

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Union County

Honorable R. Scott Sprouse, Circuit Court Judge

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IN THE MATTER OF THE CARE AND  
TREATMENT OF MELVIN BEAM,

APPELLANT

APPELLATE CASE NO. 2016-002290

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ANDERS BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial court erred in allowing the State’s expert to discuss irrelevant and highly  
prejudicial victim impact evidence in this sexually violent predator case.....3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

**TABLE OF AUTHORITIES**

**Cases**

State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) ..... 4

**Statutes**

S.C. Code Ann. § 44-48-30(1)..... 4

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in allowing the State's expert to discuss irrelevant and highly prejudicial victim impact evidence in this sexually violent predator case?

### **STATEMENT OF THE CASE**

The South Carolina Attorney General instituted sexually violent predator proceedings against appellant and on November 7, 2016, appellant was tried before the Honorable R. Scott Sprouse and a jury in Union County. R. 1. James G. Bogle, Jr., represented the State. R. 1. Anna Rawl Good represented appellant. R. 1. The jury decided appellant is a sexually violent predator. R. 225, ll. 18 – 22. This appeal follows.

## ARGUMENT

The trial court erred in allowing the State's expert to discuss irrelevant and highly prejudicial victim impact evidence in this sexually violent predator case.

The State's expert, Dr. Ana Gomez ("Gomez"), was hired after the DMH expert found that appellant did not meet the criteria for commitment under the Sexually Violent Predator statute. R. 89, l. 20 – 90, l. 23. R. 163, ll. 1 – 10. R. 175, ll. 17 – 20. Gomez testified that appellant's predicate convictions were for molesting his daughters. R. 95, l. 7 – 99, l. 13.

Gomez interviewed appellant as part of her evaluation. R. 99, l. 14 – 101, l. 6. Gomez claimed appellant denied abusing his youngest daughter and said that she "faked the whole thing." R. 99, l. 14 – 101, l. 6. Gomez said she asked appellant why the child was hospitalized for PTSD as a result of sexual abuse. R. 99, l. 14 – 101, l. 6. Appellant replied that he believed her PTSD was caused because she began having sex with other people at such a young age. R. 99, l. 14 – 101, l. 6.

Gomez then told the jury that she requested further medical records about the child's treatment "just to kind of get more information about what she was dealing with." R. 99, l. 14 – 101, l. 6. Gomez said the Attorney General found records for her that indicated that the child's PTSD was a result of the sexual abuse. R. 99, l. 14 – 101, l. 6. Appellant objected and Judge Sprouse excused the jury. R. 101, ll. 7 – 11.

Appellant objected that the victim's therapy and state of mind after appellant had pled guilty was irrelevant. R. 101, ll. 7 – 23. Appellant argued that the victim's therapy and diagnosis was not probative and was prejudicial. R. 101, ll. 15 – 23. The State argued that the evidence was relevant to appellant's credibility and Gomez's investigation and opinion. R. 101, l. 25 – 102, l. 22. The trial judge overruled appellant's objection, stating he would allow the

State to question Gomez as to her investigation based on appellant's statements. R. 103, ll. 5 – 13.

When the jury returned, Gomez again testified that appellant claimed the child's PTSD was the result of her sexual activity at a young age. R. 103, l. 19 – 104, l. 1. Gomez testified that she obtained mental health treatment records for the child from the Attorney General. R. 104, ll. 14 – 24. Gomez stated, "It clarified my suspicion that she did not have PTSD from getting pregnant at a young age but related to the events of abuse by her father that I delineated." R. 104, l. 25 – 105, l. 6. Gomez also testified that appellant's statements were important because he did not "accept his role" and that she had made a note about appellant's truthfulness and honesty. R. 105, ll. 7 – 17.

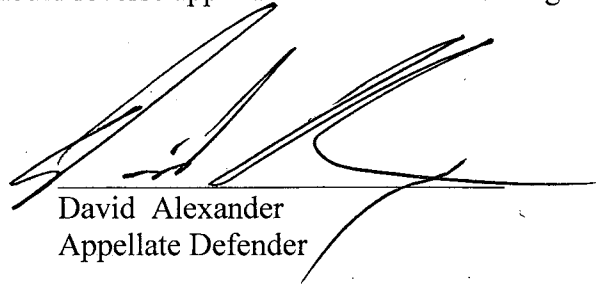
Evidence which is more unfairly prejudicial than probative is inadmissible. Rule 403, SCRE. Evidence that this victim suffered from PTSD as a result of appellant's actions is irrelevant victim impact evidence. While victim impact evidence is admissible during sentencing, it is not relevant to the issue before the jury in an SVP commitment trial. Cf. State v. Byram, 326 S.C. 107, 118, 485 S.E.2d 360, 366 (1997). Admitting such evidence here unfairly prejudiced appellant by appealing to the sympathy of the jury for the child.

In a commitment trial, all that is relevant is whether appellant suffers from a personality disorder or mental abnormality and his ability to control his behavior. See S.C. Code Ann. § 44-48-30(1). The State had already proved the fact of his prior convictions. The subsequent effect on the victims was irrelevant and highly prejudicial. To demonstrate the irrelevancy, the Court only need imagine the reverse scenario: a defendant in an SVP trial attempting to admit evidence that a victim suffered no ill effects from abuse. A defendant would not be allowed to present such evidence to the jury to prove that he should not be committed. The State's rationale

for admitting this evidence—that it showed the depth of Gomez’s evaluation—is no cure for the unfair prejudice that resulted to appellant. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's commitment and grant him a new trial.

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line. The signature is stylized and cursive.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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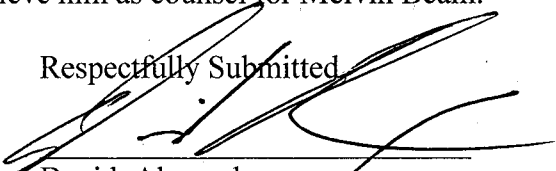
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Counsel for Melvin Beam states:

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 R. Scott Sprouse, which was held on November 7 - 8, 2016, 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 Melvin Beam.

Respectfully Submitted

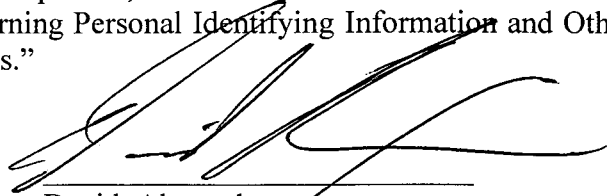
  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 7th day of August, 2017.

**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."

August 7, 2017.



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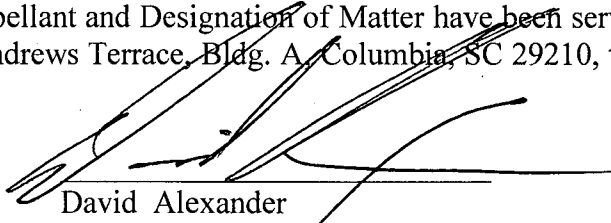
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CERTIFICATE OF SERVICE

The undersigned 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 Deborah R.J. Shupe, 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 have been served on Melvin Beam at Correct Care, 1700 St. Andrews Terrace, Bldg. A, Columbia, SC 29210, this 7th day of August, 2017.

  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 7th day of August, 2017.

David Kessler (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023

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