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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2021-000805

THE STATE, ...RESPONDENT

v.

DIONTE J'CHON HABERSHAM, ...APPELLANT.

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred in admitting the prejudicial and unreliable testimony from the state's reported footwear examination experts, Claycomb and Darnell, since a proper application of ... State v. Council, 335 S.C. 1, 515 S.E. 2d 508 (1999), warranted exclusion of this testimony?

2. Whether the court erred by refusing to direct a verdict of acquittal since there was no direct or substantial circumstantial evidence that appellant shot and killed the decedent and the evidence raising suspicion of appellant's guilt was insufficient to warrant denying the motion for a directed verdict?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether the trial court abused its discretion in admitting expert testimony linking appellant's shoes to the crime scene when the experts' methodology has been subjected to peer review and publication, is widely accepted in the forensic community, includes quality controls, and is consistent with recognized forensic procedures.

II. Whether the trial court erred in denying appellant's motion for a directed verdict of not guilty where one set of footprints led to a pile of shell casings, the footprints matched appellant's shoes, gunshot residue was found on his hands and clothes, he lied to the police about his whereabouts during the shooting, and he bragged about the shooting on Facebook.

STATEMENT OF THE CASE

In August 2019, the Jasper County Grand Jury returned indictments charging Dionte J'Chon Habersham (appellant) with murder and possession of a weapon during the commission of a violent crime. (R. p. *[2018-GS-27-673 and 674]). The State alleged that appellant shot and killed Moises Montano, a two-year old boy. (Tr. 113, l. 10-18). The case went to trial in July 2021 before the Honorable Bentley Price. (Tr. 1). Deputy Solicitor Sean Thornton prosecuted the case, and Arie Bax represented appellant. (Tr. 1). At the conclusion of a week-long trial, the jury found appellant guilty as charged on both counts. (Tr. 641, l. 6-16). Appellant was sentenced to thirty-three years[1] in prison. (Tr. 650, l. 7-9). This appeal follows.

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1 Specifically, the trial court sentenced appellant to thirty-three years for murder and five years, concurrent, for possession of a weapon during the commission of a violent crime. (R. p. [Sent. Sheets, 2018-GS-27-673 and 674]).

STATEMENT OF FACTS

A. Law Enforcement's Response to the Shooting

Sandy Montano lived in Jasper County with her husband and two-year old son, Moises. (Tr. 127-30). On the evening of August 16, 2018, she was trying to get Moises to sleep, while her husband was in the living room watching TV. (Tr. 134, l. 5-14; 140, l. 15-16). Moises kept jumping on his parent's bed, and Sandy kept patiently putting him back down. (Tr. 134, l. 8-11). Eventually, Moises fell asleep next to his mother. (Tr. 134, l. 14; 135, l. 4-9). Sandy's attention then drifted to her cell phone. (Tr. 135, l. 7-8). It was approximately 9:45 pm. (Tr. 124, l. 4).

While looking at her phone, she suddenly felt Moises' body vibrate as if he had touched an electrical outlet. (Tr. 135, l. 5-8). Sandy also heard what she thought were firecrackers behind their mobile home. (Tr. 134, l. 16-17). Her husband rushed into the bedroom and found Moises with blood on his head and milk "just coming out of his mouth." (Tr. 141, l. 15- 24). His son appeared dead. (Tr. 141, l. 13). The Montanos called 911, who instructed them to bring Moises to the living room and attempt CPR. (Tr. 135, l. 25 – 136, l. 3).

Within minutes, the police arrived and found "the baby down on the floor." (Tr. 162, l. 12; 201, l. 16). The first officer on scene saw "blood and brain matter coming out" from an apparent gunshot wound to the head. (Tr. 162, l. 13). Although the officer observed no signs of life, he desperately began CPR. (Tr. 163, l. 13-15). He explained, "it's a two-year old, I'm gonna try at least." (Tr. 163, l. 17). Paramedics would take over, start advanced life-saving procedures, and rush the child to the hospital. (Tr. 193, l. 25; 194, l. 8-20). Although they continued treating Moises in the ambulance, he was pronounced dead on arrival. (Tr. 195, l. 4). An autopsy[2] would confirm the cause of death was a gunshot wound to the head. (Tr. 450, l. 7).

