THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531

State of South Carolina, …….. Respondent

v.

Angelita Nicole Wright, …… Petitioner.

APPENDIX (VOL. 2)

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that that hit. And if you hit with a sharp edge it'll do the same thing but it'll lacerate the skin under that. You can tell a laceration from an incised wound by the fact that when the skin is torn away the tissues down inside, they aren't cut real easily. They have tissue bridging between there where it has not completely separated.

So to answer your -- your question, I don't think he was completely run over. He could have been run up against and pressed up against. Or more improbable was that he could have been hit standing up and it could have hit him hard enough to where the force was over enough distance of the body that I didn't see any injuries like that. But it could have pressed his side in far enough to cause him to -- his liver to rupture and his spleen to -- his kidney to be lacerated.

Q And regardless of which way we -- beg whether or not or how he may have been killed that day or that night -- you still believe that you saw tire tracks on some --

A It was a patten injury. I couldn't tell what it was from. If you had a vehicle and -- and we have had people that were hit by a vehicle and you could actually holding the -- the clothing up to a light and illuminating in some way, you can actually see the outline of a bumper or a light around it. And-but I didn't see anything like that.

Q Now, in this case you didn't see anything like that.

A I didn't see anything, no.
Q All right.
A But I did see what I thought could have been tire marks on his -- on his shirt.
Q Thank you, sir.
MS. ALBEE: Your Honor, I have no further questions.
THE COURT: Dr. Wren, you may step down. Please be careful.
MS. ALBEE: And, Your Honor, we'd ask that Dr. Wren be excused from his subpoena.
MR. WHELCHEL: No objection, Your Honor.
THE COURT: Sir, you may stay or go, whichever you choose.
THE WITNESS: I've got to go.
(Whereupon, the witness was excused.)
MS. ALBEE: Your Honor, at this time the state calls Sean Nix to the stand.
MICHAEL SEAN NIX, having been first duly sworn, testified as follows:
THE COURT: Sir, once you're comfortable there, adjust your microphone and tell us your full name. And spell your last name for the court reporter.
THE WITNESS: Yes, sir.
Michael Sean Nix. And it's N-I-X.
THE COURT: Yes, ma'am.

MS. ALBEE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. ALBEE

Q Mr. Nix, are you currently employed?

A Yes, ma'am.

Q Where at?

A Spartanburg County Sheriff's Office.

Q And what is your current position at the Spartanburg County Sheriff's Office?

A I work in the crime scene unit.

Q And what's your title or your position?

A My title is investigator in the crime scene unit.

Q And explain to us what an investigator in the crime scene unit does.

A We are tasked with photographing or -- excuse me -- documenting by photographing and collecting evidence at crime scenes.

Q And how long have you been involved in the crime scene unit?

A Since 2006. So that'll be 11 years.

Q How long have you been in law enforcement?

A Sixteen years, since 2001.

Q Now, explain to us all how you were involved in this case.

A I came to be involved in this case on the 27th of December of 2015. I'd received a call from one of my

fellow crime scene investigators early in the morning in reference to -- they had a -- had a death call in the city of Cowpens. And they wanted me to get in touch with one of the coroners or coroner investigators in reference to it.

Q Now, did you respond to any scene?

A Not at the actual incident location at first. My first response was to the Spartanburg County Morgue.

Q Okay. And what did you do while you were at the morgue?

A I met with Coroner Investigator Burnett at the morgue and she wanted to know -- she wanted me to look at the victim in this case and kind of give me or give her an idea of what I thought might have happened to him. And based on just looking over -- and it was only my opinion -- but I thought that he had been struck by a vehicle.

Q Now, did you ultimately respond out to Oakland and Cemetery streets in Cowpens?

A Yes, ma'am.

Q Now, if you could, explain to us what you did while you were there.

A I met up with the officers with the Cowpens P.D. and also investigators with our unit that were already on the scene, and I went about, you know, photographing the scene and collecting evidence that was on the scene.

Q Now, did you go anywhere else and photograph anything

other than a scene?
A After the scene was done I went -- did go back for the autopsy later that day.
Q And were you there during that as well?
A Yes, ma'am.
Q Did you take those photos?
A Yes, ma'am.
MS. ALBEE: Your Honor, may I approach?
THE COURT: Yes, ma'am.
MS. ALBEE: Your Honor, I've shown opposing counsel what's been previously marked as State's Exhibits 5 and 6. May I approach the witness?
THE COURT: Yes, ma'am.
Q Investigator Nix, I'm handing you what's been marked as State's Exhibits 5 and 6. Do you recognize those?
A Yes, ma'am.
Q And what are those?
A Exhibit 5 appears to be a southward view of Cemetery Street going toward the railroad crossing. Exhibit 6 appears to be a northward view of Cemetery Street going back up toward North Main Street.
Q Now, did you take those photos?
A Yes, ma'am.
Q On which day?
A On the day of question, 27th of December 2015.

Q And is that a fair and accurate representation of the scene as you saw it that day on December 27th?
A Yes, ma'am.
MS. ALBEE: Your Honor, at this time the state seeks to enter Exhibits 5 and 6 into evidence.
MS. WHITE: Without objection, Your Honor.
THE COURT: Without objection, they are admitted.
(Photograph marked State's Exhibit No. 5; photograph marked State's Exhibit No. 6.)
MS. ALBEE: Permission to publish to the jury, Your Honor.
THE COURT: Yes, ma'am.
Q Investigator Nix, I'm going to first show you State's Exhibit No. 5. If you could, explain to us what we're looking at here.
A As I -- no -- excuse me. As I stated earlier, that is a southward view of Cemetery Street going back toward the railroad crossing, which you can see in the distance.
Q And what did you do in this area?
A I was just -- I was taking a photo to show, number one, the street itself and the railroad crossing, but also there's a rail crossing paint -- painting I guess you'd call it -- symbol on the roadway. And there was supposed to be an item of evidence located on that crossing stripe.
Q And what was that item of evidence?

A It appeared to be a -- appeared to be a little spot of blood.
Q And did you swab that?
A Yes, ma'am, I did.
Q And when you see the "X" painted, is this the area on the middle of the photo that I'm pointing to?
A Yes, ma'am, the one with the little red cone setting on it.
Q I'm now going to show you State's Exhibit No. 6. Explain to us what we're looking at here.
A That's -- that's a northward view on Cemetery Street, and it's the same view as the one you saw except being northward, obviously, but that's the same railroad crossing. It's just from a different angle.
Q Now, are you aware of what this building is right here?
A If I remember correctly, I believe that is a Hardee's.
Q And is this your understanding of where the body was located prior to you arriving?
A That was my understanding, it was in that area, yes, ma'am.
MS. ALBEE: Your Honor, I have no other questions for this witness.

CROSS-EXAMINATION

BY MS. WHITE

Q Investigator Nix, did you collect some evidence while you were at the scene or just take photos?

A I collected some evidence at the scene, yes, ma'am.

Q Okay. And were you able to determine where the victim's wallet was located?

A I collected a wallet on Cemetery Street, yes, ma'am.

Q And did that wallet contain the I.D. of Brent Tessnear?

A If I remember correctly, yes, ma'am, it did.

Q Okay. And do you recall where in the frame of -- and I can pull -- you did a diagram, didn't you?

A Yes, ma'am.

Q Would it help if I brought you up the diagram?

A Yeah, because it's not going to make much sense to explain it.

Q Okay. And what I'm going to do is bring your diagram up and let you look at that. But then I will put that photo back up for you to look at.

A Yes, ma'am.

Q Are these the diagrams that you completed with measurements?

A Yes, ma'am, it is.

Q Okay. I'm going to let you look at those.

A I have my own to view, ma'am.
Q Okay. Thank you.
A You're welcome, ma'am.
Q And this is the northward view, is that correct?
A Yes, ma'am.
Q Okay. And from your understanding the body was located close to the railroad marks?
A Somewhere in that area, yes, ma'am.
Q Okay. And we're looking at -- farther up here is Main Street, is that right?
A Yes, way up in the distance.
Q Okay. Approximately with your measurements and your examination, about how far was that distance, do you recall?
A Distance to Main Street from this area?
Q Correct.
A No. I don't have that, because with the separation of the other evidence collected to this point to where this possible blood was collected was a very far distance. And so I felt it was a better idea to measure the other item of evidence from North Main Street and this particular item of evidence from the railroad crossing to make it kind of easier.
Q And so you said that from the railroad crossing to where some of the other evidence was located was a pretty

good distance.
A Yes, ma'am.
Q And where was the first piece of evidence located closest to where Mr. Tessnear's body was found?
A Closest to him?
Q Closest to him.
A As we're heading back north?
Q Correct, if we're headed back north.
A Okay. Well, one item of evidence, which was labeled item No. 7, which was onion chip bag, however, that wasn't measured because on the scene it was very windy and rainy that day. And that bag had moved prior to me being able to get to it.

So in reference to your question, that would be the item listed as No. 4, which was a fudge dipped coconut granola wrapper.
Q Okay.
A And that would have been the closest one to him.
Q Okay. And what was the farthest item that you located from the railroad crossing area?
A That would have been the cigarette pack.
Q And cigarette pack. Was it an open cigarette pack or brand new?
A I can't recall.
Q Okay. What was the next item?

A That would have been from the cigarette pack as we're traveling south, that would have been the wallet.
Q And how far away was the wallet?
A From -- according to the measurements I have from the edge of the stop stripe at North Main Street and Cemetery Street, the wallet being item two, would be 185 feet and 6 inches.
Q Okay. So it's a distance from Main Street.
A Yes, ma'am.
Q And then what was the location of where the body was located from Main Street?
A Well, I can't give you that measurement because he'd already been moved.
Q Okay. Do you have an approximate measurement of where to your understanding the blood spot then was if that'll --
A Well, as I said, I measured that from the railroad tracks. From the railroad tracks to the blood spot would have been 219 feet and 3 inches.
Q Okay. So you didn't actually measure any distance from where the body was located to where his wallet was found closer up to Main Street?
A No, ma'am. But if I had to guesstimate just -- and this is roughly on memory -- I'd say it's probably, you know, probably somewhere between 100 to 200 more feet.
Q Okay. So it's a pretty good distance away from where

Mr. Tessnear was located.
A Yes, ma'am, yes, ma'am.
Q All right. Do you recall if there was anything in the wallet other than his I.D.?
A I do not recall if there was anything else besides I.D. I know there was, but I just don't know what it was.
Q Okay.
MS. WHITE: Beg the Court's indulgence.
(Pause.)
Q Is it possible -- when you were examining did you observe any tire marks or vehicle parts in the roadway or in the side of the roadway?
A I did not re -- I did find any kind of vehicle parts in the roadway or anything like that. And I did not observe any kind of tire marks, of what you would say, yes, ma'am.
Q Okay. Now, at the time was it -- had it been raining some, or what was the weather like in the morning?
A If I recall, it had been raining some the night prior to me getting the call. And if I also recall correctly, it had been kind of raining off and on all morning. Not like a hard rain, but just a very light rain.
Q Okay. When you took the wallet into evidence had it been protected at all from this weather?
A Cowpens P.D. officers had placed a plastic -- piece of

plastic over it, or something like that, yes, ma'am.
Q Okay. And to your understanding were there any tests performed, any fingerprint tests or anything on the wallet?
A No, ma'am.
Q Okay. You also did some nail scrapings, is that right?
A Yes, ma'am.
Q Nothing came back indicating any evidence of D.N.A. from anyone else, is that right?
A I don't know, ma'am, because those are sent off to SLED. And they would be the ones to give you an answer on that.
Q Okay. You actually performed it, but you didn't do the test.
A No, ma'am.
Q Okay. I think that's all the questions I have at this time, Investigator Nix.
MS. ALBEE: Very, very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. ALBEE

Q Investigator Nix, Ms. White just asked you about the fingerprinting of the wallet. Do you know whether or not you can fingerprint leather?
A You can, but I have never in my years of doing this, have lifted a fingerprint off of a leather wallet.

Q Okay. And do you know how much time passed between the wallet being on the road and Cowpens putting it in plastic?
A I do not, ma'am.
MS. ALBEE: No further questions, Your Honor.
THE COURT: Anything at all?
MS. WHITE: Nothing.
THE COURT: Officer, you may step down. Please be careful.
THE WITNESS: Thank you. May I be excused?
THE COURT: Any objection?
MS. WHITE: No objection.
MS. ALBEE: No objection, Your Honor.
THE COURT: Sir, you may stay or go, whichever you choose.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you.
(Whereupon, the witness was excused.)
MR. KOZAK: State calls Eric Edgins.
ERIC EDGINS, having been first duly sworn, testified as follows:
THE COURT: Sir, once you're situated if you'll pull close to that microphone -- thank you. And if you'll tell us your full name and spell your last name for the court reporter.

THE WITNESS: Eric Eugene Edgins, thirty --
E-D-G-I-N-S.
THE COURT: Thank you.
MR. KOZAK: Thank you, Your Honor.
DIRECT EXAMINATION BY MR. KOZAK
Q How old are you, Mr. Edgins?
A Thirty-two.
Q How do you know Brent Tessnear?
A Through mutual friends.
Q Who are those mutual friends?
A My sister and -- and a couple of other people.
Q How do you know the defendant, Angelita Wright?
A Through Brent.
Q Through Brent.
Okay. Did you have any contact with the defendant on December 26th of 2015?
A I did.
Q What contact did you have?
A A text message.
Q In what regard?
A I really don't remember everything, but my phone was off and I turned it on and text messages come through my phone about Brent being dead.
Q Okay. Now, were those on December 27th or December 26th?

A I have no idea.
Q About what time did those text messages come through?
A Probably about 7:00 in the morning.
Q In the morning?
A 6:30 or 7:00, something like that.
Q And that's in the morning, correct? Okay. What did the text message say that came in at 7:00 in the morning?
A That Brent was dead.
Q And what did you do after you received that text?
A Showed it to one of his family members.
Q And who was that family member?
A Amy Cudd.
Q Is she also known as Amy Padgett?
A Correct.
Q Did you have contact with her after that day?
A Just that day.
Q So you had no -- did you get any text messages later that day or the next day from her?
A Uh-uh.
Q Okay. Oh, sorry. From Angelita. Did you receive any text messages from Angelita that next day?
A Nah. I think the only time we talked was that day, that day I turned my phone on.
Q So you didn't receive any text messages in the next -- the days following that?

A I don't think so.
Q Okay.
MR. KOZAK: May I approach, Your Honor? Going to show opposing counsel what's been marked as State's Exhibits 10 and 11. Showing the witness Exhibits 10 and 11.
Q Can you read that name?
A That's my name, Eric Edgins.
Q And what am I showing you?
A Text messages.
Q Okay. Can you read this name?
A Angelita.
Q Okay. And what's the date?
A 12/29/15.
MR. KOZAK: At this time I'd like to move State's Exhibits 10 and 11 into evidence and publish to the jury.
MS. WHITE: Without objection, Your Honor.
THE COURT: Without objection, they're admitted.
(Photograph marked State's Exhibit No. 10; photograph marked State's Exhibit No. 11.)
Q Putting up here State's Exhibit 11. Is this -- is that your name?
A It is.
Q All right. And what date? This is a -- same picture, but it's too big for one picture. So I'm going to show you the bottom. Whose name is that?

A Angelita.
Q And what's the date on this?
A The 29th.
Q About what time?
A 6:20.
Q Will you read the test message you received?
A "I see you believe in me so much you -- you think I murdered Brent. I wasn't even the" -- I can't see that. Something, life insurance policy.
Q All right. Thank you.
MR. KOZAK: No further questions.

CROSS-EXAMINATION

BY MS. WHITE

Q Mr. Edgins, you had talked to Angelita after this incident and after you got the text saying that Brent was dead, right?
A I did.
Q And you talked with her, and she told you that she had nothing to do with this, didn't she?
A That's correct.
Q Okay. And she told you that she thought maybe it was over a cell phone that Brent had taken from somebody?
A Yeah.
Q Okay. At the time what was your perception of how she -- I guess her -- her demeanor at the time when she was

talking to you?
A Honestly, I don't think she did it. That's my opinion.
Q Was she upset? Was she --
A She was very upset.
Q Was she crying?
A Yeah.
MS. WHITE: I think that's all the questions I have at this time, Your Honor.
THE COURT: Anything at all?
MR. KOZAK: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. KOZAK

Q Mr. Egins, is it -- did you have a romantic relationship with Ms. Wright?
A I did.
MR. KOZAK: No further questions.
MS. WHITE: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MS. WHITE

Q Are you currently involved in or have you recently been involved in a relationship also with Carol Barzilay?
A I was.
Q Okay. And that was after this incident?
A Correct.

Q Okay. Thank you.

MR. KOZAK: That's all I have, Your Honor.

THE COURT: All right. Sir, you may step down. Please be careful.

MR. KOZAK: Your Honor, may we approach briefly?

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady and ladies and gentlemen, I understand from the lawyers they have to set up some audio so that you can hear the next pieces of evidence that are going to be offered. It will take a few minutes for them to do that.

Rather than have you sit there they suggest, and I agree, that we take a break at this point. I know it's a little bit early, but we'll go and break. There's no reason for you to sit there while they take five or eight or ten minutes to do that.

So with that, the case is not ended. Please do not discuss the case. Don't talk about it. Once again, you're at work now. You're on break, so don't talk about work.

Madam Forelady.

(The following takes place outside the presence of the jury.)

THE COURT: All right. We'll be in recess for 15 minutes.

(Whereupon, a recess was taken.)

THE COURT: Ready for the jury?

MS. ALBEE: Yes, Your Honor.

MS. WHITE: Yes, Your Honor.

THE COURT: Have the jury.

(The following takes place in the presence of the jury.)

THE COURT: Madam Forelady, jury okay?

THE FOREPERSON: Yes, sir.

THE COURT: All right.

MS. ALBEE: Thank you, Your Honor.

At this time the state calls Jeanie Burnett to the stand.

JEANIE RUTH BURNETT, having been first duly sworn, testified as follows:

THE COURT: Good morning.

THE WITNESS: Good morning.

THE COURT: As soon as you're situated if you'll adjust the microphone, please. Tell us your full name, and spell your last name for madam court reporter.

THE WITNESS: Okay. Jeanie Ruth Burnett. B-U-R-N-E-T-T.

THE COURT: Thank you.

Yes, ma'am.

MS. ALBEE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. ALBEE

Q Are you currently employed?

A Yes, ma'am.

Q Where at?

A Spartanburg County Coroner's Office.

Q And what do you do at the Spartanburg County Coroner's Office?

A I am an investigator.

Q And explain to us what an investigator with the coroner's office does.

A We go out to scenes and determine the cause and manner of death. We collect evidence, photograph.

Q Can you tell us how you became involved in this case?

A I got a call to the hospital, the E.R., and I went in. And once I saw the decedent on the table I was told that he collapsed in the road. And I wasn't satisfied with that, so I wanted to go out and see the scene.

Q Now, does the coroner's office investigate every death?

A Not a hospice, but if it's not a natural death we do.

Q And what hospital did you respond to?

A Spartanburg Medical Center.

Q And when you got there, who else was there?

A A deputy with the Cowpens Police Department, Ruth Wolfe, and of course nurses and technicians.

Q Now, were you able to see Brent Tessnear's body when you got there?
A Yes, ma'am.
Q And if you could, describe to us what that looked like.
A He had a couple of abrasions on his body that was not consistent with falling out in the road, bruises on his ankles. On his shoulder blades he had some scuff marks -- on his legs. And he had a place. I think it was above his right eye.
Q Now, how long have you been an investigator with the coroner's office?
A I started January of 2013.
Q And approximately how many cases have you investigated?
A Hundreds. I mean, I can't tell you. It's a lot.
Q So what was the first thing you did after you decided to start investigating this case?
A I asked Deputy Wolfe to take me to the place where the decedent was found on the road.
Q Where was that?
A In Cowpens behind Hardee's on the railroad track, near the railroad track.
Q And did you observe that area?
A I did.

Q What else did you do?
A I asked her where he was located at. And when she told me I asked why it wasn't roped off. They didn't feel a need in it. So I asked for investigate -- I mean, I asked for the area to be roped off so that I could find out what happened to him, because I just didn't think he fell out in the road.
Q Did you speak with anyone at that point in time?
A As far as deputies, Deputy Wolfe. And a Deputy Burnett came from the Cowpens Police Department.
Q Now, as an employee of the coroner's office did you ever speak with the defendant?
A Yes.
Q When did you speak with her?
A I called her on the phone from the side of the road. When I left the hospital they did not have any information for a relative of the decedent. But when I got there the hospital called me and gave me her name and number and said she was a possible relative.
Q When you got where?
A To the scene in Cowpens.
Q So did you call her before or after you roped off that area?
A It was before the area was roped off.
Q And approximately what time was that?

A Between 5:00 and 6:00 o'clock in the morning. I'm not sure.
Q If you need your report, let me know. I can --
A It was between 5:00 and 6:00 o'clock in the morning.
Q And you said that's normal. Is it normal for you to contact his next of kin?
A Yes, it is.
Q And what do you remember the defendant saying during this phone conversation?
A When I asked her who she was, she told me. And the first thing she said was is he alive or is he okay.
Q Now, had you identified yourself yet as being with the coroner's office?
A I did not. I said I was with Spartanburg County.
Q And did you ever meet with the defendant in person?
A Yes, I did.
Q And when?
A At the hospital. I asked her where she was and I asked her -- she said she was home, and she said she wasn't home. And then I asked her to meet me because I needed to speak with her about something. I did not tell her that he had passed away.
Q Where did you meet with her at?
A At the hospital in the E.R. waiting room, the family waiting room.

Q And if you could, describe to us what her demeanor was like at that time.
A She was -- to me she was more frightened than she was upset. I mean, she just didn't seem genuinely upset to me.
Q And these phone or this phone conversation that you had with her between 5:00 and 6:00 in the morning, the first time you spoke with her, did you record that?
A I did.
MS. ALBEE: Your Honor, may I approach?
(Pause.)
MS. ALBEE: Showing opposing counsel what's been marked as State's Exhibit No. 9. May I approach the witness?
THE COURT: Yes, ma'am.
Q Investigator Burnett, I'm handing you what's been marked as State's Exhibit No. 9. Do you recognize that?
A Yes, ma'am.
Q Okay. And what is that labeled?
A Notification phone call.
Q And did you turn these phone calls over to the state?
A I did.
Q And are they a fair and accurate representation or recording of the phone calls as -- you had with him, with the defendant?
A Yes, ma'am.

MS. ALBEE: Your Honor, at this time the state moves Exhibit No. 9 into evidence.

MS. WHITE: Without objection.

THE COURT: Without objection, it's admitted.

(D.V.D. marked State's Exhibit No. 9.)

MS. ALBEE: Permission to publish to the jury.

THE COURT: Yes, ma'am.

Q Now, Investigator Burnett, do you know whether or not anybody else was with the defendant when you spoke with her?

A There was someone in the car with her. It sounded like a female. She said it was either her sister or his sister. But I heard her say sister. And there was a female in the car with her.

Q And who was with you when you made this phone call?

A Deputy Wolfe was standing outside my car window.

MS. ALBEE: At this time I'm going to play State's Exhibit 9. This is that first phone call that you made to the defendant.

(Whereupon, State's Exhibit No. 9 was played for the jury.)

Q Now, Investigator Burnett, you asked where she was. And her response was, "I'm at home and haven't seen him." Where did she say home was?

A Pacolet.

Q Okay. Where was she actually at that point in time?
A Asheville Highway or Pine Street, somewhere. I don't know. She said she was on the Asheville Highway.
Q How long did it take you to get to the hospital?
A Took me about 20 minutes.
Q And when you got to the hospital was she already there?
A Yes, ma'am.

MS. ALBEE: Your Honor, may I have a second?

THE COURT: Yes, ma'am.

(Pause.)

MS. ALBEE: Your Honor, I have no further questions for this witness at this time.

MS. WHITE: Beg the Court's indulgence.

(Pause.)

CROSS-EXAMINATION

BY MS. WHITE

Q Deputy Burnett, the initial conversation you had with her, I think originally you said her first question was is he alive. But isn't it more accurate that she said, "Please tell me he's okay"?
A Well, we all just heard it. I do believe that's what she said.
Q Okay. So it's accurate that she said, "Please tell me he's okay," as the first thing in response to you calling.

A Yes, ma'am.
Q Okay. And you answered you didn't -- when you called her you said you were with Spartanburg County, right?
A Yes, ma'am.
Q Okay. So at that point she didn't know if you were with the sheriff's office; she didn't know if you were with the hospital; she didn't know if you were with the morgue or anything, right?
A I don't know what she thought. I mean, I can tell you I said I was with Spartanburg County.
Q Okay. In addition, after she said please tell me he's okay, she asked again, "Is he okay? I want to make sure he's all right." Didn't she?
A Again, you heard it. I guess she did.
Q And I'm asking you. You had the conversation --
A Yes, ma'am.
Q -- with her, Ms. Burnett.
A Yes, ma'am.
Q Okay. Thank you.
The other person that was in the car with her at the time was her sister or said sister, is that right?
A Correct.
Q Okay. And she's the one that ultimately -- one of them said actually we're at the Hardee's on Garner Road, is that right?

A Correct.
Q Okay. So, obviously, there was a little confusion, it seems, as to where they were. There was one person saying we could be at Pacolet in 20 minutes, we could be there in 20 minutes, we're on 176; one person saying we're at the Hardee's on Garner Road, we can be there in a minute. Is that a fair and accurate description of the conversation?
A Yes, ma'am. She also said she was at home first too.
Q Right. Okay. Now, when you talked you said you got to the scene and they had not roped off the scene.
A Correct.
Q Had they done anything in regards to protecting evidence that you could see?
A No, ma'am.
Q Okay. You also talked to Officer Wolfe and tried to get some information from her as to if she had seen the victim that night, is that right?
A Correct.
Q And isn't it true that there was some confusion on her part as to whether or not she had seen the victim before?
A She told me she had not.
Q Okay. And didn't you find out later when she told you later that that actually was not true, that she had seen him earlier that night?
A Correct.

Q And in your report and investigation, part of that is determining the last time someone was seen alive, is that right?
A Yes, ma'am.
Q Okay. And in talking with Officer Wolfe, is she the one that you spoke with about trying to get that timeframe?
A Yes, ma'am.
Q And do you recall in your report what you put as the last time Mr. Tessnear was seen alive?
A She said she saw him walking across the parking lot. Well, the vacant area.
Q The area maybe behind the Hardee's?
A Yes, ma'am.
Q And what time was that?
A Shortly before he was discovered.
Q Could it be accurate that in your report it says 2:30 a.m.?
A Yes, ma'am.
Q Okay. And if you put that in your report --
A Then that's what she told me.
Q That's what she told you.
A Yes, ma'am.
Q Because you're taught to put things accurately, right?
A Yes, ma'am.
Q Okay. Deputy Wolfe also talked with you enough to put

the information in where you said he appeared to be under the influence of some drugs or alcohol.

A Yes, ma'am.

Q Okay.

MS. WHITE: Beg the Court's indulgence.

(Pause.)

Q That's all I have at this time.

MS. WHITE: Thank you, Your Honor.

THE COURT: Anything at all?

MS. ALBEE: Nothing from the state, Your Honor.

THE COURT: Ma'am, you may step down. Please be careful.

Is she excused? Is she under subpoena?

MS. ALBEE: We have no objection to her being excused, Your Honor.

MS. WHITE: No objection, Your Honor.

THE COURT: You may stay or go.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

MR. KOZAK: The state calls Brandon Letterman.

MURRAY BRANDON LETTERMAN,

having been first duly sworn, testified as follows:

THE COURT: Sir, once you adjust the microphone tell us who you are. And spell your last name, please.

THE WITNESS: Murray Brandon Letterman,

L-E-T-T-E-R-M-A-N.

THE COURT: Thank you.

Yes, sir.

DIRECT EXAMINATION BY MR. KOZAK

Q Where do you currently work?

A Spartanburg County Sheriff's Office.

Q And what do you do there?

A I'm a computer/cell phone forensics analyst.

Q Have you always been the cell phone analyst?

A No.

Q What did you do before that?

A My prior assignment before that was sergeant over violent crimes division.

Q Okay. And how long have you worked at the sheriff's office?

A I've been employed at the Spartanburg County Sheriff's Office for 11 and a half years.

Q Okay. And how long have you been in the computer forensics or phone forensics?

A I've been in the current position for seven months.

Q Okay. So what was your position at the time of this incident in 2015?

A At the time of the incident in 2015 I was a senior investigator over the cold case homicide investigations.

Q And how did you become involved in this investigation?

A Any time an investigation like this occurs all of the violent crimes investigators normally come together and work together on this, on a death investigation. And I was requested to assist in the capacity on this investigation.
Q Were you there when the vehicle was processed?
A Yes.
Q The white truck.
MR. KOZAK: May I approach, Your Honor?
THE COURT: Yes, sir.
MR. KOZAK: Showing what's been marked as State's Exhibits 7 and 8.
Q I'm handing you what's been marked as State's Exhibits 7 and 8. Can you identify what these are?
A Yes.
Q And what are they?
A Photographs of a South Carolina driver's license belonging to Angelita.
Q What about State's Exhibit 8?
A State's Exhibit 8 is a photograph of the identification in the side door of the vehicle.
Q And when processing a vehicle is it typical to photograph personal items found in the vehicle?
A Yes.
Q All right.
MR. KOZAK: At this time I'd like to move State's

Exhibits 7 and 8 into evidence and publish to the jury.

THE COURT: Any objection?

MS. WHITE: No objection, Your Honor. I'm just -- I'm sorry. We didn't have Investigator Letterman in any of our documents. So I know that that was taken. That's -- we don't object to that.

THE COURT: Okay. Without objection, it's admitted.

MR. KOZAK: Thank you, Your Honor.

(Photograph marked State's Exhibit No. 7; photograph marked State's Exhibit No. 8.)

MR. KOZAK: Publishing to the jury what's been marked as State's Exhibit 7.

Q Will you, once again, identify what this is?

A South Carolina driver's license belonging to -- correct -- South Carolina identification card belonging to an Angelita subject.

Q And this was taken after the license was discovered in the truck?

A Correct.

Q And I'm showing you now State's Exhibit 8. Will you identify what this is?

A That's a photograph of the same identification card taken in the place of where it was located in the vehicle.

Q And where was it located in the vehicle?

A The driver's side door.

Q Did you do anything else involved in this case?
A Yes. That day was all I did there was -- there with them whenever they searched the vehicle. I also executed a search warrant to take some photographs of some call logs on a phone.
Q All right. Did you review -- so did you review the defendant's phone in this investigation?
A I did.
Q What did you photograph from her phone?
A Photographed from her phone was the call log.
MR. KOZAK: May I approach, Your Honor? At this time I'm showing opposing counsel Exhibit 3-A.
Q What am I showing you?
A These are photos that I took of her call log, phone call log on the phone.
Q Is this every photo of her call log that you took?
A Correct, yes, sir.
Q And it includes every call that she made, that was on her phone that she made?
A Correct.
Q All right.
MR. KOZAK: At this time I'd like to move State's Exhibit 3-A into evidence.
MS. WHITE: Without objection, Your Honor.
THE COURT: Without objection.

(D.V.D. marked State's Exhibit No. 3-A.)
Q What is -- what date is the first phone call that still remains on her phone?
A I believe it's December 28th at 4:26 p.m.
Q So there were no phone -- no calls on her phone before that date.
A None that were on the call log, correct.
Q Okay. Did you photograph anything else involved in this or did you extract anything else from her phone?
A Correct. Yes. I did an extraction, a forensic examination, using Cellebrite that extracted the contact list on her phone.
MR. KOZAK: May I approach, Your Honor? Showing opposing counsel what's been marked as State's Exhibit 3-B. Showing the witness what has been marked as State's Exhibit 3-B.
Q Can you identify what that is?
A Yes. This is a P.D.F. report of the forensic examination's conclusion of the results of the items extracted from the cell phone.
Q All right.
MR. KOZAK: At this time I'd like to move State's Exhibit 3-B into evidence.
MS. WHITE: Without objection, Your Honor.
THE COURT: Without objection, it's admitted.

(D.V.D. marked State's Exhibit No. 3-B.)
Q Did you have a chance to review this phone's settings?
A Yes.
Q Is this how the phone -- or feature that would automatically delete texts or calls?
A No. There's a feature you have to set up on the phone to automatically delete texts, and it was not. And I spoke with the manufacturer of the phone, and you have to manually delete call logs.
Q Okay. Do you happen to know how much storage space this model of phone that Angelita owned had?
A That particular phone has a storage capacity for 256 megabites.
Q About how much memory space does an average text take up?
A An average S.M.S. text -- you've got two types of text messages. You have an M.M.S., which is a multimedia message, which would include attachments for videos, pictures, stuff like that. Then you have your S.M.S., which is your standard messaging text messages, which is what this phone was capable of. An average S.M.S. text is roughly 140 bites.
Q All right. And so about how many texts could Angelita's phone hold before it ran out of space?
MS. WHITE: Your Honor, I'm sorry. I would object. I

think he's offering an expert opinion without being qualified as an expert.

THE COURT: Well, let's see. We'll go over this.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

Q So about how many texts could a phone with 256 megabites of memory hold before it ran out of memory space?

A It's a very simple calculation if you just take the phone's memory -- storage capacity with just text messages only. If you calculate 140 bites average of an S.M.S. text message, 256 megabites of storage would be roughly 1,828,571 texts messages.

Q All right. And about how many in-box messages did she have on her phone?

A I think she about 30. She had 35 in-box messages.

Q And how many out-box messages did she have on her phone?

A She had 92.

Q So how many total messages did she have?

A That was a total of 127.

Q All right. Did you review Angelita's call log?

A I did.

Q All right.

MR. KOZAK: May I approach, Your Honor?

I am going to show opposing counsel what's been marked

as State's Exhibits 3-C, 3-D and 3-E.
Q I'm showing what's been marked as Exhibits 3-C, 3-D and 3-E. Will you identify what these are?
A These are photographs I took of the call log.
Q All right.
A Of this phone.
Q The same. They're just individual photos of the same call log you already saw?
A Correct, yes.
Q All right.
MR. KOZAK: At this time I'd like to move Exhibits 3-C, 3-D and 3-E into evidence.
MS. WHITE: Without objection, Your Honor.
THE COURT: Without objection, they're admitted.
(D.V.D. marked State's Exhibit No. 3-C; D.V.D. marked State's Exhibit No. 3-D; D.V.D. marked State's Exhibit No. 3-E.)
Q I'm going to show you Exhibit 3-C. I see a call on here to 1-800-849-4521. Now, there's a little icon next to this. What does that mean?
A Can you slide the photo down a little bit?
Q Oh, I'm sorry.
A That's good.
Q What does that mean?
A That means it's on outgoing call.

Q That means a call from that phone to someone.
A Correct.
Q All right. What time of day was this call made?
A 4:26 p.m.
Q And on what day?
A That was December the 28th.
Q Now, in your investigation did you get a chance to call this number?
A I did.
Q And what -- who was the defendant calling?
A Tindall Corporation.
Q All right. Now, I see a call to phone number 1-800-995-6230. When? What day was that made?
A That was made Monday, December the 28th.
Q Do you know what time?
A 4:30 p.m.
Q In your investigation did you have a chance to call this number?
A I did.
Q And who was it to?
A Come back to the United of Omaha Life Insurance Company.
Q All right. I see another call to this same number. What time?
A 4:48 p.m.

Q And on what day?
A The same day, Monday, December the 28th.
Q And is that call also to the same company?
A It's that same company, yes.
Q And finally I see a call. Is this --
A Yeah, the Tindall Corporation, yes, sir.
Q All right. And what time was that made?
A 3:36 p.m.
Q Okay. And what day?
A That was on Tuesday, December the 29th.

MR. KOZAK: Thank you, Your Honor. No further questions.

THE COURT: Yes, ma'am.

MS. WHITE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. WHITE

Q Investigator Letterman, you didn't do any reports as to your involvement in this case, did you?
A I did a report on the 21st of this month whenever I was requested to execute a search warrant for the photographs of the phone.
Q Okay. And so you got involved in this case a week ago.
A I initially got involved in it when it first occurred, but my first report was, correct, this week.

Q Okay. And that was at the state's request to look at the cell phone, is that right?
A Yes, ma'am.
Q In your understanding how long had they had that cell phone?
A I'm not sure when it was taken into custody, but I would imagine shortly after the death.
Q So almost two years, is that right, if we --
A Yes.
Q Okay. And so you were the first to pull up call logs, look into the contacts or retrieve that information, is that right?
A I think Investigator Lindsey McGraw had actually executed a search warrant on that earlier for forensic examination.

The Cellebrite program did not at that point support that model phone for an extraction. Cellebrite, which is the software and hardware that we use, continually updates. So over two years an update had been installed that would allow a forensic examination of just the contact list.

Q And you said you've been doing forensic examinations of phones for how long?
A Right at seven months.
Q Seven months. How long were you a law enforcement officer before that?

A I've been in law enforcement for 13 years.
Q Okay. So you understand the importance of completing an investigation and doing a thorough investigation before making any kind of decisions about anything, right?
A Well, every investigation, yes, requires a thorough investigation, yes, ma'am.
Q Okay. And you would generally as an investigator want to make sure you had followed up on all information that you received, whether it was to confirm a witness statement or to contradict a witness statement.
A Yes. The investigation requires follow up, yes, ma'am.
Q Okay. In regards to the cell phone and storage -- and I may have misheard you -- you said that a standard flip phone with 256 megabites of storage could hold 1 million text messages?
A Not just a regular standard flip phone, just this flip phone model. They vary from what their capacity is, but the storage capacity for this model is 256 megabites. And if you do the calculations, roughly a text message, instant message, 140 bites. You just take 256 megabites and do the calculations and that will turn out to be -- if it was just 256 megabites of storage, then it would take roughly 1,828,571 S.M.S. messages at an average of 140 bites to fill up that 256 megabites.

Q You've never seen a phone with a million text messages that's a flip phone, have you?
A No, ma'am.
Q Okay. And to your understanding flip phones do have to be manually deleted before for additional information to come on there once they hit capacity, right?
A Once they hit capacity, yes.
Q Okay. And when you're giving us this number, this is based on calculations as to a particular amount of text message. That doesn't include pictures that are on the phone; that doesn't include calls made; that doesn't include videos; that doesn't include the S.M.S. messages or anything, does it?
A No. That's correct. That's just taking a calculation of 256 megabites with 140 bites. That does not take into account any other items stored on that storage, correct.
Q So it's really not an accurate number to be able to give us when you don't know the other information that would be on a phone.
A It's only an accurate number if you just take 256 megabites and divide it by the 140 bites.
Q Okay. So it's simply a math calculation.
A Correct, yes.
Q Okay.
MS. WHITE: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

(Pause.)

MS. WHITE: That's all I have for this witness.

THE COURT: Anything at all?

MR. KOZAK: Nothing further from the state.

THE COURT: Sir, you may step down. Please be careful.

MS. ALBEE: Your Honor, the state calls Brett Tessnear.

BRETT TESSNEAR, having been first duly sworn, testified as follows:

THE COURT: Tell us your name, please, and spell your last name.

THE WITNESS: Brett Tessnear, T-E-S-S-N-E-A-R.

THE COURT: Thank you.

Yes, ma'am.

MS. ALBEE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. ALBEE

Q Brett, how old are you?

A I'm 21.

Q What do you do for a living?

A I'm in the U.S. Army.

Q Where are you currently stationed?

A Fort Story, Virginia Beach.

Q How long have you been in the Army?

A About a year and a half.
Q How were you related to Brent Tessnear?
A That's my father.
Q Now, Brett, we've heard some conversation about a life insurance policy. Do you know who the beneficiary to your dad's life insurance policy was?
A I was.
Q And do you know what company that was through?
A It was Mutual of Omaha Life Insurance.
MS. ALBEE: Your Honor, I have no further questions.
THE COURT: All right.

CROSS-EXAMINATION

BY MS. WHITE

Q Brett, just real briefly.
The time shortly after your father's death, the day or two after, was there a lot of planning going on trying to figure out to figure out his funeral?
A Yes, ma'am.
Q Okay. Thank you.
MS. WHITE: That's all I have at this time, Your Honor.
THE COURT: Sir, you may step down. Please be careful.
MS. ALBEE: Your Honor, we'd just like to confirm that Exhibit 2-A -- I don't believe was ever entered into

evidence formally. It is the depiction of a -- actually what's on disc two. I just want to make sure and confirm that it has been actually moved into evidence.

(Pause.)

THE COURT: Are you introducing it into evidence?

MS. ALBEE: Your Honor, at this time I would like to move 2-A into evidence.

MS. WHITE: Without objection, Your Honor.

THE COURT: All right. It's stipulated to. 2-A is in.

(D.V.D. marked State's Exhibit No. 2-A.)

MS. ALBEE: Your Honor, at this time the state rests.

THE COURT: The state rests.

Madam Forelady and ladies and gentlemen of the jury -- well, let me do this. Let me see -- let me see the lawyers.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen -- Madam Forelady and ladies and gentlemen, the trial is not at an end.

The state has now rested. And what that means is when I first told you on Monday there would be times when I needed to talk with the lawyers outside of your presence, what's called legal matters -- and this is one of those times -- so I'm going to excuse you because it may be

necessary for me to make a comment on a fact in this case when applying the law. And that would be improper for me to do in your presence. I'm prohibited from doing that.

So I'm going to remove you from the courtroom just for a few minutes while we take up a couple of matters, and I also discuss with the lawyers about the next witness and so forth to get a timeline on that. And they're now going to notify somebody to be here.

So expect to be back in 15 minutes. Don't talk about the case. It's not at an end at this time. We'll have a couple of more witnesses, and then we'll break for lunch.

Madam forelady.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the state?

MS. ALBEE: Nothing from the state, Your Honor.

THE COURT: From the defense?

MS. WHITE: Your Honor, we have a couple of matters.

First, we'd, obviously, renew our motion that we made at the beginning of the trial in regards to quashing the subpoena based on what we feel like is inconsistent elements regarding the accident required in the hit and run resulting in death and the specific intent of felonious malice aforethought that's included in the murder indictment, Your Honor.

We, obviously, would argue that those two are mutually exclusive, and therefore we move and renew our motion to quash the murder indictment based on that.

MS. ALBEE: Your Honor, standing by the same argument that we made at the beginning of this trial.

Malice aforethought does not negate whether or not there was, in fact, some sort of car accident, Mr. Tessnear being hit by a car and the defendant leaving the scene. Therefore we would contend that it is proper to go forward on both the murder indictment, as well as the leaving the scene of an accident resulting in death.

THE COURT: Okay. For the reasons previously stated by the Court that motion is denied. But you're protected on the record.

MS. WHITE: Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. WHITE: Next we would make a motion for a directed verdict, first, on the -- the indictment of hit and run resulting in death.

Your Honor, even in the light most favorable to the state they're required to prove each and every element. With the testimony that has been presented, specifically the testimony they presented from Mr. Blackwood, this has not been anything that indicates that there was any kind of accident at all, that there was a motor vehicle accident.

The testimony presented appears to indicate purely that this was something with malice aforethought, is what he testified to. And, Your Honor, we don't think there's been any testimony presented that this was simply a hit and run resulting in death.

I don't think there's anything that could be presented to the jury that could cause them to think that this was not anything other than that. And so we would ask that the directed verdict be granted on that indictment, Your Honor.

MS. ALBEE: Your Honor, hit and run, the term accident, it all comes down to construction. The bottom line is that there has been testimony that there was a hit, that Brent Tessnear was hit with a motor vehicle, and that there was a fleeing after that or a running and that it did, in fact, result in his death.

That in and of itself is a motor vehicle accident, Your Honor. Therefore we contend there is a question of fact to the jury as to whether or not there has been a hit and run resulting in death, that there is sufficient evidence in the record to support that indictment going forward to the jury. There is a question of fact for them to determine.

MS. WHITE: Just one more brief statement, Your Honor.

