STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2019-001923

THE STATE, Respondent,

v.

JAMES HAROLD BALDWIN, Appellant.

FINAL BRIEF OF RESPONDENT

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Did the trial judge abuse his discretion in admitting a Facebook photo of Appellant and Sheriff Alex Underwood into evidence when the photo helped explain why the investigation of Victim's death was delayed for approximately two years and why there multiple deficiencies in the investigation of Victim's death? Even if the photo was admitted in error, was any error harmless when the photo was cumulative to other evidence regarding Appellant's close relationship with the Sheriff's Office that was not objected to by Appellant?

STATEMENT OF THE CASE

In August 2018, the Chester County Grand Jury indicted Appellant for one count of murder. On October 28-November 5, 2019, a jury trial was held in the Chester County Court of General Sessions with the Honorable Daniel D. Hall presiding. The venue for Appellant's trial was moved from Chester County to Lancaster County. (R. 7, 15). Appellant was represented by Phillip Jamieson, Esq., and Bradley Jordan, Esq. The State was represented by Deputy Solicitor Candice Lively and Assistant Solicitor Jay Johnson of the Sixth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant as indicted. The trial judge sentenced Appellant to a term of life imprisonment. Appellant filed a timely notice of appeal and an initial brief.

STATEMENT OF FACTS

At approximately 11:06 PM on December 14, 2016, Chester County 911 received a phone call from Appellant. (R. 86). In the 911 call, Appellant reported he and Victim "ran off the road" while driving their Jeep Wrangler near a bridge on Old Richburg Road in Chester County. (State's Exhibit #5). Victim was Appellant's wife. Appellant reported Victim was ejected from the car and he wasn't sure if she was breathing. (State's Exhibit #5). Victim's body was located by first responders in the creek near the driver's side rear tire of the jeep. (R. 88-89, State's Exhibit #10). Victim was not breathing and did not have a pulse. (R. 109). First responders did not attempt to resuscitate Victim. (R. 109). The passenger side door of the jeep was open and hyperextended, however the windshield was still intact and undamaged. (R. 103, 171, State's Exhibit #30).

Appellant was initially interviewed at Piedmont Medical Center by Trooper Calvin Rikard at approximately 2:43 AM on December 15, 2016. (R. 41, 194). Appellant acknowledged to Rikard that he previously worked in law enforcement, including ten years of working for the Chester County Sheriff's Office as a 911 dispatcher. (State's Exhibit #1). Appellant claimed he and Victim returned home from running various errands and ate supper at approximately 5:30-6:00 PM. (State's Exhibit #1). After dinner, Appellant said Victim wanted to finish decorating their Christmas tree. While Victim decorated the tree, Appellant went outside to take some tools to his shed. When Appellant returned from the shed, he claimed Victim had fallen off of a step ladder and hit her head. (State's Exhibit #1). Appellant said Victim's head was bleeding profusely and he told Victim she needed to get stiches. (State's Exhibit #1). According to Appellant, Victim asked to be taken to Piedmont Medical Center in Rock Hill. When asked why

he didn't take Victim to the nearby Chester Regional Medical Center[1], Appellant responded "[Victim] don't like Chester." (State's Exhibit #1). Appellant decided to take Old Richburg Road to get from his residence at 1186 Oakwood Drive to Piedmont Medical Center. (R. 129, State's Exhibit #1). On the way to the hospital, Appellant claimed he saw a truck traveling over the center line in his lane. (State's Exhibit #1). Appellant moved to the right shoulder and then over-corrected and drove off the left side of the road. (State's Exhibit #1). Appellant estimated he was traveling between 55 and 60 miles per hour at the time he swerved off the road. (State's Exhibit #1). Appellant claimed he lost consciousness during the wreck, but claimed to remember the impact of the wreck. (State's Exhibit #1). When he regained consciousness, Appellant initially couldn't find Victim and had to search for her. (State's Exhibit #1). Appellant found Victim lying in the creek in front of the jeep on the passenger side. (State's Exhibit #1). Appellant claimed he dragged Victim to the driver's side of the vehicle and attempted to perform CPR. (State's Exhibit #1).