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[2] According to the forensic pathologist, the bullet entered above the right ear, passed through the brain, neck, lungs, and liver before stopping in the left kidney. (Tr. 449, l. 10-17). A gunshot

After paramedics left the scene, law enforcement began searching for the shooter. They found bullet holes on the left side of the trailer, penetrating into the master bedroom. (Tr. 292, l. 15-17; St. Ex. 17-18, 22). From there, they assessed that the shooter fired from a field adjacent to the master bedroom. (Tr. 165, l. 17; 292, l. 15-19). The field was "very sandy." (Tr. 174, l. 8; St. Ex. 83-84, 98). One officer testified it was like "beach sand that had just come over it and wiped everything clean." (Tr. 292, l. 25 – 293, l. 1). In that sand, they found a single set of footprints. (Tr. 293, l. 16). There were no other tracks in the area. (Tr. 293, l. 12-23). The footprints led to a pile of spent 9 mm luger shell casings. (Tr. 294, l. 2-3). A SLED firearms examiner would determine the shell casings were fired by the same weapon. (Tr. 282, l. 12-19). The shells were also identical in caliber to the bullet that killed Moises Montano and bullet fragments found in the trailer. (Tr. 284, l. 22-23).

While searching the area, officers also learned that the Montanos had an ongoing dispute over the property line with their neighbors, the Habershams. (Tr. 131, l. 10). Fabian Habersham, their neighbor's son, had been involved in the dispute. (Tr. 132, l. 5-13). Based on this information, two investigators drove to Fabian's house, which was only about a mile from the crime scene. (Tr. 339, l. 4). There, they found Fabian Habersham and his cousin,[3] Dionte Habersham (appellant).

The two men presented a stark contrast. Whereas Fabian stands 6'3" tall and weighs 300 pounds, Dionte is much smaller. (Tr. 334, l. 12-24). As the investigators spoke to the two men, they noticed that appellant was leaving footprints in the dirt that were similar to those at the crime

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to the head alone would be fatal, but the other organs were damaged in a way that would also lead to death. (Tr. 449, l. 10-17).

[3] Fabian Habersham's mother testified that appellant is her cousin's son. (Tr. 576, l. 11-12).

scene. (Tr. 339, l. 24 – 340, l. 1). The investigators decided to bring appellant in for an interview at the Sheriff's Department. (Tr. 341, l. 3). As he got into the patrol vehicle, appellant looked over to Fabian and said, "Don't worry, cuz. I got you." (Tr. 345, l. 8).

During the ensuing interview, law enforcement swabbed appellant's hands for gunshot residue. (Tr. 468, l. 6; 545, l. 3-15). Investigators also collected appellant's t-shirt, shorts, and shoes.[4] (Tr. 468, l. 13-14; 469, l. 19). Forensic testing revealed gunshot residue on appellant's hands and clothes. (Tr. 548, l. 6-14; 549, l. 15-19). Appellant denied involvement in the shooting, or even being in the area near the crime scene.[5] (Tr. 364, l. 1-2). Specifically, he claimed to have been with Pablo Perez, a.k.a. "Chamaco," at the time of the shooting. (St. Ex. 24 at [8/16/2018 Interview at 23:56]; Tr. 459, l. 22).

At trial, the State presented evidence that contradicted appellant's claims. Pablo Perez testified that appellant was not with him at the time of the shooting. (Tr. 462, l. 14). According to Perez, appellant only visited him after law enforcement left the area. (Tr. 462, l. 15-23). Additionally, an eyewitness testified that a man with a "medium build" parked a Buick,[6] got out, and jogged towards the crime scene. (Tr. 453, 5-22; 457, l. 4). The witness heard gunshots and then saw the man run "at full speed" back to the car. (Tr. 454, l. 6-14). The man was carrying "something in his hand … down to his side." (Tr. 454, l. 22-23).

Finally, investigators discovered a post from appellant's Facebook account on the night of the murder. (St. 106; 347, l. 18-22). The lead investigator explained:

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[4] Law enforcement obtained a search warrant for these items. (Tr. 32, l. 1-5).

[5] When asked about the shoes he was wearing, appellant replied that they belonged to a roommate who was in jail. (St. Ex. 24 [8/16/2018 at 23:58-59]).

