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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County

Deadra L. Jefferson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SHANA ROBINSON,

APPELLANT

APPELLATE CASE NO 2014-001272

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ANDERS BRIEF OF APPELLANT

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KATHRINE H. HUDGINS  
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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in allowing a highway patrolman, who was not qualified as an expert, to testify about the point of impact between two vehicles involved in an accident resulting in the death of the driver of one of the vehicles?

## STATEMENT OF THE CASE

In April of 2014, the Berkeley County Grand Jury indicted Robinson for felony driving under the influence resulting in death, indictment #2014-GS-08-0313. On June 2, 2014, Robinson proceeded to jury trial before the Honorable Deadra L. Jefferson. Aaron Mayer represented Robinson at trial. Mason West and Bryan Alfaro prosecuted the case. The jury returned a verdict of guilty. Judge Jefferson sentenced Robinson to seventeen (17) years in prison. A timely notice of intent to appeal was served on June 10, 2014. This appeal follows.

## ARGUMENT

The trial judge erred in allowing a highway patrolman, who was not qualified as an expert, to testify about the point of impact between two vehicles involved in an accident resulting in the death of the driver of one of the vehicles.

On November 10, 2011, the car driven by Appellant Robinson and the car driven by Candy Zoll were involved in an accident resulting in the death of Ms. Zoll. Ms. Zoll's blood tested positive for marijuana. (R. p. 912, line 24 – p. 913, lines 1-23). Appellant's blood was drawn at the hospital following surgery to remove her spleen as a result of the accident. (R. p. 331, line 1 – p. 332, lines 1-13; p. 449, lines 10-24, p. 444, lines 2-7). Fifteen minutes prior to the blood draw Appellant began receiving a blood transfusion. (R. p. 448, line 6 – p. 449, 450, lines 1-4). A forensic toxicologist from the South Carolina Law Enforcement Division [SLED] testified that Appellant's blood tested positive for .09% ethanol. (R. p. 377, lines 12-13). Appellant's blood also tested positive for other medications, some administered for treatment for her injuries sustained in the accident and others prescribed to appellant prior to the accident. (R. p. 377, line 17 – p. 378, line 1; pp. 380 – 382; R. p. 830, lines 2-20). Appellant suffers from Stevens Johnson syndrome. (R. p. 824, lines 8-25). The toxicologist testified that the prescribed medications were within therapeutic dosing ranges. (R. p. 382, lines 19-21; p. R. p. 420, line 23 – p. 421, 422, 423, lines 1-10).

At the time of the accident John Anthony Poston was working for the South Highway Patrol and responded to the scene. (R. p. 507, lines 6-9; p. p. 508, line 17 – p. 509, lines 1-12). At trial Officer Poston testified about the scene that night. (R. pp. 510 – 515). Officer Poston further testified, "Well, first and foremost the main thing I look for is a point of impact. Basically what that means is where the collision occurred. As you see---" (R. p.

516, lines 13-15). Officer Poston had not been qualified as an expert witness. Appellant objected. (R. p. 516, lines 16-18). The judge overruled the objection stating, "He doesn't have to be an expert, Rule 701. It's within his rational perception and certainly within his education, training and experience and within the scope of his responsibilities as a first responder and officer investigating the scene." (R. p. 516, lines 21-25). Officer Poston then testified, "This [indicates] is where I determined was the very first point of impact. It was the first set of gouge marks where due to the type of collision it was, which was considered a head-on collision you could tell where the BMW [Appellant's car] crossed the double center lines, came over and when they met they met like this [indicates] and buckled down." (R. p. 517, lines 4-10). Officer Poston was not qualified to testify as to point of impact.

In Jackson v. Price, 288 S.C. 377, 380, 342 S.E.2d 628, 630 (Ct. App. 1986) the South Carolina Court of Appeals wrote:

The appellants argue that the trial judge erred in allowing the highway patrolman to testify as to the point of impact. We agree. See e.g. State v. Kelly, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985) ("A police officer may not give his opinion as to the cause of the accident. He may only testify regarding his direct observations unless he is qualified as an expert."); Willard v. McCoy, 234 S.C. 317, 108 S.E.2d 113 (1959) (judgment for plaintiff reversed because patrolman who was not an eyewitness testified regarding how many times a car overturned); Thompson v. South Carolina Highway Department, 224 S.C. 338, 79 S.E.2d 160 (1953) (error for highway patrolman who did not see accident to testify about speed of car). Cf. Robinson v. Duke Power Co., 213 S.C. 185, 195, 48 S.E.2d 808, 812 (1948) (permitting patrolman who was not an eye witness to collision to testify regarding point of impact not prejudicial where witness determined point of impact from position of vehicles, broken glass and skidmarks and photographs corroborated his testimony).

Officer Poston's improper testimony in the present case was prejudicial. While later in the trial State's witness David Lee was qualified as an expert in the field of collision reconstruction and testified about the point of impact, stating the accident was a

head on collision (R. pp. 565-578), another witness, David Hill testified for the defense as an expert in accident reconstruction. (R. p. 565, lines 17-23). While Hill and Lee agreed that the accident happened in the decedent's lane of travel, Hill challenged Lee's findings as to speed and testified that the accident was not head on. (R. pp. 753-756). Hill admitted that he did not know why Appellant crossed the center line, but testified that it was not the result of speed. (R. p. 757, lines 17-21).

Appellant testified that as she was coming around the curve she saw headlights in her lane of traffic. She did not remember what happened after seeing the headlights in her lane. (R. p. 859, lines 4-5). The defense theory of the case argued in closing argument was that the decedent's car crossed the center line first, Appellant then crossed the center line to avoid the decedent but the decedent corrected causing the collision to happen in the decedent's lane of travel.<sup>1</sup> (R. pp. 1041-1043). Officer Poston's improper testimony was prejudicial because it bolstered the State expert's testimony in regard to point of impact and whether the collision was head on, a point challenged by the defense expert and a critical fact to be determined by the jury.

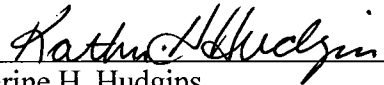
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<sup>1</sup> Appellant obtained the decedent's cell phone records at the time of the accident but failed to call the records custodian in order to admit the records in evidence. (R. pp. 804-816). While the judge ruled the proffered testimony from a private investigator about the cell phone records did not comply with Rules 803 and 901, SCRE she also ruled that the records were not relevant at that point in the trial. (R. pp. 811 – 813). Appellant, however, had not yet testified. Appellant's testimony about seeing headlights in her lane renders the phone records highly relevant. This issue will have to be addressed in post conviction relief.

**CONCLUSION**

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2015.

STATE OF SOUTH CAROLINA  
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THE STATE,

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APPELLANT

APPELLATE CASE NO 2014-001272

---

PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Shana Robinson 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 Deadra L. Jefferson, which was held on June 2-6, 2014, 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 Shana Robinson.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2015.

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


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

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript volumes 1-5.

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

March 18th, 2015

  
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Kathrine H. Hudgins  
Appellate Defender


South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(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."

March 18, 2015

  
\_\_\_\_\_  
Kathrine H. Hudgins  
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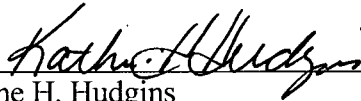
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APPELLANT

APPELLATE CASE NO 2014-001272

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 Shana Robinson, #360268 at Graham Correctional Institution, this 18th day of March, 2015.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 18th day of March, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021