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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
The Honorable Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,……RESPONDENT

v.

GENERAL T. LITTLE,…….PETITIONER

BRIEF OF RESPONDENT
Appellate Case No. 2021-001043
Opinion No. 2021-UP-196

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STATEMENT OF THE CASE

On September 22, 2015, the Petitioner called his daughter Kim Little (Kim) around 8:00 p.m. to see if she was free for dinner at the International House of Pancakes (IHOP), so they could meet around 9:15 p.m. (R. p. 447 l. 14-15; p. 673 l. 10). At the time Kim was living with her mother, the Petitioner's ex-wife Barbara (victim), the victim in this case. Kim agreed to meet the Petitioner at IHOP and left the house around 8:30 closer to 8:40 p.m. (R. p. 447 l. 25). As Kim left the house the victim locked the front glass door behind her. (R. p. 448 l. 10-11).

Kim arrived at IHOP and waited for the Petitioner. After waiting for awhile she made several attempts to call the Petitioner, however, he never answered. (R. p. 449 l. 20-22). Since she received no response from the Petitioner she made an attempt to call the victim, however, she did not answer her phone either. (R. p. 449 l. 6-7, 23-25). As closing time approached, Kim decided to get a to-go order. (R. p. 451 l. 9-12). Upon paying Kim texted the Petitioner to inform him that IHOP was closing at 10:00 p.m. (R. p. 452 l. 4-6). At that time the Petitioner finally responded and told her to meet him at the Waffle House instead. (R. p. 452 l. 8-12). Kim was confused and wondered why Petitioner wanted to go to the Waffle House since she had already gotten him a to-go order, however, she agreed to meet him at the Waffle House. (R. p. 452 l. 20 – p. 453 l. 1).

Kim then called her uncle, A.J. McConnell (A.J.). Since he only lived a quarter of a mile from her house, she asked if he could go by and check on the victim. (R. p. 340 l. 12-13). A.J. went to the house and while speaking to Kim on the phone he rang the front doorbell. (R. p. 342 l. 23-25). A.J. made no attempts to open the glass door because he knew the victim always kept it locked. (R. p. 342 l. 25 – p. 343 l. 2). When he received no response, A.J. while still speaking with Kim on the phone, checked the bedroom window, the garage, and the back porch. Nowhere did he find the victim. (R. p. 343 l. 3-13). He returned to the front and attempted to open the front glass door,

to his surprise it opened. (R. p. 343 l. 16-18). A.J. looked down and saw a pink towel lying between the glass door and the main door. (R. p. 343 l. 19-21). He opened the door and found blood everywhere. (R. p. 343 l. 24-25). He then followed the blood trail down the hall to the bathroom where he found the victim's dead body. (R. p. 344 l. 1-5). Once he found the body he immediately hung up the phone with Kim and dialed 911. (R. p. 344 l. 5-6). Kim called the Petitioner to inform him that something was wrong with the victim, his only response was "okay." (R. p. 453 l. 8-15).

Deputy Matthew Colburn of the Charleston County Sheriff's Department was the first to respond. When he opened the door he immediately found a pool of blood on the floor and blood on the walls. (R. p. 49 l. 22-25; p. 511 l. 14-15). There were also towels and a blanket on the floor, as if someone made an attempt to clean up the blood. (R. p. 511 l. 23-25). As Deputy Colburn walked through the house he saw more blood in the hallway, living room, and blood smears on the wall leading to the back of the residence. (R. p. 512 l. 2-7). He finally found the victim's body on the bathroom floor. (R. p. 512 l. 12-14). The victim was laying in a pool of blood, nude from the waist down, with one leg propped up on the edge of the bathroom tub. (R. p. 512 l. 17-19; p. 533 l. 17-24). Deputy Colburn then secured the crime scene and obtained a statement from Kim for the detectives. (R. p. 514 l. 2-5).

Lead Detective Will Muirheid arrived at the scene around 10:30 p.m. (R. p. 661 l. 19). When he arrived he was informed that the Petitioner was contacted and he was on his way to the crime scene. (R. p. 89 l. 16-18; p. 662 l. 1-4). Detectives checked the scene and found there was no evidence of forced entry but inside, the home appeared "very chaotic." (R. p. 662 l. 8-16). By 11:20 p.m. Petitioner had still not arrived at the scene, even though he lived only five minutes away. (R. p. 89 l. 19-24). Since Petitioner never arrived so detectives instructed Deputy Colburn

to go to the Petitioner's residence to make contact. (R. p. 89 l. 22-24; p. 542 l. 21-22; p. 663 l. 1-3).

As Deputy Colburn arrived at the Petitioner's residence he noticed the front passenger window of a Toyota Sequoia rolled down. (R. p. 51 l. 11-12). The vehicle was parked partially in the driveway, and partially in the mulch adjoining the Petitioner's home. (R. p. 51 l. 15-16). Since there was plenty of room to park in the driveway Deputy Colburn thought this was an odd placement of this vehicle. (R. p. 51 l. 23-24; p. 516 l. 16-17). Deputy Colburn parked his vehicle past the Petitioner's house and exited. (R. p. 53 l. 9-10). He walked up the driveway and looked inside the rear and driver's side of the Sequoia, then approached the other vehicles in the driveway. (R. p. 72 l. 19-23). As he walked by the passenger side of the Sequoia he looked through rolled down window on the front passenger side and noticed a dark stain on the front center console, which appeared to be blood. (R. p. 54 l. 1-5). Deputy Colburn also saw a burgundy towel on the passenger seat similar to the one he found in the victim's residence. (R. p. 54 l. 5-9).