In the statute for the motor vehicle statute, Your Honor, it does include a section for definitions. It

defines many of the words in the statute.

Accident is not one of those. In lieu of a definition the legislature has said look to the plain and ordinary meaning.

In this case when you look at Black's Law Dictionary accident is an unintentional event. And I think that that, again, contradicts the murder indictment and therefore a directed verdict should be granted based on the fact that there is no -- no evidence that was presented that this was unintentional event.

THE COURT: The Court is not concerned with weighing any of the evidence as to whether or not there's any evidence in the record for the finder of fact. So therefore the -- and viewing it in the light most favorable to the nonmoving party, which is the state, the motion is denied.

MS. WHITE: Thank you, Your Honor. Beg the Court's indulgence.

(Pause.)

MS. WHITE: Your Honor, I'm sorry. Beg the Court's indulgence -- or excuse me. May it please the Court.

We would also make a motion for a directed verdict, obviously, on the murder indictment.

In regards to evidence that's presented, there has to be substantial circumstantial evidence. Obviously, all the

circumstantial evidence that we think was presented does not rise to the level of circum -- excuse me -- substantial circumstantial evidence.

The state would argue, I'm sure, that the testimony of Brandon Blackwood consists of direct evidence in regards to this. But, obviously, with his testimony and the credibility, or the lack thereof with his testimony, we would argue that that is not sufficient to present this to the jury, and we would ask for a directed verdict on that as well.

THE COURT: Yes, ma'am.

MS. ALBEE: Thank you, Your Honor.

Again, viewing this light -- or viewing this motion in the light most favorable to the nonmoving party, which is the state, we would, again, contend that there is a question of fact. Even by defense counsel's own statements and her previous argument, there has been direct evidence that the defendant was, in fact, driving the car that ran over Brent Tessnear.

Now, the credibility of that witness and the witness that says that she did, in fact, did that, that is, in fact, a question for the jury. Therefore, there is a question of fact for the jury to determine the credibility of that witness, as well as whether or not the defendant did this.

The fact that there has been malice established throughout the witnesses, throughout the night, with the defendant's own statement that's in the record as well, so we would content that there is, in fact, enough evidence presented in the record for the jury to have a question of fact. And we would ask that you deny the motion at this time.

THE COURT: Okay. And, once again, the Court is not concerned with the weight of the evidence. It does not weigh credibility. The Court is only concerned with whether there's any evidence at all to go before the Court. And so therefore the motion is denied.

MR. WHELCHEL: Beg the Court's indulgence again, Your Honor.

THE COURT: Yes, sir.

(Pause.)

MS. WHITE: Your Honor, this is another issue that I'm not sure how to address.

Obviously, we had -- during testimony Investigator Clark mentioned that they had done mapping. I did ask. I had never received any mapping from the state in discovery that they had done. I did ask them.

They informed me that they did this recently in response to our indications that we would have someone.

So we would ask that we be allowed to have that

information so that we can review and prepare for cross-examination, if necessary, and allow our expert to review that.

MS. ALBEE: Your Honor, again, specifically, just like Ms. White said.

This was prepared in response to their expert. Ms. White did share with us some slides that her expert intends to use. Therefore, we had it prepared in rebuttal to that. If they want to look at it, we have no problem with it. That's fine.

THE COURT: Okay. When are you going to give it to them?

MS. ALBEE: I've got it in my bag.

MS. WHITE: Thank you, Your Honor.

And, Your Honor, that's all the defense has at this time.

THE COURT: Okay. Ready to go forward?

MS. WHITE: We are, Your Honor.

THE COURT: Okay. We'll have the jury.

(The following takes place in the presence of the jury.)

THE COURT: Madam Forelady, is all well with the jury?

THE FOREPERSON: Yes, sir.

THE COURT: Thank you.

Yes, ma'am.

MS. WHITE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. WHITE: The defense would call Spenser Smith to the stand.

THE COURT: Okay.

SPENSER HOLLORAN SMITH, having been first duly sworn, testified as follows:

THE COURT: Sir, once you're situated will you tell us who you are? And spell your last name for the court reporter.

THE WITNESS: My name is Spenser Smith, S-M-I-T-H.

THE COURT: Thank you.

MS. WHITE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. WHITE

Q Mr. Smith, tell us your current position.

A I work at the solicitor's office as an assistant solicitor prosecuting violent crimes and felony D.U.I.s.

Q Okay. And how long have you been here at the solicitor's office?

A A little over three years.

Q Just as a basic, you went to law school. And in addition to the oath you took today, what kind of oaths do you take as a lawyer?

A Well, prosecutors have a special oath to do justice

beyond what all other attorneys have, basically, that if we know things are false or things like that, we have to make disclosures, obviously, because we're in the business potentially of putting people in prison, or fines or other things like that, that are more restrictive than other attorneys deal with. So we actually have a -- we're the only set of attorneys that has a higher standard of ethics than all others.

Q And are you familiar with the case that we're here today with?

A I am. I actually was assigned this case initially. It was handled by our office before eventually going over to the attorney general's office. And that transition happened after the January 5th of 2017 meeting with Brandon Blackwood.

Q And tell me why that transition occurred.

A Well, I had met with Brandon Blackwood, I'd say, at least, I think, two times previously, at least one time prior to the January 5th. We were scheduled to go to trial January 9th, the following Monday, against Ms. Wright.

At that point Brandon was not charged. He was merely a witness. I was sitting, as I think most attorneys do prior to cases, going over testimony with witnesses.

I usually try to save my biggest confrontational type questions towards the end, more like where I would be

playing the role that you would have played having gone to trial. And that was kind of what I had planned for that meeting that day.

As I know they've heard from, he confessed. I'm sure we'll get into that. And that caused our office to step away, because potentially I could be a witness because I was involved in that conversation with him prior to the confession but did see, I believed where it was going, and then because of the relationship with his grandfather being a retired sheriff's deputy. Both of those issues caused us to step away from the case and hand it over to the attorney general.

Q Okay. Just to go back a little bit, you said his grandfather was a retired sheriff's deputy. And that was Ronnie Parris, is that right?

A That's correct.

Q At the time that this incident occurred and began the investigation wasn't it true that everyone knew that his grandson was the gentleman that was supposedly in the car at the time?

A You ask -- did law enforcement know about the connection between Brandon?

Q Correct.

A I believe so. He was from -- I don't know his full history. He actually was a Wofford security guard when I

was at Wofford. But I believe he's been at law enforcement for his entire career and was retired at this point. So I think it was known.

Q Okay. And did you understand as well that the truck that was actually used was registered to Ronnie Parris?

A I did.

Q Okay. But at that point for that next year there was not deemed to be a conflict with any investigation involved with him, even though he had worked at the sheriff's office?

A No.

Q Okay.

A I -- I didn't see anything that I thought. I did not know Ronnie Parris, and his connection with Brandon Blackwood did not affect how I was handling the case.

Q Tell me about the day that you did meet with Mr. Blackwood. Did he come alone?

A No. He came with his grandfather. I don't know who drove. I didn't see them pull up, but when he came back to our conference room his grandfather stayed in the lobby.

Q And who met with him in the conference room?

A It was me, Detective Tommy Clark and Detective Andy Lawson.

Q And when you started talking with him about the testimony, what were you basing that off of? Was that

based off his original statement?
A Yes, and previous conversations I'd had with him, just, which I started the conversation just by asking to go through the story as we had been over it before, and he did. He essentially told me the same thing that we had talked about in previous meetings.
And then I shifted to asking questions that I would anticipate you asking if we were going to go to trial. And that's when things began to change a little bit.
Q What was his demeanor? How did he act to you?
A Apathetic. I was -- I became frustrated because it didn't seem like he was taking it seriously that he was testifying next week against somebody on a murder charge and that he, you know, assuming his story was correct, was a witness to it and had gone through obviously a traumatic event. He did not seem to -- what I would have -- be appropriate affect for the seriousness of the situation.
Q And, in fact --
A Lethargic. His hair was disheveled and greasy. Yawning a lot initially before things got a little bit more confrontational. But initially just looked like he would rather be a lot of other places than talking with me.
Q And at that point had you had conversations with him before and had he had a similar affect?
A This was a little bit different than previous.

Q I'm sorry?
A Yeah. Just sloppier in appearance.
Q At this point, this was about a year, is that right, after the incident occurred?
A Yeah, about a year and a month, I guess.
Q Okay. And Mr. Blackwood up until that point had told you a fairly consistent story, is that right?
A He had. I know you've seen his written statements. There were periods always in his statement where he went in and out of consciousness or fell asleep, whichever one. But the parts that he remembered had stayed consistent.
Q And, in fact, there was some incredible detail in some of the stories he provided, right?
A He did -- he remembered specific conversations between individuals at the different locations that they were in in Cowpens and Pacolet.
Q Even kind of put them in quotes to distinguish them?
A Yes, that -- yes, direct quotes.
Q So on the day that you were meeting with him at this point, you said you began to get concerned because of his attitude or because of how he was handling himself.

What -- how -- how did you begin to speak with him?
A Well, one concern I had always had and that I obviously knew that the defense would ask about would be the 3-day delay between the incident and his reporting it.

And so I just asked him why, or I said when did you remember that this incident happened, because in his written statement and in previous statements to me he said he remembered when the police came to talk to him on the 29th. And so I asked him, and he told me the same thing, that he remembered the day that the police came to talk to him on the 29th.

And I said just confronting him, "That sounds like you made a story up when the police caught up with you." He denied that. And then he changed his story and said that he remembered being in the car that hit Mr. Tessnear the next morning, the morning after it had happened, is when he became aware that he had been involved in this collision.

Q And that would be the morning of December 28th or the 27th after it happened.

A Yeah. I know it happened in the early morning hours, yeah, but, basically, the -- the next morning from when all of the incidents occurred the previous day.

I then asked him, you know, why he didn't tell the police. Just going further down that line of questioning, the same questions, I thought you would probably ask would -- you know, then why didn't you tell the police at the point that you became aware. He said he was -- because he was scared. And I said scared of what. He said that he was scared of going to jail.

And I asked him what about the story that you have told me today would make you think that you're going to jail. The story that you told me from day one, you've never been arrested for it, you know, why would you think you're going to jail. He said he didn't know.

I -- I even pointed out, you know, your grandfather is retired law enforcement, you could talk with him, you know, maybe he could explain the roles of guilt or criminal responsibility. At that point he told me that he was scared of the defendant.

Q And let me stop you right there.

A Sure.

Q Was that the first time he had ever mentioned that?

A Yes.

Q Okay.

A When -- she was incarcerated at the time, but, I mean.

Q So she -- she was -- he was saying she was scared, but she had been in jail this whole time.

A Yes.

Q Did his demeanor change at any point as you started conversing with him at that point?

A It did. I've never -- truly, I've never seen anybody really act like kind of what this was, but I also -- I'm not a police officer who actually goes out and -- although we do investigate cases somewhat, I'm usually not dealing

with people shortly after an incident's happened trying to get to the bottom of it. I'm taking work that the police officer's done and trying to present it. But he started, I call it, burping or something. He started having, like, physical manifestations that something was like coming out of him. He was coughing and just it seemed like he was in great distress, what I would say.

Q Okay. During this conversation with him were you yelling at him?

A I did yell at him at a certain point.

Q Was this at the beginning or was this at a point that you felt that he was being untruthful?

A At the point of him being untruthful. It was -- and I'll -- to put context into it, I would say it was like an exasperated what's-happening type of yelling, not a -- not yelling at him to say anything specific. But we've been over this multiple times before. Why -- why are you, I mean, there's more -- we went, had a little bit further discussion with more details coming up. But why are you struggling on the most basic details of a story that we've been over multiple times when, you know, the reality of it is the following Monday I was presenting this case in front of a jury potentially. And so it was more frustration and just exasperation of what was happening rather than yelling at him to do a specific thing or to say a specific thing.

Q At that point he was the only witness you had to place Ms. Wright in the truck or doing anything with the truck that night to kill Mr. Tessnear.
A Yeah. At the time of the collision there are -- were other witnesses that would place her in that truck throughout the night driving it too.
Q Hours before but not at the time of the collision.
A Yes. There's no -- as far as I'm aware there's no eye witnesses other than those two.
Q So when Mr. Blackwood began doing this physical kind of manifestation, coughing, burping, looking as if he was, I guess, getting sick, what -- what was your response to that?
A I'll look at my notes. Well, so the initial thing was about the delay. And then I asked him about a couple of other things that I knew that I could prove or I knew objectively to be true but that he may not because he's not reviewed the file.

I asked him about speaking with the Padgetts who I think have testified earlier. And I don't know how much that's gone into at the trial here. But if he'd ever had a conversation with the Padgetts. He denied that he had. I don't -- I mean a conversation with the Padgetts after the incident. He denied that he had.

I showed him the written statement from, I think, Amy

Padgett talking about a very long conversation that they had at the gas station.

At that point he did -- he said that he did remember that conversation. And I asked him if he'd spoken to Angelita after the incident had happened, and he denied that.

I had text messages between, I think, both of them, that they had had communication. I asked him about that, and he said that the investigators told him to do that. And Detective Clark and I asked him what investigator, because I believe it wasn't Tommy that told him to do that. And he said that it was Chief Makupson who was the chief of police for Cowpens at the time this incident happened that had told him to do that.

So at that point Tommy Clark stepped out to go call Chief Makupson to verify if he had, in fact, instructed him to test -- to text Angelita during some sort of interrogation or interview with Mr. Blackwood.

While he's making that call I stayed inside with Andy and continued to talk with Mr. Blackwood -- Andy Lawson, the other investigator who -- and -- and Andy has no connection with this case other than he came with Tommy as a witness, is basically. He didn't have any involvement in any of the investigation, knew very, very little.

I continued to talk with him. He continued to have

these burping things almost to the point where he went -- there was a trash cash behind his seat. Almost like he was going to vomit in that. And he said that he felt like he was about to go to jail. And -- and Andy said something about, you know, I don't know much about this case but I -- from what you're saying and what I'm seeing right now it seems like that could be a thing that happens.

At that point I stepped outside my office and went and found Tommy, who was calling Chief Makupson. And I suggested to him that I did not know exactly what was happening in the room but I had very strange feelings and that I thought that he should go in there and Mirandize him and treat it like day one and go after him either that he did it or was a coconspirator like a defendant in the case.

And I then removed myself from the office. I went down the hall three offices to Jennifer Jordan's office. And I actually told her that I thought that he was about to confess.

Q Okay. And during that time you said you yelled kind of an exasperated way. Did you come to him and get in his face and, you know, shake -- shake the table at him?

A I'll describe the conference -- the conference room in the solicitor's office is kind of like these two tables in front of the defense and the prosecution pushed together with chairs all around it, probably about that length.

And he was sitting -- and there's two on the end. Tommy was on the end. I was on one side and Brandon was on the other side. And it's a wide enough table. I was not in his face.

Q So the table was between you about at least three feet probably.

A Yeah. He was closer to Tommy.

Q Okay. And at any point did you coerce him into changing his statement?

A No.

Q Did you threaten him?

A No. Well, he didn't actually change his statement until I was -- I was gone. But I did not threaten him.

Q Okay. And while you were outside of the room -- or let me back up.

From your interactions with Tommy Clark, Investigator Clark, do you -- had you seen him doing any kind of coercion with him or Investigator Lawson during any of their meetings?

A No. I would say, truthfully, that I was angrier and raised my voice and possibly even used some profanity at him much more than Tommy did.

Andy, like I said, did not really know much. He's just kind of a witness in case he's needed. He didn't say much at all other than he's kind of a -- a good old boy

type guy. And he did do some encouraging -- you know, the truth, you need to let it out, man, because he could tell something was occurring, I think.

Q And Mr. Blackwood wasn't in custody at this point?

A No. He had not been arrested for this. He'd come voluntarily. He was subpoenaed to be there the next week, but that doesn't obligate him to talk to me.

Q And while you were in Ms. Jordan's office, three offices down, did you hear anything that concerned you that made you think that there was any kind of coercion or threatening of him?

A No. I couldn't hear anything.

Q Okay.

MS. WHITE: One brief moment, Your Honor.

(Pause.)

Q That's all we have at this time, Your Honor.

MS. ALBEE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ALBEE

Q Mr. Smith, you said that you met with Brandon Blackwood before this January of 2017 meeting, right?

A At least one time that I remember.

Q And during that meeting his story was consistent in him staying with the original statement that he gave, correct?

A It was.
Q And it wasn't until this January of 2017 meeting that his story changed, is that right?
A Yeah. This was the first sign of any real wavering.
Q And in that room was you, right?
A That's correct.
Q Brandon.
A Correct.
Q Investigator Clark.
A Correct.
Q And then Investigator Lawson, right?
A Yeah. I didn't put him in the seat. He was on the other side of Brandon.
Q And you said that he came in and he looked different than he had before, right?
A I would say so.
Q And I believe -- I believe you described him as being apathetic, right?
A Very much.
Q Lethargic.
A Yes.
Q Disheveled.
A Yes.
Q And he was yawning.
A Yes.

Q And then you said that some things changed and he started coughing, right?
A He did.
Q And that he looked as if he was in great distress.
A Yes. He was.
Q And you even described him as something you had never seen before, right?
A Yeah. I've not seen it since.
Q And you said at one point in time he reached to grab maybe the trash can for vomiting, right?
A Yes.
Q And you said that it was at this point in the meeting that you kind of switched your style of speaking with him, right?
A Well, I would say that the apathy and the general lack of desire to be there started from the get-go.

The more burp, that stuff, I don't know what it was. Gastrointestinal issues happened when I started pressing him about the story.

When he -- when he initially told the story -- because he started with him just telling the story to me one time through and me not asking any questions, just letting him say it out.

It -- he was very disinterested while he told it to me, but he told it to me fine. It was just really -- it

was really hard to describe. He just seemed like he did not want to be there and didn't really care at all about what happened.

Q Okay. So when you're just letting him tell the story, that's when he's apathetic and just doesn't really seem to care, right?

A Yes.

Q And then his demeanor changes when you start being more confrontational with him, right?

A Yes. That's when the nervousness and whatever, anxiety, started manifesting, I thought.

Q And when you were doing that you were preparing like a cross-examination, right?

A Yes.

Q Were you using leading questions?

A I don't know. I wasn't necessarily cross-examining. It was just touching -- I mean, it was really, was that.

I asked him why did it take you two days or three days, whatever, to tell the authorities, because I -- I knew that question was coming. I mean, there's no way that he's going to get by without getting asked that. And that was kind of where things started falling apart and new details got added that I had never heard of and Detective Clark had never heard of.

Q And that's when you told us that that's when he said

that he was scared, right?
A Yes. He said that he was scared first of going to jail and then of the defendant.
Q Okay. So two different things he says he's scared of, right?
A Yes.
Q The first is going to jail, right?
A Yes.
Q And in all of his previous stories he said that he was with Angelita in the car when she ran -- ran Brent Tessnear over, right?
A Yes.
Q And you know people can be prosecuted for that, don't you?
A For -- well, I mean.
Q I believe you even said possibly a coconspirator. And you've used that word.
A Yeah. I mean, I think objectively when -- you know, say, there are two people inside of the car, it's certainly possible that a passenger could be charged depending on what conversations and things happened prior to.

There's also a factual situation in which, you know, being in the car when somebody decides to run over somebody would not make you anything more than just a witness, wrong place, wrong time.

So it -- it would depend on the facts. And obviously the facts are only known between the people that were in the car.

Q But it's possible.

A It's possible.

Q And so aside from saying he was scared of jail, he also said he was scared of the defendant, right?

A He did.

Q And at this point in time you decided to step out, didn't you?

A I asked a couple -- after -- after him saying he's scared, I asked the question about the meeting with the Padgetts and communicating with Angelita via text. And then I stepped out.

Q And during this time, those questions, is this the exasperated yelling that you're doing?

A I mean, to be honest, I'll tell you what I said.

It was basically can you act like somebody got run over and is dead and that next week we're going, you know, to try her for murder for doing what she did and that you are a witness to the -- you know, can you just act like this is what it actually is, a very, very, very serious situation. And it was -- it was exasperation at how he was just coming apart, was what it was.

Q And then after that you left, right?

A Yeah. I -- I walked outside and I spoke with Tommy. And I said that I thought he should Mirandize him and question him.
Q And you didn't go back into the conference room, did you?
A Not -- not while he was there. He -- I walked down, and it was like 15 minutes later. And Tommy came out and said that he had confessed. And then he -- he was taken out of the back.
Q And you have no personal knowledge as to what was said during that 15 minutes, right?
A No. I couldn't -- I didn't hear anything and I wasn't looking in or anything like that. It's 20 -- 20 feet or so down the hall. Something like that.

MS. ALBEE: I have no further questions, Your Honor.

THE COURT: Anything at all?

MS. WHITE: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE

Q Is it fair to say that the way Mr. Blackwood was presenting himself to you was these, any details, changes in stories that he appeared less than credible?
A I was -- I mean, when I'm saying I was exasperated it's because, you know, as she pointed out, is the only witness that we have, and as far as the actual incident

itself. And, you know, he's -- was struggling with the most basic details. And I knew that, you know, when you go to trial you get asked questions by the other side. I was very worried about what was going to happen next week. And then, obviously, it changes when he confessed. But, yeah, I was very worried about -- I was confused. I mean, honestly, I was very confused as to what was happening.

Q And in regards to him possibly being charged, he had acknowledged being in the car with Ms. Wright for over a year and had not faced any charges, is that right?

A That's correct.

Q Okay.

MS. WHITE: I think that's all I have at this time.

THE COURT: Anything?

MS. ALBEE: No, Your Honor.

THE COURT: Sir, you may step down. Please be careful.

THE WITNESS: Thank you.

MS. WHITE: We'd ask that he be released from his subpoena.

MR. KOZAK: No objection.

THE COURT: You are released from your subpoena.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

MS. WHITE: Your Honor, at this time the defense could

call Investigator Tommy Clark to the stand.

THOMAS CLARK, having been previously duly sworn, testified as follows:

THE COURT: Investigator, you were previously sworn. You remain under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MS. WHITE

Q Investigator Clark, while we're talking about this I'm going to ask you a few questions about your interview with Brandon on January 5th, 2017.

A Yes, ma'am.

Q Do you recall that?

A Yes, ma'am.

Q And when you brought him in he was not in custody, was he?

A No, ma'am.

Q Okay. And, in fact, tell me what he was there for.

A He actually arrived -- if memory serves correct, he was there before I got there.

Investigator Lawson was a new investigator to our unit, so I was -- he was shadowing me to -- for training to come to our unit. So we had -- I told him we had court prep so we had to be at the solicitor's office, and that's why we were there. And Brandon and his grandfather and people were already in place when I got there.

Q Do you recall what time of the day that was?
A It was in the early morning, but I don't recall the exact time.
Q We're not talking like 6:00 or 7:00, but we're not talking 11:00 or 12:00.
A No.
Q So somewhere maybe in the 9:00 to 10:00 range?
A Yes, ma'am.
Q Okay. And had you met with him -- other than when he gave his initial statement, had you met with him or talked with him any time in that intervening year?
A Not that I recall.
Q Okay. When you sat down, can you describe how you felt his demeanor was?
A He was -- his hair was messy. He was disheveled. He at times would yawn and seemed tired.

You know, when I had talked to him before it was a different person, seemed like a different person. But he was -- Solicitor Smith was going over his statement with him. And at that point he seemed able to go through the statement with -- with -- over the statement and recounts with Solicitor Smith pretty -- pretty easily.

Q So the first -- as you met with him initially he gave his story. It came through fairly accurate or consistent with what he had said before.

A Yes.
Q Okay. At any time prior to this meeting had he indicated to you that he had ingested any kind of drugs or alcohol?
A Not that I recall.
Q Could you --
A I'd -- I would have noted that, but he did not, not that I recall.
Q As an investigator if he had smoked weed in the car on the way or at any time -- could you smell any weed on him?
A No.
Q Okay. Could you smell any alcohol?
A No.
Q Okay. As you were talking with him -- Mr. Smith indicated that there were some changes in his -- in his demeanor and his physical manifestations.
A Yes, ma'am.
Q Did you acknowledge -- did you observe those as well?
A As -- as Solicitor Smith did, yes, I did.
Q And -- and to you -- you've been practicing or been involved in law enforcement for over 20 years. What was that concerning to you or how did that -- how did that concern you?
A Because as Solicitor Smith asked him questions there were some inconsistencies, because he was asking him

questions that he felt you were going to ask in trial, and he was not answering them as -- there were prior court preps between Solicitor Smith and Brandon that I was not a part of.

And so Solicitor Smith had indicated to me that this was not how the prior preps had gone or the prior conferences had gone with him. And Brandon just seemed to become -- you know, as Solicitor Smith said, the coughing and the -- and the -- and then he -- he just became very -- I want to -- I would say upset. You could see that there was something wrong with him. I couldn't put my finger on it, but I could -- you could see that there was something going on.

Q You were in here when he testified yesterday, weren't you?

A Yes.

Q Did you see any of those same physical acts of the coughing and the yawning and the burping during his testimony yesterday?

A I did not.

Q You didn't. As you talked to him did you threaten him in any way to change his story?

A No, ma'am.

Q Did you coerce him or promise him anything?

A No, ma'am.

Q When investigator -- or excuse me -- when Solicitor Smith left he said he had you go in there to Mirandize him.
A I actually left first to go talk to Chief Makupson, call Chief Makupson. And then Solicitor Smith came out after I had been out of the conference room for a few minutes to talk to me. And at that point he asked. His question to me was basically what is going on.
Q And at that point what was your thought as a seasoned investigator?
A I told him that I wanted to go back and interview him again and I wanted to Mirandize him and reinterview him.
Q Okay. And that was based on your concern of what?
A The inconsistencies in the cross-examination questions that Solicitor Smith was posing to him.
Q That perhaps he was not telling the truth to y'all.
A Correct.
Q Okay. So when you were in there was Investigator Lawson also in there?
A Yes, ma'am.
Q And this was during the interview with him when he gave the statement where he ultimately confessed to being the one to drive the vehicle that hit Brent Tessnear.
A Yes, ma'am.
Q During that interview did you become threatening to him during that part of it?

A I wasn't threatening. I did raise my voice because I told him, as Solicitor Smith did, how important this was and did explain to him the necessity for him to be honest and how important that was.

There were also some moments where, you know, there was softer talking and trying to, you know -- you know, let -- just conversation with him. But -- but it was -- that was basically the gist of the -- there was no yelling or no -- no threatening of any kind.

Q No in your face inches away --

A No, ma'am.

Q -- pointing --

A No, ma'am.

Q -- and asking them to tell the truth.

A No, ma'am.

Q Okay.

A I did ask him to tell the truth.

Q Okay.

A But I was not threatening him.

Q Okay. In regards to the talking to him, obviously, we talked during your prior testimony about you even calling him at one point baby trying to kind of be gentle with him, I think, is what you said.

A Yes.

Q Is that your standard practice?

A That's the way I was raised. I -- I have two sons that are his age. So I call my sons baby, and I call their friends that come over baby. And if it's a young lady I'll call them sunshine or something like that. It's just because I don't remember a lot of names. So it's just kind of like my standard. And that's how I was raised from my father and my grandfather.
Q And is that a way that investigators use to disarm people to make them more comfortable?
A Sometimes they will just to make them feel more comfortable and feel more relaxed, yes.
Q All right. And did you do any of that during your talk with Mr. Blackwood on the 5th?
A I did.
Q Okay. How long -- I'm sorry.
A No. Go ahead. I'm sorry.
Q I was going to say how long did that interview last.
A I don't remember the exact. As I testified earlier, that's the one that was recorded that my recorder broke.
Q Okay.
A I want to say it was around 15 or 20 minutes, but I don't remember the exact timeframe.
Q Okay. So we're not -- he wasn't in there for hours without --
A No, ma'am, no, ma'am.

Q Without lunch, without something to drink.
A No, ma'am.
Q Okay. At that point when you left had you arrested him or charged him with anything at the end of that interview?
A No. We asked him to go over to the sheriff's office to give an additional written statement, and he went, agreed to go over to the sheriff's office to give an additional written statement.
Q And at that point I think, as we discussed, he added new details in that statement, didn't he?
A Yes, ma'am.
Q And indicated that it was an accident at one point and he swerved and just suddenly he was on the hood. That was new, you said, during that interview mthat you had never heard that.
A That is part of it, yes, ma'am.
Q Okay. So there were new details even added hours after this.
A Yes, ma'am.
Q At that point from your understanding of the investigation he was the main witness to the physical event that led to Mr. Tessnear's death, is that right?
A Yes.
Q Okay. Y'all didn't have any D.N.A. on the truck?

A No, ma'am.
Q On his truck?
A No, ma'am.
Q You didn't have any -- any fibers that connected that truck to the death of Mr. Tessnear.
A No, ma'am.
Q So the only connection of that vehicle to the death of Mr. Tessnear was by Mr. Blackwood's statement, is that right?
A Correct.
Q Okay.
MS. WHITE: One moment please, Your Honor.
(Pause.)
Q Just for some clarification, Investigator Clark. When you say you Mirandize somebody, can you explain to us what that involves?
A We -- we were kinda -- I -- I was caught off guard by this situation. I generally -- I carry, generally carry, a Miranda card in my wallet. I had left my wallet in my car.
We have what we call a pre-interrogation waiver form. So I Mirandized him from one of those that we already had in the file. And it just basically goes over his rights, that he has the right to remain silent, that anything he says can be and will be used against him in a court of law. He has the right to talk to an attorney and have one

present with him while he's being questioned. And at the bottom section it says, you know, he -- waive and give up your rights and agree to talk to me at this time in reference to this case. You've not been threatened or intimidated or anything of that and -- and how far you finished in school and that you're able to read and write the English language.

Q And Mr. Blackwood voluntarily signed that?

A We didn't have one for him to sign, so I had to read him one.

Q Okay.

A But he agreed.

Q So but orally he agreed --

A Yes, ma'am, yes, ma'am.

Q -- to that. So during that he orally confessed to being the driver of the vehicle that killed Mr. Tessnear?

A Yes, he did.

Q And then hours later in his written statement he also confessed to being the driver of the vehicle.

A Yes, he did.

Q Okay. Thank you.

MS. WHITE: That's all I have at this time.

MS. ALBEE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ALBEE

Q Investigator Clark, when Brandon Blackwood came to the solicitor's office it was just for what you felt was trial prep, right?

A Yes, ma'am.

Q And so when he walked in and sat down in a conference room you didn't ask him if he had gotten high before, right?

A No, ma'am.

Q You didn't ask him if he had been drinking alcohol.

A No, ma'am.

Q You just sat there and let Spenser start asking his questions, right?

A Yes, ma'am.

Q And you said that this Brandon Blackwood that came in was a different person than you had seen before, right?

A Yes.

Q You said that he looked disheveled, right?

A Yes.

Q Sorry?

A Yes.

Q I think I spoke over you. I'm sorry.

A Yes, ma'am.

Q And that he also was yawning throughout it.

A Yes, ma'am.
Q Pretty apathetic, right?
A Yes, ma'am.
Q And you said that Spenser was there to do court prep, right?
A Yes, ma'am.
Q And I believe he even said he was there to ask some cross-examination questions, right?
A Yes.
Q To prepare for Angelita Wright's trial that was supposed to start just a week later.
A Yes.
Q And then when the more confrontational questions came out, this is when his demeanor changed again, right?
A Yes.
Q And did you observe this burping that was going on?
A Yes.
Q And at one point you left, right?
A Yes.
Q And then it was shortly after that that Spenser left, right?
A Yes.
Q And he came and met with you.
A Yes.
Q And he asked you to go in and Mirandize Brandon,

right?
A It was -- he asked me if -- he -- it was my -- he asked me what -- what we should do. And I -- that's when I told him I wanted to go back in and Mirandize him and I wanted to interview him.
Q Okay. So you Mirandized him, right?
A Yes, ma'am.
Q Now, at this point Spenser hasn't come back into the -- into the conference room, right?
A No, ma'am. He does not.
Q It's you.
A Yes, ma'am.
Q Investigator Lawson.
A Yes, ma'am.
Q And Brandon Blackwood.
A Yes, ma'am.
Q And you're in that conference room about 15 minutes, right?
A Yes, ma'am.
Q And during that 15 minutes is when Brandon Blackwood, you said, confessed, right?
A Yes, ma'am.
Q And you said that during that 15 minutes you had to raise your voice at some point, right?
A Yes.

Q And you were frustrated with him not taking it seriously, right?
A Yes.
Q And then you also said there was some softer talking as well, right?
A Yes.
Q Now, this confession -- this is the one we don't have the recording of, right?
A Correct.
Q Okay. So this is the one that you thought you were recording but we don't have it to listen to today.
A The recorder broke.
Q And then after this you took him to the police station, right?
A Yes.
Q Was he in handcuffs at that time?
A I do not recall.
Q You led him out the back of the solicitor's office, right?
A Yes, we did.
Q He didn't leave through the front, right?
A Correct.
Q He didn't ride with his grandfather to the police station.
A No.

Q Right?
A No.
Q He rode with you.
A Yes.
Q And then it was there that you had him write his statement, correct?
A Yes.
Q And when you had him write his statement you did record this one, right?
A It's video and audio recorded.
Q And you've been in law enforcement for 20-ish years?
A Just over 20 years.
Q And how long have you been an investigator?
A A month shy of 15 and a half years.
Q And being an investigator you go through different types of training schools or classes, right?
A Yes.
Q And some of these are on interrogation tactics, right?
A Yes.
Q And you know that there are some interrogation tactics where you're aggressive with whoever the suspect is, right?
A Correct.
Q And this is the fist-banging on the table, right?
A Yes.
Q The raising of the voice.

A Yes.
Q But there's also another type, right?
A Yes.
Q And it's to build rapport with the suspect, right?
A Yes.
Q To have maybe softer talking.
A Yes.
Q And to have some sort of rapport built with him, right?
A Yes.
Q And make them think that y'all are on the same team, right?
A Yes.
Q And this could be calm words like baby, right?
A Yes.
Q And you were using -- or you were speaking with Brandon in a softer tone, right?
A Yes.
Q And you were calling him phrases like baby, right?
A Right.
Q And throughout the time of him writing his statement you came in and out of that room a couple of times, right?
A Yes.
Q And you were reading his statement as he wrote it, correct?

A Yes.
Q Okay. And if you left something out, you went in and you told him what he needed to add back in that statement, right?
A I told him -- I would tell him that he needed to tell the truth as to what he told me earlier.
Q Okay. And that's the earlier conversation that we don't have the recording of any more.
A Correct.
MS. ALBEE: Your Honor, I have no further questions.
THE COURT: Anything at all?
MS. WHITE: Nothing on -- on redirect, Your Honor.
THE COURT: Sir, you may step down. Please be careful.
MS. WHITE: Your Honor, if we can approach about time.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
THE COURT: Madam Forelady, ladies and gentlemen, I conferred with the lawyers about time. We're looking at the clock here. We've got some folks who are witnesses to be here, and one or two of them are coming from Greenville and some other places. They're going to be here about 1:30.
So with that we're going to break until 1:45. And that way that will get them here and them get set up

without you having to waste any time. So we're going to reconvene at 1:45. So that's a good long lunch hour today -- 1:45. All right. Don't talk about the case.

Once again, we have the media with us, and we're always glad to have the media with us. But I use that to remind you please don't watch any news account, read anything about this case, listen to anything or likewise. Just it's -- it's important that you not do that. Okay. Don't talk about the case.

Madam Forelady, take the jury out for lunch.

(The following takes place outside the presence of the jury.)

THE COURT: Anything from the state?

MR. KOZAK: Nothing from the state.

THE COURT: From the defense?

MS. WHITE: Nothing, Your Honor.

THE COURT: Okay. We'll be in recess until 1:45. Anybody needs me, you know where I'll be.

(Whereupon, a recess was taken.)

MR. WHELCHEL: Your Honor, we have a matter of law that needs to be taken up at this time outside the presence of the jury.

We have a proffer that I think we need to try, we need to inform the Court of and take it from there, Your Honor.

THE COURT: Okay. Is it something we need to talk

about?

MR. WHELCHEL: I don't know if you want -- if you want us all to talk about it or if you want me to put it on the record. I mean, it doesn't -- I don't mind either way.

THE COURT: Let me see the lawyers and see what we've got.

(Bench conference held off the record.)

THE COURT: Mr. Whelchel.

MR. WHELCHEL: Your Honor, Brandon Blackwood in his testimony earlier during this trial claimed that he was coerced by, I believe, Investigator Clark and Solicitor Smith.

At the conclusion of his testimony I approached Attorney General Albee and asked her if that was the first time that they had heard him claim that he was coerced by those two individuals. Of course that's the first time they had -- she had heard those words coming from him, and she told me or indicated that it was.

Based on my understanding of his testimony and the fact that that is entirely different from what -- what has been told to them prior to that, we would seek to use them or to call Ms. Albee and/or Mr. Kozak -- I haven't talked to him specifically about this -- as potential witnesses in this case to impeach Mr. Blackwood.

And I want to make it clear, Your Honor. I am not

claiming in any way, shape or form that Mr. Kozak or Ms. Albee have done anything unethical or wrong or any of the bad words like that. I've known them both for years, and good friends.

But as counsel for my client when that particular witness gets on the stand and all of a sudden says -- in particular reference to Investigator Clark and the solicitor who was prosecuting the case at the time that they coerced him, I think we need to be able as counsel for my client, our client, to explore that avenue and to impeach his testimony with their testimony. And that would be my proffer, Your Honor.

MS. ALBEE: Thank you, Your Honor.

Obviously, we oppose being witnesses in our own trial considering we are representing the state, so then become witnesses. Obviously, it poses some sort of disqualification that we would be in at that time.

Aside from just opposing us being witnesses, Your Honor, there is, in fact, a disc that was turned over to the defense in discovery, is the polygraph that Brandon Blackwood, with him, with Lieutenant Woodcock.

Ms. White for the defense counsel actually played portions of that to impeach Brandon Blackwood while he was on the stand.

During that video he specifically had asked why he

would have said that he did it if he didn't do it. But first, Your Honor, polygraph examinations, he states that he was not driving. So the -- the investigator there specifically asked them why he would change his story then.

At that point he goes into describing being coerced, even stating that he would have said whatever they wanted him to at that point in time, referring to the investigators taking his confession or what was perceived to be his confession at that time.

So that information was, in fact, turned over to the defense. In my discussion with Mr. Whelchel, came over as we knew he was going to say that. And I said what, coercion, and he said yes. And I thought he was specifically talking about the word coercion. That's not a word that I've heard Brandon Blackwood use before. It doesn't sound very germane to the language that he uses. So I laughed and said no.

And then we also even spoke about another word that he used that didn't seem very natural to his language. So as far as that goes, that's what that conversation was in reference to.

However, there is that disc that was in their possession that was turned over throughout this -- or throughout the course of this investigation, Your Honor, where we does state that he did feel that they were -- and

I'm paraphrasing at this point -- but somewhat attacking and that he would have said whatever the investigators wanted him to at that point in time. And that is in their possession.

Therefore, we contend they had that prior to the cross-examination of Brandon Blackwood. They chose not to go into it at that point in time.

Your Honor, it would be improper for us to be witnesses in our trial for that specific purpose since they did have that information prior to Mr. Blackwood testifying.

THE COURT: Anything?

MR. WHELCHEL: No, sir.

THE COURT: I'm not going to -- I'm not going to allow the lawyers to be called as witnesses and that would -- to -- to impeach him.

That may well cause a mistrial, which would be drastic in nature in this -- in this trial. It would also be cumulative because without objection, and actually with the consent, it's been stipulated to the audio and the video and all of the phone records that have already been put in.

So there's already ample evidence for which to impeach that particular witness. He himself -- and we're outside the presence of the jury -- but he himself made several conflicting comments and statements, as well as Solicitor

Smith when he was on the stand earlier also offered up conflicting statements that he gave along with Investigator Tom Clark.

So you're protected on the record, but it's denied.

MR. WHELCHEL: Thank you, Your Honor.

THE COURT: Thank you.

Anything further?

MS. ALBEE: Nothing from the state, Your Honor.

THE COURT: We'll have the jury.

(The following takes place in the presence of the jury.)

THE COURT: Madam Forelady, jury ready to go?

THE FOREPERSON: Yes, sir.

THE COURT: All right. Yes, ma'am.

MS. WHITE: Thank you. May it please the Court.

The Court the defense could call Tom Slovenski to the stand.

TOM SLOVENSKI, having been first duly sworn, testified as follows:

THE COURT: Sir, once you're situated there if you'll adjust that microphone, tell your -- tell us your name, and spell your last name for my court reporter, please.

THE WITNESS: Sure. It's Tom Slovenski, S-L-O-V-E-N-S-K-I.

THE COURT: Thank you.

MS. WHITE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. WHITE

Q Mr. Slovenski, I want to start off by asking you a little bit about your background. Tell me what you do right now for a living.

A I am a SLED licensed digital forensics examiner.

Q And what does that encompass?

A I specialize in mobile phone forensics and cell tower acquisitions, the reading of the C.D.R.s and the interpretation and analyzation of them in court testifying.

Q Okay. Tell me a little bit about your educational background if you wouldn't mind.

A I'm a graduate from Bob Jones University, 1986. I was a police officer for 15 years. I went through the academy in Columbia. I was also a police officer in Midlothian, Texas, right below Dallas. I did 15 years as a police officer, retired out and then started my own company.

Q And how long have you been doing that?

A For cellular forensics, I've been doing that ten years. Before that I was a private investigator for five.

Q Okay. And what kind of training do you do to learn how to do the cellular forensics and the cell tower mapping?

A Yes, ma'am. In 2007 mobile forensics, as we call it, was just making a start, a head way. The federal agencies

were doing it, but a lot of the smaller police agencies were not. And I noted of no one in South Carolina that was doing mobile phone forensics.

So I went up to Purdue University on my own dime and learned from one of the premiere trainers, Dr. Richard Misslin of Purdue University. And I was taught mobile forensics, the basics.

Back then it's not as pronounced as it is now. So we were just learning from scratch.

And from there I learned it on my own. I produced my own course in it, certification course, and certified officers in the state. I was the very first private entity in South Carolina to bring mobile forensics to this state.

Q I imagine as the years go by and technology increases you have to continue to do training, is that right?

A Yes, ma'am. In 2009 we started to get inquiries, not just from private or defense counsel or -- or the prosecution but from police agencies and other attorneys as to cell towers and how to interpret the records.

At that time I went to Minnesota and was trained by Brent Bailey who was a premier trainer at that time and then got recertified in 2011.

And then last year I was certified as a -- as a subject matter expert by the Zetx Corporation in their program, which I will show you, and also in cell tower

records, analysis and mapping.
Q And is that -- you referenced a program that you're going to show us. Is that a software tool that you use?
A Yes, ma'am. The program that I'm going to show the Court and the jury and the judge is one that's called Trax, T-R-A-X. It's produced by the Zetx Corporation out of Arizona.

The Zetx Corporation was founded by also a retired police officer who worked with the marshals and A.T.F. and developed his own mapping program.

It's very -- how should I say? It's very complicated if you don't know what you're doing, but it is also very easy to present for settings such as this. And it is very, very accurate.
Q Okay. Tell me about what kind of licensing you have, or certifications.
A Yes, ma'am. In South Carolina to be a forensics examiner, a private one, you have to be licensed by SLED. That or you have to be a police officer. They have said anyone else, that does not count. So I've been licensed with them since 2002. I was a certified police officer. I was certified S.R.O.

And then on the forensics side I've been certified as a mobile forensic examiner. Also, been certified as a cell tower records analyst and examiner. And also I trained in

it. I've trained literally hundreds and hundreds of police officers throughout the world.

Q What areas or what facilities or groups have you provided training for?

A I recently provided training for the circuit court judges at the annual South Carolina Bar Conference. This one was held in Greenville. And I presented there.

I've also traveled around the state and presented training in cell tower forensics and mobile phone forensics to numerous public defender agencies.

