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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

On Petition for Writ of Certiorari to the South Carolina Court of Appeals

Unpublished Opinion No. 2023-UP-119 (Filed March 22, 2023)
Court of Appeals Appellate Case No. 2017-002531

THE STATE

Respondent,

vs.

ANGELITA WRIGHT,

Petitioner.

Appellate Case No. 2023-000965

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ARGUMENT

 The Court of Appeals properly affirmed the trial judge’s ruling qualifying Sgt. Letterman as an expert in “cell phone forensics and cell tower mapping” because he had acquired knowledge of these areas through study, and practical experience and his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury’s good judgment and common knowledge. And, while Petitioner continues to complain about his qualification as a expert in mapping, she cannot show any prejudice as no testimony was actually received from Sgt. Letterman as to mapping.16

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STATEMENT OF THE CASE

Petitioner, Angelita Wright, was tried by a Spartanburg County jury and convicted of murder. The Honorable R. Keith Kelly sentenced Petitioner to 30 years imprisonment. Petitioner appealed and raised the following issues in her brief filed in the South Carolina Court of Appeals:

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?

(FBOA at iv).

After hearing argument on June 2, 2020, the Court of Appeals affirmed in an unpublished opinion issued on March 22, 2023. (App. 1-14). Petitioner filed a petition for hearing on April 3, 2023, (App. 16-22), which was denied on May 19, 2023, (App. 15). Petitioner timely filed her petition in this Court. This return follows.

STATEMENT OF FACTS

Petitioner and the victim, Brent Tessnear, had been married and had children together, but at the time of the murder, had been estranged for approximately two years. *See App. 174; 248.* Brent was found by the side the road around 3:00 a.m. on December 27, 2017, the victim of a hit and run. *App. 43-45.* The evidence supported, and the jury found, that Petitioner ran him over. Brent's body was found soon after he sustained the massive and fatal injuries.

Discovery of the Body

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.” When she saw Brent, she recognized as the man she had seen 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. 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. He stated that he lived behind the Hardee's off Hwy. 29 and Oakland St. Sgt. Wolfe intended to offer him a ride, even though he was not grossly intoxicated. 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. *App. 51-53; 56-57; 59-60.*

Forensic pathologist Dr. John Wren testified the “major” externally shown injury 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 ... 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.” *App. 287-91.* The primary internal injury was his liver which was “ruptured open from a pressure type injury or extreme blow to the abdomen.” *App. 291-92.* Also, there was a laceration across the top of Brent's right kidney. *App. 291.* Dr. Wren opined that the cause of death was internal hemorrhaging, secondary to a lacerated liver and kidneys, and secondary to blunt force trauma, injuries “consistent with a pedestrian versus vehicle encounter.” *App. 292-93.*

Events Leading Up to the Murder

Brandon Blackwood, twenty years old at the time of trial, testified that he met Petitioner through her cousin, Christine Hamrick, roughly five months before December 26, 2015. Around

3:00 p.m. on December 26th, Blackwood was at Christine's residence in Pacolet when Petitioner asked if he would take her to Brent's house in Cowpens "to get [the] Christmas presents for her children." *App. 172-74*. Blackwood drove to Brent's house in his white truck. Blackwood remained in the truck, but Petitioner went up to the house and knocked on the door. Brent answered the door and they spoke briefly, before going into the house. When Petitioner 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. She said that he had returned the children's Christmas gifts, took the money he got and "bought drugs with it." *App. 174-76*. Petitioner 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. Petitioner got out and spoke to Carol once they reached her house, but Blackwood initially remained in the truck because he was drunk. *App. 176-78*. He eventually got out and introduced himself to Carol, and he spoke to his friend, who had arrived. Soon, Petitioner 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. She 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. *App. 178-79*. She 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 Petitioner wanted to locate her brother and ask him to beat up Brent for her. She next drove back to Brent's house but no one answered the door. *App. 179-81*. Before they left Brent's house, Johnathan Sellars and Amber Gossett arrived. At Petitioner's insistence, Johnathan called Chavis Tessnear to try to find him. Petitioner 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. *App. 181-82*. No one answered Petitioner's knocks on the front door and window. The front door was locked. So, she went to the back door and was able to get 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. She then drove by the home of a woman named Tammy, thinking that Brent might be there. *App. 183-84*.¹