During trial Deputy Colburn testified that he only looked inside the Toyota Sequoia as a "safety inspection" to ensure no one was inside that could harm himself or anyone else. (R. p. 51 l. 1-2). Deputy Colburn never touched the vehicle; he looked inside to determine if someone was hiding inside the vehicle. (R. p. 53 l. 21-24). When he looked inside the front passenger window, he was approximately one foot away. (R. p. 81 7-8). Deputy Colburn believed it took him a minute and a half to two minutes to clear all three vehicles. (R. p. 72 l. 5-6).

While Deputy Colburn was looking inside the window of the Sequoia the Petitioner came out the front door. (R. p. 517 l. 1-6). Deputy Colburn met the Petitioner on the front porch. Petitioner told Deputy Colburn that he knew he was there due to the victim's murder. (R. p. 85 l. 1-3; p. 517 l. 15-16). Deputy Colburn requested that Petitioner go with him to the Sheriff's

Department for an interview, Petitioner agreed, so Deputy Colburn drove him there in his police vehicle. (R. p. 517 l. 18-22; p. 518 l. 3-4).

During the Petitioner's interview a detective collected the Petitioner's clothing in order to preserve any evidentiary value. (R. p. 220 l. 2-7). In the back pocket of the Petitioner's pants the detective found a wedding ring. (R. p. 203 l. 11). Analysis at the South Carolina Law Enforcement Division (SLED) later determined there was a presence of human blood on that ring; however, there was not enough DNA to develop a profile. (R. p. 203 l. 12-15). The detective also found within the Petitioner's clothes a Walmart receipt from earlier that evening for the purchase of rubbing alcohol and a burgundy towel. (R. p. 203 l. 5-8). The Petitioner was not arrested that night, instead, he was driven back home after the interview. (R. p. 645 l. 21-22).

After arriving at the Sheriff's Department Deputy Colburn informed detectives about a possible blood stain and the towel he saw in the Sequoia. (R. p. 518 l. 14-23). At that time Investigators attempted to get a search warrant for the Petitioner's home and vehicle. Detective Muirheid went back to the residence to secure the vehicle until the search warrant was obtained. (R. p. 663 l. 21-23). While the Petitioner was being interviewed other members of Sheriff's Department received the search warrant and executed said warrant on the Petitioner's home and the Toyota Sequoia. Inside the foyer of the home, officers found a Walmart bag containing a pair of men's shoes. (R. p. 580 l. 17-19). The shoes were later tested at SLED for DNA which revealed that the victim's blood was found on one of the shoes. (R. p. 989 l. 18-19; p. 994 l. 13-14). The victim's blood was also found on the driver's door and passenger seat of the Toyota Sequoia. (R. p. 989 l. 15-21; p. 994 l. 13-14). During the search of the Sequoia, detectives noticed that the lug wrench and jack were missing. (R. p. 670 l. 7-14).

In the Petitioner's bedroom, officers smelled bleach or cleaning solution, which they thought was unusual since the bathroom did not appear to be recently cleaned. (R. p. 665 l. 15 – p. 666 l. 1; p. 790 l. 4-5). The shower also appeared to be moist. (R. p. 796 l. 15). On the Petitioner's bedroom dresser officers found a Rule to Show Cause from Family Court. This was served on the Petitioner due to a failure to pay alimony to the victim. (R. p. 580 l. 16-17). It appeared that the Petitioner owed the victim sixty-eight thousand one hundred and fifteen ($68,115) dollars in alimony, with seventeen thousand seven hundred and fifty ($17, 750) dollars of it past due. (R. p. 503 l. 18-21). The Rule to Show Cause was served on the Petitioner earlier that day. (R. p. 583 l. 19-21).

The Federal Bureau of Investigation (FBI) also analyzed Petitioner's phone records. According to geolocational data, on the day of the victim's murder Petitioner's cell phone was in Beaufort near his employment at the Naval Hospital from 8:00 a.m. till 5:24 p.m. (R. p. 380 l. 5-14). From 7:37 p.m. till 10:28 p.m. Petitioner's phone was connecting to two towers that encompassed the area around both the crime scene and his home. (R. p. 381 l. 1-7). Significantly, between 9:19 p.m. and 9:45 p.m. Petitioner received ten incoming phone calls, all of which went unanswered. (R. p. 382 l. 24; p. 383 l. 1).

Surveillance footage from a gas station was entered into evidence. This footage revealed Petitioner pulling up in his Toyota Sequoia at 10:35 p.m. (R. p. 678 l. 23 – p. 679 l. 3). At that time the Petitioner had already told detectives that he was going to come down to the crime scene. (R. p. 661 l. 19 - p. 662 l. 4). The surveillance revealed Petitioner entering the store, speaking to an employee, then removing a white envelope from his pocket. (R. p. 680 l. 10-15). The cashier shakes her head and the Petitioner leaves without getting anything or pumping any gas. (R. p. 680 l. 18-25).

