twenty percent of sexual assault cases, it typically occurs within a relationship with a husband, ex-husband, ex-boyfriend, boyfriend, sort of relationship.

Tr. 522, l. 19 – Tr. 523, l. 25. The State also sought a possible explanation for how Ms. Blanche could be so indecisive about making a report to the police.

> Q: Is there [anything] unusual about a victim not reporting just immediately?
>
> A: Uh, no, women respond in a lot of ways. Some could pick up the phone but . . . a lot of women don't necessarily do that. There are a variety of reasons. Some women like, you know, just like wrapping their heads around it, especially if it was someone that they knew. Typically, when a woman knows the perpetrator, they are less likely to report it to authorities. So you know, there is a lot that goes on with their thinking about it and [what] to do.

Tr. 527, ll. 6-18.

> Q: [I]s it sometimes difficult for some victims to come to a decision to actually pick up the phone and press charges?
>
> A: Yes. Both in literature and in my clinical experience, obviously it is difficult for women to want to make a report to rto press charges for a host of reasons. The first thing is they may have a relationship with that person. They may actually feel – first of all they may not be able to come to grip with the terms of what it means, what happened. If it is a person that they trusted, that they have feelings for, sometimes they worry about what is going to happen to the person. . . .

Finally, the State solicited hypotheses as to why Ms. Blanche would stay in constant contact with Appellant after the alleged assault occurred.

> Q: Is it unusual for a perpetrator to contact [a] victim, even after a rape?
>
> . . .
>
> A: In a domestic violence relationship, a lot of times when [women] get assaulted in some way and they have a relationship with that person, they will try to make sense of what happened. A lot of times a person afterwards apologizes, promises that they will change. So they are trying to understand. So it is not uncommon for a woman to

> go back into a relationship when they had been assaulted. Or for them to make contact.

Tr. 531, l. 14 – Tr. 532, l. 10. During the course of the examination, trial counsel objected three times to relevancy, and each time the court overruled the objection. Tr. 521, ll. 10-20; Tr. 522, ll. 7-10; Tr. 531, ll. 16-25. He tried to neutralize the testimony on cross-examination.

> Q: There is no average person, according to your testimony. You've got a wide range, you've got an entire range. Anything is possbible?
>
> A: Correct.
>
> Q: And amongst things that are possible, have you ever met someone who had lied about an assault?
>
> A: Uh, I might have met somebody. Women who work at my clinic, that I do treatment with, do evaluate whether the women are lying.
>
> Q: That is no part of your job, is to determine the truth of what they are telling you; is it?
>
> A: That's correct.
>
> . . .
>
> Q: And which you agree with me that there are women who have accused loved ones of crimes that did not happen?
>
> A: I am sure there are.

Tr. 534, l. 5 – Tr. 535, l. 14.

The case arose out of a long, intimate history between Appellant and Ms. Blanche. They met while living in the same apartment complex in early 2006. Tr. 242, ll. 1-9. Ms. Blanche was married to her second husband, but they divorced after she met Appellant. Tr. 242, ll. 12-17. She moved to a new residence in Hanahan and began having sex with

Appellant. Tr. 242, ll. 18-21. Appellant eventually purchased a home in Goose Creek, and Ms. Blanche moved in with him in late 2008 or early 2009 after he bought a ring for her. Tr. 243, ll. 5-16; Tr. 244, ll. 3-16.

Appellant and Ms. Blanche shared the master bedroom, and her ten-year old daughter, Maryssa, slept in the second bedroom. Tr. 181, ll. 10-14; Tr. 300, ll. 1-9. Appellant's daughter, the same age as Maryssa, would also stay in the house periodically. Tr. 245, ll. 9-15. During this time, Ms. Blanche used a cell phone Appellant arranged for her and registered in his name. Tr. 191, ll. 2-9.

Ms. Blanche testified that the last consentual sexual contact she had with Appellant was late 2009, shortly before she had a bladder operation. Tr. 182, ll. 1-12. However, she also testified that she did not stop staying in the master bedroom with Appellant until around March of 2010, when she claims she began staying in Maryssa's room. Tr. 181, ll. 20-25. She also admitted she never removed her clothes from the master bedroom and would dress herself in there. Tr. 247, ll. 15-22. She also claimed she had broken up with Appellant and only stayed in the house as a renter, but she had no proof she ever paid him rent. Tr. 249, ll. 11-23. She continued driving the vehicle that Appellant had purchased for her. Tr. 250, 1-9.