I used to work with the state department and was with them for a couple of years and traveled abroad and taught mobile forensics to foreign allied police departments.

Q Have you developed any course work or any kind of programs, I guess, that would help others even if you weren't there?

A Yes, ma'am. I've also for the South Carolina Bar produced eight training videos that were used on their own demand network of training.

I've also taught in other conferences, other attorney-judge conferences, as well as wrote a book, the very first one for police officers, back in 2013 called "Cellular Forensics for First Responders."

It's published on Amazon. And we have sold hundreds of those, and even they have been used abroad. It's used

presently for a D.O.J. training. And we're quite proud of it.

Q And that's department of justice, is that right?

A Yes, ma'am. I'm sorry.

Q Just to clarify.

A Yes, ma'am.

Q In addition to that, any other additional publications or programs you've been involved with that you think are important to know?

A Yes, ma'am. I've written 14 different articles on mobile forensics, which are published on my website.

I've also, like I said, have produced my own certification program, which I utilized. I've taught throughout the United States police officers on mobile forensics. And that's pretty much the extent of it.

Q Now, have you testified for defense or prosecutors prior to today?

A Yes, ma'am, I have.

Q Have you been qualified as an expert in the circuit court?

A Yes, ma'am, I have.

Q And is that here in South Carolina?

A Yes, ma'am, I have.

Q And have you worked for both sides of the fence, I guess?

A Yes, ma'am, I have.
Q Okay.
MS. WHITE: Your Honor, at this time the defense would move to qualify Mr. Slovenski as an expert in cell phone forensics and cell tower mapping.
MR. KOZAK: No objection from the state.
THE COURT: Ladies and gentlemen of the jury, this witness is now qualified as an expert in cell phone forensics and cell phone mapping.
Once again, normally a person cannot give an opinion unless they have been qualified as an expert by education, training or experience. This, again, does not mean you must accept his opinions. You must give whatever weight you deem appropriate to his opinion.
Yes, ma'am.
MS. WHITE: Thank you, Your Honor.
Q Mr. Slovenski, I know that you have some information that you have produced that is on a computer. We can start that up I think.
You also indicated you wanted a white board. Do you need us to set that up for you now?
A No, ma'am, not at this time.
Q All right. It may take a minute to warm up.
A That's fine.
Q We didn't have it on earlier, so. While that's

warming up I am going to grab. I believe we see some lights coming up there.

MS. WHITE: Can we cut off some lights in the courtroom, Your Honor to -- I think it's a little -- can everybody see that fairly clearly on the jury?

Okay. Definitely can see it now.

A Okay.

Q Just to kind of give us an idea, Mr. Slovenski, tell us a little bit about what we're looking at, just this screen.

A Sure. Okay. This is google earth, and on it we are imposing the cell tower records of a particular device. Those records -- if I may show what they look like.

Q Certainly.

A Okay. Y'all just hang with me.

Q And tell us how you received these records.

A Yes. I received these records through your office, which I was told came straight from the prosecution.

What you'll see up here, this is a T-mobile C.D.R. C.D.R. means call detail record. It's not billing records.

Okay. These are engineering records that are produced by each of the cell service providers -- AT&T, T-Mobile, Verizon, Sprint, P.C. -- Metro P.C.S., etc.

Okay. So what happens is T-Mobile comes to us in two formats. They'll come to us in a P.D.F. format and also in

an Excel format.

Okay. Now, every provider is different. AT&T will give it to you in P.D.F. and text. Sprint'll give it to you in just Excel, and so will Verizon.

Okay. But one of the things that's particular about T-Mobile is, okay, first of all, you'll have the date here. And what I'm going to call these just for clarification purposes are transactions, whether it's a text, whether it's a phone call, whether it's a call forwarded. We're just going to call it a transaction, okay, for want of a better term.

All right. Each transaction that comes from that device -- now, as you'll see right here if I can point that out -- right there -- that's the mobile telephone number of these records.

Okay. So the phone that was used in this mobile telephone number, the traffic of that device is in these records and is listed per line.

You have the date of the transaction; you have the time of the transaction; you have the duration; you have what kind is it, is it incoming or outgoing; who's calling who; who called.

And we are going to go over here a little bit. Now, you have what's called the IMSI. That is the sim card number. That's a number. It's not what you see on the

outside. It's actually on the inside. Stands for the international mobile subscriber identity, also known as a sim card, because T-Mobile is what's called a G.S.M. network.

You take Verizon. They're a C.D.M.A. G.S.M. is global system for mobility. C.D.M.A., code division multiple access.

So, anyway, but they handle calls differently. Okay. So T-Mobile has a sim card. Well, when the transaction goes through and hits the tower, T-Mobile registers, okay, this device bearing this number has this sim card in it. And, by the way, also here then has the serial -- well, we'll call it the serial number. It's the international mobile equipment identification number. That's the handset social security, for want of a better way to put it. Okay. It's not necessarily the serial number. This is a code 15 digits IMSI. I mean, I'm sorry. IMEI. And the other one is an IMSI.

Now, they'll also tell you was the transaction completed or did they get knocked off, did something happen, was it answered. Sure enough. Yes or no.

Okay. And it says the disconnecting party. It'll tell you who stopped it.

All right. Then you have what's called the switch name and the first LAC and the first I.D. And then you

have the first azimuth right here.

Now, how that works is this. Maybe I do need that white board after all, because I want to show you what this means if it's all right with Your Honor.

THE COURT: Yes, sir.

(Whereupon, the witness left the stand.)

A The best way to do is just draw it out.

THE WITNESS: Let me know if you can see it.

Your Honor, how would you like -- would you like for me to just put it over there? How would you like that?

Q You can angle so that the court reporter hear you and the jury can see.

A I've got a big mouth. I'm sure she'll hear me.

Okay. Okay. Here is what we've got. A tower when you're looking at it, you notice how you'll see different sides to it. It's not straight up. It has on top what would be basically sides like this. Metallic sides. As we get into it I'll show you a metallic.

Okay. What happens is most towers are three sided. Now, you have omnidirectional towers, which means if you just see a cell tower and it's straight up and it's just got a little thing on top, that means it covers 360 degrees, all around. But most of the towers you're going to see, including the one that's right down the street here, okay, is going to have sides to it.

Now, this is if you were a bird looking over the top of it. And they have what's called a site -- alpha, beta, gamma. Don't ask me why they do that, because I really don't know why they get those designations. That's just the way they are.

Now, these sides cover usually a 120-degree mark. Okay. So if I may, we're just going to do this this way. I'm sorry. Went the wrong way. Okay. We're going to take that off.

Now, when it says sector or the first LAC, the first cell I.D., it may say this is tower No. 1, 2, 3. And it may say this is sector one, and then they have sector two, and then they'll say sector three. So far?

Okay. Now, when you're talking and your call is hitting this side of the tower, for instance, we're just going to say side one. And, by the way, they all aren't situated like this. What they do is they have to turn them. The engineers get up there, and there's a lot of work. They have to turn these sides to get what's called due north. And how do they know that? By the azimuth.

Azimuth is the middle of the sector. So that way there's an evenness on the side. In this case you would have 60 degrees here, 60 degrees here.

So if the records say that the defendant made a call on side three and this side was mapped, something would

have been wrong. It would had to have been on this side.

Now, there's a misconception that has been going on for years about cell towers, and I want to correct that right here, right now.

Cell towers and how far they can reach depends on a lot of different items. We call it attenuation. Okay. Attenuation. Big word. What does it mean? Stuff gets in the way -- stuff gets in the way. Buildings, trees, a forest, topography, geography, a hill, water, weather. All of these have a bearing on the reception of that tower and that side as you're making your call.

Now, another thing that is -- a lot of people have been told, and it got thrown out by the Supreme Court -- is what's called granulitization. And that is because I'm closest to that tower therefore I'm hitting that tower. That's not necessarily true, because you have, again, attenuation.

Look at the time of day. How many people was on -- were on that one side that time of day you made that call. And/or was the tower being worked on. They may have taken the tower down to fix it, to update it. So you got switched over to another tower.

So the theory of granulitization, which was the nearest tower is the one you're going to be on, has been thrown out as unscientifically reliable.

The program I'm going to show you has passed Dabert-Frye standards here in the United States.

Q Okay.

A But when they say the azimuth, what they're talking about, ladies and gentlemen, is that degree, okay, in between here. In this case it would be 60 degrees, and that's the middle of the tower. That kind of helps point you in the right direction. Does that make sense?

Q It does.

A Okay.

Q Now, Mr. Slovenski --

A Yes.

Q -- as you're sitting down -- are you finished with the board?

A Yes, ma'am. I was going to put it away.

Q Okay. We'll get it. I'll have somebody get it.

(Whereupon, the witness returned to the stand.)

Q Is that, what you just described, is that why when you're doing cellular mapping you don't see a perfect circle?

A That is correct, yeah, because most of the time you're dealing with three sides.

Now, also remember that as you're moving, you're moving from one sector then usually to another sector. It's called handoff. And many times you will see calls

that are mapped where it looks like one's right over the top of the other.

What happens is that person was probably moving, and as they moved the tower changed. You don't hear it because it's a millisecond. But you -- when you get switched over you're being moved by the provider from one tower to another.

That's why they overlap, because the last thing they want you to do is to go to another provider, because, hey, they dropped my calls all of the time and I don't like that.

So service is of upmost importance, and so that's why you will see many times where things are overlapping each other.

Q Okay. Now, tell me. The records that you received from us and that phone number, were you informed as to who those records applied to or whose phone those applied to?

A Yes, ma'am.

Q And can you tell us who these records are for?

A Ms. Wright, the defendant.

Q And did you have the opportunity -- tell us a little bit, first, before we go into -- about how T-Mobile when they deliver the information, the time that they give you.

A Yes, ma'am. I'm glad you brought that up. I meant to bring that right there to the Court's attention.

You will notice, ladies and gentlemen, and, Your Honor, that it says here that the records below are reflected in universal time code, also known as U.T.C.

Okay. This can be a real pain because the way it works is this. We're in Eastern Standard Time. Has anybody ever heard of Greenwich Mean Time or U.T.C.? Okay. We're off from that time, depending on daylight savings time or not, anywhere from four to five hours. So we have a minus four or a minus five.

So in this case whenever you see the time on the T-Mobile record you have to minus five hours. Now, to show you what that looks like would be here, because this is what we did for the defense. We were able to go ahead and translate, for want of a better term, the U.T.C. time into Eastern Standard Time. And so you will notice right there it says Eastern.

Now, when we get looking into the records, these lines right here, the line number that you're seeing right here on the left-hand side, that's going to be important. Just keep that in mind, because I'll show you exactly how that works.

Q Okay. And tell me what else you look at when you, I guess, convert records or you look at the records they've sent to be able to get them into a place that they can be used in a situation like this.

A Right. What I look at a lot of times is, now, these -- this was copied because I leave the originals back at the lab, okay, on the master hard drive. So what I'm bringing here is a copy of what I've got.

So what I will look at are the names. If it says C.D.R. meditations, I know that that was from T-Mobile. And usually when it comes that way I'm already knowing, okay, I know who the provider is even before I open it up.

And then, number two, it doesn't look like it got messed with.

So these look to be true and accurate records. And then as I look more and more in there I look for anything that's missing where it normally would be. And in this case everything seemed to be fine.

Q Okay.

A So I took these records as valid.

Q Now, tell me this. Specifically, without -- I guess without getting into specifics, if there's a gap in time, what could that mean?

A A gap in time could mean many things. It could mean that the handset lost power, somebody turned it off, that they proceeded into an area where there was no coverage.

Some people turn -- like myself, I turn my phone off at night. So, you know, between 11:00 o'clock and 7:00 a.m. there's going to be nothing coming out of my

phone. If you turn power off, it's not hitting the tower.
Q So if a phone has died it's not going to reflect any tower location.
A You are correct.
Q Okay. In regards to the information we talked about and what we were looking for, can you share what our discussion was in regards to what -- what we're looking for, I guess, as to Ms. Wright's phone records specifically?
A You were -- from what I understand of our -- of our conversations and correspondence, you were looking to see where was Ms. Wright's device between the hours of 2:00 a.m. and 3:00 a.m. on December 27th of 2015.
Q Okay. And were you able to -- to look at that and determine? Could you pull up, I guess, the map for us?
A Sure.
Q And go ahead and kind of show us that to begin with.
A Okay. This here are the entire -- is a map of the entire records. Would you like to see that or just the two to three?
Q Sure. The entire records. That would give us an idea.
A What -- what I use, ladies and gentlemen, is what's called Trax. Trax is used by over 350 law enforcement departments right now across America including the secret

service who just signed on, as well as the internal revenue department.

Trax has been a godsend to us mappers and investigators. Before we would have to take every line and map it by hand.

What Trax has done is it takes a lot of that from us and we're able then to concentrate more on the actual content and as to see as to someone's movement, approximately where they were or their device was, that sort of thing.

In fact, I am the corporate partner with Zetx, and so I speak as an expert for other cases to validate the program since I've been through all of their training and have gotten their expert certification.

This has been used in many, many cases, one very locally that I'm not going to give you the name. If I were to tell it to you, you'd know it instantaneously. But let's just say it found a lost girl. And it was used by a police department. The detective I know personally. He and I were both training together up in Hickory. And they were -- it was also on T-Mobile records at that. And I'll just leave it at that.

But what I can tell you is, ladies and gentlemen, this thing is the most accurate program out there. And a lot of the police departments are jumping on it. I'm, in turn,

responsible for any public defenders, any attorney offices, any insurance agencies. Anything that's non-law enforcement, then I'm given to it to follow up on.

Q Okay. Now, what time range did you receive records for Ms. Wright?

A Okay. They range anywhere -- I'm sorry. They started right here at actually Christmas Day 2015 at 7:03 p.m.

Now, that time you see right there, ladies and gentlemen, is the converted Eastern Standard Time. Okay. That's not U.T.C. We've already done the hard work there.

Q And, obviously, it's in military time, so we're checking our 12 hours.

A That is correct.

Q Okay.

A And it ends on December 27th of 2015 at 6:59 p.m.

Q Okay.

A Now, I was given the charge of mapping certain key locations, one of which was Cleveland Street.

Q And do you recall what Cleveland Street represented?

A If I remember correctly that is supposed to be the home address of Ms. Wright.

Q Okay.

A Okay. And then I was given Oakland Street and Cemetery Road, I believe is what it is called.

Q Yes.

A So I placed that. And then I was given, as you can see right there, something over, Cowpens. And then I was given the Scotchman.

And what I like to do just be on the safe side is I like to drag my little guy down here and just show everybody. See, there's the Scotchman right there. So, and then if we go back around --

Q And if you could, stop for a minute.

A Sure.

Q Just go back to the left a little bit. That's a -- it looks like a cigarette from some kind of little convenience store over there on the left where it says for sale.

A Over here?

Q Yes. That white building.

A Here.

Q I guess the one in the middle with all of the signs, yeah.

A The one for sale.

Q Yes.

A Tobacco outlet.

Q Okay. And then to the right of that, what do you see there?

A That appears to be some sort of cafe, it's labeled --

Q Okay.

A -- at the time google went through.

Q All right. And as if you were to move on across the street, is that the Hardee's?
A Yes, ma'am, it sure is.
Q Okay. All right. We're trying to just get ourselves oriented to where we are with that.
A Sure. I was going to say if we come down here, you know, we'll hit a road.
Q And to the left right there, that is Oakland Street --
A Yes, ma'am.
Q -- or Cemetery Road. Excuse me.
A Uh-huh. What I can do is show you very quickly right there. That's Cemetery Road, Cemetery Street.
Q Thank you very much.
A Yes, ma'am.
Q Now, can you go ahead and show us for the hours of 2:00 to 3:00 what we can -- or what you come up with with locations for Ms. Wright's cell phone?
A Sure. What -- what I'll do is -- please bear with me.
What this is, ladies and gentlemen, is a little timeline, and I can go through. And as you see the time's changed up at the top. That's where I can show you exactly where the device --
Q Well, and let me back up then.
Let's -- let's start, if we can, with about 9:00 p.m. on the 26th.

A Got it. 9:00 p.m. That's about -- it's really sensitive. Is that cool right there?

Q That's perfectly -- 8:59 is perfect.

A Okay. Let me pull it back out a little bit.

Now, do you want me to explain how this coverage works first?

Q Sure. Please.

A Okay. Ladies and gentlemen, what you see here, this is what's called radio frequency coverage.

Okay. A cell tower puts out its signals by radio waves. Radio waves aren't necessarily flat. As you'll know from school days when you -- you had to take science classes and they did all of those sorts of things, radio waves jump around. They can move.

Okay. They almost breathe. And I call this a cloud, which is totally different than what is being used as Your Honor may have seen in other cases, which was the older method where all they did was take a tower and they just put two lines out of it.

A cell tower goes -- it -- it bleeds over past those lines like I showed you right there. So this is a more accurate portrayal of how a cell tower covers an area.

This one here, as you'll see, that is the defendant's home location, and this here is where there was numerous bits of traffic. And each one, as you'll see, is labeled

here.

These are the lines I told you about on the excel sheet, and I said just kind of keep them in line. So this way we're able to verify date, time. It says up here on the map -- let's go back to our excel sheet -- verification all across the board for accuracy.

Q If you were to click on one of those numbers, that would then correlate to a date and time and some kind of transaction on the phone records.

A Excellent. Like I did right there. This one here, you'll see this is who the provider was, T-Mobile. Here's the time. And we put start time and sometimes we have end times. It depends on the provider, whether they'll give us that information or not.

As you can see here, this one was 12/25/15 at 7:37:54. All right. The target number ended in 5645. It was an incoming call from 9062. Well, actually it wasn't an incoming call. It was an incoming text message, S.M.S. Gave the duration.

Now, T-Mobile no matter if that text message was five seconds or whatever, they're only going to -- they're going to put 60 seconds because that's how they charge out if you were on a per text basis. They just charge you out a minute. AT&T used to do that a lot.

Here's the IMSI; here's the LAC. Okay. Then whoever

the examiner was, this here being myself, that's then showing who performed this. And that's how each one is now.

Like here, that's how many transactions was going on up there, basically, between the hours of 7:35 p.m. and 8:59 p.m. So there was a lot of traffic going on.

And as you can see, the tower covers the area of the defendant's home and goes out only to a particular amount of range.

Now, you'll hear some people say, well, if you go anywhere from two miles to fifteen miles. Yeah. If you're in Montana. Okay. But when you've got buildings and you've got forestry, things like that can get in the way.

This one here basically goes as far as six miles, which is pretty good. Okay. But not all of them are going to do that amount.

If you were to go downtown Greenville right now to the skating rink, the ice skating rink, face the skating rink and look at the upper right-hand side on the side of the building, and you will see a cell tower. Yeah. I know. I live a boring life. And that is because it's sandwiched in between two big buildings. Nothing can get into it. So the provider wants to keep service to that area so they don't lose subscribers. So they put up a little cell tower.

So that's how the providers will put the towers out to meet a need. And then throughout your contract with them they are always monitoring your phone to see how far away you are and to bring you even better service. Okay. I'm sorry.

Q No. That's fine. I appreciate the information. It's more than I could ever imagine or figure it out on my own. So thank you.

A Now, you said between 2:00 and 3:00.

Q Let's see. Let's -- let's go ahead and look at the 2:00 and 3:00, yes.

A Okay. When --

Q And this will be on the 27th.

A 27th, yes, ma'am.

Okay. Now, as you can see how the phone is moved around, okay, I'm going to put the N-1 at about 3:07. And what I can do is I can look here. Let me bring it in just a little more so that you can see. Okay. Right there. Okay. 2:07 to 3:07. Is that good?

Q That's right.

A Okay. There is the coverage area. As you can see, the tower is situated right here. And I always like to show so everyone knows I'm not making it up. And you know -- don't want to work with us. There we go. There she is right there.

Q And so that is the tower located near the defendant's home that most of these calls were used on.
A Yes. All of these.
Q All of these.
A All of this traffic between 2:00 and 3:00 was on that tower. If there was another tower, it would be seen.
Q Okay. Now, can you show us, zoom out the map?
A Sure.
Q Show us in relation to the Scotchman and the Cowpens location.
A Yes, ma'am.
Q Where that is.
A Okay.
Q So in your expert opinion from the hour of two -- I think you said 2:08 to 3:07 a.m. the defendant's phone was located in what area?
A In this area that's portrayed -- in this estimated area portrayed by the map.
Q Okay. And that is near Cleveland Street in Pacolet.
A It encompasses Cleveland Street in Pacolet.
Q In and around that area.
A Yes, ma'am.
Q Okay. And it's not located in Cowpens or at or near the Scotchman.
A No, ma'am. That would be under another tower.

Q Okay. Let's go and look if you wouldn't mind for me and go back a little bit earlier in that evening maybe starting at -- just to kind of give us a range of how the phone moved from 8:00 p.m. earlier that evening.
A On the 26th?
Q On the 26th, yes, sir.
A Okay. So basically when we say 8:00 p.m., we're actually looking here at 6:47, because what I did is I put a little space in here so we can catch everything in that hour.
Q Within an hour. Okay. So everything we're looking at encompasses an hour, right?
A Yes, ma'am, uh-huh. Everything you see will be within an hour's time. Okay. As we move -- okay. I'll go back a little bit because if I'm not careful this thing will move here.

Okay. So there's 7:47, is where it ends. Okay. Then 8:10.

Q So that's -- area seems to reflect that the phone does show that it's in the Cowpens area closer to the 8:45 time period.
A Correct, between 7:47 and 8:46. If you wanted to be more exacting, what I can do is I can look here. And 4:29, 4:26, 4:23. So at 8:35.
Q Okay.

A So within that hour space this is where that phone was.
Q Okay. Take us a little bit further on that evening. Now, tell me. The phone seems to go towards downtown at some point. And at one point it seemed like it was located on Highway 9 in between downtown and Pacolet.
A Are you talking about right here?
Q Right there and then if there was another time -- I think with another little bubble. We'll find that there. Right there. The one where 4:55 was.
A Yes, ma'am.
Q Yes.
A Uh-huh. Let me just pull this out a little bit. Try to get that all for you. There you go.
Q And that shows an area near downtown Spartanburg, is that correct?
A It's what it appears to me, yes, ma'am.
Q Okay. And about the 10:30 range.
A Yes, ma'am. It would would've been -- let's try to grab one of these for you. Very good.
Q Okay. And from that point on can you show us where the phone traveled?
A Okay. What I'm going to do is I'm going to really serr it up right here so we can get this individual. Okay. You'll see. All right. First it's going toward downtown.

Now, you notice the -- the numbers are -- are getting bigger. Okay. 468, 470, 471, 472. That shows me movement. Okay. And you'll notice how -- you remember I said how the clouds -- I call them clouds for want of a better term -- will overlap each other.

Q Right.

A That's how a cell phone works. It's based on cells. Hence, the word cell phone.

Q So just indicating, the cell phone is not static in a location setting there. It's potentially in a car being mobile.

A Yes, ma'am. In this case you could see that within this little space of time it's in downtown Spartanburg and then heading back toward the Pacolet area.

Q Okay.

A Proceed?

Q A little more. That'll be fine. Yes.

A Sure.

Q Now, there's no time right there. There's no showing. Does that mean the phone was potentially off?

A Could have been off.

Q Okay. So there's no records for this time period.

A Could have been off. Somebody could have gone to bed. Attending to --

Q Right.

A -- or going to the restroom. It could be of anything.
Q But the phone prior to, immediately, these gaps appeared to be traveling from downtown Spartanburg down Highway 9 toward Pacolet.
A That is correct, ma'am.
Q Okay.
A Right there. Okay. What'll happen is that the only -- transactions are only registered when the phone is utilized.
Q Right.
A Either incoming or outgoing.
Q And so it picks up again around the 2:00 a.m. timeframe, as we said, in around the Pacolet area.
A Yes, ma'am.
MS. WHITE: If you'll allow me, beg the Court's indulgence for just a moment.
THE COURT: Yes, ma'am.
(Pause.)
Q Just if you would indulge me just a little more.
A Sure, sure.
Q And show us after this 3:00 a.m. timeframe of the phone being in Pacolet, where did -- what additional time do we have?
A Sure. Okay. Let me pull back a little bit here and just give a little bit more space. Okay. So we're at

2:19, moving, 2:43. Okay. It's now moved from Pacolet over to -- toward back downtown.

Q Downtown Spartanburg.

A And that's at 3:08 a.m.

Q Okay. All right.

A Do you want to go further?

Q Just a little more, yes, until about 5:00 a.m., or 6:00, timeframe.

A Okay. There's 5:00 a.m. right there.

Q Okay.

A And there's no activity.

Q No activity.

A Yes, ma'am.

Q Take us up to about 6:00.

A Yes, ma'am. Okay. 5:55.

Q Okay.

A Downtown area. I don't know the Spartanburg area well.

Q Right.

A So I'm -- I'm just assuming.

Q Yes.

A Okay. And --

Q And really that's -- that's all I need right there.

A Okay.

Q I appreciate it.

So the phone in your expert opinion between the hours of about 10:00 and 11:00 to 5:00 a.m., can you give us an overview of where it seemed to travel if you can recall that? That might be jumping a little bit more but --

A Right. Well, I can remember it being downtown and then heading back toward her residence.

Q Right.

A And then later -- early, early morning -- coming back to the downtown Spartanburg area.

Q But at no point during the 11:00 p.m. to 5:00 a.m. time period do we see the phone in Cowpens, do we?

A No, ma'am. We see it at 10:33, and then it's -- there's nothing after that.

Q Okay. Thank you.

MS. WHITE: That's all at this time I have for this witness, Your Honor.

CROSS-EXAMINATION

BY MR. KOZAK

Q Mr. Slovenski -- am I saying that correctly?

A Yes.

Q Mr. Slovenski, you're being paid for your work here today with the defense, aren't you?

A By indigent defense.

Q Okay. How much are you being paid to be here today?

A I've been paid just the regular standard rate.

Q What is that?
A $250 an hour.
Q All right. So about how many hours have you worked on this?
A I've worked already ten hours on it.
Q Okay. So that's about $2,500?
A Yes, sir.
Q You wouldn't say T-Mobile, probably isn't in the business of tracking people, correct?
A They say they're not.
Q Right. They're in the cell phone business, right?
A That is correct.
Q Is it true that all of the information that you gathered here today -- I believe you called it engineering records -- is designed to better improve their networks?
A It's to -- it's to validate and establish certain calls, the transactions, as well as provide for the police officers and the courts the established records for the tracking of a phone in historical fashion.
Q So what -- the information you reviewed and you spoke on is to track cell phones hitting on towers, correct?
A Cell phone hitting the towers.
Q Not the actual phone itself moving.
A Well, the phone would have to be on the tower as it's moving. Do you see what I'm saying?

Q Uh-huh.
A That's why you'll see the movement on the screen.
Q The cell phone only hits on the cell tower when it's in use, correct?
A That is correct. There are other records, but they were not produced.
Q And used would mean an incoming call?
A Could be an incoming call.
Q Outgoing call?
A Yes, sir, uh-huh.
Q Incoming text?
A Yes, sir.
Q Outgoing text.
A Yes, sir.
Q This phone did not have a G.P.S. tracking software, did it?
A I do not know.
Q You did not receive any G.P.S. tracking software for this phone, correct?
A I did not get anything on the phones other than what you see here.
Q What is a switching center?
A Switching center will be a location where when the call comes down it'll hit that little shack that's at the bottom of each tower. We call them radio shacks. And then

it will sent -- be sent to a central area. It could be located nearby; it could be located far away. And that's where they -- it's switched and then diverted, okay, which way is it going to go, because you could be, say, in Pacolet and judge could be in Simpsonville, and that's how it gets relayed.

Q And the switching center depends on all sorts of factors, correct?

A I'm sorry? Could you say that again?

Q These switching centers, they depend on all sorts of factors.

A Yes.

Q What are some of the factors that they take into account?

A Well, they're going to take into account where the call came from, where the call was going, what is the shortest, best route for the transaction to take place.

Q Isn't it true that the software these switching centers use is mostly proprietary?

A I don't know that part -- that part, sir.

Q What does proprietary mean?

A Proprietary means it is established for a particular use and is usually not given out to the public.

Q Is it not true that this software decides on which tower the cell phone will connect to?

A No. It shows which -- which tower the cell phone connected to.
Q Okay. Is it true that this software takes into account single strength, atmospheric conditions and maintenance schedules?
A It takes into account the medidata that was given to it on the records and looks at the particular area to establish what would be the estimated range.
Q And how does software calculates all of these different factors will affect which cell phone tower you actually connect to, correct?
A Okay. Say that one again.
Q In the way this software factor calculates all of these different factors will cause which tower you will connect to, correct?
A No. The software has -- our software has no bearing on her phone. Our software just reads what the records told us.
Q Not your software, the software that attaches to the cell tower.
A That's for T-Mobile to tell you. You'd have to get a T-Mobile rep.
Q You don't actually know how that works.
A No. I just do historical readings.
Q Okay. Isn't it true that the range of any given cell

tower is proprietary information?
A Not necessarily. See, we have -- we're able to, if we're in an area, do a driveby. In this case there was no driveby done by the police on the tower. So that's why everything's estimated.
Q But the cell tower, you don't actually know what the range of these cell towers is unless you did your own driveby, correct?
A Yes, that is correct.
Q So you don't what the range of these towers in this case are.
A This -- that's why it's estimated, looking at the topography, geography and the area and any other medidata that we receive from T-Mobile.
Q What's the range of a normal cell tower, I mean, average? Where can they go?
A I can't even give you that.
Q Can't give me the minimum to the maximum?
A No. Oh, minimum could be, you know, a half a mile. Maximum, it could be, like, in I believe it's Montana where we had one that we covered, and it is 40 miles.
Q Forty miles. So if you made a call here it could hit a cell tower 40 miles away.
A No, no, no. You got to look at the factors that are here.

See, what happens is when they put the tower up they have a particular area that they want covered. Okay. There wouldn't be the need. And I could show you all the other T-Mobile towers in this area within a 20-mile range. But the fact is you wouldn't need those other towers if a tower could go 40 miles. You'd just put one tower up and, by golly, you wouldn't have to put another tower up for another 40 miles.

Q Right.

A But that's not the case.

Q But you yourself don't know the range of these towers.

A I know the estimated range.

Q Okay. So let's talk through some of the terms on the record I'm going to switch to.

A I probably have it if you want me to put it up on the screen.

Q I'm going to use mine.

A Okay.

Q Smaller. It's a smaller version.

A Okay.

Q There we go. Let's just run through some of the terms that I saw on some of the records.

A Uh-huh.

Q What does M.S. originating mean?

A Mind if I pull it up so I can see it?

Q Yes. It's already up there, so.
A It's not going to get up there? Do you want to pull this out and put it in?
Q Do your thing.
A Well, I can show it to you right here.
Q Yes.
A Okay. We were just looking at it, I believe. You're talking about the original T-Mobile records?
Q Yes, sir.
A Okay. M.S. terminating, M.S. originating?
Q Yeah. What does M.S. originating mean?
A Originating.
Q Yes.
A It's originating from her device, hence that's why it's called outgoing.
Q So it's an outgoing voice call.
A Depends on whichever one you're looking at.
Q What is -- M.S. terminating mean?
A Terminating means that it was incoming, and her device. It ends on her device.
Q Okay. What is M.S. originating S.M.S. and M.S.C. mean?
A Okay. S.M.S. It's an S.M.S. text message.
Q Would that be outgoing or ingoing?
A It depends on whatever they're saying in the direction

column.
Q Okay.
A I took it off.
Q Okay. It says originating. Does originating in that word mean anything to you?
A Originating. It's coming from the outside.
Q Okay.
A It's originating from the outside.
Q What does M.S. terminating, S.M.S.M.N.S.C. mean?
A Terminating means that it was incoming to her device.
Q Okay. What about call forwarding? What does that mean?
A Call forwarding is that someone tried calling the device and it was -- either the line was busy or for some reason it got forwarded to either another number. Usually it's voice mail.
Q Okay. And let me show opposing counsel what's been marked State's Exhibit 12.
(Pause.)
Q I'm showing you what's been marked State's Exhibit 12.
A Uh-huh.
Q This is just a condensed version. Can you tell me what that is?
A Yeah. It's --
Q I can blow it up for you.

A Oh, this is the same, yes. Okay. This appears to be the same thing as what we have here that I showed the jury, the originating.
Q All right. And what is the first number on it, the excel for you?
A Right here 478.
Q And what's the last number?
A 500.
Q Right.
MR. KOZAK: At this time I'd like to move State's Exhibit 12 into evidence and publish to the jury.
THE COURT: Any objection?
MS. WHITE: Without objection, Your Honor.
THE COURT: State's 12 is admitted without action.
(Defendant's cell phone records marked State's Exhibit No. 12.)
Q This is going to be small.
A Wow. That row number was 478.
Q 478 to -- let's concentrate on 478 to 486 right now.
A Got it.
Q All of this -- what is this word right here?
A Let me see what you're saying. Call forwarding, it appears.
Q I'll just refer to the number because you have it on your list, right?

A Okay. Go ahead.
Q Okay. 478 says call forwarding. What does that mean?
A From what we know from the --
Q From the records.
A From the records. Call forwarding just means that, something got forwarded.
Q Okay.
A It didn't -- it -- they didn't connect. It got forwarded somewhere else.
Q A phone being turned off could cause a call forwarding response, correct?
A That could be.
Q And that would mean that that voice call was sent to voice mail, correct?
A Could be.
Q So if a phone's records had a phone -- had a phone in call forwarding for, let's say, three hours would that mean the phone could have been turned off for three hours?
A Could be.
Q And while that phone is turned off it can't receive phone calls, correct?
A No, sir.
Q Or make phone calls, correct?
A No, sir.
Q Or send text messages, correct?

A No, sir.
Q Or receive text messages, correct?
A Correct.
Q So if a text is sent to a phone while it's turned off the phone won't receive that text until it's turned back on, correct?
A That's correct.
Q All right. Actually the phone will receive all the texts that were sent to it while it was turned off soon after it was turned off -- it's turned back on, correct?
A Depends on the network.
Q Okay. So in the records you reviewed beginning on line 478 --
A Uh-huh.
Q -- where I was pointing to --
A Uh-huh.
Q -- the phone says call forwarding, correct?
A Yes, sir.
Q What time do the records indicate that began? This is in U.T.C. so --
A That would be approximately 11:19 on the 26th.
Q Okay. And the call forwarding continues at 11:55, or I'm sorry. Yeah.
A Line 479?
Q Yeah.

A That's what -- that's what the records say.
Q And again at 12:22 a.m., correct?
A That's what it says.
Q And again at 12:22 a.m.?
A Yeah.
Q And again at 12:23 a.m., correct?
A Hang on just a second. I want to look at something here. Okay. Please repeat your last question.
Q And again at 12:22 a.m., correct?
A 12:22 a.m, that appears to be call forwarded.
Q And then again at 12:23 a.m.
A Correct.
Q And again at 12:55 a.m.
A Correct.
Q And again at 1:11 a.m.
A Correct.
Q And again at 2:01 a.m.
A Correct.
Q And lastly at 2:04 a.m.
A Correct.
Q And these are all forwarded incoming calls because they're going straight to voice mail, correct?
A Actually they're outgoing calls. If you'll look at column E there --
Q Uh-huh.

A -- they're all -- a lot of them that you would --
Q Would that be the phone call being outgoing to her voice mail?
A Let me do one thing here. Let me. I've got to try to see here. Okay. It appears in some of these that she was trying to call out. 478, correct, or line 478? That was one of the ones in question.
Q Yeah.
A Okay. Line 478 is call forwarding. It's an outgoing call. I can only tell you what the records say. And if it's saying it's outgoing and it got call forwarded, that's what it's -- that's what it's saying.
Q Okay. All right. There is no clomit [sic] of voice mail to forwarded text, correct? Like you can't forward a text to a voice mail box or a text.
A No, sir, not to my knowledge.
Q So any texts received during this time if the phone was off wouldn't be received until the phone was powered back on, correct?
A That is correct.
Q And when they did come through the phone it'd be in -- probably in quick succession to one another kind of like --
A Possibly.
Q And the records you reviewed beginning on line 487, it says M.S. terminating, M.S.M. and M.S.C. right here. I

think it's line 487.
A Yeah. I got it right here in front of me.
Q Okay. That means an incoming text, correct?
A Yes.
Q All right. And when do the records say that text was received?
A Says it was received -- okay. It says 7:09. So we take five away from us, and that would be 2:09 a.m.
Q And the text message, that was received at 2:09:38, a.m., correct?
A Yes.
Q So two seconds later.
A Yes.
Q And the text after that was one second later.
A Yes.
Q And then two seconds after that the next text comes through, correct?
A Yes.
Q And two seconds after that the next text comes through, correct?
A Yes.
Q And two seconds after that the next text comes through, correct?
A Yes.
Q And one second after that the next text comes through.

A Actually two.
Q And then -- okay.
A Okay. I know what you're saying though, yes.
Q Included in this group of texts are two texts at 2:09 a.m. from the number (864)606-2580.
A Okay. You're looking at --
Q 2:09, line 488.
A 488, 489.
Q I think it's -- my number's a little off -- 488 and 489, yeah. That looks about right.
A 488, 489, yes, sir. I got it.
Q What number were those texts from?
A Calling number was ending in 2580.
Q 2580. All right. Just a moment. I put State's Exhibit 3-B, which has already been put into evidence. Will you look at -- read that number I'm pointing to, please.
A The last four are 2580.
Q Is that the number that sent those messages that arrived at 2:09?
A Let me see. (864)606-2580. Those numbers match.
Q And who is the person who sent that text?
A I really don't know. I've never seen those records before.
Q Okay. Will you just read what name that is?

A Brandon Dip -- ditch --
Q Okay. Thank you.
Did you also review the phone report for Brandon Blackwood?
A No.
Q Okay. On line 498 of the phone records, she received a text from (864)376-4810. Do you know this number belongs to?
A No, sir. I sure don't.
Q Also, you did not review Brandon Blackwood's records to corroborate any of this information you had?
A I was never provided them.
Q Okay. So you were not given records for the number 4810, ending in 4810.
A No, sir.
Q So you're not aware of who that number belongs to.
A No, sir. I sure don't.
Q All right. What time did this last text message occur --
A You talking about --
Q -- at 498, line 498?
A No. 498 happened at 2:18 a.m. on the 27th of December of 2015.
Q This causes the phone to ping off a Pacolet tower, correct?

A Ping is kind of a --
Q Well, it's called a hit? What word would you use?
A There was -- there -- the defendant's device was utilizing that tower, the Pacolet one that I showed you. And from it came this incoming text message.
Q And what time was that?
A 2:18 a.m.
Q The next activity on her phone is at 3:08 a.m., correct?
A That is correct.
Q And this causes her phone to ping off or to utilize the Spartanburg tower, correct?
A I'd have to go back and look. It's one to the west --
Q Right.
A -- toward -- going toward Spartanburg. I can pull up a map.
Q Looks like 499 at 3:08.
A I'd have to look on the map.
Q Okay. Cool.
A Okay. Yep. Okay. Okay. I got it.
Q All right. So and this causes her phone to ping off the Spartanburg tower, correct?
A It's tower 499.
Q All right. And where is that located?
A It looks like it's located more toward downtown

Spartanburg.
Q Okay. So between 2:18 a.m. and 3:08 a.m. there was no activity on her cell phone, correct?
A That is correct.
Q Between 2:18 a.m. and 3:08 a.m. she could be anywhere, correct?
A I can't agree with that. That's too --
Q According to her cell phone records for 50 minutes between 2:18 and 3:08 a.m. you have no idea where she is.
A Correct.
Q All right.
MR. KOZAK: No further questions.
MS. WHITE: Thank you, Your Honor. Just brief redirect.

REDIRECT EXAMINATION

BY MS. WHITE

Q The government was asking you about the fact that she received a number of text messages, it seemed like, at 2:09 a.m.
A Uh-huh.
Q And the implication was, was that her phone had been off and they all came in in amass time.
Even if they all came in at amass time, what tower was her phone located or utilizing at the time she received those text messages at 2:09 a.m.?

A I'll give you -- it would be -- it would be that Pacolet tower, the one that we showed you previously and zoomed in on.
Q Okay. So whether or not she received text messages as a result of a phone being cut off and all coming in a group or not, the tower at the time of 2:09 that those came in was in Pacolet.
A Yes, ma'am.
Q Okay. In regards to -- they were talking about some call forwarding. I just wanted to verify. When we said something about column E --
A Uh-huh.
Q -- being outgoing --
A Uh-huh.
Q -- that references the defendant's phone making an outgoing call, is that right?
A Correct, that is correct.
Q Okay. So where it references call forwarding, it's your expert opinion that she had made phone calls that went to -- it could be voice mail. It could be the phone had been turned off.
A Right.
Q Okay.
MS. WHITE: Your Honor, that's all we have at this time.

THE COURT: Anything at all?

MR. KOZAK: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. KOZAK

Q You showed on your map that time period during the call forwarding between 4:19 which is -- which is 11:19 p.m.

A 11:19 p.m.

Q The call forwarding section.

A On the 26th?

MS. WHITE: Your Honor, I think this is outside the scope of redirect.

THE COURT: I don't know yet. Let's see.

A 26th, sir?

THE COURT: Keep it within the scope, now.

MR. KOZAK: Yes, sir.

Q 478 where she was referring to the call forwarding calls.

A Okay.

Q From 11:19 to 2:08, all of those call forwardings. On your map --

A Yeah. I'm trying to find them right here.

Q That phone showed no activity, correct?

A That is correct.

Q So any texts received during that time would not have

come through until later, correct?
A Okay. Say that one more time.
Q Any texts she would have received during that time would not have come through, correct?
A That is correct. The phone would have been --
Q Including the two texts from 2580.
A If it's part of those right there.
Q Okay.
MR. KOZAK: No further questions.
THE COURT: Thank you. Sir, you may step down. Please be careful.
Madam Forelady and ladies and gentlemen, we've been working hard here for about an hour and a half. We're going to take our afternoon break at this point in time. It'll be a good 15, maybe 20, minutes or so while you refresh yourselves and get some ice water and whatever you need. Let the bailiffs know. They'll be happy to help you.
Don't talk about the case. It's certainly not at an end. Thank you.
Madam forelady.
(The following takes place outside the presence of the jury.)
THE COURT: Let's be in recess for about 15 or 20 minutes.

(Whereupon, a recess was taken.)
THE COURT: Ready for the jury?
MS. WHITE: I think so, Your Honor, yes, sir.
MS. ALBEE: Yes, Your Honor.
THE COURT: Let us have the jury.
(The following takes place in the presence of the jury.)
THE COURT: Madam Forelady, any matters from the jury?
THE FOREPERSON: We're good.
THE COURT: Good.
All right. Yes, ma'am.
MR. WHELCHEL: The defendant calls Gail Moffitt.
GAIL MOFFITT, having been first duly sworn, testified as follows:
THE COURT: Good afternoon. Tell us your name for the record, and spell your last name, please.
THE WITNESS: Gail Moffitt, M-O-F-F-I-T-T.
THE COURT: Thank you.
Yes, sir.
MR. WHELCHEL: Thank you, Your Honor.
DIRECT EXAMINATION BY MR. WHELCHEL
Q Gail Moffitt, you are the deputy clerk of court for Spartanburg County?
A That's correct.
Q And how long have you been deputy clerk of court for

Spartanburg County now?
A I can't remember exactly how many years I've been deputy. I've been employed for 50 years, but I can't remember how long I've been deputy.
Q A good long while.
A A long while.
Q At my direction did you pull the file in the clerk of court's office for Mark Blackwood -- Mark Brandon Blackwood?
A I did.
Q Okay. And do you have that with you?
A I do.
Q Okay. Does that file reflect an arrest warrant for murder in January of 2017?
A Ask me that question again. I'm sorry.
Q Does the file reflect an arrest warrant for murder --
A Right.
Q -- for Mark Brandon Blackwood in January of this year?
A That was when it was filed in our office, January the 6th of 2017.
Q And it was served when?
A It was served according to this January the 5th of 2016.
Q Okay. And in that file you have only an arrest warrant, is that correct?