During the investigation law enforcement also searched the Petitioner's cell phone. In this search they discovered several detailed text messages received the day of the murder. Several minutes after being served the Rule to Show Cause from Family Court Petitioner's current wife Carla Washington sent him the following text, " I'm not giving her a nickel if she sues your estate." (R. p. 504 l. 20-21; p. 720 l. 3-4). Minutes later she texted, "the only asset you have close to that amount is your mom's house." (R. p. 720 l. 4-5). She further stated, "I'm not giving her a nickel of the life insurance. She will never come before my kids. She's trying to give you a heart attack." (R. p. 720 l. 7-9).

During the investigation law enforcement also was able to trace the Petitioner's finances. They confirmed that Petitioner was heavily in debt. Although Petitioner earned around two hundred thousand ($200,000) dollars a year as a physician with the Veteran's Administration, money left his bank account as soon as it was deposited. (R. p. 430 l. 11-13; p. 646 l. 5-6). Petitioner had tax liens at approximately three hundred thousand ($300,000.00) dollars, and he had seventy-one different debts that were over ninety days pass due. (R. p. 647 l. 7-16). Even the Toyota Sequoia was subject to a title loan through Title Max. (R. p. 647 l. 19-21).

After the victim's murder, Petitioner called his son Chris in an effort to reach Kim. (R. p. 433 l. 13-15). The two had not spoken since the murder, Petitioner explained to Chris that "the cops think I did this to your mother." Petitioner informed Chris that he needed to talk to Kim "to see what timeline she gave them." (R. p. 433 l. 22-24). Shortly thereafter, Petitioner called A.J. and asked him when he found the victim's body. (R. p. 346 l. 25 - p. 347 l. 1).

Law enforcement also got a search warrant for the Petitioner's computer. Within that computer the browsing history revealed internet searches for, "forensic science blood detection," "forensic test for blood," "false positives for blood," and "tests for the presence of blood." (R. p.

906 l. 1-8). This browsing history occurred on the day following the victim's murder. (R. p. 906 l. 7-8). The Petitioner was eventually arrested on October 14, 2015, and charged with the offense of murder. (R. p. 213 l. 24).

The case was called for trial on February 12, 2018, before the Honorable Thomas L. Hughston. Present was the Petitioner along with his attorneys Edgar Mason West and Ryan Schwartz. Representing the State of South Carolina was Assistant Solicitor's Jessica Baldwin and Whit Sowards of the Ninth Circuit Solicitor's office.

During pre-trial the Petitioner moved to suppress the evidence seized pursuant to search warrants served on his home and vehicle. Specifically, Petitioner argued that the evidence was the fruit of an illegal search. It was his position that Deputy Colburn's looking inside the Toyota Sequoia prior to contacting the Petitioner constituted an illegal search. The State argued that Deputy Colburn actions were reasonable both as a welfare check on the Petitioner and for the officer's safety, so exigent circumstances existed. The trial judge ruled that given the circumstances Deputy Colburn's actions were reasonable under both the United States and South Carolina Constitutions. (R. p. 159 l. 24 – p. 160 l. 2).

During pre-trial the Petitioner also moved to suppress statements he had given and the evidence found in his pockets. The trial court decided that the interview was admissible as a non-custodial interrogation that did not require *Miranda* warnings. (R. p. 215 l. 23 - p. 216 l. 6). The trial court did however decide to suppress the ring and receipt, because they were not collected incident to an arrest or with the Petitioner's consent. (R. p. 232 l. 15-22; p. 233 l. 18-25).

During trial the State called SLED Agent Dawn Claycomb to testify. She was called as an expert in the field of footwear examination. She offered her qualifications and the reliability in the field of footwear examination. The Petitioner objected to her qualifications and the reliability of

the subject matter. That objection was overruled by the trial court. The trial court qualified her as an expert in footwear examination.

During her testimony Agent Claycomb stated that she compared a photograph of the bloody shoe print taken at the crime scene with the inked impressions taken from Petitioner's shoes found in his house. (R. p. 969 l. 1-22). She found the two had corresponding tread designs but could not match them because the photograph of the blood shoe print had not been taken at precisely ninety degrees. (R. p. 975 l. 12 - p. 976 l. 15).

SLED Agent Paul Meeh a forensic scientist in the DNA department conducted DNA tests of swabs from the shoes found in the Petitioner's house; from the lower step of the Petitioner's house; the interior side of the drivers door, and right front shoulder area of the passenger seat of the Toyota Sequoia. (R. p. 989 l. 14-21). After testing all of these items against the known samples of the victim and Petitioner, Agent Meeh came up to only one conclusion, that each of the collected samples from the Petitioner's shoes and vehicle matched the victim. (R. p. 994 l. 12-14). Agent Meeh testified that the probability of randomly selecting an unrelated individual having a DNA profile matching these items is one in 24 quintillion. (R. p. 994 l. 15-17).