Appellant told police though that he and Ms. Blanche had "fooled around" on the Thursday night before the alleged assault on Saturday morning. Tr. 667, ll. 12-16. Ms. Blanche's stated that on the evening of Friday, November 5, 2010 she came home and met Appellant. Tr. 194, ll. 2-18. Appellant greeted her by "grabbing her butt," which led to a spat. Tr. 194, l. 19 – Tr. 195, l. 2. Appellant then left for the night, and Ms. Blanche stayed in alone. Tr. 196, ll. 13-19. They interacted through calls and texts on the phone into the

early hours of the next morning, and in fact Ms. Blanche admitted she called Appellant over twenty times. Tr. 198, ll. 7 – Tr. 199, l. 25. Around 3:30 on Saturday morning, after Appellant had come back home, Ms. Blanche claimed she left her room and went to Appellant's room to tell him to stop texting her and that she did not want to be intimate with him that night. Tr. 207, ll. 17-24. She then went back to the second bedroom, and shortly thereafter Appellant entered and came over to "his side of the bed." Tr. 208, ll. 3-6. She said things then "got a little verbal." Tr. 208, ll. 8-9.

Ms. Blanche's story was that Appellant eventually moved on top of her and groped her roughly until she asked him to stop, began crying, then screamed to get him to leave the room. Tr. 208, ll. 12-17. Appellant got up to leave, but then he came back to bed and pulled off her pants. Tr. 208, ll. 18-23. She told him to get off while "trying to hit him." Tr. 209, ll. 2-4.

Ms. Blanche then said that Appellant proceeded to hold her hands down, hold her body down, grope her breasts, cover her mouth, and digitally penetrate her, all in repeated succession. Tr. 209, ll. 6-17. She said she continued yelling at him to stop and started crying, but he penetrated her with his penis and ejaculated in her vagina. Tr. 209, l. 17 – Tr. 210, ll. 5. Appellant left the room shortly thereafter. Tr. 210, ll. 16-17. Ms. Blanche said she covered up a damp spot on the sheets with some clothing so she could stay in bed. Tr. 210, ll. 19-22.

Maryssa texted Ms. Blanche at 4:00 a.m. that morning, but Ms. Blanche did not respond. Tr. 297, ll. 2-17. Instead, around 5:00 a.m., she texted a friend. Tr. 211, ll. 1-6. Around 8:15 a.m., Ms. Blanche's niece texted her, and she responded a few minutes later. Tr. 299, ll. 5-24. Around 8:00 a.m., Appellant texted Ms. Blanche that he was sorry about

the night before, and they continued texting throughout the day, arguing back and forth about the encounter that morning. Tr. 213, ll. 6-22. Tr. 221, ll. 15-19. Around 8:40, she left the house to prepare for a birthday party for her daughter that she had been planning. Tr. 211, ll. 10-14; Tr. 305, ll. 4-8. After the party she went to some relative's house and then to her grandparent's house nearby. Tr. 393, ll. 17-25. She would later make a statement that she never went back to Appellant's house that day, but at trial she admitted she did return to the house at some point for at least a couple of hours. Tr. 458, ll. 4-16.

Around 10:00 p.m., Ms. Blanche said she became "pissed off" at Appellant. "I was very pissed off about the fact that it was very flip-flop. One minute, 'I am very, very sorry' and then 'here I am, out drinking with my friends like what I've done is no big deal.'" Tr. 215, ll. 8-25. Her phone records showed she then called Appellant twenty-eight times in a row. Tr. 378, ll. 5-7. At 10:48 p.m., after the twenty-eighth call, she called the police to report a sexual assault. Tr. 215, ll. 8-14; 378, ll. 18-20.

Ms. Blanche said she was "conflicted about calling 911 on someone that [she'd] had a relationship with." Tr. 216, ll. 5-8. On Sunday, she continued texting Appellant, and the conversations turned less argumentative—Appellant wrote affectionately to Ms. Blanche, telling her he missed and loved her and wanted her to come home. Tr. 223, l. 19 – Tr. 224, l. 10.

For the trial in the case, Ms. Blanche saved the texts to and from Appellant around the time of the incident but did not save the others. Tr. 301, 1-19. Her records showed a number of messages between the two that she did not have saved for court, but she continually denied knowing what happened to them. Tr. 333, ll. 13-23. Ultimately, she admitted on the stand that she erased a number of them. Tr. 486, ll. 4-8.

