

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County  
Steven H. John, Circuit Court Judge

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JUN 19 2013

Opinion No. 2013-UP-062 (S.C. Ct. App. filed 1/30/2013), S.C. Supreme Court  
07-GS-26-2974,2975, 2976

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THE STATE,

RESPONDENT,

V.

CHRISTOPHER M. STEPHENS,

PETITIONER

Appellate Case No. 2013-000793

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A P P E N D I X

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ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

Attorney for Petitioner

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III  
Senior Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

J. GREGORY HEMBREE  
Solicitor, Fifteenth Judicial Circuit  
Post Office Box 1276  
1301 2nd Ave.  
Conway, SC 29528-1276  
(843) 915-5460

Attorneys for Respondent

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Christopher M. Stephens, Appellant.

Appellate Case No. 2009-116988.

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Appeal From Horry County  
Steven H. John, Circuit Court Judge

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Unpublished Opinion No. 2013-UP-062  
Heard October 3, 2012 – Filed January 30, 2013

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**AFFIRMED**

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Robert Michael Dudek of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior Assistant  
Deputy Attorney General Donald J. Zelenka, Senior  
Assistant Attorney General W. Edgar Salter, III, all of  
Columbia, for Respondent.

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**PER CURIAM:** Christopher Stephens was indicted on two counts of accessory  
before the fact of murder and one count of accessory before the fact of armed

robbery. He was tried together with Jimmy Lee Sessions, who was indicted on one count of first-degree burglary, one count of armed robbery, and two counts of murder. All counts arose from the same incident and involved the same victims. Both defendants were found guilty as charged. Stephens appeals, arguing the trial judge erred in admitting testimony that one of the victims accused him of owing her money for drugs and in allowing a SLED employee to testify about victimology and related matters. We affirm.

1. Over Stephens's objection, the trial judge allowed James Pearl to testify that shortly before the victims were murdered, he heard one of them accuse Stephens of owing her money for drugs. Stephens argues the testimony was (1) hearsay and (2) highly prejudicial because it suggested a motive for Stephens's involvement in her murder. We find no error.

The victim's statements were made in Stephens's presence, and he never attempted to refute them; therefore, they were admissible as adoptive admissions. *See State v. Nolan*, 318 S.C. 253, 257, 456 S.E.2d 926, 928 (Ct. App. 1995) ("The adoptive admissions rule allows admission into evidence of a defendant's failure to deny statements made in his presence which tend to incriminate him, which a reasonable person would have denied under the circumstances, as by his silence, or his making an evasive, equivocal, unresponsive, or affirmative reply."). Moreover, because the deceased victim was an unavailable declarant and her accusation against Stephens included a declaration on her part that she sold illegal drugs to him, the statement was admissible under Rule 804(b)(3), SCRE, as a statement against her interest. Finally, Stephens himself acknowledged that he owed the victim money; therefore, her accusation would be "merely cumulative," and any error in admitting it would be harmless. *State v. Schumpert*, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993).

2. Stephens further argues the trial judge should not have allowed SLED Agent Michael Prodan to testify as an expert about victimology, method of operation, motive, and related subject matter, arguing admission of this testimony violated Rule 702, SCRE, *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), and this court's opinion in *State v. Tapp*, 387 S.C. 159, 691 S.E.2d 165 (Ct. App. 2010), *rev'd* 398 S.C. 376, 728 S.E.2d 468 (2012). We find no reversible error.

In *State v. White*, the South Carolina Supreme Court held:

[T]he trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under

Rule 702 [of the South Carolina Rules of Evidence], whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

*White*, 382 S.C. at 274, 676 S.E.2d at 689. The *White* decision was issued several months after the trial in the present case took place.