A I have a copy of the arrest warrant. I don't have the whole file with me.
Q Okay. And do you have an indictment, ma'am?
A According to the computer there is not an indictment.
Q Okay. So the case has not been indicted yet.
A According to our computer, it has not.
Q And in order for a person to be tried in this courtroom there has to be an indictment, is that correct?
A That's correct.
Q Okay. How many times has the grand jury met since he was arrested, ma'am?
A Bear with me a minute.
Q Sure.
(Pause.)
A Nineteen.
Q Okay. Thank you, ma'am.
Answer any questions either of the attorneys for the government might have.
MS. ALBEE: Your Honor, we have no questions.
THE COURT: All right. Ma'am, you may step down. Please be careful.
THE WITNESS: Can I be excused?
THE COURT: You may be excused.
(Whereupon, the witness was excused.)
MS. WHITE: Your Honor, according to our schedule we

may need to approach, I think, to talk about our additional witnesses.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady and ladies and gentlemen of the jury, I'm told that there's probably only two, or possibly three, more witnesses in this case. And the -- and the -- one of them is a law enforcement officer who, again, is tied up on another matter and cannot be here. It's 4:00 o'clock. Cannot be here today. Can get here first thing in the morning. So you would anticipate hearing from that officer tomorrow morning.

With that, we are at a stopping point. Once again, I caution you. Please don't pay attention to any of the news media. Again, we have them with us today, and we're always happy to have them with us.

But don't read anything, try to do any research or listen to anything. Certainly as I told you earlier, you know, my wife was telling me that she thought there was a singer that had died, and she saw it on the internet and it turned out not to be true. He did die about two days later, but he was not dead when she saw it. So I just say that to remind you that what we see sometimes is -- is not exactly accurate, and you must -- it must be accurate.

So please don't -- don't try to do any research.

Please don't read any information about -- or any media coverage.

Don't talk about it yet. It's not at an end. After you have rendered a verdict in this case you can talk as much or as little about the case as you choose, but not at this point in time.

With that, we're going to excuse you again for the evening. Once again, I'm going to ask you to be here at 9:00 o'clock ready to go. If you need to be here at 8:30 or any time between 8:30 and 9:00, I'm going to already be here as I always am. And I'll be taking the bench promptly at 9:00. I'm assured that the investigator will be here first thing in the morning. You should expect to hear from.

Am I right, he'll be the first one?

MS. WHITE: Yes, Your Honor.

THE COURT: He'll be the first witness up.

Okay. So we'll do that at 9:00 o'clock tomorrow morning.

All right. Madam forelady, if you'll take your jury out and be excused for the evening, have a good evening.

(The following takes place outside the presence of the jury.)

THE COURT: Any matters from the state?

MR. KOZAK: Nothing from the state.

THE COURT: From the defense?

MS. WHITE: No, Your Honor.

I know that we've discussed my client testifying, whether or not. And I know that you generally have something that you'll share. I didn't know if you want to go ahead and do that before we break for the evening since we'll be discussing that perhaps overnight.

THE COURT: I'll be happy to do that while we have a few minutes.

Ma'am, I'm going to ask you to stand, please, and be sworn.

ANGELITA N. WRIGHT, having been first duly sworn, was voir dired as follows:

THE COURT: Ma'am, I'm going to let you stand where you are, but I'm going to ask you to speak loudly so that you can be heard by my court reporter. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: Now, you are Angelita Nicole Wright.

THE DEFENDANT: Yes, sir.

THE COURT: Ms. Wright, instead of this time -- my notes say at this time -- but probably tomorrow morning at some point I'm going to explain to you certain rights that you have because you have a choice to make, and that choice is to be whether or not you testify. Do you understand you have a decision to make in the morning? Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Ma'am, you have the right to claim protections given to you by the Fifth Amendment to the Constitution of the United States, which states in part: No person shall be compelled in any criminal case to be a witness against herself.

Also, you have the right to claim the protections given to you by Article I, Section 12, of the South Carolina Constitution, which states in part no person shall be compelled in any criminal case to be a witness against herself.

This means you cannot be required to testify in this case. You have the right to testify on your own behalf, but no one can make you do so. This is a personal right, and no person can waive this right except you.

If you decide to testify you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines the probative value of admitting the evidence outweighs its prejudicial effect to you, the solicitor -- or in this case the attorney general's office -- will be

able to introduce your record to attack your credibility.

If you decide to testify the decision on your part must be freely, intelligently and voluntarily made -- voluntarily made with the knowledge of the protections given to you by the constitutions of the United States and the state of South Carolina and the consequences of your decision.

If you decide not to testify I will instruct the jurors they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify.

Ma'am, it is entirely up to you as to whether or not you testify.

We're going to break for the evening. During that break I encourage you to speak with both of your lawyers about your decision as to whether to testify or not testify. But tomorrow I will ask you at the appropriate time for your decision. They cannot answer for you. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you, ma'am.

Anything further?

MS. WHITE: Nothing further from the defense, Your Honor.

THE COURT: We'll be in recess until 9:00 o'clock

tomorrow morning. If anybody needs me, you know where I am.

END OF PROCEEDINGS NOVEMBER 29, 2017

(Proceedings November 30, 2017)
(The following takes place outside the presence of the jury.)
THE COURT: Okay. Are we ready for the jury?
MS. WHITE: Yes, Your Honor.
THE COURT: Ready for the jury?
MR. KOZAK: Yes, we're ready.
THE COURT: Have the jury.
(The following takes place in the presence of the jury.)
THE COURT: Good morning, ladies and gentlemen.
Madam forelady, is the jury ready?
THE FOREPERSON: Yes, sir.
THE COURT: All right.
MS. WHITE: Thank you, Your Honor. May it please the Court. The defense would call Lieutenant Mike Woodcock to the stand.

MICHAEL GREGORY WOODCOCK,

having been first duly sworn, testified as follows:
THE COURT: Sir, once you are situated if you'll adjust the microphone and then tell us your name, and spell your last name for madam court reporter, please.
THE WITNESS: My name is Michael Gregory Woodcock, W-O-O-D-C-O-C-K.
MS. WHITE: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. WHITE

Q Lieutenant Woodcock -- isn't it?

A Yes, ma'am.

Q Okay. I want to make sure I'm right on that.

Tell us. Are you employed with the sheriff's office?

A Yes, I am.

Q How long have you been working for them?

A I have been working in the sheriff's office for 15 years.

Q Okay. Were you in law enforcement prior to that or has that been --

A Yes. I've been a law enforcement officer since 1988.

Q Okay. And during that time is there any way to estimate how many interviews you have done with witnesses?

A It would be thousands.

Q Okay. And during those interviews what -- are there methods that you use to talk with them? Is it the same kind of standard mode of operation for you, or what does it depend on as to how you interact with that?

A Yeah. I have a great deal of experience and a sense of training in standard interviewing techniques, and that's what I do. I do a standard interviewing technique in support of other investigators.

Q Okay. Do you recall interviewing Brandon Blackwood in this case?

A Yes.
Q And would it be accurate to say that the interview was on January the 11th of 2017?
A Yes.
Q And at that point what was your understanding of the -- the place of the investigation, I guess, and what Mr. Blackwood's role in this was?
A It was my understanding that he had given a statement to Detective Clark in which he admitted driving a vehicle which struck some people. And I was asked to do a confirmatory interview about that.
Q Okay. And when you met with him -- you're a tall gentleman. Were you standing up?
A Yes.
Q Okay. Were you sitting down?
A We sat down after we got into my room, yes.
Q And what -- what kind of interaction did you have with him? Was it a volatile, I guess, reaction -- interaction? Was it a fairly calm interaction?
A It was very calm.
Q Okay. Did you feel like you were able to develop a rapport with him?
A Yes.
Q Okay. During your interview with him did anything change in his story from what you understood it to be at

that point?
A Yes. Initially, he told me that -- in fact, he said he was not driving the vehicle, that a woman was driving the vehicle, which was completely opposite of what I understood to be the case.
Q Okay. And you continued with some interview with him, is that right?
A Yes, I did.
Q All right. And during that interview did he ultimately then change his story again?
A Yes, he did.
Q And changed it back to he was driving the vehicle?
A Yes.
Q During your interviews with him or your interview with him, tell me about the kind of information he was providing to you. Was it very vague; was it very detailed?
A It went back and forth in some areas of his discussion with me. He would be very detailed about the events of the evening, and then he'd get closer to the actual event. Then he'd become very vague. And he mentioned he had ingested a great deal of alcohol during that time period, but/and he was back and forth.
Q Had you asked him at this time if he had taken any kind of substance prior to your interview?
A I spoke to him about that, and he was under nothing

that I could tell.
Q Okay. And did he indicate at some times that he didn't remember what happened?
A Yes, he did.
Q And that he didn't remember if the woman was even in the vehicle at one point?
A That's correct.
Q Okay. Lieutenant Woodcock, at any time during your interview with him did you coerce him or intimidate him?
A No.
Q You didn't threaten him to make a statement that he hit Brent Tessnear?
A No.
Q Thank you.
MS. WHITE: That's all I have at this time, Your Honor.
THE COURT: Yes, ma'am.
MS. ALBEE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ALBEE

Q Lieutenant Woodcock, you said that he appeared to not be under the influence of anything when you met with him, right?
A Correct.
Q And you met with him on January the 11th.

A Correct.
Q But he did say that he had smoked previously about a week ago, right?
A That's correct.
Q Okay. And are you aware of when he was arrested?
A I can't recall.
Q And at first when he came in he told you that he wasn't driving, right?
A Correct.
Q And you did have some sort of an understanding of the facts of the case, right?
A Yes, ma'am.
Q Okay. Because you said it was your understanding that he was, in fact, driving, right?
A That's correct.
Q And during your interview with him you began to question him about that, right?
A Correct.
Q And would you say that you confronted him about him being the driver of the vehicle?
A I pointed out inconsistencies with the story, yes, ma'am.
Q And after you confronted him with those inconsistencies, that's when he changed his story, right?
A Yes, ma'am.

MS. ALBEE: Your Honor, I have no further questions.
THE COURT: All right. Anything at all?
MS. WHITE: Nothing more from the defense, Your Honor.
THE COURT: Sir, you may step down. Please be careful.
MS. WHITE: I ask that he released from the subpoena.
MS. ALBEE: No objection, Your Honor.
THE COURT: Sir, you may stay or go, whichever you choose.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you.
(Whereupon, the witness was excused.)
MS. WHITE: Your Honor, at that point the defense would rest.
THE COURT: The defense rests.
MS. WHITE: Yes, Your Honor.
THE COURT: All right. Let me see the lawyers.
(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)
THE COURT: Madam Forelady and ladies and gentlemen of the jury, the defense has now rested, which means they don't intend to call any more witnesses at that point.
I understand that the state may -- may call another witness at this time. However, this is one of those moments where I told you yesterday -- and you've already

seen it one time -- where I have to take up a couple of legal matters outside of your presence. I won't be but just a few minutes.

But, Madam Forelady, if you will, take your jury out. Don't talk about the case yet.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the state?

MR. KOZAK: Nothing from the state, Your Honor.

THE COURT: From the defense?

MS. WHITE: Your Honor, at this point the defense would just simply renew our motions for a directed verdict based on the arguments that we made yesterday at the close of the state's case.

THE COURT: Yes, ma'am.

MS. ALBEE: And, Your Honor, the state stands by their arguments that were made yesterday at the mid-trial point.

THE COURT: And you also are renewing your motion to quash the indictment for the murder and the hit and run.

MS. WHITE: Yes, Your Honor.

THE COURT: Okay. And for the -- and the state's position remains the same.

MS. ALBEE: Yes, sir, Your Honor.

THE COURT: All right. And for the same reasons already explained by the Court, those motions are denied

once again.

MS. WHITE: Thank you, Your Honor.

THE COURT: All right. Anything else?

MR. KOZAK: Nothing else.

THE COURT: You've got a rebuttal witness?

MR. KOZAK: Yes, sir, Your Honor. Just one.

THE COURT: And is that witness here and ready to go?

MR. KOZAK: He is. He's here.

THE COURT: Okay. We'll have the jury.

Do you want a minute?

MS. ALBEE: He can push it now. That's fine. You can go ahead and get them. It'll just take a second.

THE COURT: All right. We'll have the jury.

(The following takes place in the presence of the jury.)

THE COURT: All right. Ready?

MR. KOZAK: Yes, Your Honor.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

MR. KOZAK: The state calls Brandon Letterman.

THE COURT: Sir, you were previously sworn. You remain under oath.

THE WITNESS: Yes, sir.

BRANDON LETTERMAN, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOZAK

Q Please state your name.

A Murray Brandon Letterman.

Q And where do you currently work?

A Spartanburg County Sheriff's Office.

Q And how long have you worked in law enforcement?

A Be 14 years in February.

Q And what is your current position?

A Cell phone and computer forensic analyst.

Q And how long have you been in your current position?

A Seven months.

Q How many cell phone forensic exams have you performed?

A Close to, I would estimate, right around between 75 to 80.

Q Okay. And how many cell phones -- how many times have you analyzed cell tower information?

A Over my career as an investigator, probably 30 or 40 times.

Q And does this include cell tower mapping?

A Yes.

Q Have you had any training in this field?

A Yes.

Q What kind?

A For the cell phone tower map -- mapping we use a program called GeoTime, and I've received training through that company on how to use the software.
Q All right. So, as you said, what software are you familiar with to perform these cell phone exams?
A We use two types of software for the forensic examination. We use Cellebrite, and for the cell phone data records for mapping we use GeoTime.
Q And how long have you been using those programs?
A Cellebrite I've been using for seven months; GeoTime for about the last three months.
Q Okay. What training did you go through to use this software?
A Through Cellebrite, I'm a certified cell phone forensic analyst and a certified Cellebrite operator. That's a class that is presented through Cellebrite to be certified to use their software and their hardware. And through GeoTime I received training on how to utilize their software with the call data records.
Q And did you shadow anyone prior to entering this position?
A I did.
Q And was it in the same field that you're in now?
A Yes.
Q And who was that?

A That was Senior Investigator Lindsey McGraw.
Q And how long did you shadow him?
A I shadowed him for about a month before he retired.
MR. KOZAK: At this time I would like to tender Brandon Letterman as an expert in cell phone forensics and cell tower mapping.
MS. WHITE: I've got some voir dire, Your Honor.
THE COURT: Yes, ma'am.

VOIR DIRE EXAMINATION

BY MS. WHITE

Q And tell me again. Sergeant Letterman?
A Yes, ma'am.
Q Okay. You said that you got training in these programs -- Cellebrite and GeoTime -- as training in particular software, is that right?
A Correct.
Q How many days for training did you go through for the Cellebrite program?
A It was a week long.
Q Okay. So five days?
A Yes, ma'am.
Q Okay. How many days of training did you receive for the GeoTime software?
A That was a 1-day.
Q Okay. So you've had six days of training on how to

use software to do cell phone mapping and forensic exams?
A That's correct.
Q And you've been in this for seven months now. Have you testified in any trial at this point?
A No, ma'am.
Q And have you been qualified as an expert?
A No, ma'am.
Q Have you produced any kind of publication in this area?
A As far as?
Q In regards to any research that you've done or anything that you've researched and published --
A No, ma'am.
Q -- as response to that? Have you presented to any agencies or any -- any folks as an expert in this field?
A I would say -- I wouldn't say an expert. A couple of weeks ago I presented at a national homicide conference in Dallas, Texas, on a homicide case that involved cell phone mapping.
Q And you presented at the case. But were you yourself involved in the cell phone mapping?
A No, ma'am.
Q Okay. So you presented based on information you gained after.
A Correct. During the investigation, yes, ma'am.

Q And that was during the six days of training you have on these software programs.
A I beg?
Q I'm saying you presented information based on information you gleaned during your seven months in this area and your six days of training on this software, correct?
A Correct, yes, ma'am.
MS. WHITE: Your Honor, the defense would object to his qualifications as a cell phone forensic examiner and mapping. Your Honor, specifically, as well he -- his prior was -- prior -- previously called as a witness.
I don't believe he's received any additional training since that point that he was called as a witness that would allow him to be deemed an expert to come in as a rebuttal witness to our expert, Your Honor. So we would object to his qualifications as an expert and his testimony.
MR. KOZAK: Thank you, Your Honor.
I'll address the earlier calling of the witness first.
He was earlier called as a fact witness because he was involved in this case as a fact witness. Now he's an expert. He was later after he changed positions involved as a cell phone examiner in this case.
The qualifications under Rule 702 are knowledge, skill, experience, training or education. There is no

qualification for him having testified before a court. Every expert has to have their first time testifying in court. It is for these reasons that we think he is qualified as an expert and tender him as a witness.

THE COURT: The Court's going to qualify him over objection that he's a cell phone forensic examiner in examination and mapping.

Ladies and gentlemen of the jury, once again, a witness may give an opinion as an expert due to their skill, training or education. It is up to you to give whatever weight to his testimony that you deem appropriate.

MS. WHITE: Your Honor, just briefly for the record, are you also ruling on my motion to not allow him as a rebuttal witness?

THE COURT: I am -- I am going to allow him as a rebuttal witness. He was a fact witness previously. He's a rebuttal witness at this time.

MS. WHITE: Thank you, Your Honor.

THE COURT: All right. Yes, sir.

DIRECT EXAMINATION

BY MR. KOZAK

Q Are you a sergeant -- lieutenant? What's your --

A Sergeant.

Q Sergeant Letterman, did you by any chance review Brandon Blackwood's cell phone records?

A Yes.

MR. KOZAK: At this point I'm showing opposing counsel what's marked as State's Exhibit 1-A and 1-B.

Q Showing you what's been marked as Exhibits 1-A and 1-B. Can you identify what these are, first with 1-A?

A These appear to be Verizon wireless call data records.

Q Is that 1-A?

A I'm sorry. 1-A, correct. Yes. It appears to be ingoing and outgoing phone calls from Verizon Wireless.

Q And what is Exhibit 1-B?

A 1-B appears to be ingoing and outgoing text messages.

Q All right.

MR. KOZAK: At this time I'd like to move State's Exhibit 1-A and 1-B into evidence. And I'm going to publish to the jury later.

MS. WHITE: Without objection, Your Honor.

THE COURT: Without objection, they're admitted.

(D.V.D. marked State's Exhibit No. 1-A; D.V.D. marked State's Exhibit No. 1-B.)

Q Okay. I am showing you the same exhibit that was used earlier in trial with their witness. Can you identify what this is real fast?

A It's the call data records from T-Mobile.

Q Okay. And whose phone was T-Mobile?

A Angelita Wright.

Q If you look at lines -- all right. If you look at lines 478 all the way down to, I believe it's 486 it says call forwarding. What does that mean?
A Call forwarding on that means either the phone was off, either the phone was busy, someone attempted to make a phone call to that handset and then that call was forwarded to voice mail.
Q If it's going to voice mail, then why does it say outgoing right here?
A Because whenever -- with T-Mobile whenever you call in and the phone is busy or off it automatically changes it to an outgoing because it is now sending that message to the voice mail.
Q And what is this number, the call number, 1-805-637-7249?
A That number is the default forwarding number to T-Mobile's voice mail.
Q So that means all of these calls are going to voice mail?
A That's correct.
Q And none of them have any activity off any cell phone towers.
A That's correct.
Q Does this mean her phone is off?
A That -- it's a possibility, yes, that it's off.

Q What is the last activity on her phone prior to the beginning of the call forwarding?
A I think the last activity before the call forwarding -- I'm not exactly sure I know that. Do you have the page to it?
Q It is sometime before 11:02 p.m., correct? That's E.T.C. time.
A Correct, correct, yes. I believe the -- yes. That's E.T.C. time, so you substract five from that. The 11:19 is the first activity where it goes to call forwarding.
Q Okay. And the first time -- so the 11:19 is the first time a call is forwarded?
A Correct.
Q So her phone was turned off sometime between the time prior to this and 4:19.
A That is correct.
Q According to her phone records what time was her phone turned back on?
A I believe her phone receipt -- the first activity after it was from call forwarding would be 7:09 E.T.C. time. So if you substract it would be 2:09.
Q Okay. So what does that one line right before the -- where her phone is turned back on, what time is that?
A That's 7:04 E.T.C. time, but you subtract five. That would be 2:04.

Q So sometime between 2:04 and 2:09 her phone is turned back on.
A That's correct.
Q And according to the phone records exactly how long was her phone turned off?
A From going from -- you have to scoot it down. I believe that first -- from 11:19 until 2:04.
Q So about three hours.
A Roughly, yes.
Q Now, when her phone is turned back on does she receive a group of texts all at once?
A It appears that way, yes.
Q Between 2:09:36 and 2:09:50 she received about how many incoming texts?
A That would be one, two, three, four, five, six, seven, eight. I believe nine.
Q And so she received nine texts in 14 seconds.
A That's what it appears, yes.
Q Are two of those texts from 1-864-606-2580?
A Yes. You've got two of those. That's 7:09:38 and 7:09:39.
Q Whose number is that?
A That belongs to Brandon Blackwood.
Q And what time did the phone -- what time did the defendant's phone records indicate those texts arrived at

her phone?
A They arrived at her phone at 2:09:38 and 2:09:39.
Q Now, I'm going to put up Brandon Blackwell's [sic] phone records.
All right. So what exactly does this row right here indicate?
A That's the -- what they call the seizure date and time of the activity on that handset when the activity occurred.
Q And when is the last activity on Brandon Blackwell's phone?
A Keeping in mind these are Verizon, yesterday was explained that T-Mobile sends you records in U.T.C. time, so you have to substract five hours. Verizon Wireless actually sends them in Eastern Standard Time as you request. So his active is actually depicted correctly there. His last activity is at -- it shows there, I believe, 10:57.
Q Okay. Now, what -- this Exhibit 1-A is what part of his records?
A Those are the incoming and outgoing phone calls.
Q I'll put up his last page of incoming and outgoing texts. And at what time does he send his last two text messages on this phone?
A You have to slide it down.
(Pause.)

A The last two times that he sends the outgoing text message is at 11:17 and 11:26.
Q And what number were those texts sent?
A Those -- that was -- that's fine -- (864)540-5645.
Q And who does that number belong to?
A Angelita Wright.
Q The defendant.
A Correct.
Q According to Brandon's phone records was his phone active at 2:09 a.m.?
A No, it was not.
Q After this large group of texts the defendant received at 2:09, there's a text at -- after this large group of texts you received at 2:09, there's a text 2:10:28. What does that say there that?
A That's an outgoing.
Q What does that mean?
A That means that the handset is sending it out. It's actually sending a text message.
Q Does someone have to be operating a phone to send an outgoing text?
A Yes.
Q So at this time according to her phone records someone is using her phone.
A Correct.

Q After the outgoing text, what is the next activity on the cell phone?
A It's an incoming text.
Q All right. What time did the defendant receive that text?
A That incoming is at 7:10:31 U.T.C. time. It's track five -- correction. 2:18:32 is whenever that text is. It is an incoming text. I'm sorry.
Q Okay. And what number is that text from?
A Let me correct that.
Q Okay.
A You're talking about the first incoming after the outgoing?
Q Yes.
A Okay. The first incoming after the outgoing is going to be 2:10:11.
Q Okay. And what is the next text after that?
A The next text after that is at 2:18:32.
Q Okay. And what number is that text?
A The incoming text?
Q Yes, at 2:18.
A At 2:18 is going to be the (864)376-4810.
Q And do you know who that number belongs to?
A It belongs to Brent Tessnear.
Q And when is the next cell phone activity after that

text was received?
A It's going to be at 3:08:31.
Q So for 15 minutes after she receives a text from Brent Tessnear according to her cell phone records, we don't know where the defendant is.
A Correct. We don't know where the cell phone is. There's no way to tell where the defendant's at.
Q Thank you.
MR. KOZAK: No further questions.

CROSS-EXAMINATION

BY MS. WHITE

Q Sergeant Letterman, a couple of different things I want to ask you about.
One is when the state was asking you about all of those times that said call forwarding, they said something about the phone being off. You don't know that the phone was off, right?
A No. That's a possibility.
Q It could be that the phone had died?
A Correct. The phone would be off if it died. Correct.
Q If the phone is off and charging?
A Correct, yes.
Q Okay. So we don't know actually why the calls were going to forwarding at that point.
A Correct, yeah. There's no way to tell. There's

just -- the phone -- the -- the message could not reach that phone. So there was some reason that phone was off or busy or what have you. It was -- that's a possibility.

Q When -- you got these records last week. Is that the first time you reviewed them?

A Yes, ma'am.

Q Okay. And you're aware that they had them for over a year and a half at this point.

A Yes, ma'am.

Q Okay. And you reviewed them last week. Were you able to do the mapping for these?

A Yes.

Q And did your mapping also show that at 2:09 when the incoming texts were coming in that it was in or around Pacolet?

A On my mapping program the text messages were not able to be mapped off of the tower information for whatever reason. So it showed as what they call an interpolated event, which means it didn't capture the cell tower in that software. But the phone activity around that time was, yes, showing off the tower in Pacolet.

Q Okay. So not in Cowpens.

A Correct.

Q All right. So the time that Ms. Wright was receiving or sending texts messages in and around 2:09 a.m. up to

2:18 a.m. she was in the Pacolet area from what we understand.
A That's correct.
Q In regards to the text messages that Mr. Blackwood gave, you said that his phone stopped at -- let me see if I am correct. The last phone call was 10:57, is that right?
A That's correct.
Q Okay. And that the last text message was around 11:17 p.m. on the 26th.
A I believe there was 11:17 and 11:26, was his last cell -- text message activity.
Q Okay. Now, did you do the actual extraction on these phones?
A The actual forensic extraction, no, ma'am, I did not.
Q And I think we heard that Detective McGraw had done this -- or Investigator McGraw.
A That's my understanding, yes, ma'am.
Q Okay. And he told us about two different types of examinations that can be done, logical and physical.
A Correct.
Q Can you explain for us again the difference between logical and physical?
A Logical will extract a smaller amount than a physical. A physical extraction will attempt to extract everything off the cell phone. Logical is mainly, just recovers text

messages, call logs, contacts, things along those nature. It's a smaller scope extraction.

Q And from what I understand from his testimony, doesn't recover anything that might have been deleted.

A That's correct. Not a logical.

Q Okay. And from your understanding on Brandon's phone a logical examination was done, is that right, or extraction?

A I've never seen the extraction that was done on his phone.

Q Okay. If a logical extraction was done if text messages or phone calls or phone numbers or anything had been deleted, we wouldn't have recovered those, would we?

A Not a logical, no, ma'am.

Q Okay. Had they done a physical extraction it's possible that we could have gotten text messages or phone calls or records that may or may not have been deleted.

A That is possible, yes, ma'am.

Q Okay.

MS. WHITE: That's all I have at this time, Your Honor.

THE COURT: Anything at all?

MR. KOZAK: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. KOZAK

Q The record you just reviewed, those were not from the extraction, correct?

A No. Those -- those are call detail records that were sent from the -- the cell phone company.

Q Okay. So the cell phone providers of these two phones provided this, these records.

A That's correct.

Q Thank you.

MR. KOZAK: No further questions.

THE COURT: Anything at all about that one question?

MS. WHITE: No, Your Honor.

THE COURT: Sir, you may step down. Please be careful.

Anything at all?

MR. KOZAK: The state rests, Your Honor.

THE COURT: Anything at all?

MS. WHITE: No, Your Honor.

THE COURT: Madam Forelady and ladies and gentlemen of the jury, all of the testimony and evidence that you're going to receive in this trial is now before you.

Now, let me tell you what's going to happen next. We're going to take a break here. When I finish speaking here we're going to take a break. Don't begin to talk

about the case. It's not proper for you to do that at this time.

When you take the break I'm going to ask the lawyers to come up and make sure that all of the exhibits here are in order. You have seen madam court reporter label those. I'm going to ask them to come up and make sure that they're all here and everything is accounted for.

I have a few words with them. When you return to the courtroom I'm going to ask you to give your attention to the lawyers because they will make what's known as the closing statements to you, after which I will then charge you on the law, and after which you will retire to your jury room to begin deliberations.

So kindly give us about 10 or 12 minutes here. We'll be right back with you. And at that point you can expect about -- well, we'll take about 15 minutes because it takes about an hour and a half to charge -- argue and charge, about 90 minutes or so.

Okay. So take your break. Get some water, use the facility or whatever. When you return I'm going to ask you to give your attention to the lawyers.

Madam forelady.

(The following takes place outside the presence of the jury.)

THE COURT: Matters from the state?

MR. KOZAK: Nothing from the state, Your Honor.

THE COURT: From the defense?

MS. WHITE: Nothing from the defense, Your Honor. I'm sorry. Beg the Court's indulgence.

(Pause.)

MS. WHITE: Your Honor, just to ensure that we've preserved the record correctly, since the state has produced an additional witness we would like to renew our motions again to quash the indictments, as well as renew the motions for a directed verdict.

MR. KOZAK: The state stands on previous argument.

THE COURT: The motion is denied for the reasons that the Court has enunciated previously. You are protected.

Anything else?

MR. KOZAK: Nothing from the state.

THE COURT: All right. Let's take about -- let's take a good 15 minutes here.

Let me see the lawyers up here.

(Bench conference held off the record.)

THE COURT: Anything?

MS. WHITE: Your Honor, we do want -- the defense does want to make a motion.

THE COURT: Okay.

MS. WHITE: At this point, obviously, we have expressed our concern about the indictments and mentioned

that. We have talked to Your Honor at the bench.

Your Honor, the defense would make a motion to ask the state to elect which indictment they're going forward on.

At this point we believe that the indictments are contrary to each other. They're mutually exclusive, Your Honor, in our view.

The murder indictment requires malice aforethought or requires a specific intent to commit that crime.

If you look at the indictment for the leaving-the-scene-of-an-accident-resulting-in-death it says that she was the driver of a car involved in an accident resulting in the death of Brent Tessnear.

Again, the definitions' section of the statute for these motor vehicles does not define the word accident. And whenever there's not a definition for a specific word the legislature has held that you look to the plain and ordinary meaning. Black's Law Dictionary defines accident as an unintentional act.

Your Honor, their only witness has testified that Ms. Wright saw the victim, had a smile and gunned for him basically. That is an intentional act.

We would argue that if they're going to proceed without causing an issue with a potentially compromised verdict, Your Honor, and for a clean record, we feel that they should be forced to elect which indictment they're

going to proceed on so that we cannot run the risk of the jury being confused and resulting in an issue that would then cause a compromise verdict.

THE COURT: All right. Yes, sir.

MR. KOZAK: Thank you, Your Honor.

As we previously argued, the state's position on this is that the term accident is not what defines that statute. The term accident defines what happens before the illegal activity happens.

An accident happens, and then they leave the scene. The illegal portion of that is leaving the scene.

The specific indent of murder, malice aforethought, does not come into play in that. You can be guilty of leaving the scene of an incident, as well as murder.

Actually a case tried here awhile ago -- Sandy Westmoreland -- in the Court of Appeals, the Court of Appeals doesn't even use the term accident when they're defining the statute for leaving the scene of an accident. They use the term incident. They say South Carolina requires the driver of any vehicle involved in an incident resulting in injury or death to give his name, address and vehicle registration over to the other driver.

They don't even use did word accident. They use the word incident because they are saying that he can be guilty of both.

Further -- sorry -- further, she's not charging that it was an accident. She's not using accident as a defense in this case. She's saying she wasn't there, Your Honor.

THE COURT: Anything further?

MS. WHITE: Just briefly if I may, Your Honor, just to distinguish the State vs. Westmoreland case, Your Honor.

Obviously, we don't know what arguments were made by counsel presented to the Court. That was not the issue on appeal as to whether or not those were mutually exclusive or whether or not that was an issue.

However, I do believe the facts in that case are distinguishable from ours. In that incident the gentleman hit an individual, acknowledged that he hit that person, returned to check on the person, saw that he was either injured or already dead and chose to leave the scene, Your Honor.

At that point it's two separate incidents. And we would argue that, yes, that would be perhaps an incident that that would cause. But in this case, Your Honor, they're alleging one act. They're alleging one act, an intentional act to hit and kill Brent Tessnear. But yet they've got the indictment. And their indictment doesn't say incident. The indictment says leaving the scene of an accident with death, that she was involved in an accident resulting in death.

We argue again that they're mutually exclusive and they should be forced to elect.

THE COURT: Okay. Well, the -- I appreciate the arguments, but the Court is going to deny the motion, as I previously stated. And -- and I appreciate the arguments. I really do. But I think that I have fashioned the jury verdict form in such a manner as to -- as to take care of that. So we can make that part of the record if we need to.

MS. WHITE: Thank you, Your Honor.

MR. KOZAK: Thank you, Your Honor.

THE COURT: Okay. Let's also put on the record in case somebody wants to read it later, State vs. Lee from the Supreme Court, 147 S.C. 480, the parallel cite at 145 S.E. 2d. at 285. It's a 1928 case regarding election. And it appears that that would support the ruling of the Court.

Are we ready for the jury? Ready?

MS. ALBEE: Yes, Your Honor.

THE COURT: We'll have the jury.

(The following takes place in the presence of the jury.)

THE COURT: Madam forelady, is the jury ready?

THE FOREPERSON: Yes, sir.

MS. ALBEE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. ALBEE: I'm going to kill him. He doesn't deserve the ground that he walks on and he does not deserve the air that he breathes.

Those were the words said by the defendant just hours before her husband was run over by a car and left in the road to die, bleeding internally, hoping that his body was found, while she gets behind the wheel of a white truck, drives back to her house in Pacolet and gets out of the car with a grin on her face and leaves her driver's license in the driver's side of that door.

Now, we're at the point in the trial where Judge Kelly is about to instruct you on the law and ask you to return a verdict of guilty or not guilty.

We're asking that you find the defendant, Angelita Wright, guilty of the crimes of murder and leaving the scene of an accident resulting in death. And in order to do that we had to prove certain things to each of you beyond a reasonable doubt.

For murder, we have to prove to you that the defendant intentionally caused the death of Brent Tessnear with malice aforethought.

Now, what does that mean? Malice aforethought doesn't mean that she had this plan in her mind for years or for months or for days or for even hours. It means that the

killing was intentional, that it was willful, that it was purposeful, that she didn't have any justification for doing it.

Leaving the scene of an accident resulting in death means just that. There was some sort of a car accident that somebody died and that the defendant, she left.

And in order to prove those things to you we called several witnesses to the stand throughout this week, and each of them had a small piece of the puzzle, a small glimpse into the night of December the 26th of 2015 and the early morning hours of December the 27th.

And we heard the defendant -- and she was married to Brent Tessnear and that they had a history together. But at this point in time there were estranged. They weren't together any more. And we heard that she wanted to go from her place in Pacolet to his place in Cowpens to get the kids' Christmas presents. But she didn't have a ride, so she needed somebody to take her there. And she depended upon Brandon Blackwood.

And so for the first time that night she gets in Brandon Blackwood's white truck and they go over to Cowpens over to Brent's house. And you hear that this exchange is not pleasant.

This comes not only from Brandon's testimony but when Investigator Clark read you parts of Angelita's statement.

She said that she goes up and Brent's high and she's crying. She's trying to get the kids' Christmas presents but he says that he sold them for dope.

So she comes back to the car, and she's upset. She tells Brandon that Brent doesn't deserve the ground he walks on or the air that he breathes. And then she gets in the driver's side of the car for the first time that night. And they drive to pick up cigarettes and liquor -- Malibu Rum. And Brandon's sitting in that passenger seat, takes that Malibu Rum and he starts drinking it.

That encounter with Brent earlier in the night wasn't the first thing that Brent did, because you heard that then the defendant found out that Brent posted some pictures on facebook, some pictures of some female body parts. And this -- this made her mad. This made her angry. She was tabbing them.

And so she drives over to Carol Barzilay's house, and at Carol Barzilay's house is Carol and Hannah Padgett and Amy Padgett. And they tell you that she comes speeding into the driveway driving that white truck, slams on the brakes, that she opens up that car door and mini bottles fall to the ground and it looks like she's been drinking.

And she is upset. She's yelling about what Brent did, yelling about the photos on facebook. She goes and she grabs Hannah Padgett's phone. She texted on facebook,

looks at it.

And even according to what Investigator Clark told us, Angelita said she posted on his facebook page going to whip your butt if you don't take that down.

Then she grabs her phone and she talks to Brent. She's telling him I'm going to kill you, you need to take these down off facebook, you've got two minutes to take these down. She gets off the phone with him.

And Carol and Hannah and Amy, they tell you that when she leaves she gets back in the driver's side of that car but not before Brandon Blackwood asked her, hey, do you want me to take care of this for you. And she says, no, I can handle my own. And she gets back in the driver's side of that car again and they leave. Still angry, still upset.

And then for the second time she goes back to Brent Tessnear's house. She goes there, and she's knocking on the door trying to figure out where he is. He's not there. And Johnathan Sellars pulls up, and she starts asking him, hey, do you know where Brent is, call somebody, see if you can figure out where he is, because she's hunting him down. She's trying to find him. She's trying to confront him. So she's knocking on the door, and she's having people call. She can't find him.

So she gets back in the driver's side of that white

truck with Brandon Blackwood and Johnathan Sellars and Johnathan's girlfriend. They go to a trailer in Pacolet looking to see if that's where Brent is. And they don't find him there.

Brent [sic] tells us that they then drive to another place, and she's looking for someone to help her beat up Brent.

They then go back to Brent's house again for a third time that night. They go to Johnathan's, and they just walk right down the road to Brent's.

She's trying to get in through the front door, and she can't. She's on a mission. So she goes to the back door and somehow gets in there. And she's inside for a little bit. She comes out with a bike for her kid and she takes that bike and she puts it in the back of that white truck that she's been depending on to get her everywhere she needs to go all night long.

And according to Investigator Clark, this is where Angelita's statement changes a little bit from everyone else's. According to what he told us, she said that she then goes and hangs out with her friends Robert and Marie and then meets up with Bridget, Brent's sister.

But you heard from Marie. You heard from Bridget. Marie told you that they weren't hanging out between the hours of 11:00 and 1:00 and 2:00, that it was a little

after 3:00. But she's finally with the defendant.

And then Bridget gets up on the stand and tells you that she sees her earlier in the night at the Spinx and the Arby's but that she doesn't pick her up until it's closer to 5:00. They're going to the flea market. And she's with her in her car when the coroner calls at 5:57. She just picked her up. They were driving to go get breakfast.

She wants you to think that she was with these people during the time that Brent died and her timeline's off, because she wasn't with them until after Brent had already died.

Now, the burden of proof in this case has rested here at this table the entire trial. The defense doesn't have to prove a single thing to you. They didn't have to give any opening statements; they didn't have to question any witnesses. They surely didn't have to call any witnesses of their own. The burden rests with us.

But when they do, when they do put up witnesses, when they do question witnesses, you get to ask yourself if what they're saying makes sense. So let's walk through some of the points that have been made throughout this trial.

It's been said that Brandon Blackwood was some sort of mastermind behind all of this, that he's the one that said Angelita did it and that he did it to get himself out of trouble -- Brandon, the kid that you saw sit here for a

couple of hours. You got to listen to him speak. You got to watch how he reacted. Not really what you would think of as some sort of mastermind.

And if Brandon is making this up to somehow exonerate himself or to say Angelita did it, then why isn't he screaming it at the top of his lungs? Why didn't he sit here on this stand and say, yeah, absolutely, I remember Angelita did this. You're right. I was completely coherent inside of that car. I saw her pour it, run him over. She did it a hundred percent, no fumbling. If he was making it up, if he was trying to exonerate himself, if he was trying to set her up, that's how that goes.

That's not how it went. He fumbled; he stumbled. He didn't remember everything. What he does know is that he had no reason to be in Cowpens that night.

What he does know is that he didn't know Brent Tessnear, didn't know he walked up and down Cemetery Street. What he does know is that every time he was in Cowpens that night he was with the defendant. What he does know is he wasn't driving that white truck when it left the Li'L Cricket and he wasn't driving it when it went down Cemetery Street.

Now, did Brandon's story change over time? Yes. And he got up here and he told you why. And even Investigator Clark and the assistant solicitor on the case prior to us

got up here and told you that they had seen Brandon before, that they had met with him before and that this Brandon was completely different. Right. He was lethargic; he was apathetic; he was yawning; he was disheveled. Completely different Brandon. He was coughing, coughing so much it looked like he was going to throw up. He was high. Tells you that he smoked before coming in to speak that day.

And then he even told Investigator Woodcock when he met with him six days after he was arrested that he'd smoked about a week ago when he met with him in the solicitor's office.

And, yes, his story changed. Did you notice how it changed completely in only a matter of 15 minutes? Investigator Clark is in that room with Brandon Blackwood for 15 minutes, and that's how long it takes to get a murder confession.

We don't know what was said in that conference room. It's not recorded. We don't have it. We don't know what was said; we don't know how it was said.

But what we know is when Brandon then goes to the police station to write his statement Investigator Clark has to keep coming up and saying, no, no, don't forget, remember you told us this at the solicitor's office, remember you told us that at the solicitor's office. And he goes, yeah, and writes it down. It's because he can't

even remember what he'd said just a few minutes prior. It's because he's high.

And so does the story change? Yeah. But his story changed because he didn't have any recollection of what happened with him driving, because he wasn't driving.

He even goes and tells Investigator Woodcock when he meets with him, no, no, no, I wasn't driving. Angelita was driving. That's his first story. And then Investigator Woodcock tells you that as he confronts him he gets more confrontational with him again similar to how Investigator Clark was, similar to how Assistant Solicitor Smith was. That's when the story changed.

In order to not believe Brandon Blackwood means you can't believe any of the witnesses that were on the stand, because so many witnesses that night match up perfectly with Brandon's story.

Brittany Bridges who tells you about being in Gaffney together. Hannah, Amy, Carol who tell you that they came rolling in to Carol Barzilay's house liquor bottles falling out. Johnathan Sellars who tells you that he saw them over at Brent's house. Bridget Miller who told you that she saw them at the Arby's and the Spinx. These are other witnesses that aren't Brandon Blackwood whose stories are lining up perfectly with what he said.

The only time somebody doesn't corroborate his story

is when he's alone with the defendant at the Li'L Cricket in Cowpens.

Do they want you to think that there's absolutely no way that they were together after 2:00 o'clock in the morning because of these texts, these 2:09 texts that are sent from Brandon's phone? If they were together why would he be texting her at this point in time? Hoping that became real clear, right.

Previously in the night from time before 11:19 all the way down to 2:04 that phone is in call forwarding. She's not receiving anything. She's receiving no texts; she's receiving no phone calls; she's not making any phone calls; she's not sending out any texts because the phone is either charging or it's off or something is happening where she's not receiving anything.

And we know from Brandon's phone logs that you saw just earlier today that his two texts that he sent Angelita were a little after 11:00 during this timeframe when her phone's in call forwarding.

During that exact same timeframe that the defense pointed out to you he's texting his mom saying, hey, I'm going to grab some food at Wendy's, the Wendy's that they told you is by that Spinx, the Wendy's that's across from the Arby's where Brandon tells you that that's when and Angelita separated on the night, that he drove his car over

to the Arby's to wait on her. That's when those text messages are sent, during that timeframe. And they're received by her phone at 2:09.

And when you look as these they're two seconds apart, one second apart, two seconds apart, two seconds apart, two seconds apart. Seventeen seconds she gets nine text messages because her phone's back on. So these text messages weren't sent from Brandon to her at 2:09. They were received at 2:09. They were sent at 11:17 and 11:23.

Now, do we know what these text messages said? No. And we don't know what any text messages said on the defendant's phone from that night because they're deleted. And they want you to think that she's got some sort of old school flip phone that doesn't hold a lot of memory, doesn't hold a lot of text messages and you'd have to delete the text messages to be able to have new messages come in.