[6] Appellant told investigators that he had been riding in a Buick that day. (St. Ex. 24 [8/22/2018 at 21:37]).

> The post itself states: "Don't beef with my family 'cuz it's a lot of us and we can't control each other. Then several emojis, one being a skull. It says: So hash tag, boom, with explosion marks. He also tagged it at the top with the addition of the Habershams [fool 100].

(Tr. 347, l. 13-17; State Ex. 106).

B. Footwear Examination Evidence

After collecting the shoes appellant was wearing on the night of the murder, investigators submitted them to SLED to determine whether they could have made the footprints at the crime scene. (Tr. 244, l. 22; 392, l. 5 - 396, l. 17). At trial, the defense challenged the expert testimony surrounding the examination. (Tr. 383, l. 2-12). Specifically, the defense argued the discipline of footwear examination is unreliable. (Tr. 422, l. 23 – 427, l. 2; 429, l. 11-24). In response, the State proffered testimony from two SLED agents: Dawn Claycomb, who performed the initial analysis, and Tom Darnell, who conducted a separate review. (Tr. 383-422).

The two agents first explained the training process to become qualified as a footwear examiner. SLED has a three year, in-house training program that consists of crime scene training, practical exams, written exams, and case work with a seasoned practitioner. (Tr. 386, l. 1-8; 414, l. 20-24). Additionally, the agents attend training hosted by the International Association of Identification, as well as other courses by nationally recognized experts. (Tr. 386, l. 10-16; 414, l. 23 – 415, l. 9). Ms. Claycomb explained that at the end of the training, they must pass a competency evaluation that is administered by an outside agency, (Tr. 387, l. 1-3; 398, l. 5-10), and if an agent gets "anything wrong" on the test, they either go through additional training or retake the test, (Tr. 398, l. 25 – 399, l .2).

The two agents had different levels of experience in footwear examination. Prior to this case, Agent Claycomb had only worked on fifteen or twenty other cases. (Tr. 392, l. 1). However,

Agent Darnell had been on the job for decades. (Tr. 413, l. 19; 415, l. 12-18). During his career, he has conducted "in excess of 1,000 or so footwear examinations." (Tr. 415, l. 17-18).

After explaining their training and experience, the agents described the process of evaluating footwear. The examiner compares photographs of unknown prints with inked or bio-foam impressions of known shoes. (Tr. 388, l. 4-5; 392, l.14-16; 416, l. 6-16). They use the "ACE-V" method, which stands for analyze, compare, evaluate, and verify. (Tr. 388, l.9-10; 399, l. 10-17; 419, l. 12-16). The same process is used for fingerprint identification. (Tr. 399, l. 18-22). The methodology has been the subject of several books and other publications. (Tr. 419, l. 25 – 420, l. 1-2; 401, l. 4-15).

The examiner begins with an assessment of "class characteristics" between the known shoe and an unknown impression. (Tr. 387, l. 8-18). Class characteristics are "repeatable manufacturing characteristics," such as size, shape, and tread design. (Tr. 387, l. 15-18; 401, l. 24). If the known and unknown impressions have the same class characteristics, the examiner proceeds to "wear characteristics." (Tr. 387, l. 22). These arise from normal wear and tear of a shoe. (Tr. 387, l. 21-25). For example, if someone steps on a nail, it can leave a unique mark on the bottom of the shoe. (Tr. 403, l. 16-17). The agents perform not only side-by-side comparisons of impressions, but also overlays in order to reveal similarities and differences. (Tr. 388, l. 4-8).

According to the agents, SLED employs several quality control procedures to ensure reliability. For example, the photographs of an unknown print must be taken from a tripod at precisely ninety degrees. (Tr. 389, l. 11-13). They must also be printed at exactly a "one-to-one ratio." (Tr. 389, l. 21). If the quality of the unknown print or photograph is insufficient, the examiner reports that no conclusion could be made. (Tr. 419, l. 9-11). Furthermore, if the examiner reaches a conclusion, a second qualified agent must conduct another review. (Tr. 388, l. 10-22).

Agent Darnell testified that the second review is "in essence, a complete, independent examination of the items." (Tr. 417, l. 15-17). Only if the two examiners reach a consensus will SLED report a formal finding. (Tr. 388, l. 20-22).