Trooper Kirk Winburn was the first member of the South Carolina Highway Patrol to arrive at the scene of the collision. Winburn observed that the jeep suffered very little damage from the collision. (R. 169-70, 179, State's Exhibit #21, #30, #73, #74). However, Winburn observed a large amount of blood in the passenger seat. (R. 170, State's Exhibit #15). Because of the discrepancy between the lack of damage to the vehicle and the severity of Victim's injuries, Winburn opined Victim did not die in the collision. (R. 171). Winburn called the Highway Patrol's MAIT team to assist in his investigation. (R. 171). As part of the MAIT team's investigation of the collision, Trooper Brian Trotter performed an analysis of the data recorder from Appellant's vehicle. (R. 398). Trotter's analysis revealed no "event" or collision was

[1] Appellant noted in his initial interview that he lived behind the hospital. (State's Exhibit #1). Presumably, Appellant was referring to Chester Regional Medical Center.

recorded by the vehicle's data recorder. (R. 400-01). Trotter explained an event would be recorded anytime the vehicle experienced a five mile per hour change in speed over the course of a 150 millisecond interval. (R. 400-03). Trotter also photographed the tire impressions made by Appellant's vehicle and noted they were well defined and not distorted as would be expected in a high speed collision. (R. 407-10, State's Exhibit #41). After analyzing the tire impressions and data from the data recorder, Trotter concluded Appellant's jeep engaged in a low speed, controlled maneuver that was inconsistent with Victim being ejected from the vehicle. (R. 411, 413-14).

Appellant arrived at Piedmont Hospital shortly after midnight on December 15, 2016. (R. 141). When Appellant was initially treated at the hospital, he told Dr. Michael Miller he did not suffer a head injury nor did he lose consciousness. (R. 142-43). Appellant also told first responders at the scene of the wreck that he did not lose consciousness. (R. 114). Appellant received a CT scan which revealed no abnormalities. (R. 143). However, at approximately 4:22 AM, Appellant told nurse, Alexandria Hickman, he suffered a loss of consciousness and did not remember what occurred during the wreck. (R. 159). Appellant was released from the hospital at 6:59 AM the following morning (R. 144). Subsequently, during his third interview with law enforcement, Appellant claimed to suffer further memory loss from a motorcycle accident in early 2017. (State's Exhibit #3).

An initial autopsy was performed on Victim on December 15, 2016 by Dr. Roger Stone. (R. 451). Stone was tendered as an expert in the field of pathology[2]. (R. 451). In performing his external examination of Victim, Stone noted the presence of an approximately two inch complex

[2] Coroner Terry Tinker explained that he requested a second autopsy of Victim because he wanted the additional perspective that a forensic pathologist could provide. Stone was not a forensic pathologist. (R. 347).

laceration[3] on Victim's right forehead. (R. 454, State's Exhibit #86). Stone opined that Victim's cause of death was blunt force trauma to the head. (R. 465). However, Stone did not determine a manner of death in order to give investigators more time to gather additional information regarding the circumstances of Victim's death. (R. 469). While Stone could not exclude the possibility of an accidental death, he was skeptical that Victim's injuries could have been caused by a fall from a step ladder. (R. 475, 478). Stone explained his skepticism by noting the unusual shape of the wound and by describing the presence of two to three sites of impact on Victim's head. (R. 475-76, 479).

At the insistence of Coroner Terry Tinker, a second autopsy was performed by Dr. Janice Ross on December 16, 2016. (R. 347-48). Ross concurred with Stone's conclusion that blunt force trauma to the head was Victim's cause of death. (R. 495). Ross also agreed with Stone's observation that Victim suffered at least two separate impacts to her head. (R. 497). Ross measured a 24 centimeter fracture to Victim's skull. (R. 499). Ross described Victim's skull fracture as a "hinge fracture" because it stretched almost all the way around the skull and allowed the skull to be manipulated in a similar manner to a door hinge. (R. 503-04). According to Ross, the injuries Victim sustained would have rendered her unconscious within one minute and caused her death within five to six minutes. (R. 509-10). Ross completed her autopsy report on December 17, 2016. (R. 1126-34). However, Ross declined to provide a manner of death until additional investigation was completed. (R. 1126-34). After learning more about the ladder that Victim allegedly fell from and viewing pictures of a broken stocking holder found at the scene, Ross amended her autopsy report on August 1, 2017 to conclude the manner of Victim's death

[3] Dr. Stone deemed the laceration "complex" because it had "a very irregular shape." (R. 464, lines 5-7).

was homicide. (R. 505-07, 1126-34, State's Exhibits #195). Ross opined the lacerations to Victim's forehead could have been caused by the broken stocking holder. (R. 507).

