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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN BRYAN MARTIN,

APPELLANT

APPELLATE CASE NO. 2014-000627

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing a state trooper to give expert opinions on accident reconstruction without qualifying him as an expert pursuant to Rule 702, SCRE?

STATEMENT OF THE CASE

On December 18, 2012, a Greenville County grand jury indicted appellant for DUI and driving after being declared a habitual traffic offender. R. 276. On March 11, 2014, appellant was tried before the Honorable Lee S. Alford and a jury. R. 1. Sara Lee Drawdy represented the State. R. 1. Amanda L. Wicker represented Appellant. R. 1. The jury convicted appellant. R. 261, l. 7 – 262, l. 10. Judge Alford sentenced appellant to concurrent terms of three years' imprisonment. R. 268, ll. 1 – 15. This appeal follows.

ARGUMENT

The trial court erred in allowing a state trooper to give expert opinions on accident reconstruction without qualifying him as an expert pursuant to Rule 702, SCRE.

Appellant and another man, Richard Butler (“Butler”), were in a single-car accident. R. 222, ll. 1 – 11. Appellant had been drinking earlier that day, but not that night. R. 226, ll. 20 – 24. When Butler was asked what his condition was that evening, Butler testified, “I was wasted.” R. 199, ll. 7 – 10. The central question at trial was whether appellant or Butler was driving the car when it crashed.

Appellant testified Butler was driving the car. R. 222, ll. 1 – 21. Butler had been driving the car all day. R. 218, l. 22 – 222, l. 21. Even though the car belonged to appellant’s mother, appellant had Butler drive because “at that time, [appellant] was a habitual offender.” R. 219, ll. 1 – 6. Appellant testified, “I was no way going to drive a vehicle.” R. 219, ll. 7 – 8. Appellant’s mother corroborated that appellant asked her that evening for permission for a friend to drive her car. R. 232, ll. 14 – 23.

The men left a convenience store with Butler driving. R. 221, l. 22 – 222, l. 4. The car entered a curve, Butler accelerated, and then “got a little sideways.” R. 222, ll. 5 – 11. Appellant grabbed the wheel and that was the last thing he remembered. R. 222, ll. 5 – 11.

Appellant lost consciousness in the crash. R. 222, ll. 5 – 21. When appellant awakened, Butler was gone. R. 222, ll. 5 – 21. Appellant was bleeding profusely. R. 222, ll. 12 – 21. Appellant walked to a nearby convenience store and was subsequently transported to a hospital. R. 223, l. 3 – 47, l. 14. Appellant was in the hospital “for two and a half days, going on three.” R. 225, ll. 12 – 14.

Butler told an opposite story. According to Butler, appellant was driving. R. 10, ll. 12 – 16. Butler denied having ever driven appellant's mother's car. R. 195, ll. 23 – 24. Butler had been at his house smoking marijuana, drinking, and using crack cocaine. R. 191, ll. 4 – 16. Butler claimed appellant arrived and they all kept drinking. R. 192, l. 18 – 193, l. 11. Butler and appellant decided to leave "to go get some more beer." R. 193, ll. 15 – 20.

Butler said there was ice on the road and the car "spun out and crashed." R. 200, ll. 1 – 7. Butler lost consciousness in the crash. R. 200, ll. 1 – 23. Appellant was gone. R. 200, ll. 10 – 23. Butler went to a nearby house, knocked on the door, and asked the elderly occupants to call the police. R. 200, ll. 10 – 23. Butler broke a window at the residence. R. 200, ll. 10 – 23. The residents called the police and reported a burglary in progress. R. 123, ll. 7 – 17. Butler suffered a broken collar bone and a punctured lung. R. 201, ll. 12 – 17. He was not charged.

Both men were interviewed by law enforcement at the hospital trauma bay. R. 155, ll. 2 – 20. Appellant denied driving because "he had had too much to drink that evening." R. 156, ll. 1 – 4. Similarly, Butler told law enforcement that he was not driving because he was intoxicated. R. 160, ll. 2 – 15.

The State called Trooper David Robertson with the South Carolina Highway Patrol. R. 137, ll. 11 – 25. Trooper Robertson went to the crash scene and inspected the car. R. 139, ll. 11 – 20. Trooper Robertson stated the car had severe damage to the driver's side. R. 139, ll. 15 – 20. There was also damage to a utility pole and a building. R. 139, ll. 15 – 20.

Trooper Robertson then gave his opinions about how the accident occurred. R. 141, l. 18 – 151, l. 22. He opined that the car slid sideways and hit the utility pole with the impact occurring at the front towards the back of the wheel. R. 147, ll. 14 – 21. The car “rotated around the pole.” R. 147, ll. 14 – 21. The right rear of the vehicle car struck the wall of the building. R. 148, ll. 5 – 8. Trooper Robertson opined that what he called “spider cracks” in the windshield were caused by the driver’s head. R. 148, ll. 20 – 25.

The solicitor asked the trooper to opine what kinds of injuries the occupants of the car would receive. R. 149, l. 17 – 23. The trooper opined: “The driver’s injuries are going to be on the left side from the impact. Their body is going to continue to move and make contact with the interior of the left side of the vehicle.” R. 149, l. 17 – 23. He also concluded that the spider cracks on the windshield meant that the driver would have a contusion on their head. R. 150, ll. 1 – 4. Trooper Robertson also told the jury that the passenger would have the bulk of their injuries on their right side. R. 150, ll. 5 – 11. He claimed these injuries would have resulted from “the secondary impact of the wall.” R. 150, ll. 5 – 11. The officer who questioned appellant and Butler at the hospital described their injuries in a manner that coincided exactly with Trooper Robertson’s opinions about how the accident occurred and how the occupants of the car would be injured. R. 156, l. 17 – 157, l. 5. R. 159, ll. 1 – 17. R. 161, ll. 10 – 13.