The agents reached a consensus on this case. The known impressions had corresponding class, wear, and random identifying characteristics with two unknown footprints at the crime scene. (Tr. 395, l.5-8; 396, l. 4-9; 418, l. 1-24). Stated differently, they were consistent in terms of size, shape, and tread pattern. (Tr. 395, l. 9-15; 418, l. 8-12). Additionally, the known impressions matched one unknown print at the scene. (Tr. 395, l. 23). In the agents' opinion, the shoes appellant was wearing made that particular footprint. (Tr. 396, l. 2; 418, l. 18). As for the remaining prints at the scene, the quality of the impressions was insufficient for comparison. (Tr. 419, l. 9-11).

STANDARD OF REVIEW

Admission of Expert Testimony

"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). The trial court abuses its discretion when "the ruling is unsupported by the evidence or controlled by an error of law." *State v. Roy Lee Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018).

Denial of a Motion for a Directed Verdict

When reviewing the denial of a directed verdict, an appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). The court's "review is limited to considering the existence or nonexistence of evidence, not its weight." *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). When "there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Lynch*, 412 S.C. 156, 171, 771 S.E.2d 346, 354 (Ct. App. 2015) (quoting *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)).

ARGUMENT

I. The Trial Court Satisfied Its Gatekeeping Duty to Ensure Reliability of the Footwear Examination Evidence Because the Experts' Methodology Has Been Subjected to Peer Review and Publication, Is Widely Accepted in the Forensic Community, Includes Quality Controls, and is Consistent With Recognized Forensic Procedures.

Prior to admitting expert testimony, the trial court must determine that the testimony will assist the trier of fact, the witness has the skill and training to qualify as an expert,[7] and the substance of the testimony is reliable. *E.g. State v. Phillips*, 430 S.C. 319, 325, 844 S.E.2d 651, 654 (2020). In assessing reliability of an expert's opinion, the trial court acts only as a "gatekeeper." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). Its job is not to decide if the expert is "correct." *State v. Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. After all, whether to accept or reject an expert's opinion "is a matter for the jury to decide." *Id.* Instead, "[t]rial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may [sic] offered into evidence." *Id.* If a party demonstrates that "the expert's testimony consists of a reliable method faithfully and reliably applied, the gate of admissibility should be opened." *State v. Warner*, 430 S.C. 76, 87, 842 S.E.2d 361, 366 (Ct. App. 2020), *reversed on other grounds*, 436 S.C. 395, 872 S.E.2d 638 (2022). At that point, "the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf." *Id.*

When the expert testimony concerns "scientific" evidence, trial courts assess reliability in light of the four *Council* factors: (1) whether the expert's methodology has been published and

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[7] In passing, appellant alleges that Agent Claycomb lacked sufficient prior qualifications as an expert. (App. Br. 11, 12, noting "only been found an expert in one prior case"). However, at trial he only challenged the reliability of footwear examination, not her qualifications. (Tr. 393, l. 8-12; 422 – 429). To the extent appellant is challenging Agent Claycomb's qualifications now, the argument is not preserved for appeal. *See, e.g., Miller v. Dillon*, 432 S.C. 197, 207, 851 S.E.2d 462, 468 (Ct. App. 2020). Furthermore, "short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001).

subjected to peer review, (2) has previously been applied in similar situations, (3) includes quality control procedures, and (4) is consistent with "recognized scientific laws and procedures." *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (2001) (applying these factors to mitochondrial DNA analysis). On the other hand, if a party offers nonscientific, or experience-based expert testimony, the same "formulaic approach" does not apply. *Roy Lee Jones*, 423 S.C. at 638-39, 817 S.E.2d at 272. The rationale is that at times "the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." *White*, 385 S.C. at 274, 676 S.E.2d at 688. Yet, "[n]onscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." *Id,* at 273, 676 S.E.2d at 688.[8] But, in assessing admissibility, because there is such a "wide range of nonscientific fields and topics," the trial court must "consider each case on its facts." *Warner*, 430 S.C. at 85-86, 842 S.E.2d at 365. In other words, reliability "must be evaluated on an ad hoc basis." *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 75, 735 S.E.2d 650, 656 (2012).