Appellant was interviewed a second time by Investigator Chris Reynolds of the Chester County Sheriff's Office on December 20, 2016. Appellant's version of events was similar to the version he gave to Rikard in his first interview. However, Appellant revised the timeline of events regarding when he and Victim returned home and ate dinner. Appellant stated he and Victim ate dinner at 7:30 PM[4]. (State's Exhibit #2). Appellant also specified that Victim was conscious and able to speak to him during their trip to the hospital. (State's Exhibit #2). Appellant described his relationship with Victim as "about as perfect as you can get." (State's Exhibit #2). Appellant ended his second interview by telling Reynolds he would be speaking to Sheriff Alex Underwood about rumors circulating that Appellant was under criminal investigation. (State's Exhibit #2).

On August 11, 2017, a meeting was held at the Chester County Sheriff's Office between Coroner Terry Tinker and members of the Chester County Sheriff's Office, SLED, the Sixth Circuit Solicitor's Office, and the South Carolina Highway Patrol. (R. 796-97). The meeting was presided over by the Honorable Brian M. Gibbons. (R. 796). The purpose of the meeting was to discuss the status of the investigation into Victim's death. (R. 797-98). At the conclusion of the meeting, it was agreed that SLED would assist the Chester County Sheriff's Office with the investigation. (R. 798).

On September 25, 2017, agents from SLED searched Appellant and Victim's home for blood stains. (R. 802). Approximately twenty-two blood stains were found. (R. 310, State's Exhibits #153, #187, #188). Appellant was indicted for murder in August 2018. (R. 813, 1136-

[4] Appellant previously told Trooper Rikard he and Victim ate dinner from 5:30-6:00 PM (State's Exhibit #1).

37). After Appellant was placed under arrest, he was interviewed a third time by Agent Kristen Grant of SLED and Investigator Reynolds on August 15, 2018. In his third interview, Appellant again revised the timeline of events on the evening of December 14th. Appellant estimated that less than one hour passed from the time Victim allegedly fell off the ladder to the time he and Victim left to go to the hospital. (State's Exhibit #3). Appellant claimed he and Victim left for the hospital at 11:00 PM (State's Exhibit #3). Therefore, according to Appellant's third statement, the injury to Victim had to occur sometime after 10:00 PM. Appellant also claimed he and Victim never argued. (State's Exhibit #3). During the course of her investigation, Grant discovered that Victim purchased a $25,000 accidental death insurance policy six months prior to her death in which Appellant was the designated beneficiary. (R. 804).

Approximately forty-five days after Victim's death, Appellant moved in with Teri King. (R. 279, 702-03). On November 5, 2016, Appellant told his friend, Randall Black, that he was sleeping with King. (R. 608-09). According to Victim's friend, Karen Black, she observed difficulties in the couples'marriage in December 2016. Black testified she attended a Christmas party with Victim and Appellant on December 10, 2016. (R. 560-61). When Victim and Appellant arrived, Black said she could tell Victim was upset and had recently been crying. (R. 561). After the party ended, Black testified that Victim called her five times[5] in the early morning hours of December 11th. (R. 584-85, 612-13, 1135). Black said Victim was hysterical and was planning to drive to King's house. (R. 584-85). Black advised Victim she needed to talk to her pastor. (R. 587). Victim's pastor, Keith Hinson, confirmed he spoke with Victim approximately two to three months before her death about the state of Victim and Appellant's

[5] In a proffer outside the presence of the jury, Black revealed the substance of her conversations with Victim. Victim told Black that she and Appellant argued about Teri King on the way home. Victim said Appellant was enraged and left their home until the following morning. (R. 578-80).

marriage. (R. 664-65). Black also testified she occasionally worked for Victim and Appellant's cleaning business. (R. 555). According to Black, when Victim cleaned houses, she would never climb a ladder because of a childhood problem with her legs[6]. (R. 556).