When asked why she returned on the same day to the place she alleged she was assaulted, her response was unconvincing:

> Q: [Y]ou went back the same day.
>
> A: Well, the rape didn't happen – (shouting) – everywhere else. The rape happened there, so I had to come back to that house!
>
> Q: Why?
>
> A: Because that's where it happened! (Witness yelling and pounding on witness stand). Do you think that I could call from someplace where it didn't happen?

Tr. 458, ll. 13-21.

In his closing argument, trial counsel implored the jury to look at all of the evidence and determine whether the State proved beyond a reasonable doubt that any sex was not consentual. Tr. 809, ll. 18-22; Tr. 813, ll. 16-21. The court charged the jury using the bare language of the first-degree criminal sexual conduct statute:[1]

> If you find that a sexual battery did occur, you must then decide whether the State has proven beyond a reasonable doubt that the Defendant used aggravated force to accomplish the sexual battery. Aggravated force means to use physical force or physical violence of a high and aggravated nature to overcome the victim. This includes the threat of using a deadly weapon.

Tr. 846, ll. 8-16.

STANDARD OF REVIEW

This Court should reverse the trial court's decision to admit evidence when it is based on an abuse of discretion. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "An abuse of discretion occurs when the trial court's ruling is based on an error

of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell,* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

DISCUSSION

The trial court abused its discretion in allowing the State's psychological expert to testify because none of her testimony was helpful to the jury. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. The requirement that expert testimony assist the trier of fact to understand the evidence or to determine a fact in issue goes primarily to relevance. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591 (1993) (citing *United States v. Downing,* 753 F.2d 1224, 1242 (3rd Cir. 1985) ("[A]nother aspect of relevancy—is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.")).

I. The psychological expert's testimony regarding domestic violence was not helpful to the jury because it was not meaningfully connected to the facts of this case.

The psychological expert's testimony regarding domestic violence was not helpful to the jury because it was not meaningfully connected to the facts of this case. "'[E]xpert opinion which is speculative, conclusory, or unsubstantiated by facts in the record is of no assistance to the jury in rendering its verdict, and therefore is inadmissible.'" *Coombs v. Curnow*, 219 P.3d 453, 464 (Idaho 2009); *cf.* *Moriarity v. Garden Sanctuary Church of God*, 334 S.C. 150, 511. S.E.2d 699 (Ct. App. 1999)

[1] Trial counsel previously requested the trial court use a specific charge as to consent, but

(holding under motion for summary judgment "repressed memory syndrome" is not an improper subject of expert testimony, and trial court should "evaluate the efficacy of the repressed memory syndrome **as applied to this case**" when "**the allegation of repressed memory has been made and is a material issue of fact which is in dispute**" (emphasis added)); *Henry Sonneborn & Co. v. Southern Ry. Co.*, 65 S.C. 502, 44 S.E. 77 (1903) (holding testimony of expert regarding damage to clothes due to wetness was admissible although witness did not see clothes at issue because **other testimony established the clothes at issue were of the same type in which expert had specialized knowledge** (emphasis added)).

Here, the psychological expert's testimony regarding domestic violence was factually unconnected with this case. The expert admitted she had no understanding of the facts of this case, and she did nothing more than generally survey a few possible aspects of a relationship in which some physical trauma has occurred. Further, any application of her understanding of sexual assaults and relationships involving domestic violence to the case was wholly speculative. The State adduced no other witness or other evidence or even alleged that Appellant and Ms. Blanche's relationship was physically violent outside of the crime charged in the case, and that issue was never material or in dispute. To the contrary, the record shows Mr. Andes did anything but control or abuse her: he purchased her vehicle, registered her cell phone, and took her and her daughter into his home free of charge.

The State plainly called the expert to give the jurors grounds to speculate and patch the holes in its case. It had to contrive some explanations for how Ms. Blanche

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the court refused. Tr. 773, l. 1 – Tr. 777, l. 2; R *.

could accuse Appellant of sexual assault when the two lived together intimately and provided for one another; for why Ms. Blanche would wait nearly twenty-four hours before making a report to police and be conflicted about making that phone call; and for why she would reach out to Appellant repeatedly and remain emotionally connected with him after the alleged assault. The testimony did not provide with any degree of reliability factual grounds to help the jury understand and decide the case.

II. The expert's testimony was not helpful because she conflated her psychological understanding of consent and assault with those legal concepts at issue in the trial.

