RECEIVED
Dec 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

NATHANIEL JENKINS,

APPELLANT

APPELLATE CASE NO. 2024-002043

---

# ANDERS BRIEF OF APPELLANT

---

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Rules**

## STATEMENT OF ISSUE ON APPEAL

Did the trial court err allowing a lay witness to give opinion testimony regarding Federal Aviation Administration (FAA) regulations and flight safety rules where the state failed to lay the Rule 702, SCRE, foundation for the testimony?

## STATEMENT OF THE CASE

On February 29, 2024, a York County grand jury indicted appellant for two counts of burglary second degree, two counts of grand larceny, four counts of unlawful entry of an aircraft, and two counts of contributing to the delinquency of a minor. On November 14, 2024, appellant was indicted for petit larceny. R.513-514; 517-518; 521-522; 525-526; 529-530; 533-534; 537-538; 541-542; 545-546; 549-550; 553-554; 557-558. On November 18, 2024, appellant's case was called to trial before the Honorable Daniel D. Hall, and a jury. R. 1. Frederick Davis and Jerry White represented appellant. R. 1. Assistant solicitor Heather Burdette and assistant deputy solicitor Chrisopher Epting prosecuted for the state. R. 1.

At the conclusion of trial, the jury found appellant was guilty as indicted. R. 496-497. Judge Hall sentenced appellant to an aggregate term of thirteen years' imprisonment. R. 509, l. 24—511, l. 17.

This appeal follows.

## STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Hatcher,* 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*; *see also State v. Brockmeyer*, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

## ARGUMENT

The trial court erred allowing a lay witness to give opinion testimony regarding FAA regulations and flight safety rules where the state failed to lay proper Rule 702, SCRE, foundation for the testimony.

**Relevant facts**

At trial, the state alleged appellant and Daniel Villada flew to Rock Hill Airport on two occasions, in November and December 2023, and while at the airport stole fuel, broke into airplanes, and stole avionics and electronics. R. 87, ll. 1-12. The state's best evidence at trial was a surveillance camera recording from November showing the airplane landing and the two men at the fuel pump. Additionally, the state presented the testimonies of appellant's alleged accomplice, Daniel Villada, and Villada's former girlfriend, Gabrielle Chalouhi. R. 224—253; 331—404.

During pretrial motions defense counsel moved to exclude testimony regarding Federal Aviation Administration (FAA) regulations, specifically testimony that appellant intentionally turned off the transponder in the airplane before landing at the Rock Hill Airport. Counsel contended there was no basis for any testimony to be admitted that appellant violated FAA regulations while flying into Rock Hill Airport. He also asserted the evidence was not relevant to the charges for which appellant was being tried. R. 46, l. 3—47, l. 1. The solicitor responded the testimony was relevant because it went to intent to conceal appellant's identity and further showed intent to commit a crime. R. 47, ll. 3-14. The court declined to rule and stated he would rule when the evidence came up during trial. R. 47, ll. 15-19

Steve Gould, the airport director at Rock Hill Airport testified for the state. R. 113—168. Gould's responsibilities at the airport were overseeing airport operations including security,

planning, wildlife control, and lease managements. R. 113, ll. 12-19. Gould admitted during cross examination he was not a pilot, not a FAA official, and not authorized to issue flight violations. R. 158, ll. 3-14; 164, ll. 12-15. Gould discussed how the airport property was secured by a fence line and gates only accessible with the card or fob. R. 114, ll. 1-6. During Gould's testimony, the airport surveillance camera video was entered in evidence without objection. R. 125, l. 8—126, l. 23.

After the video was published, the solicitor asked Gould whether appellant's plane had "all the required lights" on when he landed in Rock Hill on the evening of the first incident. R. 129, ll. 7-11. Immediately, defense counsel objected and without further argument the trial court overruled the objection. R. 129, ll. 12-13. Gould answered, "[n]o, it did not in terms of the safety of flight," to which defense counsel objected again. Defense counsel contended, "[t]he witness is not qualified. He's not been qualified as an expert in safety of flight." R. 129, ll. 15-20. The solicitor responded that this was not expert testimony but rather as director of the airport Gould was testifying as to correct procedures. The court overruled defense counsel's objection and Gould's testimony continued. R. 129, ll. 22-25. Defense counsel continued to object throughout Gould's testimony. Off the record bench conferences were conducted and defense counsel was overruled each time. R. 130, ll. 1-12; 134, ll. 13-25; 136, ll. 1-11.