King testified on behalf of the State at Appellant's trial. King denied having an affair with Appellant. (R. 706). However, King admitted she loved Appellant and acknowledged she would tell Appellant she loved him and Appellant would say he loved King. (R. 703, 706). King also provided a timeline of the events of December 14th that differed from Appellant's. King testified Appellant sent her a text message at 6:30 PM saying Victim cut herself. (R. 682). Approximately thirty minutes later at 7:00 PM, King said Appellant called her and said Victim is going to need stitches. (R. 684). Victim's sister, Mary Ann Wilkes, testified she last talked to Victim on the phone at 7:13 PM. (R. 637-38). By contrast, Appellant told Victim's son, Joshua Orr, that Victim fell between 8:00 PM and 8:45 PM. (R. 775). Finally, Appellant claimed in his last interview that he and Victim left to go to the hospital less than an hour after Victim fell. (State's Exhibit #3). Appellant estimated he and Victim left the house at 11:00 PM. (State's Exhibit #3). Appellant called 911 at approximately 11:06 PM. (R. 86). At the conclusion of trial, Appellant was convicted of murder.

[6] Victim's son, Joshua Orr, testified he never saw his mom climb a ladder. (R. 783). Orr also revealed he noticed a difference in his mother's marriage in November 2016. Orr described the marriage as "awkward" and "it was like walking on eggshells, especially for [Victim]." (R. 764, R. 765, lines 8-9).

STANDARD OF REVIEW

I.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id.

II.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "A trial [court]'s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in 'exceptional circumstances.'" State v. Green, 412 S.C. 65, 79, 770 S.E.2d 424, 432 (Ct. App. 2015) (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008)). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." Id.

ARGUMENT

I.

The issue of whether the trial judge erred by allowing Dr. Ross to testify as an accident and crime scene reconstructionist is not preserved for appeal, because it was not raised to and ruled upon by the trial judge. Even if the issue is preserved, the trial judge did not err in admitting Dr. Ross' testimony because her opinion of Victim's injuries properly relied on her 43 years of experience in forensic pathology and did not exceed the scope of her expertise.

Appellant initially argues the trial judge erred in allowing Dr. Ross to testify as an accident and crime scene reconstructionist which exceeded the scope of her expertise as a forensic pathologist. As an initial matter, this issue is not preserved for appellate review, because Appellant did not place his objection to Ross' testimony on the record. To the extent Appellant objected to Ross' testimony, Appellant objected on the ground that her testimony was speculative; not based on her testimony exceeding the scope of her expertise or to her testifying as an accident or crime scene reconstructionist. (R. 512-13). However, even if this issue is preserved, Ross properly testified within the scope of her expertise as a forensic pathologist as to what likely caused Victim's injuries and how they were inflicted.

Error Preservation

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). "The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal." State v. Freiburger, 366 S.C. 125, 135, 620 S.E. 2d 737, 742 (2005). "[A] party may not argue one ground at trial and an alternate ground on appeal." State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). See also State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) ("Haselden did not object to this

testimony on the grounds that it was improper character evidence below. He objected only on the basis of relevancy. Accordingly, this issue is not preserved for review."). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). A "general objection that does not specify the particular ground on which the objection is based is insufficient to preserve a question for review." State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). "An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review." York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997).

Here, the State tendered Dr. Ross as an expert in the field of forensic pathology. (R. 483). Appellant asked to approach the bench and an off-the-record conference was held. (R. 483). The trial judge asked the jury to exit the courtroom and then announced on the record "Defense has raised an objection about what [Ross] may or may not be able to testify to and has asked for an opportunity to examine Dr. Ross more on her qualifications." (R. 484, lines 1-3). Appellant proceeded to ask Ross whether she was an expert in the following fields: Biomechanics, blood spatter analysis, and crime scene investigation. (R. 484-85). Ross agreed with Appellant that she was not an expert in the aforementioned fields and would not be testifying about those topics. (R. 484-85). Of particular interest to Appellant was whether Ross could testify in "regard to forces applied in [Victim's] injuries." (R. 485, line 8, R. 486-87). Ross agreed she would not testify about the amount of force used in Victim's injuries. (R. 485). The trial judge tendered Ross as an expert in the field of forensic pathology. (R. 489-90).