But what you heard, the phone's got a lot more memory than you think. And although it's not fifteen, not a hundred, not a thousand, but we're talking about just standard text messages alone in the millions.

But there are other things on the phone, right, other programs and stuff like that. But how many text messages did she have on her phone? 127. That includes inbox; that includes outbox.

We know the auto delete feature on the phone, the thing that deletes text messages when you need more space, is turned off. So those text messages are manually deleted. And that phone logs, phone calls that were made, they have to be manually deleted.

And we know that absolutely everything from December the 26th and before in the early morning hours of December the 27th when Brent is killed, when he's run over, all of that is deleted from her phone manually.

Now, they put up an expert who told us a lot of things. He came up here and explained to us all about cell phone towers and how everything works. And he looked at each of you in the eye and said that from the hours of 2:00 o'clock in the morning until 3:00 o'clock in the morning she was in Pacolet.

That's what their paid expert told you from the stand, but he's wrong. He doesn't have that information. He doesn't have the ability to be able to tell us that because cell phone companies aren't in the business of tracking people. They track the phones.

And he even told you that granular station, right, the tracking of people's cell phones based on the towers that they're pinging off of, to use his words, scientifically unsound. That's what their expert said.

And he said that the amount of area that a cell phone

tower covers ranges depending on where you are, if there's buildings and there's trees. And so all he could give you was an estimate. He doesn't know. He didn't drive out to that tower to see how far it actually covered. He estimated six miles.

So let's just assume. Just assume that the cell phone actually is telling us where Angelita is. It's still wrong to say that she is in Pacolet from 2:00 to 3:00, because what we know is that there's a text sent at 2:18 right here. It's five hours 7:18, 2:18. It is an incoming text, and that puts her in Pacolet, or it puts her pinging off Pacolet tower and however far out it reaches. It doesn't mean she's at her house. It just means she hit that tower.

And what we know is that from 2:18 to 3:08 there is no cell phone activity, no texts in, no texts out, no phone calls in, no phone calls out. Nothing pinged off any tower to tell us where she is for 50 minutes -- 50 minutes. Between the hours of 2:18 in the morning to 3:08, no idea, exactly what their expert said, that these records don't tell us where she was between the hours of 2:18 and 3:08, 50 minutes, 50 minutes after she gets that 2:18 text.

That text is from Brent. Fifty minutes after she gets that text from Brent we have no idea where she is at.

That is one hell of a coincidence. It is a coincidence that there is all of this phone activity.

You've got the logs in evidence. All of this phone activity all night long, all of these texts in, all of these texts out, all of these phone calls in, all of these phone calls out.

But when she gets that text from Brent at 2:18, suddenly nothing -- nothing. That's a hell of a coincidence, y'all.

And we know that Brent left to walk to that store around 1:55 in the morning. That's what Margo told us. You remember Margo Kirk? She said they were going to the store. And she said I wish I had gone with him. I needed some cigarettes too. He faced with me around 1:55 and said he was walking to the store.

We know from Officer Ruth Wolfe that he was in that store at about 2:00 o'clock in the morning. There's been some talk about him leaving around 2:02 and walking.

We know he's alive at 2:06. He called Sherry Riley. Called to ask about that pig tail for the dryer. We know his phone sent the text, 2:18, that texted the defendant. We know his body was found around 2:55 in the morning. And E.M.S. is dispatched onto the scene. And there's resuscitation attempts, right, attempts to keep him alive.

And Dr. Wren got on the stand and told you that with those types of injuries, with the blunt force trauma that he had and that internal bleeding, he would have lived for

20 to 30 minutes -- 20 to 30 minutes -- and that with the amount of methamphetamine in his system would have sped up that process. He would have died sooner.

So resuscitation attempts were being made after the ambulance is dispatched at 2:55, that 20 to 30 minutes from there. We know he's alive after 2:18 because he would have been dead on arrival. No.

Now, Brandon told you that he saw the defendant and Brent fighting in the parking lot. He told you that lasted somewhere along ten minutes. But he also told you that he had no idea if Brent had been in that Li'L Cricket earlier in the night. He didn't know if he'd been there just a few minutes earlier. He had no idea.

And the store clerk got up here and she told us that she didn't see anyone fighting in the parking lot. She also told us that from inside that store she can see everything, absolutely everything.

And yesterday when the cell phone analyst was going through the map he gave us that street view. Right. Did you notice that the gas station was an all-glass building? There weren't windows on all four sides. It's a cylinder building. The last one is on the front.

They want you to think somehow that that store clerk inside working could see everything. But you know what? We know she's the one that ran him over, and we know that

because her demeanor and what she's saying throughout the night changes after Brent dies.

All throughout the night she's talking about how she's going to kill Brent, he doesn't deserve the ground he walks on, he doesn't deserve the air that he breathes. She's mad about the kids' Christmas presents; she's mad about facebook.

She's telling everybody all of this stuff about Brent until after Brent's dead. And she's with Marie and she's with Bridget. She's concerned. She starts telling them reasons why Brent might be dead, about how people might want -- wanted to have beat him up.

She even tells Bridget maybe you should check on your brother. Complete change. And it's because at that point in time Angelita Wright already knows Brent Tessnear's dead. And that's why she lies about the coroner's phone call.

Jeanie Burnett got up on the stand, and you got to hear the phone call, the phone call at roughly 5:55 in the morning to Angelita's cell phone. She picks it up, and Jean Burnett goes is this Angelita Tessnear, and there's a pause. Yes. Who's this? She says, well, this is Jeanie Burnett with Spartanburg County. That's it. Not Spartanburg County Coroner's Office, not the hospital, not the police, just Spartanburg County.

And then she says are you the wife of Brent Tessnear. The defendant goes, yes, why, is he okay, is everything all right. That's her first reaction.

But then something really interesting happens in that phone call, because the next thing she says, Jeanie Burnett asked, well, I'm trying. That's why I'm trying to figure out who you are. Are you the wife of Brent Tessnear? And for the first time in this phone call she lies. She says, well, I'm at home. I haven't seen him.

We know that's not true because we know she saw him earlier in the night when she said he was high. We know she's talking with him. We've got the phone records. So that's the first lie.

And then Jeanie says I need to come out and see where you are, I need to speak with you. And she lies a second time. She says, well, I'm at my home in Pacolet. Two lies in under the first one minute of that phone call.

This is somebody who apparently thinks that her husband is hurt, doesn't know if he's alive or dead, if he's okay or not, if he's in the hospital, if he's at the police station. She doesn't know where he is. And her first reaction's to lie not once but twice?

And when you listen to that phone call she's not even the one that finally tells Jeanie Burnett where they are. It's Bridget. Bridget is the one that said we're over by

Hardee's or an Arby's or near the flea market. What's going on? Right. Because Bridget told you she was concerned. She didn't know what was going on with her brother. She wasn't lying. Angelita did. She already knew what that phone call was about.

So she's going to the hospital, and Bridget tells you that when they arrived at the hospital she's calling her brother or her cousin. Right. She's not calling whoever has their kids. She's not calling his kids. She's not calling other family members to say something might be wrong with Brent and I'm meeting somebody from Spartanburg County at the hospital. She calls her brother. She asks him what does this mean and what should I do.

So let's look at what she did after she found out Brent was dead. After she found out Brent was dead what she decided to do was to get in the car with Amy and Hannah Padgett and go to Brent's house and try to break in and get his cell phone.

She then gets on her phone and makes all sort of texts to people about how Brent's dead, about how he was definitely murdered, how she didn't do it, how she needs to, quote, get me a dress for the funeral. That's what she decides to do.

What she decides to do is to get on the phone and call the good job that she knows that Brent has now to figure

out who the life insurance company is and then call them. And when she finds out that she's not the beneficiary she starts using that as an excuse as to why she wouldn't have killed Brent.

I see. You believe in me so much you think I murdered Brent. I wasn't even the benefit -- the benefee on his life insurance policy. Just another reason as to why she thinks she shouldn't be accused of murder. But notice that's not sent till after she's already made those phone calls to Mutual of Omaha and the Tindall Corporation.

What she decides to do less than 24 hours after her husband has been run down by a car and murdered is to make a joke about it. This is the caring, concerning wife. She makes a joke about it, and not just to anyone. To Brandon Blackwood. Sent him a text message less than 24 hours after her husband is murdered, says you in town. I was walking to the store. L.O.L. Brent Tessnear died walking from the store.

Now, I know this case has not been perfect. It's not been a perfect investigation. Not every witness is perfect. That's because we're dealing with real people here. Right.

And when Judge Kelly instructs you on the law he's not going to tell you that it had to be a perfect investigation. He's not going to tell you that every

witness had to be perfect. What he's going to describe to you is that our burden is beyond a reasonable doubt.

Now, reasonable doubt isn't some doubt that's imaginary or fanciful or something you or the defense can make up in their head. It's based on reason. It's based on common sense.

If you are firmly convinced that she ran her husband down, you can find her guilty. If you can stand here with your two feet planted on the ground and say, yeah, she did it, then we've met our burden of beyond a reasonable doubt.

Sometimes the most complicated questions have the easiest answers. She said she was going to kill him all night long, and she did. Find Angelita Wright guilty.

MS. WHITE: Thank you, Your Honor. May it please the Court. We're going to take a second just to move that out of the way.

(Pause.)

MS. WHITE: I'm going to start off talking to you over here because I want you to look at Angelita Wright. Angelita Wright has been waiting for two years to prove her innocence, two years for a jury of 12 people to hear the evidence and listen and know what she's known all along, is that she's innocent of these charges.

The state has the burden of proof. That means they have to show to you beyond a reasonable doubt that this

woman intentionally and with malice ran over her estranged husband, killed him and left him on the ground. That means that a reasonable person -- a reasonable doubt is something that would cause a reasonable person to hesitate to act. And I want to talk to you about some of the reasonable doubts we've got in this.

The very first thing I want to mention is one thing. There's a murder warrant for Mark Brandon Blackwood. After he spoke with police the state issued a murder warrant for him alleging in that that he purposefully drove his truck and killed Brent Tessnear. Reasonable doubt.

They don't even know who drove the truck and killed Brent Tessnear. Their star witness has said I did it, I'm the one that was driving the truck, I killed Brent. Reasonable doubt.

When you look at the witnesses that have come forward, we have a lot of witnesses about what happened five hours before Brent was found.

She was angry. She told Investigator Clark. She told everybody. He'd put some nude photos on facebook and tagged me in them. I want them down. The mother of three young children. Take them down in two minutes or I'm going to come up there and whip your butt. I swear I'm going to kill you.

Words alone cannot convict somebody of murder. She

said these things five hours before. She was riding around with Brandon in the truck five hours before. There's never been a question. She told Investigator Clark. Yeah. We were riding around. We went to the house. We went and we got my kid's bike because Brent -- Brent had sold the other toys. I wanted my kids' Christmas back.

This was a relationship, obviously, that's complicated, back and forth for eight years. At the time this happened Angelita was 25. Brent was about ten years older than her. He had three older children. She had very young children. The oldest was five; the youngest was still in diapers.

Doesn't have much, and their Christmas gifts had gotten sold. So, yeah, she wanted them back. She was upset. She's a mom. It was the day after Christmas and their Christmas gifts were gone.

But is being angry about that and being upset about something on facebook enough to convict somebody of murder? No. There has to be evidence and proof beyond a reasonable doubt.

Let's talk about Mark Brandon Blackwood. Now, the state alleged that we tried to craft him as a criminal mastermind. I would beg to differ. I think everyone knows he's not a criminal mastermind. There's no doubt.

I don't believe he had any grand scheme; I don't

believe he had any plans in his mind. I don't know what he had in his mind. To be honest, I don't know if he knows what he had in his mind.

For the last year his story has changed multiple times. He has told the police. Now, granted, this was three days after this incident happened. You know, someone was traumatized riding in this vehicle, saw a man hit and killed but didn't say anything for three days.

In fact, I think he told police I just remembered about the guy this morning, just remembered about him this morning. That's how much he cared about him.

They show up. He gives them incredible detail. We went here, we went there, somebody said this. He put it in quotes. He described where they went, what they drank, who they talked to up and down the street, back and forth from Pacolet to Cowpens.

And then when it comes to the point of Brent's death everything gets fuzzy for him.

The one thing he does say -- and he says over and over. He's adamant. He said Angelita and Brent argued right outside the Li'L Cricket as he walked out. He said, in fact, it was so close that he thought Angelita was walking into the store to buy something.

This is the time he was -- we know he walked out to purchase some items at 2:02 a.m. He says this was right

before Brent was killed, minutes before. And he sat in the car and listened while they argued, flailed hands, yelled, make a big scene. One time he said five minutes; one time he said 20 minutes.

But you've got an officer who was in that store. She didn't see anything; she didn't hear anything. There were no people out in the parking lot, no other cars in the parking lot. Reasonable doubt.

His story hinges on things he's saying being true. You cannot count on any word he says as true he has told so many stories.

Odessa Erwin was the clerk. She has a wall of windows to look out. The parking lot is at an angle. The largest part is the store. She can see the parking lot from where she is. She can certainly see the front door and if somebody was coming near the front door.

She didn't see anybody. 2:00 a.m., nobody was there. Nobody got into an argument; nobody got into a fuss. Brandon made that up. That's just one more of his stories that he's told, one more reasonable doubt.

He said at one point he never drank before, just blackout drunk. We know that's a lie. You heard a recording, talking to his girlfriend. The Malibu Rum tasted weird. I'd had that before. I thought it tasted weird. Let's claim I was rubid [sic].

He's thinking. He's thinking about what's best for Brandon, what's going to get Brandon out of this trouble, because at this point he's confessed and he's arrested for murder.

During all of his interviews he keeps saying am I going to go away for life, what am I going to get charged with, I just hope I don't go away for life.

He's worried about himself. So he came up here and did the same thing he did with Investigator Clark, with Investigator Woodcock, Assistant Solicitor Spenser Smith, and he lied. He made up a story to what he thought was going to benefit him. Reasonable doubt.

He's charged with murder. I don't see him at a defense table. He's not here facing trial on murder. He has confessed to driving a truck. But Angelita Wright is the one that they are prosecuting for murder in this case. Angelita Wright is the one that has said I did not do this, who talked with the police, who told them everything she did.

Now, they claim her timeline doesn't match up. Investigators didn't follow up on their phone records. They've had them for a year and a half, almost two years.

Marie Dalton, Frances Marie Dalton, says we talked to her about 3:00. My client says earlier in the evening. Did they check her phone records to see if it matched what

Marie said or what my client said? No. Because at that point they'd made their decision.

Brandon Blackwood had told them she did it. They heard she was mad at him that night. It's easy; it's convenient.

She was the one that one person said I saw her do it, and she's been arrested for murder. One person. These other people saw her five hours before. She was driving the truck earlier. She admits that. She was riding around with him. She bought him alcohol. She admits that.

He also claims he was blackout drunk around this time they were at the Arby's and the Spinx, 10:30 or 11:00. You saw his text messages or heard his text messages to his mom. Hey, I'm going to go to Wendy's and pick something up to eat. I think I'm going to stop by papa's and get those clothes. Doesn't sound like somebody that's blackout drunk. I don't know about you, but blackout drunk to me is not someone that can complete a sentence in a text message, make a phone call, have a conversation, send multiple text messages that makes sense.

That's around 11:00 or 11:15. He told you from there they rode to Cowpens where they got into a fight. 11:00 p.m., 12:00 p.m., 1:00 a.m., 2:00 a.m. Doesn't make sense.

If they were at the Arby's and the Spinx at 11:00 p.m.

and then he said the next thing they did was go to the Cowpens -- Cowpens gas station, it doesn't make sense. One more reasonable doubt.

You've also got the investigation. The state's right. It doesn't have to be perfect. Nobody is perfect. We understand that. We're all human. But once they arrested Angelita that was pretty much it. They had somebody. They felt they knew who did it, and they had somebody that said she did it.

There was no D.N.A. found on the truck to corroborate what Brandon said. No items of clothing, no fibers, no hairs, nothing to corroborate what he said. That's all right.

They get the phone records. Did they do the mapping? No. A year and a half goes by. In fact, their own witness testified they mapped it, or tried, to last week. This has been going to for two years.

She has been charged with murder and faces that charge for two years, and they don't bother worrying about the cell phone. They've got the person they arrested. They've got the person they felt like was the one who did it. So they stopped.

Investigator Wolfe didn't cover any of the items on the scene. Wallet, 200 feet from the body. Is that normal? Didn't investigate that. Reasonable doubt.

You've had at least three people that said he had actually been threatened the day or two before this. Man with a metal wand showed up wanting to beat him up, trying to break in his house.

Several people mentioned it to them. Any investigation to check into this gentleman, to check into where he was that night? No. Why? They'd arrested Angelita, and because she had been upset that night about some facebook postings and kids' Christmas gifts and because Brandon Blackwood said she did it, that was enough for them.

You've also got the telephone. Now, much has been said about her phone being off, call forwarding. Okay. That's fine. That's fine with me. Phone's off.

Whether or not his text messages were sent 2:00 a.m. or not, okay, maybe they did come later. The fact is you heard her expert show you 2:09, 2:18 a.m. Her phone was in Pacolet. It was being used, outgoing and ingoing, Pacolet, not Cowpens, not with Brandon in Cowpens fighting Brent in front of a store minutes before he was killed. Pacolet. Where my client said to the officers that she was.

Now, then you've got the other witnesses. She said I talked with Marie and Robert and we hung out before like probably from 11:30 to 1:00. Marie says, no, it's 3:00.

3:18 her phone's already headed to Spartanburg. She's

not hanging out in Pacolet with Robert and Marie. She's already in Spartanburg. She's with Bridget Miller, Brent's sister. They're heading to the flea market. They're heading to get breakfast. Phone doesn't leave from that point anywhere else. It stayed in Spartanburg. So when she gets the phone call she's in Spartanburg.

Now, there's much ado about nothing essentially in regards to her being, saying, where she was. That's not evidence to prove her guilty of murder. They have to prove her guilty of murder beyond a reasonable doubt. Her telling a story or saying I was in Pacolet and then having sister say, no, we're in Spartanburg, we can be there soon, we don't know what was going on. We don't know what was being said.

And they're also talking a lot about her attitude. She's angry, estranged wife earlier, but then they're upset because at the -- at the hospital they don't think she's sufficiently upset. They don't think she's sufficiently being the crying, dodding wife.

They've just said she's estranged from Brent. She doesn't know what to do. She is in a position where she is considered the next of kin. She's asking people what do I do.

She's being told got to get stuff for a funeral. She's making calls to check on life insurance. She doesn't

have the money to pay for a funeral. But that's all right. She didn't -- she didn't deal with that. His family. He has older kids, and they were able to help with that. That's fine.

Reasonable doubt. If you have a reasonable doubt as to whether or not Angelita Wright purposefully and maliciously killed Brent Tessnear, then you have to find her not guilty.

And, in fact, as the judge said before, as she sits before you right now she is innocent. Before you go deliberate you see her, and she is an innocent woman. The only time that changes is if -- and if -- you think they have produced enough evidence to prove beyond a reasonable doubt that she was the driver of that truck that killed Brent Tessnear.

I want to touch back on Brandon Blackwood again because he played such a large part in this. He didn't testify for long, but he's the witness. He is the only witness that puts her in the truck at the time of Brent's death.

It's your job to determine credibility. It is your job to determine whether or not you believe any or all of what any witness says.

You heard from the folks that interviewed him. He's claiming coercion. Number one, he said he smokes weed all

of the time, so a claim of smoking a little weed before he goes into an interview to me doesn't seem like it's that big of a deal for him.

He says he was threatened. He says he felt upset, uncomfortable. So he confesses to murder because they were talking to him and asking him to tell the truth. That is what the coercion was. Tell the truth. You're not telling us something. Tell the truth. And he did. He told them I was the one driving. I, Brandon Blackwood, hit Brent Tessnear and killed him. He said that.

Now, when he realized he was getting charged with murder, we're backpedaling a little bit. Maybe I didn't really do it. Maybe they coerced me. Maybe I was high. Maybe I didn't know what I was talking about.

But a week later he meets with Investigator Woodcock, tries to change his story again and says, no, it wasn't me, it was Angelita. Talked to him some more. Tell the truth. That was when Brandon Blackwood, I drove the car, I hit Brent Tessnear.

But, again, he's not at the defense table. They've chosen to prosecute Angelita Wright based on the word of a man who can't even sit up here and be questioned by me without physically getting uncomfortable.

Assistant Solicitor Smith talked about him getting uncomfortable. Looked like he was burping; looked like he

was going to vomit. Coughing. He did that Tuesday. Perfectly fine when he was answering questions from the state. When he starts being questioned about what he said, he's coughing, he's moving around, he's burping. He's looking uncomfortable.

Guilty conscience is what I would call that, because he knows he's having to try to cover up the truth, which is that he is the person that killed Brent Tessnear.

Reasonable doubt. If there is anything in your mind that causes you to hesitate to act, it's reasonable doubt.

Their rebuttal witness came forward and talked about timing, call forwarding this text. But the one thing he did say, 2:18, her phone was in Pacolet.

Now, I think our expert's testimony may have been a little mischaracterized. He never said that from 2:18 to 3:08 she was in Pacolet. He acknowledged he couldn't say that. He acknowledged that at 2:18 it showed in Pacolet and at 3:08 showed that she was headed to Spartanburg. But you have common sense.

Brandon Blackwood claimed that they were arguing around that time in Cowpens. Two people say no. Phone records say no. Reasonable doubt.

And we would ask that you listen to all, take the evidence that has been presented, look at the witnesses that have testified. You decide for yourselves whether you

believe them or not.

And if anything they have said or anything that has been put forth would cause you to hesitate to act and think that maybe Angelita Wright is not guilty of murder and not guilty of a hit and run resulting in death, then you should find her not guilty. And that is what we are asking you to do today. Thank you.

MS. ALBEE: Thank you, Your Honor.

I get a brief opportunity right now to address some of the things that Ms. White said. That's what I want to talk about just very briefly.

She said that words alone cannot convict somebody. We're not just dealing with words alone. We're dealing with her words and her actions, her driving the car, her drinking, her texting, her trying to find Brent, that text from Brent, the deleted texts on her phone. We're dealing here with a whole lot more than just words.

And I want to talk about Brandon Blackwood only briefly, because they wanted you to believe that Brandon is at the Arby's and the Spinx around the 11:30 timeframe. And then they want you to think about what his testimony was, is that they went straight to the Li'L Cricket in Cowpens losing hours of time. Right. That doesn't make sense.

You remember what Brandon said? The question was

where is the next place you remember being. He said the Li'L Cricket.

Remember right before that he says she says she has to drive because I'm too drunk. I'm in the passenger seat. I'm tired. I want to go home. That's not saying they went straight to the Li'L Cricket. He's saying that's the next place he remembers them being. God only knows how much time passed with him asleep in that front seat.

And they want to talk about how Officer Wolfe saw him in the gas station and then walked out and didn't see a fight. That's the wrong timeframe. That is the wrong timeframe, because we know Brent is sending her a text at 2:18.

Is that confrontation? Isn't it when Officer Wolfe walks out of that gas station around 2:02, drives down and sees someone walking in the distance, that's not that confrontation. It happens later in the night during that 50-minute time period when her cell phone is dead or has no activity.

And they talked about no D.N.A. on the truck. Remember Investigator Sean Nix got up here on the stand. And Ms. White asked him what were the weather conditions like. He said it'd been raining off and on all day.

She pointed out that Brandon Blackwood wasn't even spoken to until three days later. So the rain on the day

of, off and on, and then they didn't even speak with him until three days later. That's time passing.

They talked about checking up on a person that had come over there with a pipe to try to beat him. That's not how Brent Tessnear died.

Dr. Wren told you that he died from internal bleeding secondary to blunt force trauma consistent with a pedestrian-on-vehicle collision. He's run over just like Brandon told you.

And they talked just briefly about her being in Spartanburg at 3:18. And her phone is there. Then they said she's already there with Bridget getting breakfast, is heading for the flea market. That's not 3:08. Because we know that coroner's call is at 5:55. That's closer to 5:00 o'clock in the morning when Bridget tells you that she first sees Angelita that night or I guess technically the next morning.

Ms. White said that we don't know who killed Brent Tessnear, but we do. We know that it was Angelita Wright. And she sits here before you now crying, but right after it happened she was laughing. So not only do we know who killed Brent Tessnear, but now you do too. So find Angelita Wright guilty.

(Whereupon, a recess was taken.)

THE COURT: Are you ready? They will need to bring whatever they want played.

(Whereupon, the jury returned to the courtroom at 1:03 p.m.)

THE COURT: Madam Forelady, if you'll tell us what it is you want to hear.

THE FOREPERSON: The notification phone call, and then also we have the D.V.D. of the phone records between Wright and Blackwell.

THE COURT: Okay. Mr. Bailiff, hand those. Can you cue those up?

MS. ALBEE: Your Honor, the phone call we can play. The records are spreadsheets that we can -- we'll have to tee this up and pull them. I know some of them have been put in -- but yeah.

THE COURT: Okay.

THE FOREPERSON: And with the notification phone call, would we be able to listen to that to its entirety through the whole conversation?

THE COURT: The entire conversation is in evidence.

MS. ALBEE: To 36.

MS. WHITE: To the point that --

MS. ALBEE: The conversation between the defendant and the officer ends.

THE COURT: It's two minutes and 36 seconds?

MS. ALBEE: Yes.

THE COURT: Okay. We can hear two minutes and 36 seconds.

THE FOREPERSON: Excuse me. Can I ask another question?

There's been some question too about the defense had played a conversation between Brandon and, I guess, his fiancée at the time or -- and there's no, like -- can we not listen to that conversation? Because she only played like I snippet, so. I guess some of us would like to listen to the entire conversation.

MS. ALBEE: Your Honor, it's my understanding that was impeachment. So it'd be played into the record of Mr. Blackwood's testimony to replay that. But the actual phone call was never entered into evidence.

THE COURT: I got you.

It was not entered into evidence but we can play back for -- we can do that.

(Pause.)

MS. WHITE: I think, Your Honor, she was asking about the whole phone call. So I -- just to verify, they would only be able to hear the portion that we played into testimony.

THE COURT: Because it -- the whole thing was never

introduced. So we can play back what was introduced.

THE FOREPERSON: No. We wanted to hear the whole conversation. Thank you.

THE COURT: It's not in evidence.

THE FOREPERSON: Thank you.

MS. ALBEE: Your Honor, are we ready for the phone call?

THE COURT: Yes.

(Whereupon, the D.V.D. was played for the jury.)

MS. ALBEE: Your Honor, can we approach on the other disc?

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: The other one is a spreadsheet. Do you want to see the spreadsheet?

THE FOREPERSON: If it's the same spreadsheet that we already have. No. We're good.

THE COURT: It's not the call. It's the spreadsheet on that disc.

MS. WHITE: Right. There's no audio.

THE COURT: There's no audio.

MS. ALBEE: Phone records of Brandon Blackwell are the spreadsheets that we looked at.

THE COURT: Okay.

THE FOREPERSON: That's good.

THE COURT: Okay. Anything else, Madam Forelady?

THE FOREPERSON: No, sir.

THE COURT: Okay. If you will, retire and resume your deliberations.

(Whereupon, the jury retired to deliberate at 1:10 p.m.)

THE COURT: Any objections or anything from the state?

MR. KOZAK: Nothing from the state.

THE COURT: From the defense?

MS. WHITE: Nothing, Your Honor.

THE COURT: All right. We'll be in recess until we hear back from the jury.

(There was no written question from the jury to be marked.)

THE COURT: Okay. Now, everyone's been on the best behavior, and we're going to continue. Do you understand? If you cannot control your emotions, I'm going to ask that you leave quietly now.

Any outbursts -- this is not a sporting event. This is a courtroom. And these officers will take you into custody, anyone who has an outburst. Do you understand?

It's not a time to celebrate. Not going to be any cheering in my courtroom. I'll deal with it appropriately, and it may be after the first of the year when I do that.

We'll have all 14.

(Whereupon, the jury returned to the courtroom at 2:20 p.m. to report its verdict.)

THE COURT: Madam Forelady, has the jury reached its verdict?

THE FOREPERSON: Yes, sir.

THE COURT: You kindly give that to the bailiff.

Madam Clerk.

THE CLERK: In the Court of General Sessions, Case No. 2016-GS-42-5200, 2016-GS-42-6461, the State of South Carolina vs. Angelita N. Wright.

We, the jury, unanimously find the defendant, Angelita N. Wright, on the charge of murder guilty. This is signed and dated --

(Outburst in courtroom.)

THE COURT: In custody.

THE CLERK: -- by the foreperson.

Ladies and gentlemen of the jury, if this is your verdict and still your verdict, please raise your right hand.

(Whereupon, all jurors responded in the affirmative.)

THE CLERK: So say you all.

THE COURT: Polling of the jury by the state?

MR. KOZAK: No, Your Honor.

THE COURT: By the defense?

MS. WHITE: Please, Your Honor.

THE CLERK: Ladies and gentlemen of the jury, I will pose a question to you, after which I will call your name individually and ask that you stand and answer my question, the question being is this your verdict and still your verdict.

No. 35, Julie Davis.

THE JUROR: Yes, ma'am.

THE CLERK: No. 8, Bagwell.

THE JUROR: Yes, ma'am.

THE CLERK: No. 33, Daugherty.

THE JUROR: Yes, ma'am.

THE CLERK: No. 50, Fernanders.

THE JUROR: Yes, ma'am.

THE CLERK: Sixty-seven, Griffin.

THE JUROR: Yes, ma'am.

THE CLERK: Eighty-eight, Hill.

THE JUROR: Yes, ma'am.

THE CLERK: 105, Lear-Walker.

THE JUROR: Yes, ma'am.

THE CLERK: Eighty-two, Hazen.

THE JUROR: Yes, ma'am.

THE CLERK: No. 1, Abernathy.

THE JUROR: Yes, ma'am.

THE CLERK: Seventy-six, Hardy.

THE JUROR: Yes, ma'am.

THE CLERK: 125, Porter.
THE JUROR: Yes, ma'am.
THE CLERK: And 137, Rooney.
THE JUROR: Yes, ma'am.
THE CLERK: Your Honor, the jury has been polled.
THE COURT: Matters from the state?
MR. KOZAK: Nothing from the state, Your Honor.
THE COURT: Anything at this time?
MS. WHITE: Nothing, Your Honor.
(Whereupon, the trial jury was excused.)
THE COURT: Matters from the state?
MR. KOZAK: Your Honor, we just need a second to go get a sentencing sheet, but nothing from the state.
THE COURT: Let's hear from the defense.
Yes, ma'am.
MS. WHITE: Obviously, Your Honor, we would renew any of our motions that we made previously -- directed verdict, the motion to quash the subpoena, or, excuse me, quash the indictments, Your Honor.
Also, in support of the motion to elect, obviously, we will take issue with both of the charges being presented to them. And we think that that would -- that created some issues. So we would argue that that should be enough for a motion for a new trial to be granted at this time.
THE COURT: Yes, ma'am.

MS. ALBEE: And, Your Honor, of course we stand by the same arguments that we've made previously to this Court about the indictments being proper and appropriate and going forward on both and then just again standing by whatever arguments we made previously to the Court.

THE COURT: All right. The Court denies the motions for the same grounds, the same reasons, as heretofore enunciated by the Court.

I think I will make that jury verdict form a court's exhibit in the record in the event that someone wants to look at that later.

Anything further?

MR. KOZAK: Nothing from the state.

THE COURT: Okay.

MS. WHITE: Nothing at this time, Your Honor.

THE COURT: All right. We'll take a few moments while you prepare a sentencing sheet.

MS. ALBEE: Thank you, Your Honor.

(Verdict form marked Court's Exhibit No. 1.)

(Whereupon, a recess was taken.)

THE COURT: Ready? All right. Yes, ma'am.

MS. WHITE: Thank you, Your Honor.

I'm here before you today on behalf of Ms. Angelita Wright. I'm going to go ahead and apologize if I sound emotional. I've represented Ms. Wright for two years, and

this was a very hard verdict for her to hear. It's hard for me because I have worked on this with her and come to know her and feel close to her at this point.

She is a mother of three. Obviously, tragically Brent Tessnear closed his life. The children lost their father. Now they're losing their mother. And they're eight, five and -- eight, six and five, Your Honor.

Currently they're living with Ms. Wright's grandparents who are elderly. They're taking care of them, and they have been able to be with them. They've been able to spend time with Mr. Tessnear's family. So they've been able to see both of the families.

Your Honor, we would ask for any consideration. Obviously, we feel like the evidence that was presented, the witness that was the main witness against her, we felt like, obviously, was not very credible from the various stories and from the various things he said, Your Honor, from the evidence we had about cell phones and things. We think, obviously, that there was reasonable doubt. Obviously, the jury disagreed with us.

But we're asking for your mercy. This is a woman with no criminal history. She was in jail for a year and a half, and I'd have to get the exact dates for you -- a year and a half. Pending this trial she was able to get out and then spend another, I believe, three months on home

detention. Obviously, we ask for all of that credit, Your Honor.

We understand that there is a minimum that has to be given. We ask that you consider that minimum to give Ms. Wright a chance to be able to have time that she will be able to see her children when they're older and when she's older.

I'm not sure what else -- what else we can say, Your Honor, other than this is clearly a tragedy for the Tessnear family. I feel like it is a tragedy for Ms. Wright and her family as well now. And we just ask that you take what you heard into consideration, take her age, the age of her children, the lack of criminal record, Your Honor, and allow her to have the minimum of 30 years.

THE COURT: Ma'am, would you like to speak?

THE DEFENDANT: Just... (crying)

THE COURT: Thank you, ma'am. Anything from the state?

MR. KOZAK: Your Honor, you sat through the whole trial. You saw the facts. We'll leave the sentencing in your discretion. But at the appropriate time I think a few of the members of the victim's family would like to speak if you deem it appropriate.

THE COURT: I'll be happy to hear from them at this point.

Sir, tell me your name for my court reporter, please.

BEN EARL PADGETT, JR.: My name is Ben Earl Padgett, Jr.

THE COURT: Yes, sir, Mr. Padgett.

BEN EARL PADGETT, JR.: I just want to say just like she, the defense attorney, said. It's tragic on both ends, but no one knows the pain that went through them that we seen in the baby's eyes every day. They didn't have their father to hold his children that's over there with us, the agony and pain that we didn't have every Thanksgiving or every Christmas that we used to have him there picking music with us or having him. It's gone. We have him no more. And no matter what the sentence really hands down, we can't get him back. We just ache on the part of the kids and the family. I just ask that she gets the maximum. That's all I have to say.

THE COURT: Thank you, sir.

Tell me your name, please.

PATRICIA GREGG: Patricia Gregg.

THE COURT: Yes, Ms. Gregg.

PATRICIA GREGG: I just want to read this. I just wanted to say a few words on behalf of Brent and all of the people that loved him.

First, what you've heard have been the horrible circumstances surrounding his death. You should also hear

the joys and struggles that make up his life.

He was born with a natural talent. Even as a little boy he could sing and play drums with little instruction. He was a natural musician, was very important. And he always had a deep love and respect for his parents. He loved his younger sisters; he loved his friends; and he loved life. But most of all he loved his children.

He had an infectious smile and he was always smiling. He made people happy just being around him. His life was not without struggles, but he never stopped trying. He could always find the good in a situation. He could always find a reason to keep trying. He deserved better than what he got.

His absence has left an emptiness in the lives of all of us who knew and loved him, and his absence leaves his six children to grow up without a daddy.

He was robbed of his life and his children were robbed of a father. The only thing you can give him now is justice.

THE COURT: Thank you, ma'am.

MR. KOZAK: I believe that's it, Your Honor.

THE COURT: Madam, the general assembly has set aside a sentencing range which is from 30 years to life no part of which this Court is able to suspend.

2016-6461, confined to the state department of

corrections for 30 years. Give you credit for time that you have served. Best of luck to you.

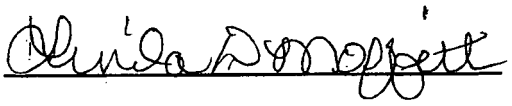
END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 27th through the 30th days of November 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 22, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
State of South Carolina,	)	2016-GS-42-5200
	)	2016-GS-42-6461
	)	
v.	)	**Verdict Form**
	)	
Angelita N. Wright,	)	
	)	
Defendant.	)	

1. We the jury, unanimously find the Defendant, Angelita N. Wright, on the charge of Murder,

_____ Not Guilty

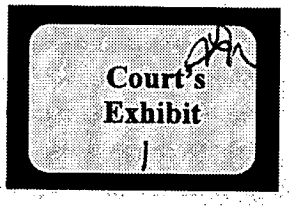
__✓__ Guilty

If you find the Defendant Guilty, please stop here and sign below. If and only if you find the Defendant "Not Guilty" to Question 1, then please answer Question 2.

2. We the jury, unanimously find the Defendant, Angelita N. Wright, on the charge of Leaving The Scene Of An Accident With Death,

_____ Not Guilty

_____ Guilty



I certify this decision was the unanimous decision of the jury.

Foreperson

November 30, 2017

Spartanburg, SC

WITNESSES

Spartanburg Sheriff's Office

Larry W. Powers

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

DEC 09 2016

Foreperson of Grand Jury
Date:

VERDICT

Guilty
Melissa Davis 11/30/17

Foreperson of Petit Jury
Date:

DOCKET NO. -
16-GS-42-6466

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

DEC 12 2016 **TERM**

THE STATE
vs.

Angelita N Wright

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 DEC 16 PM 2:50
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on DEC 09 2016, the Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Angelita N Wright, did in Spartanburg County on or about December 27, 2015, feloniously, willfully, and with malice aforethought, kill one Brent Lee Tessnear, by running over him with a truck and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Assistant Solicitor

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531

RECEIVED
AUG 15 2019
SC Court of Appeals

State of South Carolina, ... Respondent

v.

ANGELITA WRIGHT ..... Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the circuit court err in qualifying the State's cell phone mapping expert who had only one day's training in mapping software and could not map Appellant's phone at key moments on the day Decedent was killed?
2. Did the circuit court err in permitting the State's cell phone mapping expert to testify as a rebuttal witness to complete the testimony he offered in the State's case-in-chief and to address issues not covered in the Appellant's defense?
3. Did the circuit court's erroneous admission of cell phone mapping testimony prejudice Appellant where her defense was based in part on not being present at the crime scene?

STATEMENT OF THE CASE

Appellant Angelita Wright was indicted on charges of murder and leaving the scene of an accident resulting in death in violation of S.C. Code Ann. § 56-5-1210(A)(3) in connection with the death of Wright's estranged husband Brent Lee Tessnear. (R. pp. 573-74). Wright pled not guilty to both charges and was tried by a Spartanburg County jury before the Honorable R. Keith Kelly on November 27-30, 2017. Wright was represented by Suzanne White and Richard Whelchel of the Seventh Circuit Public Defender's office. The State was represented by Joel Kozak and Kinli Abee of the South Carolina Attorney General's office. On November 30, 2017, the jury returned a guilty verdict for murder and did not enter a verdict on the remaining charge. (R. pp. 562, 572). The Honorable R. Keith Kelly sentenced Wright to 30 years' imprisonment on that same date. (R. p. 566-70). Wright filed a notice of appeal that was timely served on December 11, 2017.

STATEMENT OF THE FACTS

Brent Lee Tessnear ("Decedent") was discovered dead on the side of a Cowpens, S.C. roadway just before 3 a.m. on December 27, 2015. (R. pp. 67-69). Medical examiners concluded Decedent was struck by a vehicle and died from blunt force trauma to his internal organs. (R. pp. 309-10). Brandon Blackwood confessed to the killing, but it was Appellant Angelita Wright, Decedent's estranged wife, who was tried and convicted for murder.

The night before Decedent's death, Wright and Blackwood were seen riding in a white pickup truck at various locations in Pacolet and Spartanburg, S.C. Blackwood testified he was driving the truck for some portions of the evening into the overnight hours. (R. p. 196; see also R. pp. 112, 263-64). During one stop at a relative's house, several witnesses saw Wright behind the wheel. (R. pp. 122, 126, 129, 138). She appeared angry with Decedent for a variety of issues in

their tumultuous relationship. She suspected Decedent was involved in an affair. (R. pp. 186, 293). She had also learned earlier in the day Decedent had sold Christmas presents purchased for the couple's children and used the proceeds to buy drugs. (R. pp. 155, 196). Additionally, Decedent had recently posted explicit photos of Wright on social media. (R. pp. 118, 120, 132, 138, 140, 186, 200).

Witnesses at the relative's house heard Wright tell Decedent by phone that she would kill him if the photos were not taken down within two minutes. (R. p. 140). At least one person at the house told jurors Wright's words were not meant as a serious threat. (R. p. 121, lines 15-16). As Wright continued to vent her frustration, Blackwood volunteered to kill Decedent. (R. p. 140, line 20). As the night continued, Wright and Blackwood made an attempt to confront Decedent but he was not home. (R. p. 156). They then traveled to a convenience store in Spartanburg, and Wright later met up with friends at her home in Pacolet. (R. p. 156-57). She was picked up from her home by a different friend (who was also Decedent's sister) at approximately 5 a.m. on December 27, 2015. (R. p. 266-69).

Three hours earlier (2 a.m.), Decedent was seen alive for the final time at a Cowpens' convenience store located a short distance from the crime scene. (R. p. 81-82). When a passerby reported Decedent's body almost an hour later, officers from the Cowpens Police Department and Spartanburg County Sheriff's Office opened an investigation. Police learned several people had previously threatened Decedent with harm including one whose threats were serious enough that he once drove to Decedent's house armed with a lead pipe. (R. pp. 87, 91, 294). When Wright was questioned about Decedent's death, she denied being at the crime scene and gave officers the names of the friends who were visiting her in Pacolet when Decedent died. (R. pp. 156-57).

As the investigation continued, Blackwood directed officers' attention toward Wright by telling them she was driving the white pickup truck in Cowpens around the time of Decedent's death when she saw Decedent walking along the roadway and intentionally hit him despite Blackwood's protestations. (R. pp. 215-17). No other witnesses placed Wright at the crime scene in the hour (approximately 2-3 a.m.) before Decedent's body was discovered. Wright was arrested and charged with murder and leaving the scene of an accident resulting in death. The Seventh Circuit Solicitor, eventually replaced by the South Carolina Attorney General's office[1], prepared to try Wright with Blackwood as their key witness.

However, Blackwood's account of key events began to unravel in meetings with prosecutors and officers as Wright's trial date approached. Blackwood was near tears and confessed to driving the truck and killing Decedent. (R. p. 153). During an additional interview, Blackwood again contradicted his original statement implicating Wright. During a single session with investigators, Blackwood denied all involvement in Decedent's death, confessed to killing Decedent, confessed to the crime but insisted he was acting at Wright's direction, and admitted to killing Decedent but insisted it was an accident. (R. pp. 233-36). There was no consistency to Blackwood's statements. At some points he claimed to have been too drunk or sleepy on the night Decedent was killed to remember anything. (R. pp. 246-47). At others, Blackwood said he was not even sure Wright was in the truck when Decedent was killed. (R. p. 478). After officers read Blackwood his rights and implored him to tell the truth, Blackwood signed a confession and was charged with murdering Decedent. (R. p. 398).

[1] Wright's prosecution was transferred to the Attorney General's office due to two possible conflicts of interests. As a result of Blackwood's changing stories, an assistant solicitor became a witness for purposes of Wright's trial. Additionally, Blackwood's grandfather was a retired member of the Spartanburg County Sheriff's Office. (R. p. 370, lines 4-12).

Even so, the State chose to go forward with its case against Wright alone using Blackwood as its sole eyewitness. During his trial testimony, Blackwood implicated Wright fully and told jurors his multiple confessions were lies coerced by the police.[2] (R. pp. 215-17; 241). On cross-examination, Blackwood admitted he hoped his testimony against Wright would help him avoid a life sentence for the murder charge he still faced. (R. p. 255). To supplement Blackwood's dubious testimony, the State called Officer Brandon Letterman, who participated briefly in the crime scene investigation but focused mainly on gathering potentially incriminating data from Wright and Blackwood's cell phones. (R. pp. 344-358). Testifying during the State's case-in-chief, Letterman described for jurors how he photographed the contact list from Wright's phone and performed a forensic extraction of the device's data. (R. pp. 348-54).