The expert's testimony was not helpful because she conflated her psychological understanding of consent and assault with those legal concepts at issue in the trial. Expert testimony is not helpful if it "merely tells the jury what result [it] should reach or [is] phrased in terms of 'inadequately explored legal criteria.'" *Moriarty v. Bd. of County Comm'rs*, 2013 WL 1143674 at *16 (D. N.M. 2013) (quoting *U.S. v. Simpson*, 7 F.3d 186, 188 (10th Cir. 1993)). Put differently:

> When an expert attempts to provide the jury with legal terms of art and conclusions, without explaining those terms or give the jury an opportuinity to draw its own inferences, the expert's testimony is no "helpful" to the jury . . . because the testimony "provid[es the jury] with no independent means by which it can reach its own conclusion or give proper weight to the expert testimony."

Id. Accord Hygh v. Jacobs, 961 F.2d 359, 364 (2nd Cir. 1992) ("Even if a jury were not misled into adopting outright a legal conclusion proffered by an expert witness, the testimony would remain objectionable by communicating a legal standard—explicit or implicit—to the jury.")

The Fourth Circuit Court of Appeals addressed this problem in *U.S. v. Barile*, 286 F.3d 749 (4th Cir. 2002). Noting that expert testimony that merely states a legal conclusion or tells the jury what result to reach is not helpful and inadmissible, the court held that a trial court must distinguish legal conclusions based on "terms used by the witness [that] have a separate, distinct and specialized meaning the law different from that present in the vernacular." *Id.* at 760 (citations omitted).

In this case, the crime charged, criminal sexual conduct, involves an element of consent. *See, e.g.*, *State v. Cox*, 274 S.C. 624, 266 S.E.2d 784 (1980) (holding no specific charge for consent needed in trial for second-degree criminal sexual conduct because trial court charged the language of the statute, which adequately covered the issue of consent). Consent is a legal term of art, but it also has a vernacular, everyday meaning. *See, e.g.*, *People v. Giardino*, 98 Cal. Rpter. 2d 315, 319-20 (Ct. App. 4th Dist. 2000) (distinguishing between "actual consent" and "legal consent"). Thus, criminal sexual conduct, or sexual assault, also has a legal meaning and a vernacular meaning.

Consent, and therefore criminal sexual conduct or sexual assault, has a range of legal definitions, depending on the jurisdiction. *See, e.g.*, *State v. Ice*, 997 P.2d 737, 740 (Kan. Ct. App. 2000) ("The test for consent under that provision is whether the individual understands the nature and consequences of the proposed act."); *Ritter v. State*, 97 P.3d 73, 78 (Alaska Ct. App. 2004) ("[T]he question is not whether Ritter's victims protested or physically resisted, but rather whether Ritter was aware of, and consciously disregarded, a substantial and unjustifiable possibility that his sexual contact with the women was being conducted without their consent."); *State v. Foss*, 804 A.2d 462, 465 (N.H. 2002) ("The issue of consent involves the victim's objective manifestations of her

unwillingness to engage in the conduct and thus concerns the victim's demonstrative and verbal conduct."); *State v. Cossette*, 856 A.2d 732, 737 (N.H. 2004) ("Although the word "coerce" is not defined in the statute, . . . we have construed it broadly . . . to include undue influence, physical force, threats or any combination thereof. Coercion need not be overt and may consist of the subtle persuasion arising from the position of authority." (citations omitted).).

At the trial in this case, the court did not explore the legal definition of consent or criminal sexual conduct beyond reading the statutory language in its charge. Thus, when the State's expert began testifying using the term "sexual assault," she conflated her psychological understanding of the term—or a woman's unverified report of subjectively nonconsentual sex—with the legal concepts of consent and sexual assault. When she testified that women respond in different ways to sexual assault, the jurors interpreted the testimony as explaining responses in cases where a legal, criminal assault had already been determined to have occurred, which made it easy for them to reconcile that a crime occurred in this case despite Ms. Blanche's questionable behavior. Nevertheless, the unexplored legal standard of sexual assault differs from the subject of the expert's testimony. Indeed, based on standards of consent above, some of which rely on objective factors or view consent from the male's perspective instead of the female's, Ms. Blanche's behaviors that the expert discussed—relying on Appellant for support, being intimate and living with him in a longstanding relationship, texting and calling him repeatedly,, feeling unsettled about claiming an assault to the police—were factors the jury should have considered in deciding whether a criminal sexual assault occurred in the first place. Put differently, the expert attempted to explain Ms. Blanche's unexpected

behavior in response to a sexual assault presumed to have occurred while the behaviors themselves were evidence that a sexual assault did not occur. In fact, she admitted as much:

> [I]t is difficult for women to want to make a report or to press charges for a host of reasons. The first thing is they may have a relationship with that person. They may actually feel – first of all they may not be able to come to grip with the terms of what it means, what happened. If it is a person that they trusted, that they have feelings for, sometimes they worry about what is going to happen to the person. . . .