On appeal, Appellant complains that three specific questions asked by the State called for answers that exceeded the scope of Ross' expertise and required her to testify as an expert in the

field of crime scene reconstruction. (Initial Brief of Appellant 14). In order to determine if this issue has been preserved for appeal, it is instructive to review the questions asked of Ross and the objections made by Appellant. Appellant objected to the following three questions posed to Ross and the answers she provided:

> Solicitor Lively: ...So in regard to those and that particular mantle piece, if it were to cause the type of injury to—two injuries to her forehead, would that require two separate blows?
>
> Ross: Yes.
>
> Appellant: Again, I'm going to object.
>
> The Court: I overrule the objection.
>
> Solicitor Lively: and you've already stated you believe there were two separate impacts to the head[7].
>
> ....
>
> Solicitor Lively: So in your opinion within a reasonable degree of medical certainty, was it more probable that she had been hit with the object with significant force or that she fell off of a three foot ladder?
>
> Appellant: Objection, Your Honor, calls for speculation.
>
> Solicitor Lively: She's qualified, Your Honor.
>
> The Court: I overrule the objection, I'll let her answer the question.
>
> Ross: She was hit by – she had two separate lacerations at least, maybe three, which were separate, so it would be more consistent with being hit with an object.
>
> ....
>
> Solicitor Lively: And would you agree that without any other explanation of mechanism to explain the severity of her injuries, within a reasonable degree of medical certainty this could have likely been caused by an attack or a beating to her head?
>
> Appellant: Objection, Your Honor, again calls for speculation.

[7] Ross previously testified, without objection, Victim suffered two separate impacts. (R. 497).

The Court: I overrule the objection.

Ross: It's what I've experienced and seen before as being beaten, yes.

(R. 511, line 24- Tr. 512, line 8; R. 512, lines 14-25; R. 513, lines 15-24).

After reviewing the record, it is not clear what objection Appellant originally offered to Ross' testimony. The two parties approached and engaged in a bench conference with the trial judge. (R. 483). After the bench conference, the trial judge indicated Appellant objected regarding what Ross "may or may not be able to testify to", but the trial judge did not articulate what Appellant's specific objection was. (R. 483). This Court is left to infer from Appellant's questions during the proffer of Ross' testimony that Appellant was concerned about Ross testifying about the specific amount of force that would be required to inflict the injuries that Victim suffered. (R. 484-87). Ross agreed she would not testify about the specific amount of force required to fracture a skull and even remarked that such an estimation was improper and unethical in the medical field. (R. 486). Because it is not clear what the grounds of Appellant's initial objection were, this Court must examine the actual objections made by Appellant on the record. The first objection offered by Appellant was a generic one where Appellant simply stated: "Again, I'm going to object." (R. 512, line 4). The second and third objections offered by Appellant were based on the ground that the questions asked called for speculation[8]. (R. 512-13). Appellant did not object to any of the aforementioned questions on the grounds that Ross was exceeding the scope of her expertise, nor was the objection made that Ross was testifying as an

[8] It is possible the trial judge inferred from this objection that Appellant was concerned about Ross exceeding the scope of her expertise, but it is equally possible the trial judge interpreted this as a generic objection to Ross' testimony that did not relate to the scope of her expertise. In any event, this Court is forced to use context clues from the questions asked during Appellant's proffer because neither Appellant nor the trial judge placed the substance of their bench conference on the record.

accident or crime scene reconstructionist. Because the question of whether Ross exceeded the scope of her expertise as a forensic pathologist was not raised to and ruled upon by the trial judge on the record, this issue is not preserved for appeal.

Dr. Ross did not exceed the scope of her expertise

Even if this Court determines Appellant properly preserved this issue for appeal, the trial judge did not err in allowing Ross to answer the aforementioned questions because the questions did not call for Ross to exceed the scope of her authority as a forensic pathologist nor did Ross' answers exceed the scope of her authority.

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

> 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. "Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony's probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." Chavis, 412 S.C. at 106, 771 S.E.2d at 338.