Forensic Pathologist Dr. Ellen Reimer who performed the autopsy on the victim also testified. (R. p. 1013 l. 4-6). According to Dr. Reimer the victim died from blunt force trauma to the head. (R. p. 1013 l. 8). Dr. Reimer testified that she had never seen such blunt force trauma of this magnitude in her career, which included over 4,000 autopsies. (R. p. 1014 l. 11-12; p. 1012 l. 10). Dr. Reimer testified that the victim sustained multiple blunt force strikes to her head causing complex lacerations. (R. p. 1017 l. 10-15; p. 1018 l. 3-4; p. 1020 l. 1-15). The impact to the victim's head was so powerful that they caused a build-up of gaseous pressure underneath her cranium that ultimately tore through her scalp. (R. p. 1014 l. 7-9). The victim also sustained injuries to her

hands, consistent with her taking a defensive posture during the attack. (R. p. 1016 l. 10-11; p. 1021 l. 12-13). The force was so brutal that it ripped off a piece of the victim's index finger. (R. p. 1016 l. 25 - p. 1017 l. 1).

After four days of testimony a jury of his peers found the Petitioner guilty of murder. (R. p. 1243 l. 17). After the reading of the verdict the Petitioner was presented before the trial court for sentencing. The trial court proceeded to sentence the Petitioner to a thirty-year term of incarceration. (R. p. 1252 l. 2-3).

While serving his sentence the Petitioner timely filed a notice of appeal before the Court of Appeals. On January 12, 2021, all parties appeared before Judges Lockemy, Konduros, and McDonald for arguments before the Court of Appeals. On June 9, 2021, the Court of Appeals issued their decision affirming the decision of the trial court. The Petitioner filed a motion for rehearing that was granted by the Court of Appeals. As a result, the Court of Appeals withdrew their previous opinion and issued a substitute opinion filed on July 21, 2021. Within this unpublished opinion the Court of Appeals once again unanimously affirmed the decision of the trial court. *State v. Little,* 2021 WL 3085417 (2021).

On July 30, 2021, Petitioner filed an additional petition for rehearing. This petition was denied on August 23, 2021. Petitioner then filed a petition for writ for certiorari on September 22, 2021. The Respondent filed their response to this petition on November 1, 2021. This court granted certiorari on September 13, 2022. Brief of the Respondent supporting their argument follows.

ARGUMENTS

1. **The Court of Appeals did not err in affirming the decision of the trial court finding that the exigent circumstances exemption to the Fourth Amendment exists when law enforcement looked into the Petitioner's vehicle as a safety check in order to make sure someone was not in the vehicle that could endanger the Petitioner or himself.**

Relevant Facts

Petitioner contacted law enforcement the night of the murder informing them that he would go to the crime scene. After over an hour elapsed, detectives directed that Charleston County Deputy Matthew Colburn to go to the Petitioner's residence to contact the Petitioner. When he responded he found the Petitioner's Toyota Sequoia parked oddly, and other vehicle so as a precaution he decided to look inside each vehicle to determine if anyone was hiding inside any of these vehicles. Once he looked into the passenger side of the Toyota Sequoia he saw what he thought might be blood. He later informed investigators of this discovery. They received a search warrant for Petitioner's vehicle and his house.

Prior to trial the Petitioner moved to suppress the evidence seized pursuant to the search of his home and vehicle. Petitioner argued that the evidence collected was fruits of an illegal search by Deputy Colburn. They argued that the actions of Deputy Colburn looking inside the Petitioner's vehicle violated his rights under the United States and South Carolina Constitutions. The State argued that the actions of Deputy Colburn were reasonable both as a welfare check on the Petitioner and for his own safety, thereby, presenting exigent circumstances.

At the conclusion of these arguments the trial court decided that given the circumstances, Deputy Colburn's actions must be considered reasonable and did not violate the United States nor South Carolina Constitutions.

Standard of Review

In criminal cases, the appellate court only review errors of law. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220, (2006). On appeals from a motion to suppress on Fourth Amendment grounds, appellate courts review questions of law de novo. *State v. Bash,* 419 S.C. 263, 268, 797 S.E.2d 721, 723-724 (2017). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster,* 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions without evidentiary support. *State v. Jennings,* 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011). When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Weaver,* 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2017).

Discussion

The Fourth Amendment of the United States Constitution protects, "[t]he right of people to be secure in their persons, houses papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV. The South Carolina Constitution additionally prohibits, "unreasonable invasions of privacy." S.C. Const. art. I §10.[1]

[1] Although in some limited situations the South Carolina constitution prohibits searches and seizures that would not otherwise violate the Fourth Amendment, *see, State v. Counts,* 413 S.C. 153, 776 S.E.2d 59 (2013), there appears to be no precedent recognizing enhanced state constitutional protection in a factual scenario similar to the case at bar. In fact, in *State v. Weaver,* 374 S.C. 313, 649 S.E.2d 479 (2007), this Court rejected a claim that the state constitution created an additional layer of protection in a case involving a warrantless search of a car parked in the back yard of a private residence.

Generally, a warrantless search is *per se* unreasonable and thus violates the Fourth Amendment's prohibition against unreasonable searches and seizures. "However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically established and well delineated exceptions to the Fourth Amendment exclusionary rule. *State v. Johnson,* 410 S.C. 10, 18, 763 S.E.2d 36, 40 (2014), *quoting, State v. Abdullah,* 357 S.C. 344, 350, 592 S.E.2d 344, 348 (Ct. App. 2004).