During her defense, Wright called Tom Slovenski, a cell phone forensics and cell phone mapping expert who explained how cell phone use can be analyzed to approximate the phone owner's location. (R. pp. 411-17). Wright's phone was not equipped with GPS or other active tracking technology. However, when her phone made or received calls or texts, a "transaction" was noted on records obtained from her cell service provider. (R. p. 419). Each transaction identified which of the provider's strategically located towers transmitted the call or text. By mapping each transaction, Slovenski showed jurors Wright's approximate location at several important moments before and after Decedent was killed. Since Wright's phone did not receive or make any calls/texts between 2:18 – 3:08 a.m., there was no transactions to map during that time period. (R. p. 461). However, Slovenski's data did show that from December 26, 2015 at 11 p.m.

[2] Both the assistant solicitor and police investigator denied coercing or threatening Blackwood. (R. p. 380, lines 8-22; R. p. 392, lines 22-25).

to 5 a.m. the next morning, none of the transactions on Wright's phone corresponded with the cell tower that services the crime scene. (R. p. 443).

After Wright rested her case, the State attempted to recall Letterman as a rebuttal witness. (R. p. 482). Despite his earlier testimony on Wright's cell phone, the State argued Letterman was now stepping into a different role as a cell phone extraction and cell phone mapping expert. (R. p. 487). However, Letterman had not actually conducted an extraction of Wright's phone and admitted he could not map key texts from Wright's phone during the crucial 2 a.m. hour. (R. p. 497, line 13-21; R. p. 498, lines 12-14) (did not perform extraction on either phone); R. p. 499, lines 6-10 (never seen extraction data for Blackwood's phone). Letterman also admitted he had never before been qualified as an expert in cell phone mapping and had used the mapping software for only three months. (R. p. 484, lines 10-11; 486, lines 3-7). His only training for operating the mapping software was a one day class. (R. p. 485, lines 22-24). He had not published any articles or obtained any certifications related to cell phone mapping. (R. p. 486, lines 8-13). Wright's counsel asserted a timely objection to Letterman's qualifications that the circuit court overruled. (R. p. 487, lines 9-17; 488, lines 5-7). Wright's counsel also timely objected to Letterman being called as a reply expert, given his previous testimony on Wright's cell phone. (R. p. 487, lines 9-17). The circuit court overruled this objection as well. (R. p. 488, lines 12-17). After being qualified as an expert, Letterman was immediately asked a series of questions about Blackwood's cell phone records, an issue that was not part of Slovenski's analysis. (R. pp. 488-89).

On November 30, 2017, the jury returned a guilty verdict against Wright on the murder charge and did not reach the charge for leaving the scene of the accident resulting in death. (R. p. 562; R. p. 572). The circuit court sentenced Wright to 30 years' imprisonment. (R. pp. 569-70). This appeal followed.

STANDARD OF REVIEW

South Carolina law grants circuit courts discretion when considering a proposed expert's qualifications or the scope of evidence offered during the rebuttal stage of a criminal trial. Watson v. Ford Motor Co., 389 S.C. 434, 447, 699 S.E.2d 169 (2010) (citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)); State v. Huckabee, 388 S.C. 232, 240, 694 S.E.2d 781, 785 (Ct. App. 2010); State v. Bailey, 279 S.C. 437, 308 S.E.2d 795 (1983). A circuit court's rulings on these evidence admissibility issues are reviewed for an abuse of discretion. An abuse of discretion occurs when the circuit court's ruling was either controlled by an error of law or based on unsupported factual conclusions. State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2009). An evidence admissibility error may lead to reversal and a new trial where the appellant was prejudiced by improperly admitted evidence. State v. Garris, 394 S.C. 336, 350, 714 S.E.2d 888, 896 (Ct. App. 2011).

ARGUMENT

No disinterested person saw who killed Decedent during the early morning hours of December 27, 2015, in Cowpens, S.C. Two people were charged with Decedent's murder and one of them (Brandon Blackwood) confessed to the crime on multiple occasions. Yet, the State held off prosecuting Blackwood and focused its efforts on Appellant Angelita Wright, Decedent's estranged wife. Blackwood testified against Wright—now claiming she was the killer—but his history of lies and incentive to divert suspicion presented substantial credibility problems the State hoped to remedy by creating a circumstantial timeline of Wright's movements on the night Decedent was killed. Since none of the State's witnesses placed Wright at the crime scene in the

hour before Decedent's body was discovered, the State tried to make its case with location data garnered from Wright's cell phone.

However, unlike Wright's cell phone mapping expert (Tom Slovenski), the State's witness (Brandon Letterman) had never before been qualified as an expert in this field, had only one day of training on cell phone mapping software, and was unable to map Wright's phone for crucial portions of the night in question. Moreover, even though Letterman had testified during the State's case-in-chief regarding Wright's phone data, the State held back his cell phone mapping opinions for reply and then delved into issues that did not rebut or refute Slovenski's testimony. In sum, the circuit court abused its discretion in admitting Letterman's testimony both because he was not qualified to state opinions on cell phone mapping and because the testimony Letterman offered exceeded the scope of permissible rebuttal evidence.

1. The Circuit Court Erred in Qualifying Letterman as a Cell Phone Mapping Expert.

Brandon Letterman was admitted as an expert on cell phone extraction and cell phone mapping (R. p. 488, lines 5-7) even though he admitted he had not performed extractions on Wright or Blackwood's phones and admitted he was unable to map key text messages sent during the crucial hours before Decedent's body was discovered. (R. p. 497, line 13-21; R. p. 498, lines 12-14 (did not perform extraction on either phone); R. p. 499, lines 6-10 (never seen extraction data for Blackwood's phone). This ruling violates the governing legal standards for expert qualifications, and the circuit court abused its discretion in admitting Letterman's testimony.

Letterman was offered as a reply expert, and the admission of his testimony is governed by Rule 702, SCRE. Expert testimony admissibility depends on satisfaction of a three-prong test as determined by the trial judge. To be admitted, the "trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." State v.

Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). Even if this test is satisfied, the testimony may be excluded if its probative value is substantially outweighed by the risk of unfair prejudice, confusion of the issues, etc. Wilson v. Rivers, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004) (citing Rule 403, SCRE). This three-prong analysis is a threshold test and may not be circumvented by simply arguing defects in an expert's testimony go to weight and not admissibility. Watson v. Ford Motor Co., 389 S.C. 434, 447, 699 S.E.2d 169, 175 (2010).

Letterman was admitted over Wright's objection to his qualifications. (R. p. 487, lines 9-17). The qualifications test consists of two parts: (1) whether the proposed expert has "sufficient" qualifications; and (2) whether the proposed expert's testimony will be reliable. State v. Chavis, 412 S.C. 101, 106-07, 771 S.E.2d 336, 339 (2015) (citing State v. White, 382 S.C. 265, 273, 676 S.E.2d 684, 688 (2009)). From South Carolina appellate court opinions considering the "sufficient" qualification component, three important principles emerge.

First, while there is no qualitative or quantitative blueprint for determining when a proposed expert knows enough, the "sufficiency" standard is a substantive threshold requirement not met by de minimis experience, knowledge, or training. State v. Andrews, Op. No. 5575 (S.C. Ct. App. filed July 18, 2018) (Shearouse Adv. Sh. No. 29 at 34-35). It is not enough that the proponent offers any suggestion of the proposed expert's knowledge. Courts must make a "broad," searching inquiry to determine whether the witness has the requisite "**level of skill or knowledge**." Fields, 376 S.C. at 556, 658 S.E.2d at 86 (emphasis added). A proposed expert must know enough to effectively guide the jury on a disputed issue and should not be cloaked with the credibility-wielding "expert" designation without first demonstrating substantial knowledge. State v. Henry, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1997); State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013) (it is an inescapable fact that jurors have a tendency to attach more

significance to the testimony of experts"); Watson, 389 S.C. at 449, 699 S.E.2d at 176 (holding that courts "should be cautious in conferring an expert label" on witnesses due to "excessive or undue weight" jurors may afford their testimony). Arguments that the expert's alleged deficiencies affect only weight and not admissibility may be raised only after the expert is closely vetted for the quantity and quality of his qualifications. White, 382 S.C. at 274, 676 S.E.2d at 689.

Second, the qualification standard is "relative," meaning the manner by which a person acquires expert qualifications varies from one field to another. Watson, 389 S.C. at 447, 699 S.E.2d at 175 (citing Wilson, 357 S.C. at 452, 593 S.E.2d at 605). Accordingly, it is useful to consider how admitted experts obtained their qualifications in the field when determining whether the proposed witness has sufficient qualifications to be labeled an expert. Third, qualifications should not be evaluated at a high level of generality. A witness who intends to offer opinions on a specific issue within his profession must demonstrate his expertise on that issue and not just his profession more generally. Watson, 389 S.C. at 447-48, 699 S.E.2d at 176. For example, a witness's general engineering experience and knowledge will not qualify him to offer conclusions on the engineering of a particular automobile component with which he has no experience. Id.; see also Walker v. The Bluffs Apartments, 324 S.C. 350, 477 S.E.2d 472, 473 (Ct. App. 1996) (finding licensed builder and building inspector not qualified to testify on architect's conduct because proposed witness had never constructed a structure and had no issue-specific training); State v. Priester, 301 S.C. 165, 168, 391 S.E.2d 227 (1990) (finding witness qualified to testify regarding defendant's blood-alcohol concentration was not qualified to testify on effect of alcohol quantity on behavior because witness "had no training whatsoever" in that area).

This Court recently applied these principles to exclude a police officer's proposed expert testimony. Andrews, Op. No. 5575 (S.C. Ct. App. filed July 18, 2018) (Shearouse Adv. Sh. No.

29 at 34-35). In Andrews, the defendant in a manslaughter prosecution asserted self-defense but gave police different accounts of the fatal encounter in the hours and days after his arrest. Id. at 28. The defendant proffered testimony from a police investigator who concluded the defendant's inculpatory statements in interrogations shortly after his arrest were not reliable because he had not yet had time to mentally process rapidly-changing events. Id. This court affirmed the circuit judge's exclusion of the investigator's testimony. Id. at 34. The circuit court found that, while the investigator had attended a class on the proper procedure for interviewing a shooter after a fatal incident, "his one-week course was insufficient qualification." Id. at 28. This Court agreed, holding that the class did not show sufficient qualification especially since it contained only one day of training on cognitive interviews. Id. at 35. Andrews also refused to consider the investigator's proposed qualifications in general terms. While he had twenty years' general law enforcement experience, the investigator had not proven his expertise on the specific issue he was called to address. Id. The same was true for the investigator's week-long class. That class did not show sufficient qualification for the proffered testimony because it covered the danger of inaccurate interrogation statements in a different context (officer-involved shootings) and the only arguably qualifying portion of the class lasted just one day. Id.

Letterman did not have substantially more knowledge, training, or experience than the proposed expert excluded in Andrews. The heart of Letterman's testimony was cell phone mapping, a skill for which Letterman had received just one day's training. (R. p. 485, lines 22-24). Just like the Andrews' witness, Letterman had never before been qualified as an expert on either cell phone extraction or mapping. (R. p. 486, lines 3-7). Letterman further testified that he had been using cell phone mapping software for just 3 months. (R. p. 484, lines 9-11). Letterman's dearth of qualifications is especially stark when considering the types of qualifications available

in the cell phone mapping field. A cell phone mapper can study in the university setting to stay up to date as technology changes, publish articles on the proper methods or the latest techniques, and obtain a certification from the mapping software manufacturer. Letterman did none of these things. (R. pp. 412-16).[3] While Wright is not suggesting a side-by-side comparison of Letterman's career path to that of the defense expert, Slovenski's credentials are useful for demonstrating the types of qualifications a person may pursue to obtain expertise in this challenging and evolving technological field. Letterman obtained no cell phone mapping certifications, authored no academic or industry-circulated publications in this discipline, and began using the software just three months earlier after one day of training. (R. pp. 485-87).

Letterman's testimony also failed to satisfy the second component of Chavis's qualification test as he failed to demonstrate his testimony would be reliable. 412 S.C. at 106-07, 771 S.E.2d at 339. The State bore the burden of showing Letterman possessed the learning, skill, or practical experience to provide opinion testimony and to show his testimony was reliable. State v. Myers, 301 S.C. 251, 255-56, 391 S.E.2d 551 (1990). However, while Letterman offered conclusions on Wright's locations during the critical hours before Decedent's body was discovered (R. pp. 495-96), he never explained how he reached those conclusions or why his methodology was reliable.[4] In fact, Letterman admitted he was unable to map a series of text messages sent during the critical 2 a.m. hour on the night Decedent was killed. (R. p. 497, line 13-21). Letterman did not explain to the jury why these critical text messages and their crucial location data could not be obtained from

[3] Letterman testified that he was certified in one cell phone extraction program (Cellebrite) but did not testify to any certification in the cell phone mapping software he used (GeoTime). (R. p. 484, lines 12-19).

[4] This stands in sharp contrast to Slovenski's testimony in which he explained how cell phone towers are placed, how data from the towers is captured, and how those data points are processed into a visual representation of the phone's movements over time. (R. pp. 417-43).

the mapping software he utilized. Letterman did not seem to know why. (R. p. 497, lines 16-18) (telling jurors the texts could not be mapped "for whatever reason").

This testimony further demonstrates Letterman lacked "sufficient" qualifications and that he failed to meet Rule 702's reliability standard. His inability to map key data is unsurprising given his minimal training and limited experience with the mapping software. His inability to explain why the data could not be mapped reflects on the reliability of Letterman's methods. Cf. Graves v. CAS Med. Sys., Inc., 401 S.C. 63, 76-78, 735 S.E.2d 650, 656-57 (2012) (affirming exclusion of purported software experts who offered no explanation for how allegedly defective device's software failed).

In sum, by failing to conduct the broad qualification examination Fields demands and by failing to ensure Letterman demonstrated "sufficient" qualifications as discussed in Chavis and applied in Andrews, the circuit court misapplied the Rule 702, SCRE standard and improperly admitted Letterman's cell phone mapping testimony.

2. Letterman's Testimony Exceeded the Scope of Permissible Rebuttal Evidence.

Wright also objected to Letterman's testimony as going beyond the scope of permissible rebuttal evidence. (R. p. 487, lines 9-17; R. p. 488, lines 12-17). The circuit court overruled the objection and admitted the testimony ruling Letterman was a fact witness during his testimony in the State's case-in-chief and was being properly offered for a different purpose when testifying as an expert on reply. (R. p. 488, lines 15-17). This ruling misconstrued the facts and failed to properly apply the limited scope of rebuttal evidence.

In a criminal trial, the State may offer evidence after the defense rests its case, and the circuit court has discretion to admit additional testimony. However, that discretion must be exercised within the legal restrictions on the scope of rebuttal evidence. Reply evidence must be

limited to matters raised by the defense. State v. Garris, 394 S.C. 336, 350, 714 S.E.2d 888, 896 (Ct. App. 2011). A reply witness's testimony must "rebut" or "refute" what a defense witness said. State v. Durden, 264 S.C. 86, 90, 212 S.E.2d 587, 589 (1975). It is not enough that a proposed reply witness will address the same general subject matter as a defense witness. Nor is the restrictive scope of rebuttal evidence strictly a relevancy consideration. Even if proposed reply testimony is relevant, it cannot be admitted unless it strictly tracks the specific issues covered by the defense. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 438 438 319 S.E.2d 695, 700 (1984). Limiting reply is a matter of trial fairness designed to prevent the state from holding back key evidence until a time when the defense lacks an effective opportunity to respond. Durden, 264 S.C. at 90, 212 S.E.2d at 589 (suggesting proposed reply testimony may be excluded when it goes beyond opponent's presentation and serves as a "surprise"); McGaha v. Mosley, 283 S.C. 268, 277, 322 S.E.2d 461, 466 (Ct. App. 1984). Moreover, reply evidence is limited to demand proper trial planning. The State may not use reply as a means of completing its case-in-chief. State v. Huckabee, 388 S.C. 232, 240, 694 S.E.2d 781, 785 (Ct. App. 2010) (citing State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998)).

Recently, this Court applied these principles to reverse the admission of expert testimony as rebuttal evidence. State v. Prather, 422 S.C. 96, 810 S.E.2d 419 (Ct. App. 2017) (cert granted Aug. 3, 2018). Prather considered a defendant's conviction on murder and armed robbery charges where the circuit court admitted expert testimony on reply from a crime scene analyst. The analyst, a SLED criminal profiler, was purportedly offered to rebut the defendant's testimony denying involvement in the crime and claiming he was not present at the scene when the crime was committed. Id. at 102, 810 S.E.2d at 421-22. However, the expert was allowed to offer "broad expert testimony" including opinions on the perpetrator's motivations as indicated by the

placement of various objects discovered at the crime scene. Id. at 106-07, 810 S.E.2d at 426. This Court held the expert's testimony was improper reply evidence for two reasons. First, the expert did not rebut or refute the defendant's testimony because he went beyond the issues the defendant actually discussed. Id. at 107, 810 S.E.2d at 425. Second, the testimony was improper because the State was not permitted in reply to go beyond issues already in evidence in an effort to complete its case-in-chief. Id. at 106, 810 S.E.2d at 424.

Letterman should have been excluded for the same reasons. His purported expert testimony could only have been offered in reply to Slovenski, Wright's cell phone mapping expert. But, Letterman did not limit his testimony to issues Slovenski discussed. Immediately after the circuit court qualified him as an expert, Letterman began testifying about a forensic evaluation of Blackwood's phone even though Slovenski's testimony focused exclusively on mapping Wright's phone. Compare (R. p. 428, lines 5-13) with (R. p. 488-89, 494, lines 9-11). Just as in Prather, the State was improperly using rebuttal as an opportunity to complete its case-in-chief. Rebuttal was actually the second time Letterman testified in Wright's trial. Comparing his two direct examinations further demonstrates his reply testimony was the State attempting to tie up loose ends in its case and not a true rebuttal of specific issues Wright raised in her defense.

The circuit court distinguished Letterman's two trips to the witness stand by concluding the first was strictly as a fact witness and the second was for the distinct purpose of offering expert opinions. (R. p. 488, lines 15-17). Arguing in favor of Letterman's admission, the State noted Letterman had changed positions after the initial investigation and now served in the distinct role as cell phone forensic analyst. (R. p. 487, lines 19-23). However, Letterman did not partition his testimony as the State suggested. See (R. pp. 350-51) (showing parties' dispute as to whether Letterman's cell phone testimony was veering into expert opinions). His original testimony

touched on observations from the crime scene including the location of Wright's driver's license in the truck (R. pp. 346-47), but the bulk of the questions he received concerned cell phone evidence he collected and analyzed. (R. pp. 348-54).

Letterman specifically discussed a cell phone extraction performed on Wright's phone including his use of the Cellebrite computer program, the same software Letterman cited on reply in describing his alleged expertise. (R. p. 349, lines 8-12; R. p. 484, lines 4-11). Therefore, Letterman's second round of testimony was not a true rebuttal, but rather an effort to supplement his earlier statements with more detail the State either neglected to cover or chose to leave out from his original testimony. As Prather demonstrates, the reply stage of a trial is not meant as a supplement for issues that could or should have been covered earlier. 422 S.C. at 106, 810 S.E.2d at 424 (citing State v. McDowell, 272 S.C. 203, 206-07, 249 S.E.2d 916, 917 (1978) (describing the scope of rebuttal evidence in terms of whether it was "[]necessary" to discuss the issue in the proponent's case-in-chief)). Allowing the State to knowingly hold portions of Letterman's testimony back for reply would also present fundamental fairness questions implicating Wright's due process rights. See State v. Beaty, ___ S.C. ___, 813 S.E.2d 502, 511-12 (2018) (discussing "sandbagging" by state in closing argument) (citing Bailey v. State, 440 A.2d 997 (Del. 1982) (due process offended when State permitted to "sandbag" by making perfunctory opening statement and then argue in full in reply, thereby depriving defendant the opportunity to counter State's arguments)); State v. Hughes, 419 S.C. 149, 161, 796 S.E.2d 174, 181 (Ct. App. 2017) (discussing earlier Supreme Court ruling in Beaty along with its citations to Bailey and concluding "the supreme court agreed in part with Beaty's due process concern").

In sum, while the rebuttal stage of a trial serves an important function, a party should not be allowed to use it to gain the rhetorical advantage with the jury of both primacy and recency by

artificially partitioning a key witness's testimony. Both for this reason and because Letterman's reply did not rebut or refute what came before him, the circuit court abused its discretion in allowing the State to recall Letterman as a reply witness.

3. Wright was Prejudiced by the Evidence Improperly Admitted Against Her.

Errors in qualifying a proposed expert and in admitting an improper reply witness should lead to a new trial if the disputed evidence prejudiced the defendant. Garris, 394 S.C. at 350, 714 S.E.2d at 896. In the criminal context, prejudice is determined through a harmless error analysis with an error deemed harmless only if the Court finds "beyond a reasonable doubt the trial error did not contribute to the guilty verdict." State v. Tapp, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). Harmless error is at its core an analysis of the materiality and prejudicial character of wrongfully admitted evidence. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (citing State v. Key, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). Qualifying Letterman as an expert and permitting him to testify on reply were not harmless errors because Letterman was the sole expert the State offered, and his testimony concerned a crucial issue in the State's case against Wright.

Harmless error typically applies when the circuit court's mistake related to merely cumulative evidence or an issue insignificant to the jury's verdict. Beaty, 813 S.E.2d at 512 (finding no prejudice where error related to "relatively insignificant" issue); State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) (admission of improper evidence is harmless where it is merely cumulative to other evidence). The State's cell phone mapping testimony is neither. The jury was asked to resolve two critical factual disputes—(1) whether Wright was present at the crime scene; and (2) if so, whether Wright or Blackwood was driving the truck that struck Decedent. Wright told police she was not at the scene and pointed to alibi witnesses to support her

claim. (R. pp. 154-57). In contrast, the State called Blackwood and relied on cell phone data to suggest Wright was at the scene. Since it was directly related to a crucial disputed fact, the improperly admitted evidence was not harmless error beyond a reasonable doubt. See State v. Ellis, 345 S.C. 175, 177-78, 547 S.E.2d 490, 491 (2001)) ("An officer's improper opinion which goes to the heart of the case is not harmless").

Moreover, Blackwood's testimony placing Wright at the scene does not render the cell phone mapping evidence merely cumulative. Blackwood's testimony presented unique credibility problems leading a reasonable juror to disregard his testimony in full. He told the jury Wright drove the truck over Decedent knowing who he was and intending to harm him. (R. pp. 215-17). However, Blackwood previously told police he was behind the wheel and he hit Decedent. (R. p. 222, lines 22-23). He made these confessions in signed written statements after receiving Miranda warnings. (R. p. 397, line 14 – p. 398, line 20). In the course of a single interview, Blackwood denied all involvement in Decedent's death, then confessed to the crime, then acknowledged driving but claimed Wright threatened him, and finally denied remembering anything that happened. (R. pp. 233-36). Blackwood drank heavily on the night Decedent was killed and told a friend days later that he did not remember the incident at all. (R. pp. 246-47). At one point, Blackwood admitted he was not even sure Wright was in the truck around the time of Decedent's death. (R. p. 478, lines 2-7). Blackwood's substantial credibility issues were matched by his potential bias. He too had been charged with Decedent's murder and admitted to jurors he hoped testimony implicating Wright could spare him a long prison sentence. (R. p. 255, lines 4-11).

A reasonable juror could easily conclude Blackwood's self-interested, constantly shifting account of Decedent's death had no evidentiary value and that, as a result, circumstantial evidence like cell phone data was all the more important for determining Wright's guilt or innocence. In

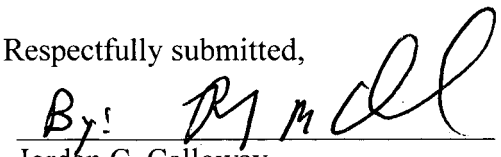
fact, at least two other courts have rejected harmless error arguments for cell phone mapping testimony in cases where the defendant's presence at the crime scene was contested. Collins v. State, 172 So.3d 724, 744 (Miss. 2015) (finding police officer who was improperly permitted to provide cell phone location testimony was "obviously" not harmless error in part because police officers holds the public trust); Wilder v. State, 991 A.2d 172, 200 (Md. 2010) (finding mapping evidence had "compelling" role in trial's outcome).

For these reasons, neither of the circuit court's errors should be dismissed as harmless. Prather held admitting improper reply evidence was prejudicial in a case like this one where the defendant denied being at the crime scene and the improperly admitted evidence suggested the defendant was actually there. 422 S.C. at 108-09, 810 S.E.2d at 425. Similarly, the circuit court's error in qualifying Letterman as an expert was prejudicial because, regardless of how they are charged by a circuit court, jurors tend to lend more credibility to testimony offered by a witness the court has labeled an expert. Kromah, 401 S.C. at 357, 737 S.E.2d at 499; Watson, 389 S.C. at 449, 699 S.E.2d at 176.

CONCLUSION

For all these reasons, Wright respectfully request the Court reverse her murder conviction and remand for a new trial. The circuit court abused its discretion by admitting a purported expert who lacked proper qualification and who was improperly offered as a rebuttal witness. These errors substantially prejudiced Wright's defense because they relate directly to key factual issues presented to the jury.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531

RECEIVED
AUG 15 2019
SC Court of Appeals

State of South Carolina, …….. Respondent

v.

Angelita Nicole Wright, …… Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 211, SCACR, Appellant's counsel certifies that the Appellant's Brief and Reply Brief comply with Rule 211(b), SCACR.

Respectfully submitted,

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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2017-002531

THE STATE,

Respondent,

vs.

ANGELITA WRIGHT

Appellant.

FINAL BRIEF OF RESPONDENT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2017-002531

THE STATE,

Respondent,

vs.

ANGELITA NICOLE WRIGHT,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Respondent agrees with Appellant's Statement of the Case.

STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence presented at trial was that Appellant and the victim, Brent Tessnear, had previously been married and had children together. However, they had been estranged for two years by December 26, 2015. *See* ***R. 196; 270.***

Brandon Blackwood testified that he was twenty years old and graduated from high school in 2016. He met Appellant through her cousin, Christine Hamrick, roughly five months before December 26, 2015. Although he "knew of" Brent Tessnear through Appellant, he did not know Brent. Around 3:00 p.m. on December 26th, Blackwood was at Christine's residence in Pacolet when Appellant asked if he would take her to Brent's house in Cowpens "to get [the] Christmas presents for her children." ***R. 194-96.***

Blackwood drove Appellant to Brent's house in his white truck. Blackwood remained in the truck, but she went up to the house and knocked on the door. Brent answered the door and they spoke briefly, before going into the house. When Appellant returned to the truck fifteen minutes later, she was visibly upset and yelling that she could not believe Brent. Because she appeared "[a]ngry" and "bitter," Blackwood asked what Brent had done. Appellant said that he had returned the children's Christmas gifts, took the money he got and "bought drugs with it." ***R. 196-98.***

Appellant then drove them back to a store in Pacolet where she bought some cigarettes. She also bought some Malibu rum for Blackwood at his request. Their next stop was at Carol

Barzilay's house.[1] Blackwood had never been drunk before and he drank almost half of the rum on the way to her house. Appellant got out and spoke to Carol once they reached her house, but Blackwood initially remained in the truck because he was drunk. ***R. 198-200.***

He eventually got out and introduced himself to Carol, and he spoke to his friend, who had arrived. Soon, Appellant was yelling, "[T]here's no way in hell he just did this." Blackwood asked her why she was angry and she told him that Brent had "posted pictures of her private parts" on indicated they were her private parts. Appellant was "furious" and repeatedly said, "[H]e's got two minutes to take those down" and that she was "going to have to find somebody to go and beat his ass" if he did not remove the pictures. She had not been drinking in Blackwood's presence. ***R. 200-01.***

Appellant thereafter went into Carol's residence for about fifteen minutes. When she returned, she drove Blackwood's truck because he was too drunk to drive. She went to a woman's house in Cherokee County because Appellant wanted to locate her brother and ask him to beat up Brent for her. Appellant also unsuccessfully tried calling her brother. Next, she drove back to Brent's house but no one answered the door. ***R. 201-03.***

Before they left Brent's house, Johnathan Sellars and Amber Gossett arrived. Jonathan had not seen Brent. At Appellant's insistence, Johnathan called Chavis Tessnear but Chavis had not seen him either. Appellant drove the group to Chavis' house and they remained there for some period of time. When they left, they walked back to Brent's house. ***R. 203-04.***

No one answered Appellant's knocks on the front door and the window even though she yelled for Brent. The front door was locked. So, she went to the back door and was able to get

[1] Apparently, Blackwood did not know Carol's last name and referred to her as Appellant's "friend Carol." ***R. 198-99.***

inside. She emerged about fifteen minutes later and said that the only present that she found was a bike for her boy, which Blackwood and Johnathan put into the bed of the truck. Appellant then drove by the home of a woman named Tammy, whom Blackwood had never met, because Appellant mistakenly thought that Brent might be there. ***R. 205-06***.[2]

The next place that Blackwood remembered going to was the Spinx station in Spartanburg, where Appellant met her friends. Again, Appellant drove. She got out of the truck and into her friends' vehicle. After speaking to her friends, she told Blackwood to go to the nearby Arby's and she would meet him there in a minute.[3] Appellant and her friends pulled into the Arby's ten minutes later, and Blackwood got the bike out of the truck bed at Appellant's request, so that she could show it to her friends. ***R. 206-09***.

After her friends left, Blackwood told he needed to get home because he had a midnight curfew and it was after 12:00 a.m. He stated that he would drive himself home. However, Appellant told him to relax and that she would drive because he was too drunk to drive. Blackwood eventually acquiesced and allowed her to drive. By the time he awoke, Appellant was getting out of the truck at the Li'l Cricket in Cowpens again, even though he did not have any reason to be in Cowpens. ***R. 209-11***.

Brent was coming out of the store a she approached it and she ran into him. They then had a heated argument for five to ten minutes, in which they yelled at each other. When Appellant got back into the truck, she repeatedly refused to tell Blackwood what was wrong and insisted that she was fine. She thereafter drove. After making sure that no cars were coming, she pulled out of the parking lot and headed on N. Main St. She then turned on Graveyard St. (S 566), which is by the

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[2] Brent was dating Tammy Yosa at the time. ***R. 284***.

[3] Blackwood testified that the Arby's was less than a minute away from the Spinx station. ***R. 253***.

Hardee's. ***R. 211; 214-15.***

Blackwood saw a man walking in the road and warned her to "watch out." Appellant initially slowed her speed and turned on her bright lights. Despite Blackwood saying, "'make sure you don't hit him,'" she floored the truck when the man was in the center of the road and did not stop because she apparently recognized Brent. Appellant continued driving until she reached her apartment in Pacolet. From there, Blackwood drove to his mother's house in Cherokee County. ***R. 216-17.***

Less than twenty-four hours after Appellant killed Brent, she sent Blackwood a text at 12:57 a.m. on December 28th in which she said, "You in town? I was walking to the store. LOL." ***R. 221.*** Blackwood spoke police on the 29th. On his way to meet with law enforcement, Appellant sent him a text telling him that "you need to call me ASAP." ***R. 218-20.***

Blackwood indicated in his original statement that Appellant was driving the truck when she struck and killed Brent. Blackwood admitted that he gave inconsistent statements to the Assistant Solicitor and police when he met with them to prepare for the original trial date. He had even given a statement stating that he was driving. He testified, however, that he had smoked marijuana before giving the false confessions, and that he had felt threatened and pressured to falsely confess. He was adamant at trial that Appellant was the driver, that he did not have a reason to be in Cowpens at 2:00 a.m., that he did not know that Brent walked up and down Graveyard St., and that he had not received any deal in exchange for his testimony. ***R. 221-23.***[4]

Alaina Miller testified that she misplaced her cell phone in her home around 3:00 a.m. on December 27, 2017. Her boyfriend did not have a cell phone. So, she was going to drive to a nearby

[4] Defense counsel impeached him with his inconsistent statements on cross-examination (***R. 230-42; 248-49***), and Appellant later called Assistant Solicitor Spencer Smith and the officers involved in taking those inconsistent statements as defense witnesses. *See* ***R. 368-405; 474-80.***

gas station and have them call her number. Her boyfriend was going to stay home to listen for the ring in order to locate her phone. After she had driven a short distance past the railroad tracks on Cemetery St., she saw a man's feet in the roadway. "[H]is head was on the white line that comes before the 'X' on a railroad sign," and he was lying face down. ***R. 65-67.***

She circled the man but he did not move. So, she immediately went back home and told her boyfriend what she had seen. They then walked to the store to call the police, but stopped a passing car and the occupant of the car called 911. Alaina went to the gas station, but did not see any officers. So, she went back to where she had found the victim. It was approximately 3:15 a.m. by that time. ***R. 66-69.***

Sgt. Ruth Wolfe, of the Cowpens Police Department, testified that she was dispatched at 3:03 a.m. on December 27, 2015, "to assist an ambulance on Cemetery Street in reference to a man down." Emergency personnel were present by the time she arrived on the scene, which "was near the 'X' on the railroad (sic) on Cemetery Street." An African American man, Alaina Miller, and Ms. Miller's boyfriend were also present, but none of them could identify Brent. Sgt. Wolfe collected a green plastic bag, a cell phone, keys, a lighter, and some grocery items that were laying in the roadway near the emergency personnel. She placed these items in the trunk of her vehicle and then went to Spartanburg Regional Hospital. ***R. 69-73; 77.***

When she finally saw Brent, she recognized him because she had seen him earlier that morning at the Li'l Cricket in Cowpens. She had gone into the store shortly before 2:00 a.m. on the 27th to get a cell phone charger to use in her vehicle. When he went to purchase his items, she noticed that he had apparently been drinking. She asked him whether he had been drinking and he admitted that he had "a few" Jägermeisters earlier. He also explained that he lived behind the Hardee's off of Hwy. 29 and Oakland St. Sgt. Wolfe intended to offer him a ride, even though he

was not grossly intoxicated. However, he was already walking in the direction of his home by the time that she had paid for the cell phone charger at 2:02 a.m. ***R. 73-75; 78-79; 81-82.***

Inv. Jeanie Burnett testified that she went to Spartanburg Regional Hospital on the morning of December 27th and saw Brent's body, as part of her duties as an investigator with the Spartanburg County Coroner's Office. "He had a couple of abrasions on his body that [were] not consistent with falling out in the road." These injuries included bruises on his ankles, "scuff marks" on his shoulder blades and his legs, and an injury "above his right eye." In light of what Inv. Burnett observed, she had Sgt. Wolfe take her to the area where Brent's body had been discovered. ***R. 334-35.***

Once Inv. Burnett got to the scene, she had the area cordoned off, as a potential crime scene. Between 5:00 and 6:00 a.m., Inv. Burnett called Appellant and asked Appellant to meet her because she needed to speak with Appellant about something. Although she identified herself as a Spartanburg County employee, she did not tell Appellant that she worked for the Coroner's Office. Yet, Appellant immediately asked, "Is he okay? I want to make sure he's alright." ***R. 336-37; 340-41.***[5]

Also, when Inv. Burnett asked Appellant where she was, Appellant said that she was home in Pacolet and had not seen Brent. She then admitted that she was on the Ashville Hwy. Inv. Burnett later met with Appellant in the emergency room of the hospital. While it only took her roughly twenty minutes to get the hospital, Appellant was already there when she arrived. ***R. 339-40; 342.***

Inv. Michael Nix, who works in the crime scene unit of the Spartanburg County Sheriff's

[5] Inv. Burnett made the call in the presence of Sgt. Wolfe and she could tell that another person was also in Appellant's car. ***R. 339.***

Office, went to the scene at the intersection of Cemetery and Oakland Streets on the morning of December 27th. Inv. Burnett asked to look at Brent's body and assess what he thought happened. He looked at the body and concluded that Brent had been struck by a vehicle. In addition to photographing the scene, he collected evidence and measured how far some evidentiary items that he found were from the railroad crossing. Although he was told that Brent's body was found close to the railroad crossing, the evidence he found was over two hundred feet from it. Also, he did not find any vehicle parts or tire marks in the roadway. ***R. 315-26.***

Nineteen year old Johnathan Sellars testified that he was living with Brent's son, Chavis, in Cowpens, on December 26, 2015. Johnathan did not know Appellant at the time but he knew Brandon Blackwood from school. Between 8:00 and 9:00 p.m. on the 26th, he saw Blackwood and Appellant Brent's house. They were traveling in Blackwood's truck but Appellant was driving. Appellant was mad and wanted to know where Brent was because of photographs on Facebook. ***R. 183-86; 191-92.***

Johnathan and Amber Gossett thereafter rode with them as Appellant headed to a trailer in Pacolet.[6] Before they reached this trailer, Appellant briefly received a call from Brent and told him that she would be there in fifteen minutes.[7] She then turned around and headed back to Cowpens. As they drove, Appellant said that Brent "don't deserve the ground he walks on or the air he breathes." She dropped Johnathan and Amber there. In light of Appellant's comment the previous day, Johnathan was concerned when he heard on December 27th that Brent was dead. ***R. 186-88;***

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[6] She did not explain why she was going there. ***R. 192.***

[7] Appellant told Brent that she loved him in that conversation. ***R. 189.*** Johnathan's testimony vacillated on whether this was before or after her malicious remark, but he ultimately testified that was before it. ***R. 191.***

191-92.

Carol Barzilay testified that Appellant and Brandon Blackwood went to Ms. Barzilay's Pacolet, South Carolina residence between 8:00 and 9:30 p.m. on the night of December 26, 2015, and they stayed there for thirty to forty-five minutes. Appellant was driving Blackwood's white Ford 150 truck. She had apparently been drinking and she was "ranting and raving" about pictures "of her body parts" that Brent had posted on Facebook. Ms. Barzilay attempted to calm Appellant and called Brent using Appellant's cell phone. When confronted, he denied posting the photographs. Appellant then spoke to him. Afterwards, she told Ms. Barzilay, "I'm going to kill the f----ing bastard." Appellant was driving when they left and said that she was going to Brent's residence. ***R. 118-22***.

Amy Padgett testified that she was Brent's first cousin and that she had met Appellant through him. Amy and her daughter, Hannah, were staying at Ms. Barzilay's residence on December 26, 2015. Slightly before 9:00 p.m. that night,[8] Appellant pulled into the driveway of the residence at a high rate of speed, "slammed the brakes," and got out the white truck. Blackwood was in the truck but she was driving. Several mini bottles of liquor fell out of the truck as she got out. Appellant "was livid" about some pictures "of her body parts" that Brent had posted on Facebook and she wanted to use Hannah Padgett's phone to call him. Hannah overheard her say that she was going to kill him. ***R. 126-28; 137-40***.

Hannah and Amy testified that Appellant used her phone "to get on Facebook." Hannah also saw Appellant and Blackwood drinking while they were there. She was driving the truck when they left. ***R. 128-29; 140***. Amy testified that after Appellant saw the photographs, she called Brent

[8] Seventeen year old Hannah was positive about the time because she had walked back from a store that closed at 9:00 p.m. ***R. 126***.

on her flip phone and asked him why he had posted the pictures of her. They went "back and forth." Although he denied that he had posted the pictures, Appellant told him, "[Y]ou have two minutes to take these pictures off or ... I'm coming to kill you." When Blackwood asked Appellant if she wanted him "to do it" for her, she replied, "[N]o, I can take care of my own."***R. 140-41.***

Both Appellant and Blackwood were stumbling. So, Amy told both of them that they had been drinking and needed to lay down. In spite of this plea, they got back into the truck and sped away, with Appellant driving. ***R. 140-41.*** Hannah Padgett confirmed that Appellant was driving the truck when she and Blackwood left. ***R. 129.***

Amy learned that Brent was dead around 7:30 or 8:00 on December 27th when Eric Edgins, who was dating Carol Barzilay at the time, showed her a text that Appellant had sent him.[9] Because Amy could not believe that her cousin was dead, Amy got Appellant's cell phone number from Mr. Edgins and called her. Appellant was crying. She confirmed that he was dead and, when asked what happened, said "the Evans guy beat him to death." ***R. 141-42.*** Amy saw Appellant later on the 27th at Spartanburg Regional Hospital. ***R. 142.***

Appellant "seemed nervous." ***R. 143.*** According to Amy, the women had the following conversation:

> [Appellant] was standing off to the side kinda bent down. And I walked up to her and I hugged her, and I'm like ... are you okay. And she was like I can't believe they did this to Brent. And I was like who. And she said the Evans boy beat him to death. Brian Evans had beat him to death. And I asked could I see him, because I couldn't believe that he was actually gone. I wanted to see for myself. But the hospital refused to let anyone see him.

R. 143, lines 2-9.

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[9] Eric Edgins, who had at one point been in a relationship with Appellant, also testified for the State. He corroborated Amy's testimony that he showed her a text that he had received from Appellant on the 27th stating that Brent was dead. ***R. 327-28; 331.*** He also testified that he received on the 29th in which she stated, "'I see you believe in me so much ... you think I murdered Brent.'" ***R. 329-30.***

Hannah likewise testified that when she was at the hospital on the 27th, she heard Appellant say "something about Brian Evans and some other person" killed Brent. ***R. 129***. Both Hannah and Amy testified that Appellant rode with them when they left the hospital and asked to go to Brent's residence because she needed to get his phone. While Hannah testified that Appellant claimed that she had permission to get his phone, Amy testified that Appellant had papers in her hands and claimed that the Spartanburg Sheriff's Office had authorized her to get his phone. Therefore, Amy drove her to his Cowpens residence. ***R. 129-31; 143***.

When they reached his house, Appellant got out of the truck and tried to get into the house. However, it was locked. Appellant then went to the back of the residence and picked up a brick, but Hannah stopped her from using it to break into the house. So, Appellant and Hannah got back into the truck. The police pulled Amy as they were driving away and asked why they were at Brent's house. In response to Amy's explanation that Appellant led them to believe it was okay for them to be there because she had asked to go there and had "paperwork," officers told them not to come back to the property because "it was all under investigation and nobody was allowed there. Although Appellant seemed "up tight," she spoke to the Chief of Police. ***R. 143-44***.

On December 28th, Amy drove Appellant to the funeral home. On the way there, Appellant was quiet at times she was quiet, but "she would break down at moments. And then it was almost like she was very nervous." Appellant "called the life insurance people" while they were at the funeral home because "she was trying to figure out if he had life insurance and who was the beneficiary of the life insurance." She was unsuccessful because the company would not give her any information. ***R. 145***.[10]

[10] Brent's son by a previous marriage, Brett Tessnear, testified that his father had a life insurance policy with Mutual of Omaha Life Insurance and that he was the sole beneficiary. ***R. 358-59***.

Bridget Miller testified that she was Brent's sister and that she had known Appellant most of Appellant's life. Although they had their "ups and downs," the women were close. Bridget remembered seeing Appellant and Blackwood on December 26th, at the Spinx gas station in Spartanburg. It was around 10:00 p.m. and Bridget was preparing to go to the flea market early the next morning. While her husband was in the store, Appellant and Blackwood pulled up in his truck. Bridget apparently scared Blackwood when she tried to speak to him because he backed the truck up over a curb and drove to a nearby Arby's. ***R. 260-64***.

Appellant got into Bridget's vehicle and she told Bridget that she was trying to sell a TV. After Bridget's husband came out of the store, he got into the truck and the three went to the Arby's where Blackwood had parked. She saw the bicycle for Appellant's son in the truck bed. Appellant told Bridget that she had to get Blackwood home because he was drunk. Appellant insisted on driving the truck even after Bridget reminded her that she did not have a driver's license and she declined Bridget's offer to follow her home. ***R. 263-65***.