"Pathology is the study of the diseases and degenerative processes that occur in the body. It is the branch of medicine that seeks to explain the nature of diseases, their signs, symptoms, and causes." 40 Am.Jur. *Trials* 501 § 5. "Forensic pathology is that subspecialty which is concerned with the cause and manner of death for legal or public purposes. The word 'forensic' is defined as 'belonging to the courts of justice or to public debate and discussion.'" 40 Am.Jur. *Trials* 501 § 6 (quoting 33 Am.Jur *Trials* 467 § 1, 2, 18). "The very essence of forensic pathology is investigative, in that it seeks through detailed examination of a decedent's body to reconstruct the cause and manner of death. Clues are provided by the decedent's body, and the pathologist's training and expertise allow him or her to draw conclusions based on those clues." United States v. Vega-Penarete, 974 F.2d 1333 (4th Cir. 1992) (unpublished table decision).

Here, Appellant alleges that Ross exceeded the scope of her authority as a forensic pathologist and instead testified as an accident and crime scene reconstructionist. Contrary to Appellant's assertion, Ross' testimony remained within the bounds of her expertise and properly relied on her 43 years of experience as a forensic pathologist. (R. 481). Ross' qualifications in the field of forensic pathology are unassailable. In addition to her 43 years of experience working as forensic pathologist, Ross was previously tendered as an expert in the field in various courts of law over 260 times. (R. 483). Ross properly relied on her experience in the field of forensic pathology in providing an opinion regarding whether Victim fell from a ladder or was beaten with an object. Ross explicitly relied on this experience when she testified "It's what I've experienced and seen before as being beaten, yes." (R. 513, lines 23-24). In fact, Ross' answers were general in nature and lacked the specificity Appellant complains of on appeal. Ross merely described Victim's injuries as being "more consistent with being hit with an object." (R. 512, lines 24-25). When asked on cross examination whether she could testify about the amount of

force used on Victim, Ross replied "I can't give you the amount of force in foot pounds or whenever (sic), but I can tell you by experience what kind of injuries occur at different scenarios." (R. 517, lines 1-3).

Furthermore, the notion that Ross somehow testified as an accident or crime scene reconstructionist is belied by her answers to the questions Appellant complains of on appeal. Ross' answers focused entirely on the injuries sustained by Victim and the condition of her body. The answers Appellant complains of on appeal did not mention the crime scene nor objects located at the crime scene. Ross offered no opinions on the crime scene nor did she attempt to reconstruct it. Ross merely testified Victim suffered at least two separate blows and her injuries were more consistent with being beaten with an object rather than falling off a ladder. (R. 511-13). Ross's testimony properly focused entirely on Victim's injuries and never strayed into the realm of accident or crime scene reconstruction.

Ross' testimony is consistent with testimony that has been repeatedly recognized as being within the scope of the expertise of a forensic pathologist by our state's Supreme Court. For example, in State v. Lopez, our Supreme Court held the trial judge did not abuse his discretion in admitting the testimony of a neurosurgeon on the characteristics of battered child syndrome and shaken baby syndrome. State v. Lopez, 306 S.C. 362, 367, 412 S.E.2d 390, 393 (1991). The Court noted a properly qualified expert could provide testimony that "may support an inference that the child's injuries were not sustained by accidental means." Id. Here, like in Lopez, Ross appropriately testified, based on her review of Victim's physical injuries, that they were inconsistent with an accidental fall. Similarly, the Supreme Court held in State v. Tyner that the trial judge did not abuse his discretion in admitting the testimony of a forensic pathologist who testified about the distance of a shotgun blast and the absence of powder burns on the victim's

body. State v. Tyner, 273 S.C. 646, 652, 258 S.E.2d 559, 562 (1979). Like Appellant in this case, Tyner claimed a forensic pathologist exceeded the scope of his expertise and testified as a ballistics expert by providing the aforementioned testimony. Id. Our Supreme Court disagreed. Id. If Appellant's argument were taken to its logical extreme, forensic pathologists would never be able to testify about causes of injury in our state's courts for fear of straying into the realm of a crime scene reconstructionist or other specialty. This Court should not endorse such a draconian limitation on a well-recognized field of science.