At trial, Stephens objected to Prodan's testimony, arguing (1) he was not informed that the State intended to call Prodan and (2) Prodan's testimony was not relevant. On appeal, Stephens argues only that the testimony was speculative, irrelevant, and therefore admissible. Although Stephens did not specifically request the trial judge to exercise a gatekeeping role in determining whether Prodan's testimony was admissible, we hold his objection on the ground of relevance was sufficiently specific to address this argument on appeal. *See* Rule 401, SCRE ("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."); *State v. Tapp*, 398 S.C. 376, 385-86, 728 S.E.2d 468, 473 (2012) ("While our preservation rules require that objections to the admissibility of evidence be specific, they most certainly do not require clairvoyance.") (citation omitted). Moreover, we hold that even though the law at the time of Stephens's trial allowed the reliability of nonscientific expert testimony to be determined by the jury, the trial judge erred in admitting Prodan's testimony without making his own determination as to whether it was reliable. *See id.* at 389, 728 S.E.2d at 475 (acknowledging the trial judge erred in admitting certain expert testimony after making an initial determination of the witness's expertise but without vetting the testimony for its reliability).

Nevertheless, we hold that "beyond a reasonable doubt the trial error did not contribute to the guilty verdict[s]" against Stephens. *Id.* at 390, 728 S.E.2d at 475. Here, Prodan's testimony concerned only the victims and the crime scene. He never identified Stephens, the co-defendant, or anyone else as a perpetrator and testified that at his insistence, he was not given any information about any suspects

developed in the case. As was the case in *Tapp*, the jury made numerous factual determinations in arriving at its verdict, including (1) whether Pearl testified truthfully about the victim's accusations against Stephens and the defendants' attempt to enlist his help in committing the crimes, (2) the credibility of witnesses who allegedly heard Stephens's co-defendant admit to committing a crime, (3) whether shoe prints found at the crime scene matched the shoes taken from the property bag of Stephens's co-defendant, and (4) the credibility of testimony that certain individuals knew about the deaths of the victims before the police found their bodies.

**AFFIRMED.**

**HUFF, THOMAS, and GEATHERS, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

V.

CHRISTOPHER M. STEPHENS,

APPELLANT

---

Appeal from Horry County

Steven H. John, Circuit Court Judge

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Opinion No. 2013-UP-062

Appellate Case No. 2009-116988

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PETITION FOR REHEARING

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Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that the accusation that appellant owed one of the victims money for drugs was simply not something a reasonable person would have thought was worth responding too. This Court respectfully has applied the strange in and of itself legal concept of an adoptive admission too broadly. Ignoring the declarant in this situation was instead the reasonable thing for appellant to have done. Appellant urges the Court to reconsider its application of an adoptive admission to this situation.

Second, an accusation “on the street” that a person owes another person for drugs is not the kind of statement that “so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true.” See Rule 804, (b)(3), SCRE. This was largely meaningless talk “on the street” that was not in the context that a reasonable person would have feared criminal prosecution for making the statement or accusation. The error also was not harmless as an accusation that a person was a drug user or drug dealer is explosively prejudicial in the minds of some jurors.

Instead the statement was prejudicial hearsay as appellant argued. See Rule 801(c), SCRE. See, also, State v. Saltz, 346 S.C. 114, 551 S.E.2<sup>nd</sup> 240 (2001). The solicitor elicited Pearl’s hearsay testimony that decedent Hightower was yelling at appellant about the money appellant owed her for drugs. It was highly prejudicial hearsay *because it was calculated to provide an alleged motive for the murder: That appellant elicited the help of co-defendant Sessions to rob and kill decedent Hightower. This would relieve him of the drug debt, and also have Hightower fill the need for a victim of a robbery the men wanted to commit to obtain money.* See State v. Caulder, 287 S.C. 507, 339 S.E.2d 876 (Ct.App. 1986); State v. Davis, 371 S.C. 170, 638 S.E.2d 57 (2006).

#### **State v. Tapp issue**

The Court should respectfully reconsider its holding that this error was harmless because Prodan never identified appellant or anyone else as the perpetrator. The point is this junk science was meant to lead the jury to believe that Prodan’s “victimology” could help identify the murderer by piling inference upon inference from the facts before it.

As in State v. Tapp Prodan here said he asked for background information on the victim or victims. Prodan testified he tried to ascertain whether the victim was a high risk individual because of their life style. Prodan opined that some people who were “low risk” because they were not

involved “in criminal enterprises, they are not selling drugs, they are not involved in sexual affairs or promiscuity or prostitution.” R. 576, l. 4 – 588, l. 4.