Certainly, an objective view of consent and assault would construe a woman's romantic feelings and trust for a man, her reluctance to believe that an assault occurred, and her concerns for his wellbeing as evidence that he had consent to have sex with her. Accordingly, her testimony had the ultimate effect of telling the jury what legal conclusion to reach, and it was not helpful and should have been excluded.

III. None of the psychological expert's testimony was helpful because it was all within the common knowledge and common sense of the jury.

None of the psychological expert's testimony was helpful because it was all within the common knowledge and common sense of the jury. Expert testimony is also not helpful or relevant when the matters discussed are within the common knowledge and common sense of the jury. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) ("[T]he trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury."); *McBeth v. TNS Mills, Inc.*, 318 S.C. 388, 392, 458 S.E.2d 52, 54 (Ct. App. 1995).

In this case, the expert testified the dynamics of a relationship in which trauma occurs based on her psychological experience. However, she did not delve into any

technical or specialized concepts in dealing with consent, assault, and relationships that were outside of the ordinary understanding of a juror. For example, she testified that women at times have difficulty believing they have been assaulted, and it also takes time for them to process such trauma. She also testified that when a woman knows her assaulter, she has concerns about the social, professional, or personal consequences of reporting that person. She also drew a few general conclusions based on these principles. Plainly, nothing she testified to was outside the intuition of the average person on the street, and the testimony was not necessary for the jury to understand the evidence and decide the case. Because she merely recounted for the jurors relationship dynamics of which they were already aware, her testimony was not helpful, and the trial court should have excluded it.

IV. The psychological expert's testimony was not helpful because its only effect was to boost the credibility of Ms. Blanche and usurp the role of the jury.

The psychological expert's testimony was not helpful because its only effect was to boost the credibility of Ms. Blanche and usurp the role of the jury. Supporting the credibility of a witness alone is not a relevant ground for the admission of expert testimony because the testimony usurps the role of the jury. *See State v. Jerrell*, 350 S.C. 90, 104 n.6, 564 S.E.2d 362, 370 n.6 (Ct. App. 2002) ("An expert is not necessary for the jury to determine the credibility and truthfulness of the witnesses." (citing *Duncan v. State*, 500 S.E.2d 603 (Ga. 1998))).

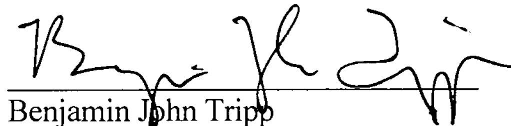
Here, the expert's testimony did nothing more than rehabilitate Ms. Blanche's credibility. She exhibited questionable behavior prior to and after a sexual encounter she was alleging to be rape. For the jury to trust her and believe her story, the jurors needed

some reconciliation of these behaviors. Accordingly, the State called in a psychological expert solely shore up the theory of the case that it wanted to sell. The testimony was equivalent to an expert telling the jury that the State's star witness was credible rather than letting the juror's assess her credibility for themselves. Thus, it was not helpful as a matter of law, and the trial court abused its discretion in allowing it.

CONCLUSION

For the foregoing reasons, Appellant requests that the Court remand the case to the trial court for a new trial.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of July, 2013.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Kristi Lea Harrington, Circuit Court Judge

THE STATE,

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V.

MICHAEL C. ANDES,

APPELLANT

APPELLATE CASE NO. 2011-204706

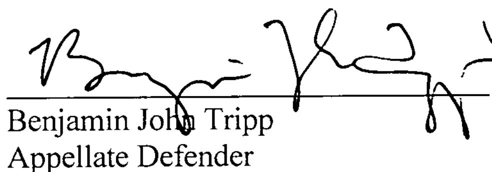
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True–billed indictment(s);
(2) Trial Transcript from November 28, 2011;
(3) Court's Exhibit 6.

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

July 19, 2013



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Kristi Lea Harrington, Circuit Court Judge

THE STATE,

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V.

MICHAEL C. ANDES,

APPELLANT

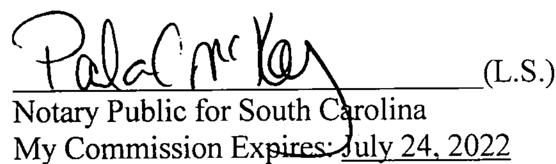
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter 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, this 19th day of July, 2013.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of July, 2013.



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

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