Appellant additionally complains that Ross' testimony "blunted the testimony of Appellant's two experts." (Initial Brief of Appellant 16). If Ross exceeded the scope of her expertise in opining on the facts and circumstances surrounding Victim's death, then Appellant's expert, Dr. Beaver, exceeded the scope of his expertise in the same manner. Beaver, like Ross, was tendered as an expert in the field of forensic pathology. (R. 974). Like Ross, Beaver was asked to provide his opinion regarding Victim's manner of death when Appellant posed the following question: "And, Doctor, then is it your opinion to a reasonable degree of medical certainty that the scientific evidence that you observed is consistent with a fall from the ladder?" (R. 988, lines 17-19). Beaver testified Victim's injuries were consistent with a fall from a ladder. (R. 988). Therefore, it is disingenuous for Appellant to complain he was somehow prejudiced by Ross' testimony when Appellant's expert offered testimony that was cumulative to Ross' testimony. The jury was not required to accept either expert's testimony. Indeed, the trial judge instructed the jury in his closing instructions that: "you are not required to accept an expert's opinion even though it is not contradicted." (R. 1111, lines 12-14). Here, Ross and Beaver's testimonies directly contradicted each other. The jury was not required to accept either expert's opinion. Ultimately, on appeal, Appellant is dissatisfied with Ross' conclusion because

Appellant disagrees with it; not because the trial judge abused his discretion in allowing Ross' testimony. Appellant's conviction and sentence should be affirmed.

II.

The trial judge did not abuse his discretion in admitting a Facebook photo of Appellant and Sheriff Alex Underwood into evidence because the photo helped explain why the investigation of Victim's death was delayed for approximately two years and why there were multiple deficiencies in the investigation of Victim's death. Even if the photo was admitted in error, any error was entirely harmless because the photo was cumulative to other evidence regarding Appellant's close relationship with the Sheriff's Office that Appellant did not object to.

Next, Appellant argues the trial judge erred in admitting a Facebook photo of Appellant and Chester County Sheriff Alex Underwood because the photo was irrelevant and unduly prejudicial to Appellant. Specifically, Appellant argues the photo suggested an improper basis for the jury's verdict because it allowed the jury to imply that Appellant received favorable treatment from the Chester County Sheriff's Office and to explain away the deficiencies in the State's case. (Initial Brief of Appellant 19). On the contrary, the photo was relevant evidence that served a probative purpose and was not unduly prejudicial to Appellant. The State offered the photo into evidence to explain to the jury why the investigation into Victim's death was delayed, why another law enforcement agency became involved with the investigation, and why various pieces of evidence were not collected by law enforcement. However, even if the trial judge admitted the photo in error, the photo was cumulative to other evidence that was not objected to by Appellant. Therefore, any error in the admission of the photo was harmless.

Relevance

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401 SCRE. "Although relevant, evidence may be

excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403 SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)). "All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." Id. "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014).

Here, it was uncontroverted that Appellant was a former law enforcement officer and was a former employee of the Chester County Sheriff's Office as a dispatcher. (State's Exhibits #1, #3). It was also undisputed that Appellant was not charged with a criminal offense until August 2018, nor was it disputed that SLED charged Appellant with murder, rather than the Chester County Sheriff's Office. (R. 813, 1136-37). The State was entitled to explain those facts to the jury. The Facebook photo was offered, along with other evidence, to explain the delayed investigation of Victim's death as well as some of the failures by law enforcement to collect evidence. (R. 356, State's Exhibit #197).

Appellant's relationship with the Chester County Sheriff's Office helps explain several deficiencies in the initial investigation. For example, Investigator Reynolds testified he was denied permission by his superiors to obtain Appellant's phone records. (R. 272-73). Appellant's phone records could have shed considerable light on the timeline of events on the evening of December 14th. The phone records could have corroborated or contradicted King's testimony regarding when Appellant called her on December 14th. Additionally, Appellant's relationship

with the Chester County Sheriff's Office helps explain why law enforcement did not treat Appellant and Victim's residence more like a crime scene. After taking photos at Appellant's home, Reynolds and Deputy Jonathan Thomasson left the home without blocking or taping off the scene to restrict access to it. (R. 134, 263-65). Law enforcement also did not secure the step ladder for evidentiary purposes and it was later burned in a fire according to Appellant. (State's Exhibit #3). Reynolds testified he "[ran] everything up the chain of command" when deciding how to process the scene. (R. 263, lines 20-21). Because the scene was not secured, King was able to go to the house the following morning and clean up Victim's blood, thereby destroying evidence. (R. 694-98). Appellant's expert, Ross Gardner, described the way the crime scene was investigated in the following manner: "there's no nice way to say it, it was trash. There is a basic rule in crime scenes, you treat every unattended death as a homicide. Things were never picked up, things were not photographed, things were not collected." (R. 925, lines 18-21).

