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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Kershaw County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

IN THE MATTER OF THE CARE AND  
TREATMENT OF ANTHONY [REDACTED] TUCKER,  
APPELLANT

APPELLATE CASE NO. 2016-002468

ANDERS BRIEF OF APPELLANT

RECEIVED  
SEP 18 2017  
SC Court of Appeals

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

In this sexually violent predator case, whether the trial court erred in allowing the State's expert witness to opine whether appellant was truthful during his evaluation?

## STATEMENT OF THE CASE

The State sought appellant Anthony Tucker's commitment into the Sexually Violent Predator facility and on November 28, 2016, a trial was held in Kershaw County before the Honorable DeAndrea G. Benjamin and a jury. R. 1. Christopher A. Morrow represented the State. R. 1. Anna Rawl Good represented appellant. R. 1. After deliberating for forty-four (44) minutes, the jury found appellant was a sexually violent predator and Judge Benjamin ordered him committed. R. 162, l. 25 – 168, l. 12. This appeal follows.

## ARGUMENT

In this sexually violent predator case, the trial court erred in allowing the State's expert witness to opine whether appellant was truthful during his evaluation.

Instead of a full-time Department of Mental Health evaluator, the trial court's appointed expert in this case was Dr. Amy Swan ("Swan") from Florida. R. 70, l. 6 – 74, l. 24. She testified that she received a flat fee and her payment was "not dependent on what my opinion is in the case." R. 74, l. 25 – 75, l. 7. She was paid \$4,000.00. R. 104, l. 18 – 24. She went into private practice after working at Florida's SVP confinement facility and claimed to have done 840 SVP evaluations since 2000.<sup>1</sup> R. 72, l. 23 – 73, l. 6. On cross-examination, she admitted an ethics violation with the Association for Treatment of Sexual Abusers in 2015. R. 105, ll. 7 – 18.

Dr. Swan testified appellant suffered from two mental abnormalities. R. 84, l. 25 – 85, l. 6. The two mental abnormalities were "Other Specified Paraphilic Disorder Involving Nonconsenting Partners; and Exhibitionistic Disorder." R. 84, l. 25 – 85, l. 6. Dr. Swan also testified that appellant suffered from a personality disorder, Antisocial Personality Disorder. R. 86, ll. 20 – 23. According to the expert, unlike the "75 to 80 percent of men in prison" who have garden-variety Antisocial Personality Disorder, appellant had what she called "**a supercharged version** of Antisocial Personality Disorder."<sup>2</sup> R. 89, ll. 12 – 21 (emphasis added). The expert

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<sup>1</sup> If Dr. Swan made \$4,000.00 per evaluation, the gross income received from 840 evaluations would be \$3,360,000.00. Her yearly income for these 17 years would equal \$197,647.06 (not adjusted for inflation).

<sup>2</sup> The record does not disclose whether Dr. Swan was aware that a non-supercharged diagnosis of Antisocial Personality Disorder, which does appear in the DSM-V, has been held insufficient for commitment by New York's highest court. State v. Donald DD, 24 N.Y.3d 174 (2014). See also In re Thomas S., 402 S.C. 373, 376, 741 S.E.2d 27, 28 (2013) (holding that South Carolina's SVP act does not "broadly subject any dangerous person to what may be an indefinite term of confinement.").

testified that having the supercharged version made appellant more likely to commit another sexual offense because it was “**a double whammy.**” R. 91, ll. 9 – 21 (emphasis added).

After receiving and reviewing her “referral package,” Dr. Swan met with appellant to discuss with him “everything that has happened to him from the day he was born until the day he was sitting in front of me.” R. 76, l. 22 – 77, l. 13. The meeting took three hours and forty-five minutes. R. 101, ll. 1 – 5. During the interview, Dr. Swan asked appellant about his conviction for sexually assaulting an inmate in prison. R. 79, ll. 7 – 22. Appellant denied having anal sex with the man and claimed the prisoner lied. R. 79, ll. 7 – 22. The Attorney General then asked, “Dr. Swan, did you find his explanation probable?” R. 79, ll. 23 – 24. Dr. Swan replied, “Not at all.” R. 79, ll. 23 – 24.

The trial judge erred in not striking Dr. Swan’s opinion of appellant’s truthfulness from the record. Expert witnesses may not offer opinions on other witnesses’ credibility. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (holding that an expert could not comment on the veracity of a child’s sexual abuse allegations). Expert opinions on credibility “invade the province of the jury.” State v. Whitner, 399 S.C. 547, 559, 732 S.E.2d 861, 867 (2012).