The exigent circumstances doctrine provides an exception to the Fourth Amendment protection against warrantless searches, but only where from an objective standard, a compelling need for official action and no time to secure a warrant exist. *Abdullah,* 357 S.C. at 348, 592 S.E.2d at 351. A warrantless search is justified under the exigent circumstance doctrine to prevent a suspect from fleeing or where there is a risk of danger to the police or others inside or outside a dwelling. *Minnesota v. Olson,* 495 U.S. 91, 100, 110 S.Ct. 1684 (1990).

The Petitioner argues that Deputy Colburn was "trespassing" and was unlawfully searching the Petitioner's vehicle for evidence. Law enforcement was not "trespassing" on the Petitioner's property, Deputy Colburn was there during official police business and had a reason to be on the property. The Petitioner informed law enforcement an hour earlier that he was going to arrive at the crime scene to speak to them. After waiting an hour without any message from the Petitioner about his safety or whereabouts, detectives decided to send Deputy Colburn to the Petitioner's home to get in contact with him. At this time all they knew was that the victim was murdered, they did not even know what type of weapon was used. They had no suspects nor did they know if this had to do with the entire family. When Deputy Colburn arrived at the Petitioner's house he did not even know the car that was parked oddly belonged to the Petitioner. It was reasonable for him to

go look into the car to determine if someone was hiding inside that vehicle or maybe it was the Petitioner himself injured or dead.

Given the circumstances Deputy Colburn witnessed at the crime scene, it was reasonable to expect him to look into each vehicle before approaching the front door. We must remind the court that when he arrived at the Petitioner's house, the Petitioner was already an hour late from arriving at the crime scene after promising law enforcement he would be there, and he only lived five minutes away. It was past 11:00 p.m. the passenger window was rolled down and the car was parked halfway on the mulch. At this point the court was correct in determining that Deputy Colburn was present for two reasons first, conducting a welfare check on the Petitioner, and second, making any determination about any danger within those cars parked outside.

To survive a Fourth Amendment challenge to a warrantless search, the State must establish the officer had probable cause and demonstrate one of the exceptions to the prohibition against warrantless searches. *State v. Morris,* 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015). Probable cause is a commonsense nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men not legal technicians act. *Id.,* 411 S.C. at 580, 769 S.E.2d at 859. Exigent circumstances doctrine provides an exception to the Fourth Amendment protection. The court should be concerned with determining whether a reasonable officer would be moved to take action. Determining whether an officer has probable cause to conduct a warrantless search depends on the totality of the circumstances. *Id.,* at 411 S.C. at 581, 769 S.E.2d at 859. When looking at the totally of the circumstances it is reasonable to see that Deputy Colburn acted like any other officer in his position would have acted. Deputy Colburn was the first law enforcement officer that arrived at the scene of the murder. When he first arrived, he observed a large pool of blood on the floor and blood on the walls. (R. p. 49, l. 23-25; p. 511 l.

14-15). He also saw in the foyer a blanket soaked in blood, from an attempt to clean up. (R. p. 511 l. 23-25). There was also blood in the hallway, in the living room, and the walls leading to the back of the residence. (R. p. 512 l. 4-7). When he finally got to the bathroom he saw the victims body lying in a pool of blood, nude from the waist down, with one leg propped on the bathroom tub. (R. p. 512 l. 17-19; p. 533 l. 17-23). At the time there were no suspects, they did not even know how the victim died. All that Deputy Colburn knew was that the victim was brutally murdered, and that a killer was still at large. So, it was reasonable for Deputy Colburn to do a protective search of these vehicles to ensure the safety of the Petitioner and himself. Eventually Deputy Colburn realized that no one was in the vehicles, so it was not a dangerous situation. However, that does not remove the fact that when Deputy Colburn arrived at the house he has just witnessed a brutal murder scene. The victim being the ex-wife of the Petitioner who had informed law enforcement an hour earlier that he was going to come to the crime scene. All of these circumstances would raise alarms to any law enforcement officer.

During the trial and on appeal the State argued that this case closely mirrors this Court's decision in *State v. Herring,* 387 S.C. 201, 692 S.E.2d 490 (2009). In *Herring,* this Court decided that it "was objectively reasonable for [the officer] to take precautions to protect his own safety, and the safety of others around him, by looking into the garage to see if the suspect was there." *Id.*, 387 S.C. at 211, 692 S.E.2d at 495.

Within their brief the Petitioner argues that *Herring* is not similar and should not be considered. The Respondent disagrees, there are key similarities that exist within both cases. Both cases involved a fresh homicide with rapidly developing situations. In *Herring,* law enforcement arrived at the suspects house within two hours of the initial shooting. In the present case law enforcement arrived at the home of the Petitioner an hour and twenty minutes after they first

arrived at the murder scene. Both cases involved malicious levels of violence. *Herring,* involved a shooting death at a nightclub, the present case involved a gruesome murder scene that was initially observed by the officer that arrived at the home of the Petitioner and conducted a welfare check of the vehicles parked at the Petitioner's home. Both cases involved a narrowly tailored action of looking inside a window located on the curtilage of the home. And in both cases law enforcement had an obligation to approach the home with little time to act. In *Herring,* law enforcement was attempting to locate a murder suspect. In the present case law enforcement had two reasons to locate the Petitioner, to interview him, and to conduct a welfare check. An hour had passed after the Petitioner informed law enforcement he was on his way to the crime scene to speak with them and only living five minutes away, (R. p. 89 l. 23-24). Law enforcement had a reason to be ensure Petitioner's safety.