Appellant argues that "a proper application of the *Council* [factors]" warrants exclusion of the footwear examination evidence here. (App. Br. 3). The analysis is flawed from the start. Footwear examination is not "scientific" evidence that requires a rigid application of the *Council* factors. *See, e.g., Roy Lee Jones*, 423 S.C. at 638-39, 817 S.E.2d at 272 ("there is no formulaic approach for determining the reliability of nonscientific testimony"). Its reliability depends not on "empirical science" but "upon the experience and observational powers of their practitioners." *United States v. Ford*, 481 F.3d 215, 218, n. 5 (3d Cir. 2007); *see also Castellon v. State*, 302

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[8] Rule 702, SCRE: "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."

S.W.3d 568, 572 (Tex. Ct. App. 2009) ("the field of expertise in shoe print comparison is not complex. Nor is the degree of scientific expertise required high, particularly when the discipline is compared with, for example, DNA profiling."). In contrast to the mitochondrial DNA analysis at issue in *Council*, footwear examination is similar to other fields that do not require analysis under *Council*. *See White*, 385 S.C. at 274, 676 S.E.2d at 688 (dog tracking); *Roy Lee Jones*, 423 S.C. at 638-39, 817 S.E.2d at 272 (child sexual abuse dynamics), and *Warner*, 430 S.C. at 87, 842 S.E.2d at 366 (cell site location information). Like those cases, the trial court was under no obligation to apply *Council*.

Nevertheless, even assuming that the trial court was required to apply the *Council* factors, it fulfilled its gatekeeping duty.[9] The State's proffer established all four factors. First, the agents testified that footwear examination has been the subject of several textbooks and other publications. (Tr. 391; 419-20).[10] Second, Agent Claycomb testified that she previously used the methodology in fifteen to twenty other cases. (Tr. 392, l. 1). Moreover, Agent Darnell has performed "in excess of 1,000 or so footwear examinations." (Tr. 415, l. 17-18). Third, to ensure quality control SLED requires "a complete, independent examination" by another qualified agent

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[9] The judge rejected the defense arguments finding that [i]t all goes to weight, not admissibility." (Tr. 442, l. 1-4). This is correct for the reasons plainly appearing the record. Appellant has not complained about the sufficiency of the ruling.

[10] The defense indicated disagreement by referencing two sources but did not contest that the method of comparison existed and had been long recognized. (See Tr. 401, l. 8-11; 426, l. 8-12). Again, the trial court's role was not to determine which publications were "correct." *See Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. As the Sixth Circuit has noted, "the 'key' is whether 'the theory and procedures have been submitted to the scrutiny of the scientific community." *United States v. Gissantaner*, 990 F.3d 457, 464 (6th Cir. 2021) (quoting *United States v. Bonds*, 12 F.3d 540, 559 (6th Cir. 1993)). According to the court, "[p]ublication in a peer-reviewed journal typically satisfies this consideration." *Id.*

on every case.[11] (Tr. 388, l. 10 – 389, l. 2; 417, l. 15-17). Only if the two examiners reach a consensus will the agency report a formal finding. (Tr. 388, l. 20-22). Fourth, the agents explained the methodology is rooted in the "ACE-V" method, which also serves as the basis for fingerprint identification. (Tr. 388, l. 9-11; 399, l. 10-22; 401, l. 4-15; 419, l. 12-20). Thus, it is consistent with other recognized forensic procedures. *See Council*, 335 S.C. at 19, 515 S.E.2d at 517.

But perhaps the most compelling indicator of reliability does not neatly fit within the *Council* framework: widespread acceptance in the field. *See Warner*, 430 S.C. at 87, 842 S.E.2d at 366 ("what matters is the method's endorsement by the relevant field"). According to the agents, the methodology is taught by international forensic associations and nationally recognized experts. (Tr. 386, l. 10-16; 414 l. 24 – 415, l. 9). Additionally, an independent agency administers the agents' annual proficiency test. (Tr. 387, l. 2-3; 398, l. 3-10). An unreliable methodology is not likely to receive this type of institutional endorsement. *See e.g.*, *Elosu v. Middlefork Ranch, Inc.*, 26 F.4th 1017, 1029 (9th Cir. 2022) (holding a fire investigator's testimony was reliable because he applied standards published by the National Fire Protection Association); *United States v. Bahena*, 223 F.3d 797, 810 (8th Cir. 2000) (holding an expert's testimony was unreliable in part because he was unfamiliar with the standards issued by the International Association for Identification). Moreover, Agent Darnell has employed the methodology on over a thousand cases during his thirty year career. (Tr. 413, l. 19-22; 415, l. 17-18). *See, e.g.*, *White*, 382 S.C. at 271, 676 S.E.2d at 687 (finding a dog handler reliable in part because of his record of 750 tracks with the same dog).