Bridget then went home and went to bed. She next saw Appellant sometime close to 5:00 a.m. the following morning after she stopped by her father's house before she went to the flea market.[11] Blackwood was with Appellant at that point. Appellant went with Bridget to help her set up at the flea market. As they were headed to Hardee's to eat, Appellant told Bridget that "she was scared that Brent had got beat up over ... a cell phone," and that Bridget needed to get in touch with him and "go check on him." ***R. 266-68***.

Bridget, whose phone was at home charging, said that she would do something later. She added that if Brent had done "something to Jeff, Jeff will just knock him around a little bit but he

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[11] Bridget explained that she had to be at the flea market when it opened at 6:00 a.m. to get a good "place." ***R. 266***.

won't hurt him ... because [Jeff was] like a nephew to him." In this conversation, Appellant appeared to be concerned about Brent. However, she finally told Bridget about trying to stop him from selling the children's Christmas gifts. ***R. 268-69; 273-74; 279-80.***

Appellant received a phone call from the Coroner's Office at 5:57 a.m. This was while she and Bridget were at the Hardee's and Bridget was able to hear the conversation because Appellant put the call on speakerphone at her request. The caller needed to come to Appellant's house and speak with about Brent. Bridget told the caller that she did not have enough gas to go to Pacolet. So, the caller agreed to meet them at Spartanburg Regional Hospital. Bridget got mad when the caller refused to answer any of Bridget's questions because Brent and Appellant had been separated for two years. ***R. 269-70.***

Once they reached the hospital, Appellant called a male cousin and repeatedly asked him "[W]hat do I do[?] [W]hat does it mean[?]"Bridget told her it meant either Brent was on life support, "or I don't want to mention the other thing, or maybe he's in jail." Later, hospital staff told the women that Brent was unconscious when found behind the Hardee's and that he had died. Bridget went home but Appellant was required to stay. ***R. 270-72.***

Margo Kirk testified that Brent was her cousin, that they were close, and that they lived within walking distance of each other at the time of his murder. He contacted her in the early morning hours of December 27th and asked if she had "a way to the store" because he needed cigarettes. She told him that she did not have a vehicle. Although she likewise needed cigarettes and the store was less than a mile away, she declined his invitation to walk to the store with him. He posted on Facebook at 1:50 a.m. that he was on his way there. ***R. 181-83.***

Sherry Riley testified that she was related to Brent and had raised him and Bridget after their mother died. Sherry had seen Appellant but did not know her. Sherry testified that she lived

in Cowpens on December 26, 2015, and that her home was less than a mile away from Brent's house. She and Brent had a good relationship because he had gotten his life straightened out, had a good job and was buying a home. ***R. 281-82.***

Brent went by Sherry's house on December 26th and wanted to know if she had a pigtail connector to use on his dryer. She did not know and told him that she would ask her husband when he got home. ***R. 283.*** He then showed her a text message that Appellant had sent him:

> And it said if you don't take that off of [Facebook] I'm going to come to Cowpens and kill you. And I said what did you put on [Facebook?] And he said it was a woman's private. And he tagged her and tagged different ones in it, and I said, boy, you know better than to do stuff like that.

R. 283-84. Brent asked her to check on the connector and left. ***R. 284.***

He later called her between 10:00 and 10:40 p.m., as Sherry and her husband were headed to a friend's house. He was trying to get in touch with Tammy Yosa, a girl he was dating but Sherry did not know how to reach her. Brent also asked her and her husband to come by his place on their way home. Sherry told him that she did not know if they could stop by because it might be late. Brent next called her at 2:06 a.m. on the 27th. She could tell that he had been drinking. He wanted to know whether she had asked her husband about the pigtail connector and she told him that her husband had one but that he would have to find it. ***R. 284-85.***

In order for the Rileys to get home, they had to drive by the Hardee's near the crime scene. As they drove by after 2:30 a.m., the road was blocked and both police and an ambulance were present. So, the Rileys stopped at the Li'l Cricket and her husband went inside to find out what had happened. When he returned, he told Sherry that the cashier said someone had been hit by a vehicle. He later told her that Brent had been hit. ***R. 285-87.***

Frances Dalton testified that she had met Appellant and Brent through her former

boyfriend, Robert, and that she lived two houses away from Appellant on December 26, 2015. Appellant called Robert between 3:00 and 4:00 a.m. on the 27th and asked for Robert and Frances to come out and talk to her. They met her outside and then the three of them went into her house. In this conversation, she appeared to be "real worried about Brent, saying that he had gotten into a lot of trouble and that she was worried about what may happen to him." She also said, him and her (sic) had messed up before but ... he'd never messed up like this, that he was on drugs real bad and had done traded all the kids' Christmas but the bicycle that was there. ***R. 288-89***.

She also said that "she was worried about he had posted some naked pies of some girl and worried about ... the woman's boyfriend hurting Brent," and she was scared because Brent had stolen a cell phone from a dangerous drug dealer. ***R. 290; 294***. When the three friends ran out of cigarettes, Appellant offered to buy cigarettes and a drink if Frances and Robert would walk to the Li'l Crick with her. They agreed and all three walked to the store. Appellant was very quiet on the walk there and on the way back home. Frances testified that this was not normal for Appellant, particularly since she had been expressing so much concern for Brent only minutes earlier. Shortly after they returned home, Bridget Miller arrived and Appellant left with her. Finally, Frances denied being with Appellant between 1:00 and 2:00 a.m. on the 27th. ***R. 289-92; 295***.

Odessa Erwin was working as the cashier at the Li'L Cricket in Cowpens, on December 26, 2015. Few people came in during her 11:00 p.m. to 7:00 a.m. shift "because it was after the holidays." She remembered both Sgt. Wolfe and Brent coming into the store "around maybe 1:30, 2:00 o'clock-ish." (Sic). ***R. 256-57***.

She testified that Brent "appeared ... like any normal person. .... [H]e wasn't irate or anything." Ms. Erwin could see the entire parking lot and she did not see a man and a woman fighting in the parking lot that morning. Nor did she tell anyone that she had seen a fight. ***R. 257-***

58.

Inv. Thomas Clark, with the Spartanburg County Sheriff's Office, assisted Cowpens Chief of Police Makupson with an interview of Appellant on December 29, 2015, and they obtained a written statement. ***R. 149; 154***. She admitted that she called Blackwood on December 26th and asked him to take her to Brent's house so that she could get her children's Christmas presents and that she got upset because he had sold the gifts and was "possibly high or on drugs." After Carol Barzilay called her and told her "about some pictures on [F]acebook that her husband had posted," she went to Ms. Barzilay's house in Pacolet. Appellant also admitted that she posted on Brent's Facebook page, "'If he did not remove my name I was going to come up there to Cowpens and whip Brent.'" ***R. 154-55***.

Appellant and Blackwood later went back to Brent's house with a man named Johnny, to get her son's bicycle. ***R. 155-56***. To that point, her statement was generally consistent with the testimony of persons with whom she came into contact on the 26th. Yet, she claimed that after they left Brent's house the second time, Blackwood dropped her off at her Pacolet apartment. She called Robert Blackwell and Marie Dalton. ***R. 156***.

"They came over to her apartment and they smoked dope." The three walked to a local store "between 1:00 and 2:30 [a.m.]." She then waited on Brent's sister, Bridget, to come pick her up. She later rode with Bridget back to Bridget's house and they "'smoked until the coroner's office called her.'" Inv. Clark denied giving Appellant permission to get Brent's cell phone. ***R. 156-57***.

Lindsey McGraw[12] testified that he is computer forensic examiner in the South Carolina Attorney General's Office and that he had previously worked in this capacity for the Spartanburg

[12] Mr. McGraw testified that Cellebrite is used by law enforcement throughout the world. ***R. 98***.

County Sheriff's Office. ***R. 97-98***. Inv. Clark asked him to perform a forensic examination of three cell phones in this case: Appellant's LG B450; Brent's Coolpad Model 3320A; and Blackwood's LG TracFone. Using Cellebrite, a "hardware tool that is used to extract data from cell phones," he attempted to perform a forensic extraction on the three phones. ***R. 98; 100***.

Cellebrite has the capability of performing three potential types of examinations on cell phones: a logical extraction of data, a file system extraction of data, and a physical extraction of data. A logical extraction of data is what the phone's user can see on the phone and does not typically include deleted data. A file system extraction includes this information, as well as application data. A physical extraction of data "is the entire bit for bit data that's available on the device to include operating system information, file system information, deleted data, anything that's available on the phone that's electronic in nature." ***R. 99***.

Because Appellant's flip phone did not support any of Celebrities' extraction methods, Mr. McGraw took digital photographs (State's Ex. 2) of the information he found on the phone's SIM card. There were "35 inbox messages and 92 outbox messages." He also photographed the text messages. The date and time for the earliest text message that she received was 6:30 p.m. on December 27, 2015. The date and time for the earliest text message that she sent was 6:47 a.m. on the 27th. ***R. 100-02***.[13]

Sgt. Brandon Letterman testified on direct examination that he is a computer and cell phone forensics analyst for the Spartanburg County Sheriff's Office, and that he was a Senior Investigator with the Office's cold case homicide unit. In connection with this case, he photographed Appellant's South Carolina ID Card (*see* State's Ex. 7), which she had left in the driver's side door

[13] Mr. McGraw did a logical extraction on the other two phones but was likewise unable to retrieve any deleted information from them. ***R. 103-04***.

of Blackwood's truck (*see* State's Ex. 8). Sgt. Letterman also executed a search warrant that enabled him to photograph (*see* State's Ex. 3-A) the phone call logs on Appellant's cell phone. Using Cellebrite, he did a forensic extraction of the contact list on her phone as well. ***R. 345-50***; State's Ex. 3-B (pdf. of information extracted).

Appellant's call logs reflected that she called Tindall Corporation at 4:26 p.m. on December 28th and again on Tuesday the 29th. She likewise called United of Omaha Life Insurance Company at 4:30 p.m. and again at 4:48 p.m. on December 28th. Sgt. Letterman contacted the manufacturer of Appellant's phone and was informed that text messages had to be manually deleted. Also, her phone had a storage capacity of 256 megabites, which means that it could hold approximately 1,828,571 S.M.S. text messages, or messages without anything attached to them. ***R. 350-54; 356-57***. (Thus, Appellant did not have any reason to delete the texts from the phone prior to December 27, 2015, because there was adequate space to store more information).

Dr. John Wren is the forensic pathologist who performed an autopsy on Brent's body. Brent's body was clothed when the autopsy began, and the "major" injury on the external examination of Brent's body was "an irregular torn area in the right [mid-chest] that covered about 13 by 5 centimeters, which is about 5 by 2 inches." Dr. Wren also observed "a pattern area along the left shoulder of the shirt near the seam with linear marks separated by about half an inch and covering an area of about 2 by 1 inch, which looked like a tire mark to me. Further, Brent's lip was bruised, his front teeth were chipped, he had abrasions and small lacerations on the right side of his face, and he had "abrasions and contusions scattered over his body." Those on his shoulders and back were "consistent with road rash." ***R. 304-08***.

Dr. Wren testified that the primary internal injury was Brent's "liver had actually ruptured open from a pressure type injury or extreme blow to the abdomen, although I didn't see anything

externally. .... It was a deep laceration that actually separated the right lobe of the liver." I would require "either constant pressure force or an extreme blow to cause the liver to lacerate like that." This injury cause extensive hemorrhaging in the rear of the abdominal wall. ***R. 308-09.***

Dr. Wren found that there was a laceration across the top of Brent's right kidney that likewise separated the top portion of his kidney from the bottom portion. ***R. 308.*** Dr. Wren opined that the cause of death was internal hemorrhaging, secondary to a lacerated liver and kidneys, and secondary to blunt force trauma. He also opined that these injuries were "consistent with a pedestrian versus vehicle encounter." ***R. 309-10.***

Sgt. Letterman was the prosecution's only reply witness. *See* Arguments, *infra*. He testified that he had reviewed Blackwood's Verizon Wireless cell phone records, which were introduced without objection as State's Ex.s 1-A (DVD with log of ingoing and outgoing calls) and 1-B (DVD with log of ingoing and outgoing text messages). The T-Mobile call data records for Appellant's phone (State's Ex. 12) reflected that all calls from line 478 through 486 were listed as call forwarding. This meant that either the phone was off, it had "died," or it was busy, and the call was forwarded straight to voice mail from11:19 p.m. on the 26th until 2:04 a.m. on the 27th. She received the nine text messages that had been previously sent to her within fourteen seconds after she turned the phone back on, including two texts from Blackwood. ***R. 488-93; 496.***

An outgoing text message was sent from Appellant's phone at 2:10:28 a.m. on the 27th. Thus, she used the phone at that time. The first incoming text after that message was at 2:10:11 a.m. and she then received a text from Brent's phone at 2:18:32 a.m. She did not use her phone again until 3:08:31 a.m. ***R. 493-96.***

According to Sgt. Letterman, the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th. Also, his phone records reflected that his

phone was not active at 2:09 a.m. ***R. 493-94.***

STANDARD OF REVIEW

In criminal cases, appellate courts only review errors of law. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "The qualification of an expert witness and the admissibility of the expert's testimony are matters largely within the trial court's discretion." *State v. Harris*, 318 S.C. 178, 181, 456 S.E.2d 433, 435 (Ct. App. 1995). "The trial court does not abuse its discretion in qualifying experts and allowing their testimony as long as the witnesses have 'acquired by study or practical experience such knowledge of the subject matter of [their] testimony as would enable [them] to give guidance and assistance to the jury in resolving a factual issue [that] is beyond the scope of the jury's good judgment and common knowledge.'" *State v. Mealor*, 425 S.C. 625, 645-46., 825 S.E.2d 53, 64 (Ct. App. 2019) (quoting *State v. Anderson*, 407 S.C. 278, 285, 754 S.E.2d 905, 908 (Ct. App. 2014) (quoting *State v. Goode*, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991))). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *State v. Herrera*, 425 S.C. 558, 562, 823 S.E.2d 923, 924 (2019) (quoting *State v. Douglas*, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)).

"The admission of reply testimony is a matter within the sound discretion of the trial judge." *State v. Stewart*, 283 S.C. 104, 106, 320 S.E.2d 447, 449 (1984); *State v. Huckabee*, 388 S.C. 232, 243, 694 S.E.2d 781, 786 (Ct.App. 2010) (finding no abuse of discretion by the trial judge in allowing reply testimony when it was limited in scope to contradict a previous contention raised by the defendant and not admitted to complete the State's case-in-chief). Admission of testimony that is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion. *See State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986); *State v.*

South, 285 S.C. 529, 535, 331 S.E.2d 775, 779 (1985) ("Any arguably contradictory testimony is proper on reply, and the trial judge properly exercised his discretion"). "Just what evidence is admissible in reply in a given case, as opposed to being offered as part of the evidence-in-chief, is a question which of necessity has to rest largely in the sound discretion of the trial judge." *State v. Hinson*, 253 S.C. 607, 619, 172 S.E.2d 548, 554 (1970). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Respondent submits that applying this standard of review, the Court should affirm the trial judge's ruling and the judgment of conviction should be affirmed.

ARGUMENTS

I. The trial judge did not abuse his discretion by qualifying Inv. Brandon Letterman as an expert in "cell phone forensics and cell tower mapping" under Rule 702, SCRE, because he had acquired such knowledge of these areas, through study and practical experience, that his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury's good judgment and common knowledge, and Appellant's attacks on his qualifications go to the weight she believes should have been accorded to his testimony rather than its admissibility.

Respondent submits that the trial judge did not abuse his discretion by qualifying Inv. Brandon Letterman as an expert in "cell phone forensics and cell tower mapping" under Rule 702, SCRE, because he had acquired such knowledge of these areas, through study and practical experience, that his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury's good judgment and common knowledge. Also, this is not a complex field and many courts have concluded that lay witnesses can present this evidence. Further, Appellant's attacks on his qualifications go to the weight she believes should have been accorded to his testimony rather than its admissibility.

A. How Issues I and II developed at trial.

Appellant's cross-examination of Inv. Thomas Clark elicited that the Sheriff's Office had obtained the cell phone records for Brent Tessnear, Appellant and Brandon Blackwood by a search warrant and that these records had been reviewed to compare them to statements and information that had been received. Although the records for Brent and Blackwood were stated in Eastern Standard Time, Appellant's records were stated in Universal Time Code (U.T.C.), and five hours had to be subtracted from the times listed on her records to accurately determine the time of any transaction. ***R. 166-68***. Appellant also elicited that her cell phone records reflected that she received text messages from Blackwood's phone around 2:00 a.m. on December 27th. ***R. 168-69***.

The various records were turned over to a forensic phone investigator in the Sheriff's Office for possible cell tower mapping. While "there were several things with her phone that were not able to be corroborated because of the type of phone it was, and there were things that were not on her phone that could not be pulled up," eventually the forensics investigator was able to map the phones. ***R. 170-72***.

On cross-examination of Brandon Blackwood, Appellant questioned him about text messages that he sent to Appellant and which Appellant received at 2:09 a.m. on December 27th. His response was, "I do not recall texting her." ***R. 243-44***.

After the State had rested and the jury had been excused, defense counsel White noted that Inv. Clark had mentioned that the Spartanburg County Sheriff's Office "had done [cell tower] mapping" but that counsel had not received any evidence of mapping in discovery. The State informed counsel that "they did this recently in response to our indications that we would have someone" testify to mapping. Counsel then asked that the State provide the information, "so that we can review and prepare for cross-examination, if necessary, and allow our expert to review

that." ***R. 366-67.***

> Assistant Attorney General Abee[14] stated,
> Your Honor, again, specifically, just like Ms. White said.
>
> This was prepared in response to their expert. Ms. White did share with us some slides that her expert intends to use. Therefore, we had it prepared in rebuttal to that. If they want to look at it, we have no problem with it. That's fine.

R. 367. In response to the trial judge's inquiry as to when the State would provide the information to defense counsel, Ms. Abee indicated that she had it in her bag (***R. 367***) and no issue has been raised regarding disclosure of information underlying Sgt. Letterman's testimony.

Appellant presented Mr. Tom Slovenski as part of her case-in-chief. ***R. 411-64.*** Mr. Slovenski was qualified as an expert in cell phone forensics and cell phone mapping without objection. ***R. 417, lines 3-9.*** He testified that he had received the T-Mobile call detail records for Appellant's flip phone from December 25, 2015, at 7:03 p.m., to December 27th, at 6:59 p.m. He also explained that the time of the transaction for T-Mobile records is stated in Universal Time Code, which is five hours ahead of Eastern Standard Time. So, it is necessary to subtract five hours from the listed for a transaction in order to determine when the transaction occurred. ***R. 418-19; 425-27.***

Mr. Slovenski testified that when the records reflect a gap in time, this could mean that the phone lost power, that it had been turned off, or that the user was in an area where that did not have coverage. ***Tr. 427.*** He mapped the location of Appellant's cell phone between 2:00 and 3:00 a.m. on December 27th by using a software program called Trax, which he stated is widely accepted by law enforcement in America. ***R. 428-29.***[15]

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[14] Ms. Abee's name is misspelled throughout the trial transcript.

[15] This software is manufactured by a company of which he is "a corporate partner." ***R. 429, lines 11-14.***

He explained that he "was given the charge of mapping certain key locations" and was Appellant's address on Cleveland Street in Pacolet; Oakland St. and Cemetery Rd. in Cowpens and the Scotchman or Li'l Cricket in Cowpens. ***R. 430-31***. He opined that the cell tower near Appellant's residence covers a radius of roughly six miles and that all of the "traffic" on her phone between 2:00 and 3:00 a.m. on the 27th used the cell phone tower near her Pacolet residence and that her phone would have had to use a different tower if it was being used in Cowpens. ***R. 435-37.***

Mr. Slovenski further testified that her phone was in the Cowpens area "between 7:47 and 8:46 [p.m.]" on the 26th. 9:00 p.m. as well as earlier in the afternoon on December 26th. The phone was in the area of downtown Spartanburg and then heading back to Pacolet around 10:30 p.m. on the 26th. The next activity was at 2:00 a.m. and the phone was in Pacolet at the time. After 2:19 a.m. the phone was moving back to downtown Spartanburg and it was used in Spartanburg between 3:08 and 5:55 a.m. on the 27th. He testified that the phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th. ***R. 438-43***.

Mr. Slovenski conceded on cross-examination that his testimony was based on the cell phone towers the phone used and that a cell phone only hits on a tower when it is in use. Nor was he using G.P.S. tracking software. Also, he estimated the range of the cell phone tower and he did not know the actual range of the towers. ***R. 444-49***. Without objection, the State introduced Appellant's cell phone records on cross-exanimation as State's Ex. 12. ***R. 452***. Mr. Slovenski agreed that an incoming call would go to call-forwarding if a person turned a phone off and that if a cell phone was turned off, a person could neither receive incoming calls or text messages nor send calls or text messages. He also agreed that it if incoming calls on a cell phone went to call-forwarding for three hours it "[c]ould be that the person had turned off the phone during that period.

R. 452-54.

He explained that any previously-received text messages would be received once the phone is activated again. Appellant's phone records indicate that call-forwarding began on her phone at 11:19 p.m. on the 26th and continued until 2:04 a.m. on the 27th. Appellant's phone records reflected that she received a series of text messages in two second intervals, beginning at 2:09:38 a.m. the last four text messages were from Blackwood's cell phone, but Mr. Slovenski testified that he was not asked to a phone report for Blackwood. Finally, Appellant's phone pinged off of the Pacolet tower when she received a text message at 2:18 a.m., and the next activity on her phone was not until 3:08 a.m. ***R. 454-61.***

On redirect, Appellant established that the text messages received at 2:09 a.m. had pinged off of the tower in Pacolet, and some of the call-forwarding reflected in her records were her own outgoing calls. ***R. 461-62.***

After the defense had rested, the State indicated that it had a rebuttal witness and it recalled Sgt. Letterman. ***R. 482.*** Sgt. Letterman testified that he was the "[c]ell phone and computer forensic analyst for the Spartanburg County Sheriff's Office and that he had been in that position for seven months. He had performed between 75 and 80 forensic cell phone examinations and he had analyzed cell phone tower information, including cell tower mapping, "probably 30 or 40 times" in his career. ***R. 483.***

In response to the State's question about his training in the field, Sgt. Letterman testified that for cell phone tower mapping, the Sheriff's Office uses a software program called GeoTime. He had received training through the company that manufactures this software on how to use the company's hardware and software, and he had used it for three months. For cell phone data records, the Sheriff's Office uses a software program called Cellebrite. He had been using Cellebrite for

seven months and he had been certified as a "Cellebrite operator" after taking a class presented by Cellebrite. Additionally, he had shadowed Inv. Lindsey McGraw for a month before entering his current position. ***R. 483-85.***

The State proffered Sgt. Letterman as an expert in cell phone forensics and cell tower mapping, but Appellant indicated that she wanted to voir dire his qualifications. ***R. 485.*** In response to her questioning, he testified that the training he had received for Cellebrite was a week-long program and his training for GeoTime software was for one day. Also, he had never testified as an expert in the area and he had not published in the area or done further research. However, he had presented "at a national homicide conference in Dallas, Texas, on a homicide case that involved cell phone mapping." This was based upon his training and experience and he had not done the mapping in that case. ***R. 485-87.***

Appellant objected to Sgt. Letterman's testimony based on his lack of "qualifications as a cell phone forensic examiner and map[per]." She also objected because he had testified in the State's case-in-chief. She added that he had not obtained "any additional training since that point ... that would allow him to be deemed an expert to come in as a rebuttal witness to our expert." ***R. 487.***

The State responded by noting that Sgt. Letterman had earlier testified as a fact witness because he had been involved as a fact witness in the case. His involvement as a cell phone examiner did not occur until he had changed positions in the Sheriff's Office. The State also argued that the qualifications to testify as an expert under Rule 702, SCRE, are "knowledge, skill, experience, training or education." An expert is not required to have previously testified because every expert must have a first time testifying in court. ***R. 487-88.***

The trial judge qualified him as an expert in the areas of forensic cell phone examination

and mapping, over objection. The trial judge also found that he was a proper rebuttal witness. ***R.* 488**. Sgt. Letterman then testified to the matters discussed in the "Statement of Facts."

B. The trial judge properly qualified Sgt. Letterman as an expert.

The qualification of an expert witness and the admissibility of the expert's testimony are matters largely within the trial court's discretion." *Harris*, 318 S.C. at 181, 456 S.E.2d at 435. See also *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). "There is no exact requirement concerning how knowledge or skill must be acquired." *Honea v. Prior*, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988) (citation omitted). In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather should make a broad inquiry. *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016), *reh'g den.* (July 13, 2016). "The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject." *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004).

"The trial court does not abuse its discretion in qualifying experts and allowing their testimony as long as the witnesses have 'acquired by study or practical experience such knowledge of the subject matter of [their] testimony as would enable [them] to give guidance and assistance to the jury in resolving a factual issue [that] is beyond the scope of the jury's good judgment and common knowledge.'" *Mealor*, 425 S.C. at ___, 825 S.E.2d at 64 (quoting *Anderson*, 407 S.C. at 285, 754 S.E.2d at 908 (quoting *Goode*, 305 S.C. at 178, 406 S.E.2d at 393). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *Herrera*, 425 S.C. at 562, 823 S.E.2d at 924 (quoting *Douglas*, 369 S.C. at 429-30, 632

S.E.2d at 848). See also *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 142 (2010) ("Reversal of a trial judge's qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice").

Notwithstanding Appellant's arguments to the contrary, Respondent submits that the trial judge did not abuse his discretion by qualifying Sgt. Letterman as an expert. The South Carolina Supreme Court has liberally construed Rule 702, SCRE. *See State v. Ford*, 301 S.C. 485, 488, 392 S.E.2d 781, 783 (1990) ("South Carolina ... has never specifically adopted the [*Frye v. United States*, 293 F. 1013 (D.C.Cir.1923)] test and has employed a less restrictive standard in regard to the admissibility of scientific evidence"); *Mealor*, 425 S.C. at ___ n. 13, 825 S.E.2d at 67 n. 13. "In general, courts allow experts to testify if they are more qualified in the field than a juror on the subject. .... Defects in an expert witness' education and experience go to the weight, not the admissibility, of the expert's testimony." *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005).

This is true even though Sgt. Letterman had never previously been qualified as an expert. "Every expert found to be qualified by a court must be so designated a first time." *Clena Investments, Inc. v. XL Specialty Ins. Co.*, 280 F.R.D. 653, 662 (S.D. Fla. 2012). Sgt. Letterman's education and experience in using the Cellebrite and GeoTime software programs[16] "can and do, in and of themselves, satisfy the relatively low threshold established by Rule 702." *Clena Investments, Inc.*, 280 F.R.D. at 662. *Cf. United States v. Cronic*, 466 U.S. 648, 665 (1984) ("Every

[16] Again, he had received training through the companies that manufacture the software programs he had used: GeoTime and Celebrite; he had been certified as a "Cellebrite operator;" he had been using GeoTime for three months; he had been using Cellebrite for seven months; he had performed between 75 and 80 forensic cell phone examinations; and he had analyzed cell phone tower information, including cell tower mapping, "probably 30 or 40 times" in his career. Additionally, he had shadowed another officer with expertise in this area for a month.

experienced criminal defense attorney once tried his first criminal case"). Moreover, the field of expertise at issue - cell phone forensics and cell tower mapping – is not an overly complex area. *Cf. Castellon v. State*, 302 S.W.3d 568, 571 (Tex. App. 2009). *Contra Hamrick v. State*, 426 S.C. 638, 648-49, 828 S.E.2nd 601 (2019) (finding, without any supporting citation(s) and contrary to its own well-settled precedent on the qualification of experts, that "[a]ccident reconstruction is a highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand"). Indeed, many courts have determined that testimony such as that at issue, which merely describes the information in a cell phone record, is proper lay testimony and does not require an expert.[17]

Indeed, this Court rejected a similar argument in *State v. Peer*, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). In *Peer*, the defendants – owners of a "non-alcoholic dance club

[17] This Court has previously affirmed a case pursuant to Rule 220(c), SCACR, in which the appellant asserted that his murder and armed robbery convictions should be reversed because the trial court allegedly erred in permitting two witnesses to testify regarding cell phone location data without qualifying them as experts. *See State v. McDonald*, 2017-UP-285, 2017 WL 4791156, at *1 (S.C. Ct. App. July 12, 2017). Other jurisdictions have likewise consistently found testimony that simply describes the information in a cell phone record, such as that given by Sgt. Letterman, is proper lay testimony. *See Collins v. State*, 172 So.3d 724, 743 (Miss. 2015) (holding that testimony that merely informs the jury as to the location of cell phone towers is proper lay testimony when it is based upon the personal observations of the witness); *Perez v. State*, 980 So.2d 1126, 1131-32 (Fla. 3d Dist. Ct. App. 2008) (finding a cellular company's records custodian was not required to be qualified as an expert to testify regarding geographic coverage of a typical cell tower and factually explain the contents of phone records); *United States v. Baker*, 496 Fed. App'x 201, 204 (3d Cir. 2012) (finding a federal agent's testimony as to his use of computer mapping software to create map of defendant's general location from cell phone records did not involve expert testimony); *United States v. Evans*, 892 F. Supp. 2d 949, 953 (N.D.Ill. 2012) (finding creation of a map plotting cell towers utilized by a defendant's phone does not require specialized knowledge and is admissible through lay opinion testimony); *Burnside v. State*, 352 P.3d 627, 636 (Nev. 2015) (holding the State was not required to notice as an expert witness a detective who made a map of cell phone sites that handled calls from cell phones registered to the defendant).

for teenagers" – were convicted of two counts of reach of the peace. *Id.* at 549, 466 S.E.2d at 377. On appeal, they claimed that a police officer was erroneously qualified as an expert "in sound" and that he was erroneously permitted "to testify concerning the noise ordinance" because he allegedly "lacked sufficient knowledge to be deemed a sound or noise expert." *Id.* at 554, 466 S.E.2d at 380. This Court, however, rejected their argument.

The Court observed that the officer testified that he had worked for the Greenville County Sheriff's Office for roughly five and a half years; that an officer who was certified in the use of sound meter equipment at issue had trained him; that he had been conducting these tests for a and a half; that he had "handled probably ten cases;" and that the officer had "demonstrated for the jury how a sound level meter works." *Id.* The Court further observed that "[t]he criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony. .... Defects in the amount and quality of education and experience go to the weight of the expert's testimony and not to its admissibility." *Id.* at 554-55, 466 S.E.2d at 380.

The Court then held that "[p]ursuant to the foregoing principles, we conclude the trial judge properly exercised his discretion in qualifying Deputy Gardner as an expert in sound, and as such, his testimony concerning the noise ordinance was proper." *Id.* at 555, 466 S.E.2d at 380-81.

Courts from other jurisdictions have reached the same result under facts that are similar to those presently before the Court. *See e.g.*, *Warthan v. State*, 927 N.E.2d 425 (Ind. Ct. App. 2010) (police officer qualified to testify as an expert on crash reconstruction even though he did not belong to any professional organization regarding crash investigation or reconstruction, had no higher education or degree in the field, had only conducted one prior accident reconstruction on

his own, was not published, and had not previously testified as an expert witness because officer had participated in a six-week course and additional training on crash reconstruction and was certified as a crash reconstructionist); *Belk, Inc. v. Meyer Corp., U.S.*, 679 F.3d 146, 162 (4th Cir. 2012), *as amended*, (May 9, 2012); *Marsal v. East. Carolina Univ.*, 2011 WL 13233801, at *3 (E.D.N.C., Apr. 15, 2011). *See also Robinson v. GEICO General Ins. Co.*, 447 F.3d 1096, 1100 (8th Cir. 2006) ("Gaps in an expert witness's qualifications or knowledge generally go to the weight of the witness's testimony, not its admissibility").

Appellant's reliance on this Court's decision in *State v. Andrews*, 424 S.C. 304, 316, 818 S.E.2d 227, 234 (Ct. App. 2018), *reh'g denie*d (Sept. 20, 2018), is misplaced. In *Andrews*, this Court held that the trial judge did not abuse his discretion by refusing to qualify Investigator Terry Gainey as an expert in interrogation and force science because

> [d]espite Investigator Gainey's twenty years' experience in law enforcement, Andrews failed to demonstrate how Investigator Gainey was qualified to give expert testimony on fragmented post-shooting interrogation memory of a non-officer shooter. Investigator Gainey's one-week course on force issues in law enforcement did not address interviewing non-officer shooters and only dedicated one day to cognitive interviewing.

Id. at 317, 818 S.E.2d at 234. The Court in *Andrews* also held that the trial judge erred by allowing opinion testimony from EMT paramedic Kimberly Graham as to the victim's location at the time of the shooting because her testimony that the victim "'was standing on the porch' when he was shot—exceeded the scope of her expertise in emergency medical services and was, therefore, inadmissible." *Id.* at 318, 818 S.E.2d at 235.

In the present case, however, Sgt. Letterman did have expertise in the area to which he testified at trial. Appellant simply did not think that he had sufficient qualifications. Again, this is not an overly-complex field and to the extent that she believed that Sgt. Letterman was not properly

qualified to testify as an expert, her remedy was to point out any and all defects in his qualifications, knowledge or expertise through her cross-examination of him. *See Austin*, 387 S.C. at 41, 691 S.E.2d at 145; *Peer*, 320 S.C. at 554-55, 466 S.E.2d at 380; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997) ("Greenwood was ... free to cross-examine Hawkins on the methods he used to make these calculations; however, any defects in the amount or quality of his experience go to the weight of his testimony and not to its admissibility"). This is precisely what she did. ***R. 485-87; 496-99.***

Likewise, Sgt. Letterman's inability to perform extractions on Appellant's or Blackwood's cell phones did not render him unqualified to testify as an expert. Rather, he explained the reasons for this and, once again, these are matters that also went to the weight that Appellant believed his testimony should receive and not his qualifications to testify as an expert. *See Austin*, 387 S.C. at 41, 691 S.E.2d at 145; *Peer*, 320 S.C. at 554-55, 466 S.E.2d at 380.[18]

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[18] Further, the admission of his testimony is in no way analogous to the testimony of the forensic interviewer of child sexual assault victim that the Supreme Court found was improperly admitted in *State v. Kromah*, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013). Although experts are not permitted to offer an opinion as to another witness' credibility, the Supreme Court found in *Kromah* that "[i]t is undeniable that the primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations. " *Id.* at 358, 737S.E.2d at 489. Therefore, the Court in *Kromah* set forth a list of statements that should not be elicited from a forensic interviewer:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or
- an opinion that the child's behavior indicated the child was telling the truth.

Id. at 360, 737 S.E.2d at 500. In contrast, Sgt. Letterman's testimony was not based upon hearsay statements by another witness and his opinions did not directly comment upon the truthfulness of any witness.

Appellant's argument that the trial judge erred by admitting Sgt. Letterman's testimony without passing upon the reliability of his testimony is not preserved for appellate review because the same argument was not presented to and passed upon by the trial judge. See *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal"); *Hickman v. Hickman*, 301 S.C. 455, 457, 392 S.E.2d 481, 482 (Ct.App. 1990) (issue not presented to and passed upon by the trial court cannot be considered on appeal). Nor is there merit to her contention in this regard.

In *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009), the Court found that "[a]ll expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration."[19] The Court in *White* held that

> the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, 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.

Id. at 274, 676 S.E.2d at 689.

However, the "reliability" determination is not whether the individual expert is credible. Rather, it is whether the field to which the expert will give testimony is reliable. See *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74–75, 735 S.E.2d 650, 655 (2012) (In determining whether to admit expert testimony, the trial court must determine whether "the substance of the testimony [is]

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[19] Therefore, the Court in *White* overruled this Court's decision in *State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct.App.1997), "to the extent that it suggests that only scientific expert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence." *White*, 382 S.C. at 273, 676 S.E.2d at 688.

reliable. .... It is this final requirement of reliability which is the central feature of the inquiry") (citation omitted); *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999) ("When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable"). The Supreme Court's decision in *State v. Tapp*, 398 S.C. 376, 388-89, 728 S.E.2d 468, 474-75 (2012), very clearly makes this point:

> For the most part, the court of appeals' rendering of *White* was correct. However, the court misstated that *White* created the requirement that "the foundational reliability of nonscientific testimony must be tested *prior* to the qualification of an expert." .... The court additionally stated, "this court is left with no guidance on what test or elements must be satisfied to establish the foundational reliability *necessary to qualify an expert* in the fields of crime scene analysis and victimology."..... To be clear, the reliability of a witness's testimony is not a pre-requisite to determining whether or not the witness is an expert. The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined *prior* to determining the reliability of the testimony.

State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012) (citations omitted).

Thus, in *Council*, the issue was whether the results of the mtDNA analysis was sufficiently reliable and the Court held that this had been established. *See Council*, 335 S.C. at 19-21, 515 S.E.2d at 517-18. In *White*, the question for the trial judge to resole was whether the dog tracking evidence was reliable. *See White*, 382 S.C. at 271, 676 S.E.2d at 687. Here, the trial judge was required to determine the reliability of forensic cell phone examination and mapping evidence. He had already been required to do this when Appellant's own expert in the area testified, which explains why she did not raise this argument in the trial court.

Respondent would likewise note that several courts have rejected challenges to the reliability of cell phone mapping technology, with some finding that it is so well accepted in both

science and law that a hearing on its admissibility is unnecessary. *See, e.g., Jackson v. Allstate Ins. Co.*, 785 F.3d 1193, 1204 n. 5 (8th Cir. 2015) (rejecting a challenge to the reliability of cell phone mapping technology); *United States v. Lewisbey*, 843 F.3d 653, 659 (7th Cir. 2016) ("Using call records and cell towers to determine the general location of a phone at specific times is a well-accepted, reliable methodology"); *United State v. Jones*, 918 F.Supp.2d 1, 6-7 (D.D.C. 2013) (finding the reliability of cell phone mapping is so well-established that a *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), hearing was unnecessary); *People v. Wells*, 2007 WL 466963, at *11 (Cal.Ct.App.2007) ("It is simply not true, as defendant contends, that the use of cell phones to locate a caller is new to the law. Cell phone evidence has been introduced for that purpose in a number of cases across the country...."); *People v. Davis*, 2006 WL 2965368, at *10 (Cal.Ct.App.2006) ("[T]he technology in question is neither new to science or the law."); *Pullin v. State*, 272 Ga. 747, 534 S.E.2d 69, 71 (2000).

Moreover, the fundamental problem with Appellant's argument is that it would require a trial judge to usurp the role of the trier-of-fact because it "misconstrues the difference between a [trial judge's] evaluation of an expert's reliability, which is required by [*White*] and an expert's believability or persuasiveness, which is reserved for the trier of fact." *See Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1293 n. 7 (11th Cir. 2005). As the Eleventh Circuit explained in *Maiz v. Virani*, 253 F.3d 641, 665 (11th Cir. 2001), a trial judge's "gatekeeper role ... 'is not intended to supplant the adversary system or the role of the jury.'" (Citation omitted). *See also Int'l Adhesive Coating, Co. v. Bolton Emerson Int'l*, 851 F.2d 540, 545 (1st Cir. 1988) ("When the factual underpinning of an expert's opinion is weak, it is a matter affecting the weight and credibility of the testimony-a question to be resolved by the jury"); *Smith v. Ford Motor Co.*, 215 F.3d 713, 721 (7th Cir. 2000) ("The soundness of the factual underpinnings of the expert's analysis and the correctness of the

expert's conclusions based on that analysis are factual matters to be determined by the trier of fact").

Therefore, Respondent submits that Sgt. Letterman's testimony fully supports the finding that he was qualified to testify as an expert under Rule 702, SCRE and the above cases interpreting it, even though it was not necessary for him to be so qualified.[20]

II. Assuming that the Court finds this issue preserved for appellate review, the trial judge did not abuse his discretion by permitting the State to call Sgt. Letterman in reply because his testimony was contradictory of and in rebuttal to evidence presented by Appellant on her cross-examination of Brandon Blackwood and in her case-in-chief.

Initially, Respondent submits that Appellant's argument is not preserved for appellate review. On appeal, Appellant argues that "[Sgt.] Letterman did not limit his testimony to issues Slovenski discussed" and that "[c]omparing his two direct examinations further demonstrates his reply testimony was the State attempting to tie up loose ends in its case and not a true rebuttal of specific issues Wright raised in her defense." These arguments, however are not preserved for review by this Court on appeal.

Prior to Sgt. Letterman's testimony, Appellant objected because he had testified in the State's case-in-chief. She added that he had not obtained "any additional training since that point

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[20] *See McDonald*, 2017-UP-285, 2017 WL 4791156, at *1. *See also Collins*, 172 So.3d at 743 (holding that testimony that merely informs the jury as to the location of cell phone towers is proper lay testimony when it is based upon the personal observations of the witness); *Perez*, 980 So.2d at 1131-32 (finding a cellular company's records custodian was not required to be qualified as an expert to testify regarding geographic coverage of a typical cell tower and factually explain the contents of phone records); *Baker*, 496 Fed. App'x at 204 (finding a federal agent's testimony as to his use of computer mapping software to create map of defendant's general location from cell phone records did not involve expert testimony); *Evans*, 892 F. Supp. 2d at 953 (finding creation of a map plotting cell towers utilized by a defendant's phone does not require specialized knowledge and is admissible through lay opinion testimony); *Burnside*, 352 P.3d at 636 (holding the State was not required to notice as an expert witness a detective who made a map of cell phone sites that handled calls from cell phones registered to the defendant).

... that would allow him to be deemed an expert to come in as a rebuttal witness to our expert." ***R. 487***. She did not thereafter raise an objection that any matter to which he testified went "beyond the scope of permissible rebuttal evidence." Rather, her argument was simply that he should be allowed to testify in reply because he testified in the State's case-in-chief and he had not acquired any additional expertise that he did not have at the time he first testified.

A party cannot argue one theory at trial and a different theory on appeal. *See State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989); *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997). Also, "[t]o be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal." *Watts*, 321 S.C. at 167, 467 S.E.2d at 278. "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." *See also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). *See also I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (explaining that imposing issue preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law and arguments; and noting that the purpose of an appeal is to determine whether the trial court erroneously acted or failed to act, and when appellant's contentions are not presented or passed upon by the trial court, such contentions will not be considered on appeal). Therefore, Respondent submits that her argument is not preserved for appellate review. *Id.*

Yet, even assuming *arguendo* that the Court finds the issue properly before it on appeal, Respondent submits that the trial judge did not abuse his discretion by permitting the State to call Sgt. Letterman in reply because his testimony was contradictory of and in rebuttal to evidence that she presented on her cross-examination of Brandon Blackwood and in her case-in-chief.

"The admission of reply testimony is a matter within the sound discretion of the trial judge." *Stewart*, 283 S.C. at 106, 320 S.E.2d at 449; *Huckabee*, 388 S.C. at 243, 694 S.E.2d at 786 (finding no abuse of discretion by the trial judge in allowing reply testimony when it was limited in scope to contradict a previous contention raised by the defendant and not admitted to complete the State's case-in-chief). Admission of testimony that is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion. *See Todd*, 290 S.C. at 214, 349 S.E.2d at 340; *South*, 285 S.C. at 535, 331 S.E.2d at 779 ("Any arguably contradictory testimony is proper on reply, and the trial judge properly exercised his discretion"). "Just what evidence is admissible in reply in a given case, as opposed to being offered as part of the evidence-in-chief, is a question which of necessity has to rest largely in the sound discretion of the trial judge." *Hinson*, 253 S.C. at 619, 172 S.E.2d at 554. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *McDonald*, 343 S.C. at 325, 540 S.E.2d at 467.