The Petitioner argues that *Herring* does not apply because in that particular case they were after a suspect that was considered armed and dangerous, at the time Deputy Colburn arrived at the Petitioner's house he was not a suspect. However, in his inquiry the objective is reasonableness. The ultimate touchstone of the Fourth Amendment is "reasonableness" the warrant requirement is subject to certain exceptions. *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507 (1967). Deputy Colburn knew that someone who knew the Petitioner was recently brutally murdered; that the Petitioner informed them that he was coming to the crime scene and had not shown up after an hour had passed; and, going to his home, there was a potential risk that he might meet or see the person who committed this murder. Deputy Colburn acted as any other officer would have acted in a similar situation, which is what must be acknowledged when deciding if exigent circumstances exist. In the Fourth Amendment context, a court is concerned with determining whether a

reasonable officer would be moved to take action. *State v. Wright,* 416 S.C. 353, 369, 785 S.E.2d 479, 487 (Ct. App. 2016).

Within his brief the Petitioner mentions the South Carolina Constitution and its added protection of "unreasonable invasions of privacy." S.C. Const. art. I, §10. The focus on the state constitution is on whether the invasion of privacy is reasonable, regardless of the person's expectation of privacy in the vehicle to be searched. *Weaver,* 374 S.C. at 322, 649 S.E.2d at 483. So even when looking at the South Carolina Constitution the question must be were the actions of the officer reasonable. The Respondent argues that when a law enforcement officer is placed in an identical situation as Deputy Colburn there is a duty for him to act in an identical fashion. In order to protect the public an officer must at times make quick decisions regarding the look through a vehicle to make sure it is unoccupied, especially when that officer has just left a gruesome murder scene, when the ex-husband of the victim had told informed law enforcement he would meet them an hour earlier and never arrived. The actions of Deputy Colburn satisfied the additional language found in the South Carolina Constitution as well.

The Petitioner argues that Detective Muirheid had conducted a second search. After being informed by Deputy Colburn that he potentially saw what he thought may be blood during his protective sweep of the vehicle, Detective Muirheid went to the scene to secure it and make sure nothing is changed, contaminated, nor manipulated. (R. p. 663 l. 21 – p. 664 l. 2). At that time, he knew there was probable cause, so a warrant was obtained.

2. **The Court of Appeals did not err in affirming the decision of the trial court in the denial of the Petitioner's motion for mistrial when the State during closing arguments made reference to a ring that was suppressed during pre-trial proceedings. This denial of a mistrial was proper because this reference did not cause Petitioner any prejudice.**

Relevant Facts

During pre-trial the trial court suppressed a ring and Walmart receipts found in the Petitioner's clothing when it was taken by law enforcement. The trial court ruled that this search was not incident to an arrest nor consensual, so the items found in Petitioner's clothing was inadmissible.

In their closing argument the State mentioned that the wedding ring of the Petitioner was not present. Assistant Solicitor Baldwin mentioned that during the testimony of Detective Turner he asked the Petitioner if he was wearing any jewelry and he didn't really remember him wearing any. (R. p. 1161 l. 13-16). During the closing argument there was a PowerPoint presentation revealing the words "no jewelry, no ring" (R. p. 1162 l. 15-16). At that time the Petitioner objected and moved for a mistrial. He argued that the State was trying to introduce a fact there was no ring when it was specifically excluded by the trial court. (R. p. 1162 l. 3-7). The trial court denied the Petitioner's motion for mistrial but did order the PowerPoint be taken down. (R. p. 1162 l. 23-25). The State immediately complied with the trial court's order.

Standard of Review

It is well settled that the decision to grant or deny a mistrial is within the sound discretion of the trial judge. *State v. Prince,* 316 S.C. 57, 67, 447 S.E.2d 177, 183 (1993). Declaring a mistrial "is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." *Earley v. State,* 418 S.C. 255, 267, 792 S.E.2d 226, 233 (2016), *quoting, State v. Patterson,* 337 S.C. 215, 277, 522 S.E.2d 845, 851 (Ct. App. 1999). In

order to receive a mistrial, the defendant must show error and resulting prejudice. *State v. Harris,* 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). The circuit court has wide discretion in handling the propriety of the solicitor's closing argument to the jury, and ordinarily those rulings will not be disturbed on appeal. *State v. New,* 338 S.C. 313, 318, 526 S.E.2d 237, 240 (Ct. App. 1999).

Discussion

The State's closing argument must be confined to the evidence contained in the record, and any reasonable inferences drawn therefrom. *Id.* The Solicitor has the right not only to argue the State's version of the facts, but also to comment on the weight the jury should give those facts. *Id.,* at 319. Furthermore, failure to confine arguments to evidence contained in the record does not automatically warrant a mistrial. *State v. Huggins,* 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). A new trial will be granted only when the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Id.* On appeal, the defendant bears the burden of showing an improper comment deprived him a fair trial. *Johnson v. State,* 325 S.C. 182, 480 S.E.2d 733, 735 (1997).