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[11] The agents also testified about other quality controls used at SLED. For example, photographs of an unknown print must be taken at precisely ninety degrees and printed at a "one-to-one ratio." (Tr. 389, l. 11-13, 21).

In addition to the agents' testimony, other courts have recognized the widespread acceptance of footwear examination. For example, in *Ford*, the United States Court of Appeals for the Third Circuit observed that "there was general acceptance of shoeprint analysis in both the federal courts and the forensic community." *Ford*, 481 F.3d at 218. The First Circuit was even more specific, noting that "ACE-V is clearly highly accepted in the forensics field; the same method is used for latent impression analysis of fingerprints." *United States v. Mahone*, 453 F.3d 68, 72 (1st Cir. 2006). The Seventh Circuit twice found that "the techniques for shoe-print identification are generally accepted in the forensic community." *United States v. Smith*, 697 F.3d 625, 634 (7th Cir. 2012) (quoting *United States v. Allen*, 390 F.3d 944, 949-50 (7th Cir. 2004)). State courts[12] have also acknowledged that "footwear examination is an area of study 'generally accepted within the scientific community.'" *West v. State*, 755 N.E.2d 173, 181 (Ind. 2001).

A forensic discipline gains widespread acceptance for primarily one reason: "it works." *Warner*, 430 S.C. at 87, 842 S.E.2d at 366. That is exactly why the trial court did not abuse its discretion in this case. The State's proffer established "a reliable method faithfully and reliably applied." *Id.* As such, the trial court was required to "remain at the gatepost and not tread on the advocate's or the jury's turf." *Id.* Its ruling should be affirmed.

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[12] Numerous other state courts have held that footwear identification is admissible. *See, e.g.*, *State v. Gay*, 145 A.3d 1066 (N.H. 2016); *Berks v. State*, 427 S.W.3d 98 (Ark. Ct. App. 2013); *Jennings v. State*, 123 So. 3d 1101 (Fla. 2013); *Rodriguez v. State*, 30 A.3d 764 (Del. 2011); *Castellon v. State*, 302 S.W.3d 568 (Tex. Ct. App. 2009); *State v. Reid*, 91 S.W.3d 247 (Tenn. 2002).

II. The Trial Court Properly Denied The Motion for a Directed Verdict Because There Was Substantial Circumstantial Evidence of Guilt: One Set of Footwear Prints Led to the Pile of Shell Casings Outside the Home, the Footprints Matched Appellant's Shoes, Gunshot Residue Was Found on His Hands and Clothes, He Lied to the Police About His Whereabouts During the Shooting, and He Bragged About the Shooting on Facebook.

When reviewing the denial of a motion for a directed verdict, an appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (quoting *State. v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). The court limits its assessment to "the existence or nonexistence of evidence, not its weight." *Id.* When "there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Lynch*, 412 S.C. 156, 171, 771 S.E.2d 346, 354 (Ct. App. 2015) (quoting *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)). A directed verdict is appropriate only where "the evidence merely raises a suspicion that the accused is guilty." *Id.* (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). Mere suspicion "implies a belief of guilt based on facts or circumstances which do not amount to proof." *Bennett*, 415 S.C. at 236, 781 S.E.2d at 253.

The trial court correctly submitted this case to the jury because the evidence of appellant's guilt went beyond "mere suspicion." *See Id.* Quite the opposite. There was substantial circumstantial evidence that reasonably tended to prove appellant's guilt. The State's case reasonably tended to show: (1) that one person went to the victims' home to fire the fatal rounds, and (2) that person was appellant.

The responding officers first determined the general location of the shooter based on the direction of the bullet holes on the mobile home. (Tr. 165, l. 17; 291, l. 15-25). From there, they identified a *single set of footprints* in the sandy area adjacent to the trailer. (Tr. 174, l.8; 293, l.