The Facebook photograph served a limited but probative purpose. The photograph illustrated Appellant's relationship with the Chester County Sheriff's Office. Appellant's relationship with the Sheriff's Office was relevant to explain the deficiencies in the Sheriff's Office's investigation and ultimately why SLED assisted with the investigation. Appellant suffered little to no prejudice from this evidence because multiple witnesses, including Appellant himself, acknowledged Appellant had a prior relationship with the Sheriff's Office. (State's Exhibit #1, #2, #3). Therefore, the probative value of the photo was not substantially outweighed by the danger of unfair prejudice and the trial judge did not abuse his discretion in admitting the photo.

Harmless Error

"Whether an error is harmless depends on the circumstances of the particular case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." Thompson, 352 S.C. at 562, 575 S.E.2d at 83. "Error is harmless when it could not reasonably have affected the result of the trial." Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)). "Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point." State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968). "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008).

Even if the Facebook photo was erroneously admitted into evidence, it was cumulative to other evidence which was not objected to by Appellant. Therefore, any error in the admission of the photo was harmless. Multiple witnesses testified regarding Appellant's relationship with the Chester County Sheriff's Office, and about the Sheriff's Office's unwillingness to assist with various aspects of the investigation. In fact, references to Appellant's relationship with the Sheriff's Office were so ubiquitous that the trial judge made the following remark when denying Appellant's motion for a continuance after the Facebook photo was entered: "the Court's view is there has been nothing that should have been or is not fully disclosed to the defense and that the

trial strategy of relationship between the defendant and the sheriff was certainly not something that is a surprise to anyone" (R. 361; R. 448, lines 2-6).

First and foremost, Appellant implied he had a close personal relationship with Sheriff Alex Underwood in his second interview with law enforcement. Appellant told Reynolds that he heard the Sheriff's Office was conducting a criminal investigation into the wreck. In response to that rumor, Appellant told Reynolds "you can tell your Sheriff I will be back to see him about that." (State's Exhibit #2). Appellant acknowledged in his initial interview with Highway Patrol that he worked for the Sheriff's office for ten years. (State's Exhibit #1). When Appellant attempted to get some items out of his jeep after it had been impounded by law enforcement, Appellant handed the body shop owner a police officer's card and said "if you call this man he will let me get my stuff out." (R. 656, lines 10-11). In addition to testifying about the difficulties he encountered trying to obtain Appellant's phone records, Reynolds testified Appellant personally knew two senior members of the Sheriff's Office, Phillip Perry and Burley McDaniel. (R. 882). Perry, who testified on behalf of Appellant, admitted he was denied permission on one occasion to subpoena Appellant's phone records. (R. 965-66). Reynolds also testified that Sheriff Underwood did not want SLED involved in the investigation. (R. 303). Victim's son testified he had difficulty with the Sheriff's Office. (R. 780-81). Multiple witnesses testified about the meeting between the Sheriff's Office, SLED, Coroner Tinker, and Judge Gibbons. (R. 218-19, 370, 796-98). The meeting was described as "very tense. It was a very volatile meeting" and "very heated" by two people who attended it. (R. 219, line 11; R. 798, line 12). Even Dr. Stone, who performed the first autopsy on Victim, testified that tensions were high between the Coroner and Sheriff's Office during the autopsy. (R. 472-73).

Multiple witnesses testified, without objection from Appellant, regarding the close relationship between Appellant and the Chester County Sheriff's Office. Multiple witnesses, including employees of the Sheriff, also testified about the difficulty they encountered working with the Sheriff's Office during the investigation of Victim's death. As the trial judge noted, the relationship between Appellant and the Sheriff's Office should not have come as a surprise to anyone. Therefore, any error in the admission of a Facebook photo depicting Appellant and Sheriff Underwood together was entirely harmless because it was cumulative to other evidence that was not objected to by Appellant. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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May 7, 2021

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2019-001923

THE STATE, Respondent,

v.

JAMES HAROLD BALDWIN, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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