The trial court properly denied the Petitioner's motion for a mistrial because the Assistant Solicitor confined her arguments to the facts found in the record and reasonable inferences therefrom. Officers testified that during the execution of the search warrant, Petitioner's bathroom smelled like bleach even though the bathroom did not appear to have been recently cleaned. (R. p. 665 l. 15-19).

Facts found in the record include: (1) that Petitioner was not wearing any jewelry; (2) Petitioner was married to Carla Washington at the time the crime was committed; and, (3) Petitioner's bathroom smelled like bleach but had not been recently cleaned. One can reasonably draw the inference that Petitioner removed his ring while cleaning up after the murder. During the

argument the Assistant Solicitor did not reference collection of the ring by law enforcement, blood on the ring, or the Petitioner's clothing.

The State limited their argument to the evidence contained in the record; the Petitioner also failed to show that he suffered any prejudice. In *Little* the Court of Appeals correctly found,

> "During the State's closing, it presented a PowerPoint slide, which stated 'no jewelry, (no ring??).' The slide did not inform the jury of the blood evidence on the wedding band, and the slide was presented to the jury only briefly before the trial court ordered the State to take down the reference to the ring, which the trial court had excluded in its earlier evidentiary hearing. Without the broader context of the ring's blood evidence, the State's error did not prejudice Little, and we are unconvinced by Little's argument that because wedding bands are symbolic, the fact he was not wearing one inherently prejudiced him."

Little, 2021 WL3085417 (2021).

If the Petitioner had blood on his hands he possibly removed the ring to wash the blood off. This is an adequate argument raised by the State that included evidence that was included in the record. Petitioner was not prejudiced, so a mistrial was not necessary.

The State's case against the Petitioner was very overwhelming. On appeal the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including . . . whether there is overwhelming evidence of the defendant's guilt. *Simmons v. State,* 331 S.C. 333, 338, 503 S.E.2d 164, 165 (1998). The victim's blood was found on the drivers' door and the passenger's seat of Petitioner's vehicle, as well on the Petitioner's shoes. At the time of the murder Petitioner did not answer his phone while his daughter was attempting to call him repeatedly, after not showing up even though Petitioner had just arranged to meet her for dinner. (R. p. 449 l. 20-22). Petitioner avoided law enforcement for over an hour when he told them he was coming over to speak to them at the crime scene. And his house still smelled of bleach when it was searched later that night. (R. p. 665 l. 15-19; p. 790 l. 4-5). There also exists a motive,

after being served that day with a Rule to Show Cause for his failure to pay over sixty-eight thousand ($68,000.00) dollars in alimony. (R. p. 583 l. 9-21).

The trial court was justified in not granting the Petitioner's motion for mistrial. The Court of Appeals did not err in affirming this decision. This decision should be affirmed by this Court.

3. The Court of Appeals did not err in affirming the decision of the trial court admission of qualifications of an expert witness who testified about shoe impressions left at the crime scene by the Petitioner this expert had sufficient qualifications pursuant to Rule 702 SCRE to be considered an expert in the field of outsole footwear impressions.

Relevant Facts

During trial the State offered as an expert witness SLED agent Dawn Claycomb. The State was going to introduce Agent Claycomb as an expert in the field of footwear examination. Before her testimony the State proffered her testimony regarding her qualifications and the reliability of the field of footwear examination. (R. pp. 946-955). After hearing arguments, the trial court overruled the Petitioner's objections as to her qualifications and the reliability of the subject matter. (R. p. 955 l. 11-13). Agent Claycomb testified that she compared a photograph of the blood shoe print taken at the crime scene with inked impressions taken from shoes found in the Petitioner's house. (R. p. 969 l. 1-22). She found two had corresponding tread designs but could not match them because the photograph of the blood shoe print had not been taken at precisely a ninety-degree angle. (R. p. 975 l. 12 – p. 976 l. 15).

Standard of Review

A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. White,* 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes-Craven Holding Corp. v. Robinson,* 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016). Error is harmless when it could

not reasonably have affected the result of the trial. *State v. Simmons,* 432 S.C. 522, 566, 816 S.E.2d 566, 574 (2018).

Discussion

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Rule 702 SCRE. A witness is competent as an expert when he or she has acquired knowledge, skill, or experience so that he or she is better able than the jury to form an opinion on the subject matter. *State v. Robinson,* 396 S.C. 577, 722 S.E.2d 820, 825 (Ct. App. 2012). Agent Claycomb was properly introduced as an expert in the field of footwear examinations due to the fact she had vast knowledge, experience, and training in this field. The trial court committed no error in allowing her to testify as an expert in this field.

During voir dire Agent Claycomb testified that she received her Bachelor of Science degree in forensic science from Williamsburg University. (R. p. 958 l. 10-11). She began at SLED in 2012 as a crime scene agent. (R. p. 958 l. 17-18). She testified that she initially received between eight months to a year of basic crime scene training which involved recovery, collection, enhancement, and preservation of footwear evidence. (R. p. 947 l. 21-24). She testified that when she became a footwear examiner her training consisted of at least three years of supervised casework under a qualified examiner. (R. p. 959 l. 5-7). This consisted of many written tests, reading research, external training. She also did a week with Dwane Hilderbrand who is a well-known international footwear examiner. (R. p. 959 l. 7-12). She testified that she also did an external weeklong training at the International Association of Identification (IAI) Conference. This training consists of lectures, workshops, and more training on additional footwear. (R. p. 959 l. 13-18). Near the end

of her training, she had to complete a mock court, and had to complete a competency test which basically revealed whether she was competent or not. It tested if she understood footwear examination, the results and what is needed to do a footwear examination. (R. p. 959 l. 19-24).

