

16

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

v.

GENE DAVID EVANS, JR.,

RESPONDENT,

ORIGINAL
RECEIVED
JUL 08 2019
SC Court of Appeals

APPELLANT

APPELLATE CASE NO 2018-000365

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this felony DUI case, did the trial court erred in qualifying a highway patrolman as an expert in accident reconstruction and allowing him to offer an opinion on whether the decedent was driving the vehicle when it crashed?

STATEMENT OF THE CASE

A Sumter County grand jury indicted appellant Gene David Evans, Jr., for felony driving under the influence with death resulting and on February 20, 2018, appellant was tried before the Honorable Howard P. King and a jury. R. 1. John P. Meadors represented the State and Timothy L. Griffith represented appellant. R. 1. The jury convicted appellant and Judge King sentenced him to twelve years' imprisonment. R. 370, l. 8 – 385, l. 17. This appeal follows.

STANDARD OF REVIEW

“The qualification of a witness as an expert is within the trial court's discretion, and this Court will not reverse that decision absent an abuse of discretion.” Watson v. Ford Motor Co., 389 S.C. 434, 447, 699 S.E.2d 169, 176 (2010)

ARGUMENT

In this felony DUI case, the trial court erred in qualifying a highway patrolman as an expert in accident reconstruction and allowing him to offer an opinion on whether the decedent was driving the vehicle when it crashed.

The primary factual issue at trial was who was driving a recreational vehicle when it ran off the road and crashed into a tree. Appellant testified in his own defense and stated the decedent, Robert Skidmore, was driving the RV. R. 275, ll. 20 – 21. To bolster the testimony of the people who witnessed the crash, the State offered a highway patrolman, Trooper Brian Trotter, as an expert in accident reconstruction. R. 184, ll. 13 – 15. Over appellant’s objection, the trial judge qualified Trooper Trotter as an expert. R. 184, l. 18 – 195, l. 10. Trooper Trotter opined that Skidmore “was in the passenger seat.” R. 214, ll. 9 – 12. Under the recently decided case of Hamrick v. State, ___ S.C. ___, ___ S.E.2d ___, Op. No. 27886, 2019 WL 2121719 (May 15, 2019) *reh’g denied* July 1, 2019, qualifying Trooper Trotter as an expert was a prejudicial error requiring reversal.

Skidmore and appellant were friends. R. 265, ll. 17 – 23. Skidmore’s girlfriend lived in the RV and needed to move it. R. 266, ll. 1 – 9. Skidmore drove the RV to an abandoned gas station near Shaw Air Force Base where they met appellant. R. 266, ll. 10 – 24. The RV was packed with items. R. 267, ll. 1 – 25. Skidmore’s girlfriend whispered to appellant that she wanted appellant to drive because she did not trust Skidmore’s driving. R. 268, ll. 5 – 17.

Appellant reluctantly agreed to drive because the RV was in terrible condition. R. 268, ll. 13 – 12. Appellant did not drive it far because the RV was so difficult to drive. R. 269, ll. 1 – 12. Appellant told Skidmore “this thing can’t be on the road,” and Skidmore said he would drive. R. 269, ll. 1 – 12. Skidmore sat in the driver’s seat and appellant stood behind him. R.

269, ll. 8 – 16. Appellant could not see the road very well from where he was standing. R. 270, ll. 1 – 2.

Appellant then saw Skidmore suddenly stand up and try to turn the wheel. R. 270, l. 14 – 271, l. 12. Appellant asked him what he was doing and lunged for the wheel. R. 270, l. 14 – 271, l. 12. The RV was heading off the road and appellant could not remember what happened next. R. 271, ll. 3 – 24. Appellant suffered serious injuries in the crash and was transported by helicopter to a Columbia hospital. R. 270, l. 19 – 273, l. 23. R. 118, ll. 3 – 6.

Shonda Brown and Andrew Moye witnessed the crash. R. 155, l. 14 – 178, l. 15. Brown and Moye were going fishing and Brown was driving. R. 155, l. 14 – 178, l. 15. She saw the RV coming at her in her lane. R. 158, l. 16 – 159, l. 17. She swerved to avoid the RV and the RV also swerved. R. 158, l. 16 – 159, l. 17. The RV missed Brown and Moye, but overcorrected, went off the road, and hit a tree. R. 158, l. 16 – 159, l. 17.

The RV exploded. R. 170, ll. 19 – 24. Moye raced to the RV and pulled appellant from the driver's side. R. 170, l. 16 – 173, l. 15. He also tried to pull Skidmore from the RV, but could not because of the flames. R. 170, l. 16 – 173, l. 15. Moye claimed on direct-examination that appellant was in the driver's side seat with his seatbelt on, which Moye first said he remembered unbuckling. R. 171, ll. 10 – 17. However, on cross-examination, Moye admitted he could not remember "if it was fasten or nothing" but maintained the seatbelt was around appellant when he pulled him from the RV. R. 175, ll. 10 – 18. Tragically, but mercifully, Skidmore died almost instantaneously from a broken neck and was not burned alive. R. 103, l. 10 – 104, l. 25.

The State called Trooper Trotter in an attempt to bolster Moye's testimony about finding appellant in the driver's seat. Trooper Trotter graduated from the United States Naval Academy

with a degree in aerospace engineering and a master's degree in aviation science from Embry-Riddle Aeronautical University. R. 181, ll. 8 – 122. During his twenty years in the Navy, he did nothing related to accident reconstruction. R. 181, ll. 9 – 14. After retiring, he went to work for the Highway Patrol. R. 181, l. 15 – 184, l. 8. He took some classes related to accident reconstruction and was on the MAIT team. R. 181, l. 15 – 184, l. 8. The solicitor asked to have Trooper Trotter qualified as an expert in accident reconstruction and after voir dire, appellant objected to the qualification and Judge King excused the jury. R. 184, l. 13 – 186, l. 21.

