

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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DANIEL HAMRICK,

V.

STATE OF SOUTH CAROLINA,

**ORIGINAL**

**RECEIVED**

JUN 10 2019

PETITIONER SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2015-002164

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Appeal from Charleston County

Honorable Larry B. Hyman, Circuit Court Judge

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Opinion No. 27886

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RETURN TO PETITION FOR REHEARING

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JUN 07 2019

SC Court of Appeals

The Court's unanimous decision is correct that allowing Officer Harris to give opinion testimony was a prejudicial error. The Attorney General gives no reason why this Court should grant rehearing or modify its opinion. The petition for rehearing uses hyperbole to exaggerate supposed negative results of the Court's opinion which do not exist. The Court's decision maintains the course of our jurisprudence which requires trial judges to exercise their gatekeeping role to prevent unqualified expert testimony from reaching the jury. Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-75 (2010).

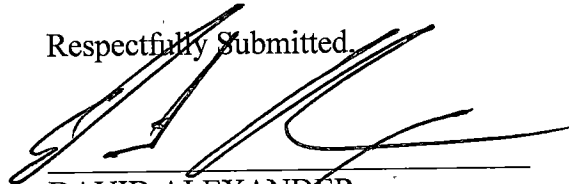
This Court's opinion properly applied the principles of Watson to this case. The trial court was required to make specific findings concerning Officer Harris's qualifications regarding the specific subject matter of his testimony—accident reconstruction. The trial court failed to make these findings, nor could it have done so as this Court found in its review of the record. In Watson, this Court wrote that the “qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject.” Watson at 447, 699 S.E.2d at 176. The subject here was accident reconstruction, which as this Court found, requires an expert to have knowledge of engineering and physics. Officer Harris's reference to this technical and difficult subject lacked the required scientific background and training. The Attorney General's feeble attempt to favorably compare the courses taken by Officer Harris to Poplin's degrees in civil and mechanical engineering shows that the State fails to understand this important concept in the Court's decision. Pet. Rehearing at 5.

The Attorney General also uses hyperbole in an attempt to convince this Court that rehearing is necessary. The State claims the decision establishes an “arbitrary line” for the “level of expertise required and then questions whether several types of experts can be qualified in the future. Pet. Rehearing at 6. This decision draws the same line that has always existed—trial courts must ensure that the expert before them is qualified to render the opinion testimony on the subject presented. The Court did not say that a police officer can never be qualified as an expert witness; but it did say that even police officers must have the required scientific knowledge to give opinion testimony and are not somehow exempt from Rules 701, 702, and 703, SCRE.

The Attorney General also overlooks the fact that the solicitors in this case knew that the critical factual issue would be reconstruction of the accident, yet they failed to present an engineer at trial. The State is perfectly capable of hiring qualified experts (just like Hamrick

did). Whether the State's failure to find an engineer who could give them favorable testimony was due to inaction by the solicitors or the factual limitations on what a real expert could say can be explored on remand.

Respectfully Submitted,



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DAVID ALEXANDER  
Appellate Defender

This 7th day of June, 2019.

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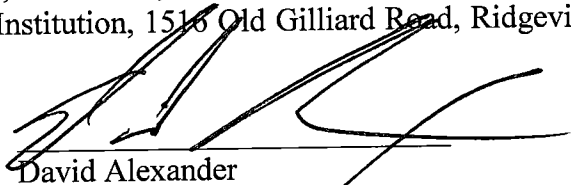
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Daniel Hamrick, #357581, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 7th day of June, 2019.



David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE  
ME this 7th day of June, 2019.

Marcy Allgeier (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.