Prodan also told the jurors there were “moderate risk life styles.” These included people working in a convenience store and a cab driver. R. 588, l. 17 – 589, l. 12.

The solicitor asked Prodan about the decedent’s “risk level.” Prodan opined decedent Hightower was probably a moderate risk because of her drug sales. “It was not – it doesn’t give rise to the level of multi-national cartels, but it’s not a college student selling five dollar baggies of marijuana to their dorm mates either, so it has to kind of fall in the middle.” Prodan said the other decedent had an “exceedingly low risk” life style besides her living with decedent Hightower. R. 589, l. 16 – 590, l. 5.

Prodan opined that there is a misconception perpetuated by the media that violent crimes just happen and are random events. *“Our experience and our training indicate that is not the case. There is a motive for murder. There are victims who are selected by the offender for that reason.”* R. 590, ll. 6-21. (emphasis added).

Prodan said he had to ask himself how the person got into the house in this case since there was no forced entry. *Prodan then stated his “background information” indicated that Hightower only sold drugs “if there was previous notification.”* R. 595, l. 1 – 596, l. 14. (emphasis added).

Prodan offered there was no evidence either of the decedents were a “victim of blunt-forced trauma.” Prodan opined that both decedents were able to be controlled by the murderer, and he noted the fact decedent Wall was found nude. “The question you ask yourself is, while the individual is having Ms. Wall disrobe, what’s Ms. Hightower doing.” Defense counsel Frederick objected that this testimony was pure speculation. R. 597, l. 14 – 598, l. 21. As Prodan continued, the defense made further relevance and speculation objections that were overruled. R. 602, ll. 4-18.

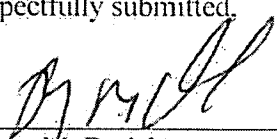
Prodan again opined that there was always a motive for murder *and that the concept of murder without motive was a media myth.* R. 608, l. 11 – 609, l. 8.

In his closing argument, the solicitor noted Prodan's testimony and argued that appellant and co-defendant Sessions planned the crime carefully and that one decedent was shot with a pillow over her head "*because as Mike Prodan said, it's a lot easier to shoot that pillow than to shoot Jamilla Hightower.*" R. 1010, l. 5 – 1011, l. 5.

Appellant respectfully submits that Prodan's junk science testimony – which the solicitor exploited – was very prejudicial and this Court should reconsider its holding that the error was harmless beyond a reasonable doubt. It cannot, respectfully, be stated that the error in admitting Prodan's testimony had little, if anything, to do with the guilty verdict in this case. That the error had little, if any, likelihood of affecting the verdict must be stated beyond a reasonable doubt. See State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) *citing Chapman v. California*, 386 U.S. 18 (1967).

Prodan's testimony was very prejudicial given that he led the jury to believe that his "science" dictated that the murderer or murderers knew the victim and he told the jurors that *Hightower only sold drugs "if there was previous notification."* R. 595, l. 1 – 596, l. 14. (emphasis added). Further, murder without motive was also a media myth and the state strongly desired the jury to believe that the motive here for the murder was a drug dispute between people who knew each other well. Rehearing should be granted.

Respectfully submitted,

  
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 Robert M. Dudek  
 Chief Appellate Defender

This 14th day of February, 2013.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

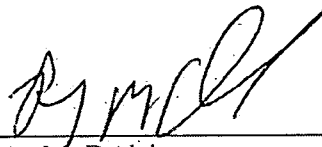
V.

CHRISTOPHER M. STEPHENS,

APPELLANT

CERTIFICATE OF SERVICE

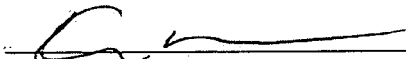
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William Edgar Salter, III, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of February, 2013.



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day  
of February, 2013.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Christopher M. Stephens, Appellant.

Appellate Case No. 2009-116988

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paul W. Thomas J.

John D. Baxter J.

Columbia, South Carolina

cc:  
Robert Michael Dudek  
W. Edgar Salter, III

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MAR 20 2013

COURT OF APPEALS  
SOUTH CAROLINA

FILED

20 MAR 2013