12-19). There were no "other tracks in the area." (Tr. 293, l. 22-23). The officers followed the footprints to "a pile of shell casings." (Tr. 294, l. 1-3). According to a forensic examination, one weapon fired each of the shells in the pile. (Tr. 282, l. 12-22). The shells were identical in caliber to the bullet that killed Moises Montano and bullets recovered inside the home. (Tr. 284, l. 22-23). An eyewitness also saw a man with a "medium build" park a Buick,[13] get out, and jog towards the crime scene. (Tr. 453, 5-22; 457, l. 4). The witness heard gunshots and then saw the man run "at full speed" back to the car. (Tr. 454, l. 6-14). The man was carrying "something in his hand ... down to his side." (Tr. 454, l. 22-23). From this circumstantial evidence, a reasonable juror could conclude that only one person went to the mobile home and fired upon the Montanos. *See Bennett*, 415 S.C. at 235, 781 S.E.2d at 353

Additional circumstantial evidence tended to show appellant was that person. The responding officers first noted the similarity between the set of footprints leading to the shell casings and the footprints appellant was making during his roadside interview. (Tr. 339, l. 24 – 340, l.1). As discussed above, two SLED footwear examiners compared photographs of the footprints at the crime scene with known impressions made from the shoes appellant was wearing. Both agents concluded that appellant's shoes matched the prints near the pile of shell casings. (Tr. 396, l. 2; 418, l. 18). Additionally, SLED discovered gunshot residue on appellant's hands, t-shirt, and shorts. (Tr. 548, l. 5-10; 549, l. 15-19).

Furthermore, appellant's statements tended to prove his guilt. For example, when officers took him into custody, he looked over to Fabian Habersham and said "don't worry cuz, I got you." (Tr. 345, l. 8). At the police station, appellant denied being at the crime scene, instead claiming to

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13 As noted above, appellant told investigators that he had been riding in a Buick that day. (St. Ex. 24 [8/22/2018 at 21:37]).

have been with Pablo Perez at the time. (St. Ex. 24 [8/16/2018 23:56]; Tr. 459, l. 22). But Perez contradicted that story. He testified that appellant was not with him at the time of the murder. (Tr. 462, l. 23; 464, l. 25). According to Perez, appellant only appeared after law enforcement had left the scene. (Tr. 462, l. 17-18). A juror could reasonably conclude that appellant lied to the police and infer guilt. *See, e.g.*, *Pearson*, 415 S.C. at 474, 783 S.E.2d at 808 (holding that a defendant's denial of touching a victim's car was circumstantial evidence of guilt in light of his fingerprint being found on the car).

In addition to apparently lying to the police, appellant arguably took credit for the shooting in a Facebook post on the night of the murder. (St. Ex. 106). The lead investigator gave the following description of the post:

> Don't beef with my family 'cuz it's a lot of us and we can't control each other. Then several emojis, one being a skull. It says: so hash tag, boom, with explosion marks. He also tagged it at the top with the addition of the Habershams [fool 100].

(Tr. 347, l. 13-17; State Ex. 106).

The average juror could interpret this post in a variety of different ways. But when viewed "in the light most favorable to the State," it is an admission of shooting and killing Moises Montano. *See Bennett*, 415 S.C. at 236, 781 S.E.2d at 354.

Appellant argues that the Facebook post was "a juvenile thing to do" but "was not strong evidence" of guilt. (App. Br. 25). He further argues that the gunshot residue "was also not very strong." (App. Br. 25). As for the footwear impression evidence, Appellant believes it still does not create "substantial circumstantial evidence of guilt." (App. Br. 25). The logic is flawed in that it isolates each piece of evidence from the whole before offering an alternative interpretation. The law reserves this type of argument for the jury, not an appellate court. *See State v. Tillman*, 433 S.C. 58, 64, 856 S.E.2d 168, 172 (Ct. App. 2021).

Contrary to appellant's argument, evidence of guilt in this case must be "[t]aken cumulatively and in the light most favorable to the State." *Id.* As this Court recently reminded, it is "within the jury's purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict." *Id.* at 64-65, 856 S.E.2d at 172. The trial court understood that and reserved the task of weighing the evidence for the jury. The denial of appellant's motion for a directed verdict should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentences of the trial court be affirmed.

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