Over objection, Gould testified appellant was flying his airplane without "all [] required lights," which was in violation of FAA regulations. R. 129, l. 10—130, l. 12. He testified about what specific lights appellant did not have turned on and stated it was "unusual" that a plane would land at the airport without those lights. R. 130, l. 19—131, l. 11. Over objection, Gould testified regarding ADS-B capabilities and FAA regulations regarding the ADS-B receiver. Gould declared that FAA regulations require a plane have its ADS-B receiver turned on when

within thirty miles of Class B airspace and that appellant had his receiver turned off when flying into Rock Hill on the dates of the incident. R. 146, l. 6—148, l. 13. He later admitted he did not even know what ADS-B stood for. R. 159, l. 23—160, l. 2.

**Discussion**

The trial court failed to hold a *Daubert/Council*[1] hearing and failed to conduct an on-the-record Rule 403 balancing test as required by *State v. Phillips*, 430 SC 319, 844 S.E.2d 651 (2020). As such the trial court failed to exercise its discretion in the admission of portions of Steve Gould's opinion testimony regarding FAA regulations and appellant's alleged violations of them.

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE.

"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. "When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "[I]f the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect." *Id.*; Rule 403, SCRE.

---

1 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

Rock Hill Airport Director Steve Gould did not possess the requisite qualifications to explain FAA regulations or flight safety procedures. The trial court erred allowing Gould's testimony.

In *Hamrick v. State*, the Supreme Court of South Carolina held the trial court reversibly erred by characterizing the police officer's testimony as lay opinion, failing to make necessary findings that the officer was qualified to testify as an expert witness, and admitting officer's opinion testimony as to whether defendant struck victim within construction zone. 426 SC 638, 828 S.E.2d 596 (2019). In that case, the defendant was convicted of felony driving under the influence resulting in great bodily injury. *Id.*

In that case the Court concluded that because the officer gave opinion testimony on the subject of accident reconstruction and the state failed to lay Rule 702, SCRE, foundation the admission of his testimony was error. *Id.* at 650, 828 S.E.2d at 602. First, the Court found the officer's testimony was incorrectly deemed "lay" opinion where the officer testified as to accident reconstruction which "require[d] expertise." The Court also found the state sought to establish the officer's qualifications as an expert and the court erred by characterizing it as lay testimony. *Id.* at 648-49, 828 S.E.2d at 601. Next, the Court found the trial court failed to make on the record findings that the state had established the foundation required by Rule 702, SCRE. *Id.* at 649, 828 S.E.2d at 601-02. The Court found the officer "did not possess the necessary qualifications to give an opinion on accident reconstruction." *Id.* The Court reasoned that accident reconstruction is a "highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand." *Id.*

In *State v. Phillips*, the Supreme Court of South Carolina held the trial court abused its discretion in admitting state's DNA analyst expert testimony and the error was not harmless. 430 SC 319, 844 S.E.2d 651 (2020). In that case defendant was convicted of murder and possession of a weapon during the commission of a violent crime. *Id.* In that case the Court found the state failed to lay the foundation so that the trial court could meaningfully exercise its discretion. *Id.* at 340-41, 844 S.E.2d at 662.

In that case the Court found that "because the trial court did not require the state to present the factual and scientific foundation for" the testimony "in a *Daubert/Council* hearing before she testified to the jury" the Court conducted the analysis for the first time on appeal. *Id.* at 341, 844 S.E.2d at 662. The Court held the trial court should also have "conducted an on-the-record" Rule 403, balancing test. The Court found the root of the error was based in "a series of failures by the [s]tate," the state failed to: (1) present testimony of the expert at a hearing where the court was to consider the admissibility, (2) present a complete factual and scientific basis for the admission of the expert's opinion, (3) explain to the jury complicated DNA concepts involved in the case, and (4) present correct information regarding DNA evidence. Additionally, the state misstated to both the court and jury that the defendant's DNA was on the gun and in the jeans pocket. *Id.*

The Court concluded that if an objection is made the trial court must hold a *Daubert/Council* hearing, the proponent of the evidence must present the factual and scientific basis necessary to satisfy the foundational elements of Rule 702, and the trial court must conduct an on-the-record Rule 403 balancing test and make specific findings as to each contested element or issue. *Id* at 343, 844 S.E.2d at 663. The Court held that in this case the trial court's failure to do the above was an abuse of discretion. *Id.*

This case is similar to both *Hamrick* and *Phillips*. In those cases the subject matter of the contested testimony, here FAA regulations and flight safety procedures, required expertise. As in *Hamrick*, Gould's testimony was wrongly characterized as lay opinion. As in *Phillips*, here the state failed to: (1) present testimony of the witness at a hearing where the trial court could consider the admissibility, (2) present a complete factual and technical basis for the admission of the expert's opinion, (3) explain to the jury these specialized regulations and procedures, and (4) present correct information these regulations. As in *Phillips*, the state's failures and the trial court's error in failing to hold a *Daubert/Council* hearing or conduct an on the record Rule 403 balancing test and make specific findings was an abuse of discretion.