At no point during Trooper Robertson’s testimony did the State seek to have him qualified as an expert witness in accident reconstruction. Before offering opinions, an expert must be qualified by the trial court. Rule 702, 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 (emphasis added). It was error to allow Trooper Robertson to testify without any inquiry or voir dire regarding his qualifications.

“[A]n expert’s testimony may not exceed the scope of his expertise.” State v. Commander, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011). In State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001), the Supreme Court reversed and ordered a new trial because a police officer testified outside of the scope of his qualifications. In Ellis, an officer was qualified as an expert in crime scene processing and fingerprint identification. Id. at 177-78, 547 S.E.2d at 491-92. The officer testified as to his conclusions concerning the location of the victim and the position of the body at the time of a shooting. Id. The Supreme Court stated that the officer was improperly allowed to give his opinion on the ultimate issue in the trial, which was self-defense. Id.

An expert may only offer an opinion on the ultimate issue at trial if the expert is properly qualified. See State v. Wilkins, 305 S.C. 272, 407 S.E.2d 670 (Ct. App. 1991) (holding that a properly qualified psychiatrist could testify about state of mind in a battered woman’s syndrome case); Ellis at 178, 547 S.E.2d at 491; SCRE 704. In the recent case of In re Thomas S., 402 S.C. 373, 741 S.E.2d 27 (2013), the Supreme Court reversed because a social worker, who was not qualified to give an opinion on whether a sexually violent predator would reoffend, improperly gave such an opinion. The State attempted to avoid this problem by not qualifying the social worker as an expert. Id.

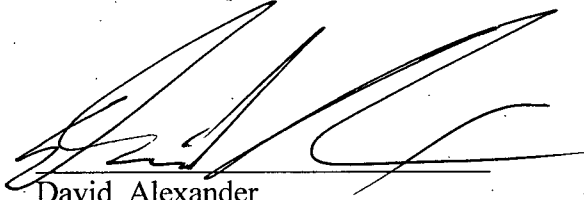
Trooper Robertson’s opinions were highly prejudicial. “An officer’s improper opinion which goes to the heart of the case is not harmless.” Ellis at 177-78, 547 S.E.2d at 491-92. See also, Fordham v. State, 325 S.E.2d 755, 756 (Ga. 1985) (holding that an

officer's opinion as to whether a defendant acted with malice required reversal). The question of who was driving the car was the heart of the case. Trooper Robertson's opinions broke the tie that was the swearing match between appellant and Butler about who was driving the car. Had it not been for Trooper Robertson's testimony, the jury would have been left to make a credibility determination between appellant and Butler. The officer's improper expert opinions tipped the scales in the State's favor and their admission requires reversal and a new trial.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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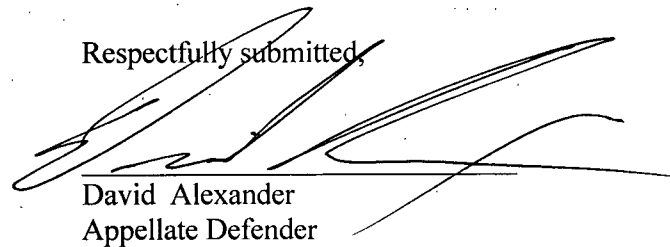
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Bryan Martin 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 Lee S. Alford, which was held on March 11-12, 2014, 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 John Bryan Martin.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2015.

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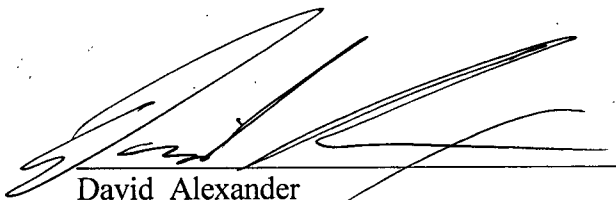
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial transcript

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

January 23rd, 2015



David Alexander
Appellate Defender

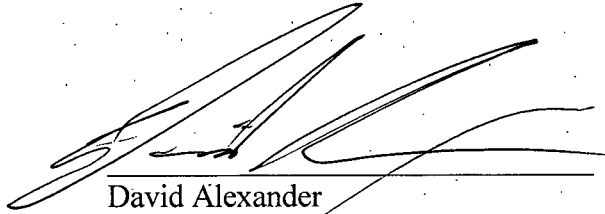
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

Attorney for Appellant

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."

January 23rd, 2015

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

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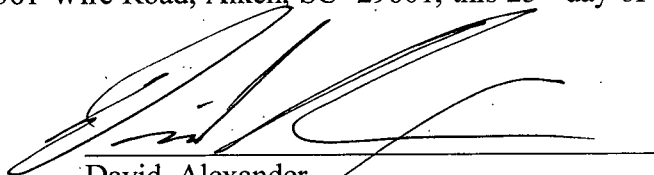
V.

JOHN BRYAN MARTIN,

APPELLANT

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 Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Mr. John Bryan Martin, #117521, Lower Savannah Pre-Release Center, 361 Wire Road, Aiken, SC 29801, this 23rd day of January, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of January, 2015.

Marie Hendrix (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.