In *State v. Council,* 335 S.C. 1, 515 S.E.2d 508 (1999), this Court established that in considering the admissibility of scientific evidence under the *Jones* standard, the Court looks at several factors including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and, (4) the consistency of the method with recognized scientific laws and procedures. *Council,* 335 S.C. at 19, 515 S.E.2d at 517.

Agent Claycomb testified that every case requires peer review by another qualified examiner who assesses her work. (R. p. 948 l. 5-7). She testified that it is a secondary check to say, "hey you know maybe you should look at this," or "Did you miss this?," or "I agree with your results." That is when the report is finalized. (R. p. 960 l. 7-13). Agent Claycomb testified that she applied the techniques she learned during her three years of training. (R. p. 947 l. 17-23). In addition to the training program at SLED, she was sent to train with an internationally recognized expert in the field and with the IAI. (R. p. 959 l. 8-18). She also testified that her results had to be peer reviewed by another agent before they are finalized. Agent Claycomb also explained specific guidelines. Agent Claycomb explained that the photographs of prints must be taken at a ninety-degree angle from the ground preferably with a tripod. (R. p. 968 l. 9-12). Because the print was not photographed at precisely a ninety-degree angle, Agent Claycomb's testimony was limited. She could only determine that the shoe print taken at the crime scene had a corresponding tread design with the shoes taken from the Petitioner's house. (R. p. 975 l. 12-14). This deviation limited

the scope of Agent Claycomb's opinion but enhanced the reliability of her testimony by revealing the quality control that SLED uses.

Although there is limited caselaw that mentions footwear identification , this technique is considered reliable all over the nation. Footwear identification is not something that is new nor controversial. Footwear identification has been a widely accepted form of identification in numerous jurisdictions all over the country. *See, United States v. Ford,* 481 F.3d 215 (3rd Cir. 2007)(District Court did not abuse its discretion by admitting the expert testimony regarding shoeprint evidence); *United States v. Allen,* 390 F.3d 944 (7th Cir. 2004)(Expert shoeprint testimony proffered in bank burglary prosecution satisfied the reliability prong of *Daubert)*[2]; *State v. Gray,* 145 A3d 1066 (N.H. 2016)(Expert testimony regarding footwear comparison, which indicated that murder defendant's shoes could have made impressions found at the crime scene, was relevant and thus admissible.) *Jennings v. State,* 123 So.3d 1101 (2013)(Expert witness's testimony concerning comparisons between crime scene impressions and particular shoes in stating that several impressions matched or corresponded did not lack scientific basis or constitute improper legal conclusion.) *State v. Gay,* 169 N.H. 232, 145 S.3d 1066 (2016)(Expert testimony regarding footwear comparison, which indicated that murder defendant's shoes could have made impressions found at crime scene, was relevant and thus admissible.) *U.S. v. Allen,* 390 F.3d 944 (2004)(Fact that government's expert shoe-print witness in bank burglary prosecution did not reach a conclusive opinion, i.e., opined that shoe-print found at scene of burglary was consistent with defendant's shoe rather than that print was definitely defendants did not preclude testimony from satisfying relevance prong of *Daubert.*)

[2] *Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579, 113 S.Ct. 2786 (1993).

Even if the trial court erred in allowing this expert to testify any error should be considered harmless. Agent Claycomb never made a definitive match between the two shoe prints. She just said that they had corresponding tread designs. This testimony was not crucial in the Petitioner's conviction. Even without this evidence there was ample evidence presented by the State that proved that the Petitioner committed this crime beyond a reasonable doubt. Error is harmless only when it could not reasonably have affected the results of trial. *State v. Charping,* 313 S.C. 147, 437 S.E.2d 88 (1993).

In *State v. Young,* 420 S.C. 608, 803 S.E.2d 888 (2017), this Court defined the harmless error doctrine. In *Young* this Court decided,

> The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.

Young, 420 S.C. at 628, 803 S.E.2d at 899, *quoting, Delaware v. VanArsdall,* 475 U.S. 673, 106 S.Ct. 1431 (1986).

There was ample evidence proving that the Petitioner committed this murder. The blood of the victim was found in the Petitioner's car and on shoes found in his home. He called his daughter to have dinner and after waiting for over an hour and calling numerous times his daughter was finally able to reach him. When the police searched his home they could smell bleach but the bathroom was not cleaned but the shower was wet; and, instead of meeting law enforcement as he told them he would, they waited for over an hour for his presence while he was at a gas station without purchasing any gas or items.

Considering the State's other damaging evidence, particularly the victim's blood found on the Petitioner's shoes, the testimony regarding the footwear examination is cumulative. This

evidence would not have changed the outcome of this case if it was not admitted. Any error in its admission should be considered harmless.

CONCLUSION

The Court of Appeals did not err in affirming the decision of the trial court. The Respondent respectfully request this Court to affirm the decision of the Court of Appeals.

Respectfully submitted,

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