As discussed above, the State's reply testimony "was prepared in response to their expert." ***R. 367***. And, it was clearly presented in order to rebut evidence offered by Appellant suggesting that Blackwood was supposedly sending text messages to her at 2:09 a.m., when Blackwood had testified that he was with her and had witnessed her murder Brent Tessnear. First, Appellant questioned Blackwood about text messages that he sent to Appellant and which she received at 2:09 a.m. on December 27th. His response was, "I do not recall texting her." ***R. 243-44***. Specifically, Sgt. Letterman's testimony rebutted that of Mr. Slovenski, who testified that Appellant's phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th and that all of the "traffic" on her phone between 2:00 and 3:00 a.m. on the 27th used the cell phone tower near her Pacolet residence. ***R. 435-43***.

On the other hand, Sgt. Letterman testified that The T-Mobile call data records for Appellant's phone (State's Ex. 12) reflected that all calls from line 478 through 486 were listed as call forwarding. This meant that either the phone was off, it had "died," or it was busy, and the call was forwarded straight to voice mail from11:19 p.m. on the 26th until 2:04 a.m. on the 27th. She received the nine text messages that had been previously sent to her within fourteen seconds after she turned the phone back on, including two texts from Blackwood. ***R. 488-93; 496.***

An outgoing text message was sent from Appellant's phone at 2:10:28 a.m. on the 27th. Thus, she used the phone at that time. The first incoming text after that message was at 2:10:11 a.m. and she then received a text from Brent's phone at 2:18:32 a.m. She did not use her phone again until 3:08:31 a.m. ***R. 493-96***. Also, Sgt. Letterman had reviewed Blackwood's Verizon Wireless cell phone records, which were introduced without objection as State's Ex.s 1-A (DVD with log of ingoing and outgoing calls) and 1-B (DVD with log of ingoing and outgoing text messages). According to Sgt. Letterman, the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th. Also, Blackwood's phone records reflected that his phone was not active at 2:09 a.m. ***R. 493-94***.

Likewise, Appellant's contention that Sgt. Letterman's testimony was not in rebuttal to the testimony of Mr. Slovenski because Sgt. Letterman testified to the results of his forensic evaluation of Blackwood's phone but Mr. Slovenski did not examine Blackwood's phone is without merit. This contention ignores that Mr. Slovenski's expert opinion put Appellant's phone in Pacolet when the text messages were received at 2:09 a.m. on the 27th, with the implication from both his testimony and Appellant's cross-examination of Blackwood being that he sent the text messages at that time, when he had actually sent the text messages on the night of the 26th.

Her argument that Sgt. Letterman addressed the cell phone extraction on his direct

examination in the State's case-in-chief does not show an abuse of discretion by the trial judge, and ignores, as it necessarily must, that the matters to which he testified at that point did not require an expert to admit. Rather, it was limited to matters on Appellant's call logs, such as the time and date of the calls and the number called. *See* ***R. 348-54***. Moreover, while Respondent agrees that reply testimony may not be used *to complete* the State's case in chief, this does not mean that if it could have been admitted in the case-in-chief, it cannot be admitted in reply. *See Stewart*, 283 S.C. at 107, 320 S.E. 2d. at 449 (admission of reply testimony of an admission by defendant that "he stabbed the old woman" was proper reply to contradict the alibi claim, even though a defendant's admission would have been admissible in the case-in-chief). *Cf. State v. Robinson*, 223 S.C. 314, 75 S.E.2d 465 (1953); *State v. Farrow*, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998).

Admissibility in the State's case-in-chief is the very test of non-collateral matter admissible in reply. *State v. Brock*, 130 S.C. 252, ___, 126 S.E.2d 28, 28-29 (1924) (reply testimony should not be admitted where the testimony involves a collateral issue). In determining whether or not the matter is a collateral issue, the test is whether the party offering the reply testimony would have been allowed to prove the fact in question as part of its case; if so, the matter is not collateral. *State v. Bailey*, 279 S.C. 437, 440, 308 S.E.2d 795, 797 (1983); *Brock*, 130 S.C. at ___, 126 S.E.2d at 29.[21] The same is true in the present case. Even if admissible as part of the State's case-in-chief, it

[21] For example, in a murder case, where the defendant testified the deceased victim grabbed the barrel of the gun as it was fired, it was proper to present reply there were no powder burns on the deceased hands, which tended to show the deceased did not have hold of the barrel of the gun at the time it was fired. *See State v. McDaniel*, 68 S.C. 304, ___, 47 S.E. 384, 385 (1904). Obviously, the fact that the deceased had no powder burns on his hands could have been admitted in the State's case in chief as part of the findings at autopsy; however, this testimony was not necessary to complete the State's case in chief. It was therefore proper reply once the defendant testified the deceased grabbed the barrel of the gun to rebut and contradict it. *Id.* Just because the probative value became enhanced on reply, it did not preclude its admission on reply.

was properly admitted in reply because it rebutted evidence presented by Appellant.

Moreover, Appellant's reliance on this Court's opinion in *State v. Prather*, 422 S.C. 96, 810 S.E.2d 419 (Ct. App. 2017), *reh'g denied* (Mar. 22, 2018), *cert. granted* (Aug. 3, 2018), is misplaced for several reasons. First, the Supreme Court has granted the State's petition for writ of certiorari in *Prather* to review this Court's decision. Second, as noted by Judge Williams' dissent in *Prather*, a fair reading of the record in that case reveals the following:

> At trial, Prather testified to being outside Victim's residence when the purported "staging and undoing" occurred. Moreover, Prather claimed he did not participate in any of these acts and testified Phillips was inside the residence when these acts occurred. When examining his claims in the context of his entire testimony, Prather inferred that only one person committed these acts. Conversely, the State's reply testimony contradicted Prather's notion that only one person participated in these acts. Importantly, the testimony was in response to Prather's testimony and was introduced to counter Prather's testimony—even though it did not directly implicate Prather. Specifically, LaRosa's testimony indicated two individuals were at the crime scene based on the types of personalities involved in "staging" and "undoing."

Prather, 422 S.C. at 110-11, 810 S.E.2d at 426-27 (Williams, J., dissenting) (footnote omitted).[22]

Similarly, in a murder prosecution where the defendant testified he shot his son three times in rapid succession while his son was still standing, the testimony of the pathologist that the victim was shot the final time while lying on the floor with his head resting against the floor was proper reply. *See State v. McDowell*, 272 S.C. 203, 205, 249 S.E.2d 916, 917 (1978) (per curiam). The testimony of the pathologist, offered in reply, could have been admitted in the State's case in chief, but it was not necessary to complete the State's case in chief. Once the defendant claimed he fired all three shots while the victim was standing, the probative value increased to rebut and contradict the defendant's claims. *Id.*

[22] Respondent notes that Prather conceded on p. 11 of Appellant's Final Brief that LaRosa's reply testimony "contradicted Prather's testimony that he was not involved in, nor did he witness, any carving of the word 'rapist' on Stewart and had no knowledge as to Stewart's being covered with a blanket." See *State v. Robert Jared Prather*, Appellate Case No. 2014-001500, https://ctrack.sccourts.org/public/caseView.do?csIID=57167. This Court's decision does not reference this concession even though it waived the alleged error. *Cf. State v. Nathari*, 303 S.C. 188, 200, 399 S.E.2d 597, 605 (Ct. App. 1990) ("Even if this Court were to recognize recklessness as an element of felony D.U.I. by virtue of recklessness being an element in the lesser included offense of involuntary manslaughter, and if Nathari was entitled to an instruction that the State is required to prove recklessness for conviction of felony D.U.I., counsel

To the extent that the dissent's construction is correct, then the majority Opinion is in conflict with *Todd*, *Huckabee*, *South* and *Hinson*. Third and regardless of the outcome in *Prather*, Sgt. Letterman's testimony was clearly offered in rebuttal to Appellant's evidence.

Additionally, Respondent submits that Sgt. Letterman's testimony also passes a Rule 403, SCRE, analysis because the danger of unfair prejudice does not substantially outweigh its probative value. *See State v. Aleksey*, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000). It was very probative because it rebutted Appellant's evidence that Blackwood had sent text messages to her at 2:09 a.m. on the 27th and thereby circumstantially corroborated Blackwood's testimony. His testimony also rebutted the testimony of Mr. Slovenski that Appellant's phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th (***R. 438-43***) by providing an explanation: the phone may have simply been turned off during that time period, and the various text messages that she received at 2:09 a.m. on the 27th had actually been sent earlier. (Again, Sgt. Letterman testified that the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th, and that Blackwood's phone records reflected that his phone was not active at 2:09 a.m. ***R. 493-94***).

On the other hand, the prejudice to Appellant was *de minimis*, since Sgt. Letterman's reply testimony was very brief and was tailored only to rebut Appellant's evidence. Further, she was not only able to cross-examine both Blackwood and Letterman, she had already presented the contradictory evidence from Mr. Slovenski and she was able to rely upon his opinions in her closing. ***R. 526-39***. Accordingly, Respondent submits that the trial judge did not err by allowing

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for Nathari conceded Nathari's recklessness in his closing argument and thereby has waived any objection to the trial court's charge in this regard").

the State to introduce this evidence in reply.

III. Any error in admitting Sgt. Letterman's reply testimony cannot serve as the basis for reversal of Appellant's murder conviction because the error was harmless and non-prejudicial beyond any reasonable doubt, since introduction of it could not reasonably have affected the result of Appellant's trial.

Finally, Respondent submits that any error in admitting Sgt. Letterman's reply testimony cannot serve as the basis for reversal of Appellant's murder conviction because the error was harmless and non-prejudicial beyond any reasonable doubt, since introduction of it could not reasonably have affected the result of Appellant's trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). "Whether an error is harmless depends on the circumstances of the particular case." *Tapp*, 398 S.C. at 389, 728 S.E.2d at 475.

There was no evidence that Blackwood had previously known Brent Tessnear, whereas Appellant had been married to him. Blackwood's testimony is the only eyewitness to the murder and he testified that Appellant deliberately struck the victim with the truck despite of Blackwood's efforts to prevent any collision. Admittedly, he was impeached through cross-examination and by the testimony of defense witnesses who testified to his statements admitting that he had killed Brent. However, no other witness provided a differing and contradictory eyewitness account. Also, with the exception of his eyewitness account of the murder, most of his testimony concerning his and Appellant's actions on December 26-27, 2015, was corroborated by other prosecution witnesses. The prosecution's evidence even tended to corroborate his testimony as to where the

crime occurred and her S.C. ID card was found in the driver's side door of Blackwood's truck.

These corroborating witnesses proved that she was determined to find the victim on the 26th and that she searched high and low to find him, even going so far as to break into his residence. The record further proved that Appellant had two distinct motives to find and kill him: she was angry because of the pictures that he had posted on Facebook and she was angry because he had returned their children's Christmas gifts and used the money to purchase drugs. Although the State is not required to prove that she had a motive, the evidence of these dual motives is circumstantial evidence of her guilt. See *State v. Needs*, 333 S.C. 134, 150, 508 S.E.2d 857, 865 (1998), *modified on other grds., State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Bell*, 302 S.C. 18, 29, 393 S.E.2d 364, 370 (1990) (conversations with first murder victim's family admissible to show motive and state of mind when he kidnapped and murdered second victim).[23] Moreover, the record reflects that she had received a text from the victim at 2:18 a.m. on the 27th.

The record is replete with statements Appellant made to or in the presence of other witnesses that demonstrated express malice,[24] including her threats to kill Brent and her statement that she was "going to have to find somebody to go and beat his ass" if he did not remove the pictures. However, one of the most damning pieces of evidence against her was a statement from

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[23] There was no evidence that Blackwood had a motive to kill Brent.

[24] "Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." *State v. Wilds*, 355 S.C. 269, 276-77, 584 S.E.2d 138, 142 (Ct.App. 2003); *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (same). It is the doing of a wrongful act intentionally and without just cause or excuse. *Tate v. State*, 351 S.C. 418, 570 S.E.2d 522 (2002). *See also State v. Fennell*, 340 S.C. 266, 275 n. 2, 531 S.E.2d 512, 517 n. 2 (2000) ("[m]alice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it"); *Arnold v. State*, 309 S.C. 157, 163, 420 S.E.2d 834, 837 (1992) (malice "is something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief").

which malice can be inferred: her text message to Blackwood at 12:57 a.m. on December 28th (less than twenty-four hours after the murder), in which she said, "You in town? I was walking to the store. LOL." ***R. 221.***

Additionally, her actions after the crime tended to further demonstrate her guilt. The prosecution's various witnesses proved that Appellant had lied in her December 29, 2015, statement to Inv. Clark concerning her actions after she and Blackwood had retrieved her son's bicycle from Brent's house on December 26th . Also, she manually deleted all text messages from her phone for the 26th and the relevant time period on the 27th, even though her phone had a storage capacity of 256 megabites and could hold approximately 1,828,571 S.M.S. text messages and she did not have to delete any messages. Further, she attempted to get Brent's cell phone. Inferably, she intended to remove evidence of the 2:18 a.m. text message that he sent to her and any other incriminating evidence.

Several witnesses testified that after the crime she seemed nervous. Moreover, despite her repeated threats and displays of anger and malice toward the victim before the killing, she expressed supposed "concern" for his safety afterwards, while simultaneously attempting to shift focus away from her by suggesting others who might have harmed him. Also, she initially lied as to her location when contacted by the investigator from the Spartanburg Coroner's Office. Further, Appellant immediately expressed concern for the victim's wellbeing when speaking to the investigator, even though the investigator had not identify herself as being with the Coroner's Office. Moreover, she made several efforts to contact the insurance company, inferably to determine if she could collect on his life insurance.

Given the present record, any error must be viewed as harmless and non-prejudicial beyond a reasonable doubt. *Sherard*, 303 S.C. at 175, 399 S.E.2d at 596; *Bailey*, 298 S.C. at 5, 377 S.E.2d

CONCLUSION

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

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August 15, 2019.

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-002531

State of South Carolina, ... Respondent

v.

ANGELITA WRIGHT ... Appellant.

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REPLY ARGUMENT

In a misguided attempt to support an unqualified expert, Respondent seeks to chip away at Rule 702, SCRE piece by piece. First, Respondent asks the Court to hold a police officer (Brandon Letterman) who attended a one-day training class could be labeled a cell phone mapping "expert" and effectively tell jurors technology contradicted Ms. Wright's alibi and put her at the murder scene at the time of Brent Tessnear's ("Decedent") death. Resp't Br. at 30-32. Then, Respondent goes a step further, arguing for the first time on appeal Letterman did not need qualifications because his opinion testimony on the results of cell phone mapping and the carrier-specific quirks of cell phone records are all common knowledge anyway. Resp't Br. at 28-29, 35. Finally, Respondent makes a sweeping argument against the Court's well-established expert gatekeeping duties, criticizing Ms. Wright for questioning the amount of Letterman's qualifications and suggesting disputes over qualifications do not affect admissibility. Resp't Br. at 31.

South Carolina law does not support any of these arguments. In fact, the expert qualification standard Respondent's brief suggests would do little to distinguish proposed experts from lay witnesses and almost nothing to ensure conclusions presented to jurors as expert testimony are offered by a knowledgeable person. Pursuant to South Carolina's recently reaffirmed expert qualification standard, Letterman's testimony should have been excluded. Moreover, Letterman's testimony was not proper rebuttal evidence since he did not respond to specific evidence Ms. Wright presented. Since Letterman's testimony was an important part of Respondent's case, these errors cannot be corrected without granting Ms. Wright a new trial.

1. Letterman Stated Conclusions and Opinions Requiring Expert Qualifications.

Respondent's argument that "it was not necessary" for Letterman to be qualified as an expert (Resp't Br. at 35) fails to acknowledge the substance of Letterman's testimony,

misconstrues the nature of lay v. expert opinion evidence under South Carolina law, and ignores substantial persuasive authority rejecting the notion that cell phone forensic/mapping testimony is a matter of common knowledge.

As an initial matter, the Court should not consider Respondent's argument on this point because it was not presented to the circuit court. When Ms. Wright objected to Letterman's qualifications, Respondent's sole argument was Letterman in fact met the threshold qualification standard. (R. p. 487, line 24 – 488, line. 4). There was no suggestion expert qualifications were unnecessary or that Respondent's attempt the qualify Letterman was merely precautionary. Respondents could argue it has raised this issue at this late stage as an additional sustaining ground. But, while Respondent is not barred from raising as proposed additional sustaining grounds arguments omitted below, this tactic is disfavored and the Court has discretion to ignore such arguments. I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) ("the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it").

The argument also fails on the merits. Respondent contends Letterman "merely describes the information in a cell phone record" and that his testimony did not cover either complex topics or information beyond a lay juror's common knowledge. Resp't Br. at 28 and n. 17. However, Letterman did far more than just read cell phone records. He offered his definition of terms used in the cell phone industry presumably because Respondent did not believe lay jurors would understand the terms otherwise. For example, Letterman was questioned extensively about calls to and from Ms. Wright's phone on the day Decedent was killed. In those instances where calls were listed as going to "call forwarding," Letterman was asked to provide a technical definition of the term. (R. p. 489, line 20 – 490, line 7). Letterman then examined Ms. Wright's cell phone

records further and told jurors that, based on the phone number listed, several of the calls were transferred to T-Mobile's default voicemail inbox. (R. p. 490, lines 8-17). A lay juror would have no idea this apparently random 11-digit number corresponded to that inbox without a proposed expert explaining the number's designated purpose. Moreover, Letterman's entire testimony built toward a conclusion that in no sense constituted a description of the cell phone records. Letterman was asked to interpret the records and draw conclusions regarding Ms. Wright's whereabouts around the time of Decedent's death. (R. p. 495, line 24 – 496, line 7). This was a paradigmatic question-and-answer exchange between counsel and its *expert* witness and it is no wonder that, throughout the trial, Respondent treated Letterman as if expert qualifications were required.

Both in these examples and overall, Letterman's testimony could only be admitted if he was first qualified as an expert. Generally, witnesses are limited to testimony regarding matters within their personal knowledge. Rule 602, SCRE. Opinion testimony may be admitted in some instances but is limited to the matters outlined in Rules 701-02, SCRE. A non-expert witness may offer his/her opinion only on matters they perceived and for which no "specialized knowledge, skill, experience, or training" is required. Rule 701, SCRE. For all other opinion evidence, the witness and testimony must meet the qualification, reliability, and helpfulness requirements of Rule 702, SCRE. Applying these rules, South Carolina courts have held that experts are different than lay witnesses in that only an expert may state an opinion based on facts not within his firsthand knowledge. Watson v. Ford Motor Co., 389 S.C. 434, 445-46, 699 S.E.2d 169, 175 (2010); see also In re Care & Treatment of Thomas S., 402 S.C. 373, 379, 741 S.E.2d 27, 30 (2013) ("a lay witness may only testify as to matters within his personal knowledge").

Lay witnesses may not offer opinions on anything that "requires specialized knowledge, skill, experience, or training." Watson, 389 S.C. at 446, 699 S.E.2d at 175. A witness crosses over

from lay to expert testimony anytime the witness go beyond personal knowledge to base opinions or conclusions on "information made available" to him before trial. Id. at 445-46, 699 S.E.2d at 175; see also Rule 703, SCRE. The South Carolina Supreme Court recently held that to distinguish lay testimony from expert opinion, a court must make a determination of what knowledge is commonly held by the average juror. State v. Jones, 423 S.C. 631, 638, 817 S.E.2d 268, 271 (2018). Thus, to credit Respondent's new argument that Letterman did not need expert qualifications, the Court must accept that an average juror would know the technical definition of "call forwarding," would understand 1-805-637-7249 corresponds to T-Mobile's default voicemail inbox, and would draw the inference Letterman drew about the meaning of Ms. Wright's records relative to her whereabouts on the night in question.

Even the savviest cell phone-subscribing juror would not know these things without guidance from a specialist. To hold otherwise would substantially blur the line between Rules 701 and 702. Moreover, the Supreme Court has been wary of the State's efforts to reclassify sophisticated police investigative techniques as common knowledge appropriate for lay witness testimony. Hamrick v. State, Op. No. 27886 (S.C. Sup. Ct. filed May 15, 2019) (Shearouse Adv. Sh. No. 20 at 19, 19-20). Whether an officer is attempting to reconstruct a vehicle collision or to explain how cell phone records place a suspect at a crime scene, the officer is utilizing specialized knowledge to offer opinion testimony, and the State must lay a foundation establishing the witness's qualifications before offering this testimony into evidence.

Finally, Respondent reaches outside South Carolina case law[1] to argue it is common practice to admit cell phone forensic and mapping testimony without requiring a witness to show

[1] Respondent does cite one unreported South Carolina Court of Appeals ruling. Resp't Br at 28 n. 17 (citing State v. McDonald, 2017 UP-285, 2017 WL 4791156 (S.C. Ct. App. July 12, 2017)). However, this citation is contrary to the appellate court rules and should not be considered. See

expert qualifications. Resp't Br. at 28 n. 17. It is true some testimony describing a cell phone record could be common knowledge but, as described above, Letterman's testimony went further and drew conclusions that could only be grounded in specialized knowledge. Additionally, a number of courts have held cell phone location testimony requires an expert. See e.g., State v. Payne, 104 A.3d 142, 155 (Md. 2014); Hall v. State, 123 A.3d 577, 588 (Md. App. 2015) ("cell phone plotting may only be admitted through expert records"); State v. Manzella, 128 S.W.3d 602, 608-09 (Mo. App. 2004) (while a cell phone customer could testify to the calls on his bill, his experience as a customer did not qualify him to testify regarding cell phone towers).

This is especially true when a state uses cell phone location data in an effort to approximate a suspect's location when a crime was committed or to place a suspect at a crime scene. State v. Ford, 454 S.W.3d 407, 414 (Mo. App. 2015) ("it was error here for the trial court to allow [officer] to testify as a lay witness that [suspect's] telephone connected to a cell tower close to the murder scene at the time of the murder"); State v. Patton, 419 S.W.3d 125, 132 (Mo. App. 2013) (ruling that allowing testimony on cell phone location "without the aid of specialized experience or knowledge in the field of cellular communication comes too close to mere speculation"). When a witness uses cell phone records for this purpose, he has gone beyond the ordinary use of such records and the lay juror's knowledge of their contents. Drawing conclusions on a person's

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Rule 268(d)(2), SCACR (stating that unpublished memorandum opinions have no precedential value "should not be cited except in proceedings in which they are directly involved"). The purpose for Rule 268(d)(2)'s bar on citing these rulings is borne out in this case. While Respondent claims McDonald shows the Court is inclined to permit cell phone mapping testimony by a non-expert, the memorandum opinion offers no reasoning to support that conclusion. Plus, it is not even clear McDonald was addressing the merits of that portion of the appeal. Instead, it appears the Court found the issue was unpreserved. McDonald, 2017 WL 4791156, at * 1 (citing State v. Berry, 418 S.C. 500, 504, 795 S.E.2d 26, 28 (2016) and State v. Holliday, 333 S.C. 332, 338, 509 S.E.2d 280, 283 (Ct. App. 1998)). Moreover, a memorandum opinion is by rule non-precedential and our Supreme Court has since spoken in Hamrick on the need for expert qualifications for sophisticated police investigative techniques.

location using cell phone records requires a person to understand (1) how cell towers communicate with cell phones; (2) how cell towers create cover areas; (3) the relationship between coverage areas and tower connections; and (4) the relative importance of physical proximity and non-proximity factors for determining whether a cell phone will connect to a particular cell tower. U.S. v. Banks, 93 F. Supp. 3d 1237, 1248-49 (D. Kan. 2015). Banks quite reasonably concluded "[t]hese issues are not familiar to the Court based on everyday experience." Id.; see also U.S. v. Yeley-Davis, 632 F.3d 673, 684 (10th Cir. 2011) ("testimony concerning how cell phone towers operate constituted expert testimony because it involved specialized knowledge not readily accessible to any ordinary person").

The fact that Letterman's testimony was grounded in cell phone records does not necessarily make his testimony about those records a matter of common knowledge. The Connecticut Supreme Court recently rejected that argument finding that, even though an officer based his testimony on records obtained from a cell phone provider, "the process he used to arrive at his conclusions was beyond the ken of average juror[s]." State v. Edwards, 156 A.3d 506, 526 (Conn. 2017); see also Wilder v. State, 991 A.2d 172, 198 (Md. App. 2010) (holding that state must "offer expert testimony to explain . . . the techniques of locating and/or plotting the origins of cell phone calls using cell phone records").

Therefore, the Court should reject Respondent's assertion that Letterman's testimony was admissible even if he lacked the qualifications to testify as an expert. Respondent never raised this argument at the circuit court level and South Carolina law requires a witness to be qualified as an expert before offering testimony based on knowledge beyond what is generally known by an average juror.

2. Letterman Lacked the Qualifications Needed to Serve as a Cell Tower Mapping Expert.

The circuit court qualified Letterman as an expert in "cell phone forensics and cell tower mapping." (R. p. 485, lines 4-6; 488, lines 5-7). The major thrust of Letterman's testimony was what he believed Ms. Wright's cell phone usage indicated about her location at key moments around the time Decedent was killed. The entire direct examination built to Letterman's conclusion about Ms. Wright's whereabouts which he purportedly derived from his analysis of her cell phone. (R. pp. 495-96). This testimony leans heavily on the "mapping" portion of Letterman's supposed expertise. Yet, it is in this area where his insufficient qualifications are at their lowest ebb. Letterman has far fewer qualifications than the expert in the primary case Respondent touts (State v. Peer[2]) and about the same insufficient qualifications of the proposed expert in the primary case Respondent attempts to distinguish (State v. Andrews[3])—and which the Supreme Court recently affirmed. Op. No. 27894 (S.C. Sup. Ct. filed June 19, 2019) (Shearouse Adv. Sh. No. 25 at 9-12).

Respondent cites Peer as a benchmark to prove Letterman's qualifications were sufficient, but Letterman has far fewer qualifications than the Peer expert. In that case, the officer was qualified as an expert in sound because he (1) conducted sound testing for 1 ½ years; (2) gained a certification in the equipment used to perform sound testing; and (3) performed a sound testing demonstration in the courtroom for the jury to see. 320 S.C. at 554, 466 S.E.2d at 380. In contrast, Letterman admitted he had been using the GeoTime software for cell phone mapping for just three months and he had never testified to or presented in a law enforcement setting on a case in which he personally participated in mapping. (R. p. 484, lines 9-11; R. p. 486, lines 14-22). Letterman did not testify to any certification in GeoTime and instead acknowledged the sum total of his

[2] 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996).
[3] 424 S.C. 304, 316, 818 S.E.2d 227, 234 (Ct. App. 2018).

official training on the software was a one-day class. (R. p. 485, lines 22-24). Moreover, Letterman did not offer anything like an in-court demonstration of the technique that led to his conclusion.[4] He basically did the opposite. Letterman told jurors that, despite being qualified as a cell phone mapping expert, he could not map text messages transmitted to Ms. Wright's phone during crucial moments and could not explain why his efforts to do so failed. (R. p. 497, lines 13-21).

Respondent now argues Letterman's important admission did not affect his qualifications. Resp't Br. at 31. However, if an in-court demonstration like in Peer is a factor favoring qualification, an in-court admission that the purported expert witness's process failed must be a factor disfavoring qualification. Respondent contends Letterman explained why the texts could not be mapped but cites no portion of the trial transcript to support this contention. Resp't Br. at 31. The lack of an explanation is an additional factor showing why Letterman should not have been labeled a cell phone mapping "expert" and allowed to offer testimony designed to convince jurors Ms. Wright was at the crime scene around the time Decedent was killed. Cf. Graves v. CAS Med. Sys., Inc., 401 S.C. 63, 76-78, 735 S.E.2d 650, 656-57 (2012) (affirming exclusion of purported software experts who offered no explanation for how allegedly defective device's software failed).

In total, Letterman's qualifications are less like the expert in Peer and more like the rejected expert in Andrews. The officer in Andrews cited as expertise his extended service as a law enforcement officer and a one-week training class. 424 S.C. at 317, 818 S.E.2d at 234. This Court affirmed a circuit court order excluding the expert and ruled that, even with his experience, the short training class was "insufficient qualification." Id. at 310, 818 S.E.2d at 231. On appeal, this

[4] This is in sharp contrast to Ms. Wright's cell phone mapping expert who presented the jury with a computer model to demonstrate the accuracy of his analysis. (R. p. 417).

Court focused on two things in affirming the proposed expert's exclusion. First, his proposed qualifications were not specific to his testimony as most of the class covered general law enforcement issues or was even unrelated to the conclusions he offered at trial. Id. at 317, 818 S.E.2d at 234 Second, when the unrelated portions of the class were stripped away, the remaining instruction time (one day) was insufficient to make the officer an expert. Id. The same hold true here. Letterman's testimony was intended to boost Respondent's contention that Ms. Wright was at the crime scene and not at her alibi location.

Thus, the key qualification question was whether he had knowledge, training, and experience in mapping. On this specific process, Letterman had one day's training, no certifications, and no experience as an expert. Even adding in Letterman's instruction on Cellebrite, he had a total of six days' training on the cell phone forensic processes for which he was permitted to offer opinion testimony in a murder trial. (R. p. 485, line 17 – 486, line 2). This Court found a similar expert unqualified in Andrews, and the Supreme Court recently affirmed that ruling. Op. No. 27894 (S.C. Sup. Ct. filed June 19, 2019) (Shearouse Adv. Sh. No. 25 at 10-11). Hamrick is even further proof Letterman's minimal training is insufficient. There, the unanimous Supreme Court ruled an officer's multiple training courses over a period of years was not enough to make him an expert and the circuit court abused its discretion in admitting this testimony. Specifically, the Court held, "A law enforcement officer who attended several classes on the subject does not possess the necessary qualifications to satisfy the 'qualified as an expert' element of the Rule 702 foundation." Op. No. 27886, at 19.

In sum, since Letterman's qualifications were like the rejected experts in Andrews and Hamrick and unlike the expert in Peer, he should not have been admitted to testify at trial. Hamrick also shows that it is an abuse of a circuit court's discretion to qualify an expert under these

circumstances. Given Letterman's limited training on cell phone mapping and his unexplained inability to map key data points, he should not have been allowed to offer testimony designed to persuade jurors Ms. Wright was present at the crime scene.

3. Letterman's Insufficient Qualifications is an Admissibility Issue and Not Just a Factor Affecting the Weight Given to His Testimony.

Respondent's farthest-reaching argument is a direct attack on the threshold qualification requirement for expert testimony. Respondent argue all Ms. Wright's objections to Letterman's qualifications were simply matters for the jury to consider and did not amount to an admissibility question. Resp't Br. at 31 (arguing Ms. Wright's "remedy" for Letterman's deficient qualifications was cross-examination). Similarly, Respondent dismisses Ms. Wright's objection to Letterman as improperly focusing on the amount of his qualifications. Resp't Br. at 31 (claiming it was improper for Ms. Wright to argue that she "did not think [Letterman] had sufficient qualifications"). These arguments overlook two crucial principles of South Carolina law. First, courts must determine whether a proposed expert is qualified before he is permitted to take the witness stand. Second, the court's obligation includes a duty to examine the amount of a proposed expert's qualifications to determine whether they are sufficient to support admission.

Rule 702's language establishes qualification, reliability, and helpfulness as threshold requirements for expert testimony. A proposed expert "may testify" only "if" these three requirements are demonstrated first. Thus, by rule, courts are delegated the duty to serve as "gatekeeper" for proposed experts. Watson, 389 S.C. at 445, 699 S.E.2d at 174. As gatekeeper, the court must make three findings before the proposed expert offers any testimony to a jury. Along with determining whether expert testimony is needed and whether the proposed testimony's substance is reliable, a court must also "find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." Id. at 446,

699 S.E.2d at 175 (citing Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997)).

South Carolina courts have consistently held concerns over expert qualifications are threshold questions and not just matters affecting the weight to be afforded to the proposed expert's testimony. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008) (finding courts have crucial role "as the gatekeeper in determining both the qualifications of an expert and whether the expert's testimony will assist the trier of fact"). While disputes over qualifications can be presented to a jury should a court to admit an expert, the opportunity to cross-examine a witness on his experience or training is not a substitute for the threshold qualification finding Rule 702 and Watson require the court to make. The Supreme Court has specifically rejected Respondent's invitation to push the qualification debate on to a jury. Watson, 389 S.C. at 447, 699 S.E.2d at 175 (citing State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) (finding 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") (emphasis added)).

Respondent also errs by suggesting the threshold qualification question does not include the sufficiency of a proposed expert's qualifications. It is not enough that Respondent offered *some* basis to claim Letterman had specialized knowledge on computer forensics and cell phone mapping. It was incumbent on the circuit court to probe all of the proposed qualifications to see whether they were enough to allow Letterman's conclusions to reach the jury. State v. Chavis, 412 S.C. 101, 106-07, 771 S.E.2d 336, 339 (2015) ("First, the qualifications of the expert must be sufficient . . ."). That was the approach taken in Andrews and Hamrick. The Andrews proposed expert offered evidence of his experience and a one-week class he attended, but the circuit court

deemed the class "insufficient qualification" and both this Court and the Supreme Court agreed. 424 S.C. at 310, 818 S.E.2d at 231; Op. No. 27894 (S.C. Sup. Ct. filed June 19, 2019) (Shearouse Adv. Sh. No. 25 at 10-11). The officer in Hamrick pointed to multiple training courses he took over a period of several years, but the Supreme Court ultimately concluded the officer's training was "limited" and he lacked the "necessary qualifications" to be admitted as an expert. Op. No. 27886 (S.C. Sup. Ct. filed May 15, 2019) (Shearouse Adv. Sh. No. 20 at 19).

Therefore, it is wrong for Respondent to dismiss Ms. Wright's argument that she "simply did not think [Letterman] had sufficient qualifications." Resp't Br. at 31. That is a proper objection to raise in the face of a proposed expert with limited training on the subject matter of his testimony and it directly invokes the circuit court's gatekeeping duty to prevent unqualified witnesses from garnering the valuable "expert" label. The Court should reject Respondent's attempt to water down the expert qualification standard from the threshold requirement Rule 702 and South Carolina law has consistently required. As explained above, Letterman had no more relevant qualifications than the proposed experts rejected in Andrews and Hamrick, and the circuit court abused its discretion in allowing an officer with one-day's training on cell phone mapping to offer testimony on a criminal defendant's whereabouts in an effort to tie her to the scene of a murder.[5]

[5] Respondent argues the remainder of Ms. Wright's "qualification" challenge is unpreserved (Resp't Br. at 32) but this argument fails to account for how South Carolina courts describe expert "qualification" requirements. As stated in Chavis, when ruling on the "qualification" of experts, a court must consider both whether the proposed expert has sufficient qualifications; and (2) whether the proposed expert's testimony will be reliable. 412 S.C. at 106-07, 771 S.E.2d at 339. Moreover, Ms. Wright's objections at the start of Letterman's testimony went beyond just the sufficiency of his qualifications. (R. p. 487, lines 16-17) ("we would object to his qualifications as an expert **and his testimony**") (emphasis added). As a bottom line, precedent holds that it is a "good practice" to reach the merits of an issue even with error preservation is doubtful. Johnson v. Roberts, 422 S.C. 406, 812 S.E.2d 207 (Ct. App. 2018) (citing Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 730 S.E.2d 282, 285 (2012)).

4. Respondent Artificially Segmented Letterman's Testimony in an Effort to Complete its Case-in-Chief on Rebuttal.

Letterman's second round of testimony was not limited to rebutting Ms. Wright's evidence, and the trial transcript shows Respondent held back this testimony from Letterman's initial appearance in an effort to complete its case-in-chief on reply. As this Court recently held, it is reversible, not harmless error to admit an expert on reply who goes beyond the specific evidence offered by an opponent to present evidence the proponent should have offered in its original presentation.

Initially, Respondent incorrectly claim Ms. Wright's rebuttal-based issue is not preserved because she offers a "different theory" in her brief than was included in her objection at trial. Resp't Br. at 36 (citing State v. Bailey, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989)). Respondent contends the trial objection was limited to Letterman's qualifications. Resp't Br. at 36. In other words, Respondent asks the Court to find Ms. Wright's rebuttal objection was effectively indistinguishable from her qualification objection such that she should be permitted only one issue on appeal. Respondent errs because it misreads Ms. Wright's objections and omits key context showing the scope of the issues raised to the circuit court. Along with concerns over Letterman's qualifications which were explored during *voir dire*, Ms. Wright's trial counsel objected to because Letterman was "previously called as a witness." (R. p. 487, lines 9-12). This objection reasonably implies the testimony Letterman was about to offer should have been included in Respondent's case-in-chief.

If there was any ambiguity as to whether Ms. Wright had one or two objections to Letterman, Ms. Wright's attorney dutifully sought confirmation that the circuit court understood her distinct motion "not to allow [Letterman] as a rebuttal witness." (R. p. 488, lines 12-14). This follow-up ensured the circuit court entered a distinct order on this separate objection. (R. p. 488,

lines 15-17). This fuller context shows the errors in Respondent's preservation argument. Ms. Wright is not offering a different theory on appeal than was offered at trial, and Respondent should not be permitted to turn issue preservation rules in to a "gotcha game" to avoid the merits of Ms. Wright's properly-raised objections. Johnson v. Roberts, 422 S.C. 406, 411, 812 S.E.2d 207 (Ct. App. 2018) (finding "any doubt should be resolved in favor of preservation" and rejecting preservation argument even though "the factual theory Appellant presented to the circuit court is not identical to the factual theory she argues here").

As to the merits, Respondent argues Letterman's opinions were proper rebuttal testimony because they covered the same general subject matter as Ms. Wright's defense. Resp't Br. at 38-39. However, Letterman's rebuttal testimony addressed issues never discussed by the cell phone mapping expert he was purportedly recalled to rebut. Appellant's Br. at 14-15. Moreover, rebuttal testimony is not proper simply because it is in the same ballpark as an opponent's theory of the case. This Court recently reversed a murder conviction because a proposed rebuttal expert's presentation "was not limited to refuting or rebutting **specific testimony**" from the defendant. State v. Prather, 422 S.C. 96, 107, 810 S.E.2d 419, 425 (Ct. App. 2017) (emphasis added). Rebuttal expert testimony must be reasonably constrained by the specific evidence or testimony offered by an opponent and may not venture into "general testimony as to the circumstances of the crime." Id.

When a witness like Letterman or the expert in Prather expand beyond refutation and into general expert testimony, he risks running afoul of the long-standing rule preventing a party from using rebuttal to complete its case-in-chief. State v. Huckabee, 388 S.C. 232, 242, 694 S.E.2d 781, 786 (Ct. App. 2010). That rule is especially apt here since Letterman's rebuttal testimony was his second appearance and any cell phone forensics or mapping conclusions he intended to offer fit

naturally into his initial testimony. R. pp. 349-54) (discussing Letterman's extraction of Ms. Wright's phone using Cellebrite, his analysis of call logs, and the technical capabilities of the phone). Ultimately, the error requiring reversal in Prather is mirrored in Letterman's testimony. He was allowed to testify in areas going beyond proper rebuttal testimony, and the context shows Respondent's purpose in recalling Letterman was to complete its case-in-chief.

5. Improperly Admitted Evidence on a Criminal Defendant's Purported Location at the Time of a Murder is not Harmless Error.

Improperly admitted testimony cannot be harmless error when it goes to the heart of the case. In re Care & Treatment of Thomas S., 402 S.C. at 379, 741 S.E.2d at 30 (citing State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001)). The question at the heart of this case was whether Ms. Wright was present at the crime scene when Decedent was killed. Respondent's brief could leave a misleading impression about just how contested that question actually was. Ms. Wright's statement to police was that she was with friends in another town at the time of the murder. (R. pp. 154-57).

The only witness who placed Ms. Wright at the crime scene (Brandon Blackwood) is an admitted liar who confessed multiple times to the crime he now accuses Ms. Wright of and who would have faced his own murder trial if not for his testimony leading to Ms. Wright's conviction. Respondent needed some other seemingly-objective evidence to either bolster Blackwood's fundamentally shaky testimony or to independently suggest Ms. Wright was at the crime scene at the time Decedent was killed. Thus, evidence related to Ms. Wright's cell phone became a crucial component of the evidence Respondent used to gain a conviction. The trial transcript bears this out. Respondent viewed cell phone mapping evidence to be important enough that it devoted its only rebuttal evidence to readdressing the issue with the jury. Then, during closing arguments, Respondent devoted 4 ½ pages to cell phone data to suggest Ms. Wright was at the scene of the

crime. (R. pp. 516-20). In turn, Ms. Wright's counsel argued her position on what the cell phone data said about Ms. Wright's location at key moments and what those locations meant for Respondent's ability to meet its burden of proof. (R. pp. 534-35). Respondent's hindsight argument that Letterman's testimony "could not reasonably have affected the result" of the trial is not consistent with how the parties treated that testimony during the trial.

Respondent's harmless error argument is flawed for other reasons. First, Respondent largely dismisses Blackwood's massive credibility problems by claiming his testimony was corroborated by other witnesses. Resp't Br. at 43. But, as Respondent admitted at trial, there is no corroboration for Blackwood on the "heart of the case" question. No one corroborated Blackwood's testimony placing Ms. Wright at the crime scene and putting her behind the wheel of the truck that hit Decedent. R. p. 515, line 25 – 516, line 2). It is no coincidence that after acknowledging this potential flaw during its closing argument, Respondent immediately began discussing cell phone evidence and the alleged support it offered Blackwood's statements. (R. pp. 516-18). Second, Respondent dismisses Blackwood's confessions by claiming he had no motive to kill Decedent. Resp't Br. at 44 n. 23. Respondent overlooks the fact that, according to a witness who saw Blackwood in the hours before the incident, he volunteered to kill Decedent. (R. p. 140, lines 15-20). Third, Respondent's brief could leave the Court with the impression Ms. Wright was the only one who harbored ill will toward Decedent. However, multiple witnesses testified Decedent had several enemies including men who threatened him with a lead pipe or metal wand and a disgruntled drug dealer with whom Decedent had an earlier dispute. (R. pp. 87, 297).

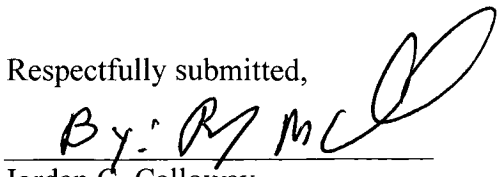
Thus, the jury was presented with crucial questions when deciding whether Ms. Wright was guilty of murder. They had to find she was present at the crime scene and that it was her rather than Blackwood who struck Decedent with the vehicle. Both of these key questions were contested

by evidence Ms. Wright presented. Respondent used Letterman's cell phone mapping testimony to counter this evidence and to prop up Blackwood's inherently unreliable statements. Placing the defendant at the crime scene was a crucial part of the Respondent's burden in this case and cell phone location evidence can have a "compelling" effect on the jury's perception of this issue. Wilder v. State, 991 A.2d 172, 200 (Md. 2010). Even a case Respondent's brief cites multiple times rejects its efforts to minimize the importance of Letterman's testimony. See Resp't Br. at 29, 35 (citing Collins v. State, 172 So.3d 724 (Miss. 2015)). Collins held that an officer's improper testimony on cell phone location data was "obviously" not harmless since its purpose was to place a criminal defendant "in the same geographic area at the time of the murder." 172 So.3d at 744. The issue was too important and Letterman's testimony too crucial to dismiss the errors as harmless.

CONCLUSION

Based on these arguments and those in her earlier brief, Ms. Wright respectfully requests the Court reverse the circuit court and remand for a new trial. The circuit court abused its discretion by admitting an expert with no more qualifications than the experts recently rejected by the Supreme Court in Andrews and Hamrick. The circuit court also abused its discretion by permitting a rebuttal expert to offer testimony that did not rebut specific evidence Ms. Wright offered. Ms. Wright faces a thirty-year prison sentence in no small part because of this improperly admitted evidence, and a new trial is the only proper remedy.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-002531

State of South Carolina, …….. Respondent

v.

Angelita Nicole Wright, …… Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 211, SCACR, Appellant's counsel certifies that the Appellant's Brief and Reply Brief comply with Rule 211(b), SCACR.

Respectfully submitted,

By: RJMC

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