In *State v. Wallace* the Supreme Court of South Carolina held that "an 'unfair' ruling on expert testimony may or may not be outside a trial court's discretion," and ruled the witness was properly qualified as an expert in cell site location information. 440 S.C. 537, 892 S.E.2d 310 (2023). Wallace was convicted at trial of murder and kidnapping, and this Court affirmed in an unpublished opinion. *Id.* In that case state's witness, Investigator Dylan Hightower, was called as an expert witness. Hightower used cell site location information to make a map showing the whereabouts of the defendant's phone during the time of the incident. *Id.* at 541, 892 S.E.2d at 312.

On appeal, our Supreme Court considered whether Hightower was properly qualified under Rule 702, SCRE, to testify regarding the analysis of cell sight location information. *Id.* at 543, 892 S.E.2d at 313. The Court found the fact that Hightower was the solicitor's investigator was important, but standing alone, did not render him unqualified and was instead a credibility matter for the jury to decide. *Id.* at 544, 892 S.E.2d at 314. The Court reasoned that the trial court's analysis should be affected by the "complexity of the 'scientific, technical, or . . .

specialized knowledge'" for which the witness is testifying. *Id.* The Court found that the trial court did not abuse its discretion where it held a "robust" examination of Hightower and exercised its responsibility as gatekeeper. *Id.* at 549, 892 S.E.2d at 316.

Unlike *Wallace*, here the trial court did not qualify Gould as an expert under Rule 702, SCRE. Instead, multiple off the record bench conferences were had after the initial objection and the trial court overruled without any on the record reasoning or explanation. The solicitor continued eliciting questions that required specialized "knowledge, skill, experience, training, or education." *See* Rule 702, SCRE. Moreover, there was inadequate examination of Gould's qualifications to testify regarding FAA regulations and flight safety procedures.

The trial court overruled defense counsel's numerous objections to the evidence without any analysis. The state never offered any foundation for Gould's assertions. The foundation offered for this testimony was Gould's assertion that as the director of the airport he was familiar with FAA regulations. R. 146, ll. 23-25. However, Gould later conceded he was not a pilot and did not know what the abbreviations ADS-B stood for.

The failure of the state to lay a proper foundation allowed the state to sneak in opinion testimony without an expert. The testimony given was not perceptions observed by Gould but instead constituted opinions that require "special knowledge, skill, experience or training" to be properly made. *See* Rule 702, SCRE.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

Gould's testimony without any context from an actual expert left the jury to speculate and

conjecture about what it meant that appellant did not have certain lights on and did not have a receiver on when landing his airplane at the airport. Gould's inadmissible testimony regarding the transponder or other lights was confusing and misleading. None of Gould's testimony was helpful to the jury in deciding any fact at issue. Rather it was used by the solicitor to infer appellant had the intention to conceal his presence at the airport. None of Gould's testimony was relevant to whether appellant broke in and stole avionics and electronics from airplanes located at the airport. Gould's improper opinion testimony offered deficient and confusing information to the jury which the solicitor improperly used to imply intent.

## CONCLUSION

By reason of the foregoing argument, appellant requests this Court reverse his convictions and sentences and remand his case for a new trial

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of December, 2025.

RECEIVED
Dec 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

NATHANIEL JENKINS,

APPELLANT

APPELLATE CASE NO. 2024-002043

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Nathaniel Jenkins 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 Daniel D. Hall, which was held on Nov. 18-21, 2024, 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 Nathaniel Jenkins.

Respectfully Submitted,

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of December, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

NATHANIEL JENKINS,

APPELLANT

APPELLATE CASE NO. 2024-002043

---

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

---

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

(1) Entire Trial Transcript dated November 18-21, 2024
(2) Indictments and Sentence Sheets

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

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 17th day of December, 2025.

## 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."



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 17th day of December, 2025.

RECEIVED
Dec 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

NATHANIEL JENKINS,

APPELLANT

APPELLATE CASE NO. 2024-002043

---

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Nathaniel Jenkins, #395858, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 17th day of December, 2025.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

**Leverett, Scott**

**From:** Leverett, Scott
**Sent:** Wednesday, December 17, 2025 4:20 PM
**To:** Mark Farthing
**Cc:** ccollins@scag.gov; Shipe, Sarah
**Subject:** 2024-002043 - State v. Nathaniel Jenkins - Anders Brief of Appellant
**Attachments:** 2024-002043 - State v. Nathaniel Jenkins - Anders Brief of Appellant.pdf

Dear Mr. Farthing,

Attached please find a copy of the Anders Brief of Appellant in the above referenced case that is being filed today with the Court of Appeals. The Record on Appeal will follow tomorrow, December 18, 2025.

-Scott Leverett
Admin. Asst. for Sarah Shipe
Appellate Defense