Appellant objected that Trooper Trotter's "six weeks worth of training just doesn't seem like enough training to qualify him as an expert in accident and collision reconstruction." R. 187, ll. 7 – 10. The solicitor argued that Trooper Trotter's experience and training, combined with his degree in engineering made him qualified. R. 188, ll. 2 – 20. Judge King ruled Trooper Trotter was qualified. R. 188, l. 25 – 193, l. 21. Trooper Trotter then testified about the impact point of the RV, the forces that would have been exerted on the occupants and items in the RV, and the position of Skidmore's body. R. 204, l. 14 – 214, l. 19. He offered an opinion on the ultimate issue in the case that Skidmore "was in the passenger's seat." R. 214, ll. 4 – 18.

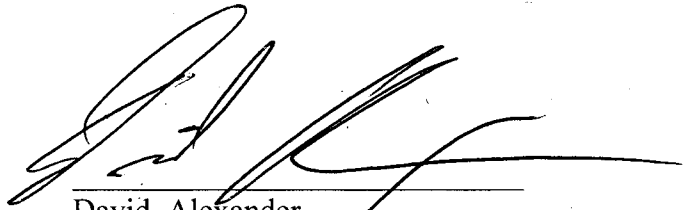
Under Hamrick, the court erred in qualifying Trooper Trotter as an expert and in allowing him to opine that Skidmore was the passenger. In Hamrick, the Supreme Court reversed because of the erroneous qualification of a police officer as an expert in accident reconstruction. Hamrick at *4. The crucial question in Hamrick was whether a construction worker was inside or outside of traffic cones when he was hit by the defendant's car. Id. The Supreme Court found that the officer "did not possess the necessary qualifications to give an opinion in accident reconstruction." Id. at *5.

The officer's training in Hamrick mirrored Trooper Trotter's training here. Id. The officer's training was "limited to a few courses he took over a period of several years." Id. The Court stated that, "Accident reconstruction is a highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand." Id. "A law enforcement officer who attended several classes on the subject does not possess the necessary qualification to satisfy the 'qualified as an expert' element of the Rule 702 foundation." Id.

The only real difference between qualifications of the officer in Hamrick and Trooper Trotter are Trooper Trotter's degrees. While a degree in aerospace engineering from the Naval Academy is an impressive credential, a decrepit, fully loaded RV is obviously not an airplane. Trooper Trotter's engineering degrees were not in a relevant field that would qualify him to render an opinion in this case that involved an RV and a tree, not jets and aircraft carriers. The error requires reversal because the case boiled down to appellant's testimony versus Moye's testimony and the improperly qualified expert carried the State's case. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of July, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE DAVID EVANS, JR.,

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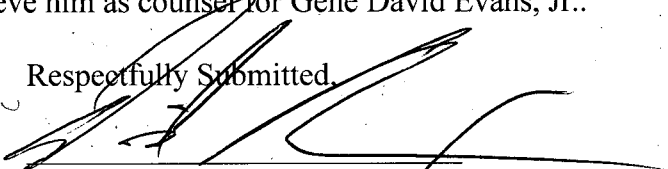
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gene David Evans, Jr. 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 Howard P. King, which was held on February 20 - 22, 2018, 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 Gene David Evans, Jr..

Respectfully Submitted,


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 3rd day of July, 2019.

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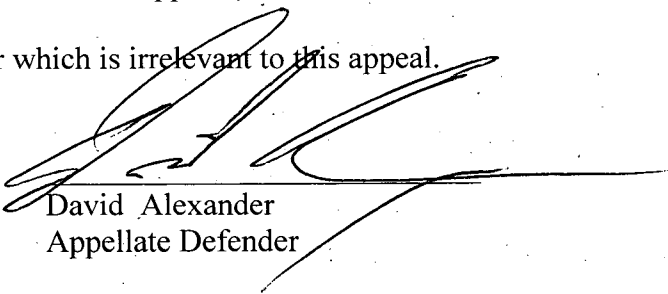
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Entire trial transcript dated February 20-22, 2018
- (3) Court's Exhibit #2 (Motion to Suppress)

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

July 03, 2019


David Alexander
Appellate Defender

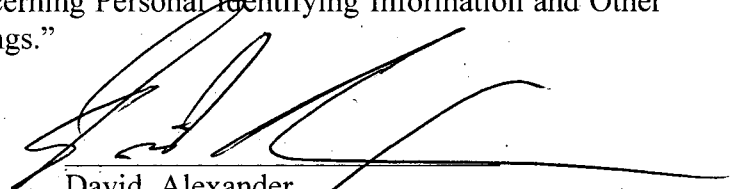
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ATTORNEY FOR APPELLANT

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."

July 03, 2019.



David Alexander
Appellate Defender

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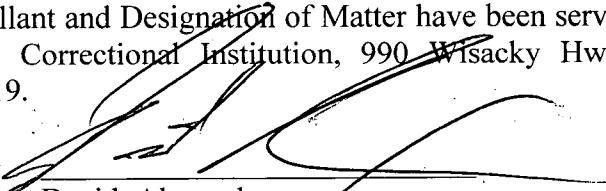
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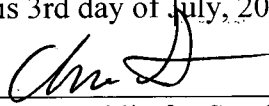
APPELLANT

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 William M. Blich, 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 Gene David Evans, Jr., 375509, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of July, 2019.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2019.


Notary Public for South Carolina

(L.S)

My Commission Expires: October 28, 2019