Dr. Swan’s erroneously admitted opinion that appellant was not truthful during his evaluation greatly prejudiced appellant’s case. When describing appellant’s “supercharged” Antisocial Personality Disorder, she told the jury that persons with this diagnosis “are deceitful and many of them are pathological liars.” R. 90, ll. 10 – 19. She said the “end result is that Mr. Tucker is a psychopath.” R. 90, ll. 18 – 19. Her own view of appellant’s truthfulness improperly fed into her diagnosis.

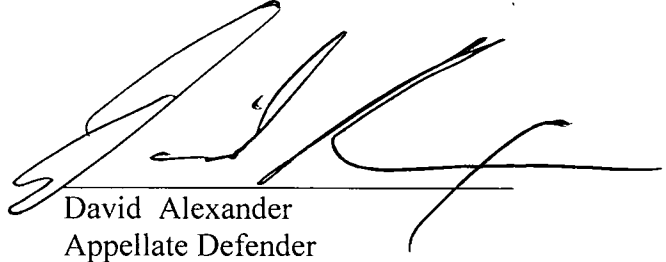
Had the trial court prevented Dr. Swan from offering an opinion on appellant's truthfulness, the result of this trial would have been different. Appellant received six months of sex offender treatment while in the Department of Corrections. R. 97, ll. 15 – 22. Appellant graduated from the class. R. 119, ll. 19 – 22. While it is true that the Attorney General's witness opined that the State's sex offender treatment within the Department of Corrections was insufficient because it was "psychoeducational," and was of insufficient duration and intensity, it is also true that appellant had no disciplinary infractions after his treatment.<sup>3</sup> R. 119, l. 11 – 120, l. 22. R. 97, ll. 10 – 23. Appellant told Dr. Swan that the treatment was successful. R. 97, l. 24 – 98, l. 2. Without this error, the jury likely would have concluded that appellant did not require civil commitment for further treatment in the SVP secure facility at South Carolina's "old death row." R. 48, ll. 17 – 21.

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<sup>3</sup> It is surprising that Dr. Swan was able to offer an opinion on the quality of sex offender treatment in the Department of Corrections compared to what appellant needed in the SVP program because during pre-trial motions, the Attorney General told the trial judge that Dr. Swan was "not involved in the treatment program at the unit" and "would not have extensive knowledge of what they plan to do there." R. 49, ll. 14 – 50, l. 4.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's commitment and order his immediate release.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2017.

STATE OF SOUTH CAROLINA

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Appeal from Kershaw County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

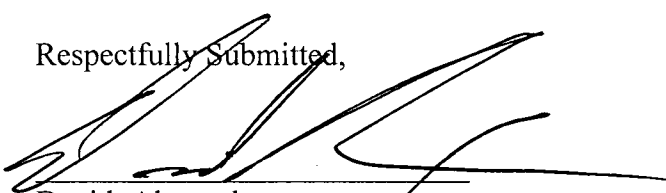
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Counsel for Anthony Vincent Tucker states:

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 DeAndrea G. Benjamin, which was held on November 28-29, 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 Anthony Vincent Tucker.

Respectfully Submitted,



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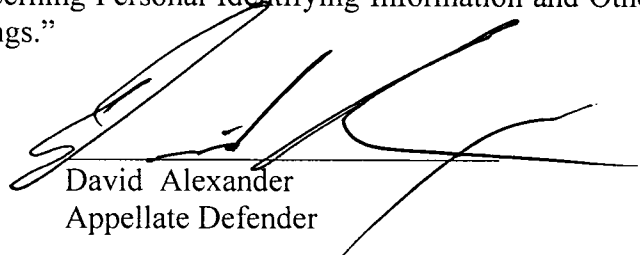
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 18th day of September, 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."

September 18, 2017.



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Appellate Defender

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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) Trial Transcript
- (2) Order of Commitment
- (3) State's Exhibit 1

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

September 18, 2017

  
\_\_\_\_\_  
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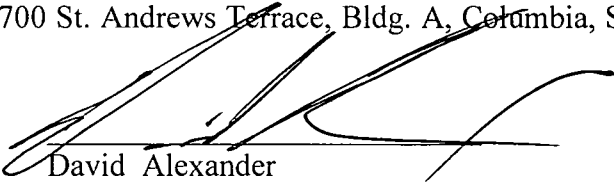
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CERTIFICATE OF SERVICE

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 Anthony Vincent Tucker at Correct Care, 1700 St. Andrews Terrace, Bldg. A, Columbia, SC 29210, this 18th day of September, 2017.

  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 18th day of September, 2017.

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