The next place that Blackwood remembered going to was the Spinx station in Spartanburg, where Petitioner met her friends. Again, she 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. Petitioner and her friends pulled into the Arby's ten minutes later, and Blackwood got the bike out of the truck bed at Petitioner's request, so that she could show it to her friends. *App. 184-87*. 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, Petitioner told him that she would drive because he was too drunk to drive. Blackwood eventually acquiesced and allowed her to drive. By the time he awoke, Petitioner was getting out of the truck at the Li'l Cricket in Cowpens again. *App. 187-89*. Brent was coming out of the store. They had a heated argument for five to ten minutes. When Petitioner got back into the truck, she repeatedly refused to tell Blackwood what was wrong and insisted that she was fine. After making sure that no cars were coming, Petitioner drove out of the parking lot and headed on N. Main St. She then turned on Graveyard St. *App. 189; 192-93*. Blackwood saw a man walking in the road and warned her to "watch out." She initially slowed down and turned on her bright lights. Despite Blackwood saying, "make sure you don't hit him," she floored the truck when the

¹ Brent was dating Tammy Yosa at the time. *App. 262*.

man was in the center of the road and did not stop because she apparently recognized Brent. Petitioner continued driving until she reached her apartment in Pacolet. From there, Blackwood drove to his mother's house in Cherokee County. *App. 194-95*. Less than twenty-four hours after Petitioner 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." *App. 199*. Blackwood spoke police on the 29th. On his way to meet with law enforcement, Petitioner sent him a text telling him that "you need to call me ASAP." *App. 196-98*. Blackwood indicated in his original statement that Petitioner 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 was adamant at trial that Petitioner was the driver. *App. 199-201*.²

Inv. Jeanie Burnett testified that she went to Spartanburg Regional Hospital on the morning of December 27th and saw Brent's body. "He had a couple of abrasions on his body that [were] not consistent with falling out in the road." In light of what Inv. Burnett observed, she had Sgt. Wolfe take her to the area where Brent's body had been discovered. *App. 317-18*. 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 Petitioner and asked to speak with her. Although she identified herself as a Spartanburg County employee, she did not tell Petitioner that she worked for the Coroner's Office. Yet, Petitioner immediately asked, "Is he okay? I want to make sure he's alright." *App. 319-20; 323-24*. When Inv. Burnett asked where she was, Petitioner said that she was home in Pacolet and had not seen Brent. She then admitted that she was on the Ashville Hwy. Inv. Burnett met with Petitioner in the emergency room. While it only took her roughly twenty minutes to get the hospital, Petitioner was already there. *App. 322-23; 325*.

² Defense counsel impeached him with same. (*App. 208-20; 226-27; 351-88; and 457-63*).

Inv. Michael Nix, who works in the crime scene unit of the Spartanburg County Sheriff's Office, went to the scene at the intersection of Cemetery and Oakland Streets on the morning of the 27th. Inv. Burnett asked to look at Brent's body and assess what he thought happened. He looked at the body and concluded that he had been struck by a vehicle. In addition to photographing the scene, he collected evidence. 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. *App. 298-309.*

Johnathan Sellars testified that he was living with Brent's son, Chavis, in Cowpens, on December 26, 2015. Johnathan did not know Petitioner at that time but he knew Blackwood from school. Between 8:00 and 9:00 p.m. on the 26th, he saw Blackwood and Petitioner at Brent's house. They were traveling in Blackwood's truck but Petitioner was driving. She was mad and wanted to know where Brent was because of photographs on Facebook. *App. 161-64; 169-70.* Johnathan and Amber Gossett thereafter rode with them as Petitioner headed to a trailer in Pacolet. Before they reached this trailer, Petitioner briefly received a call from Brent and told him that she would be there in fifteen minutes.³ She then turned around and headed back to Cowpens. As they drove, Petitioner 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 those comments, Johnathan was concerned when he heard on December 27th that Brent was dead. *App. 164-66; 169-70.*

Carol Barzilay testified that Petitioner and Blackwood came to her Pacolet residence between 8:00 and 9:30 p.m. on the night of December 26, 2015, and they stayed there for 30 to 45 minutes. Petitioner 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

³ Petitioner told Brent that she loved him. *App. 167.* His testimony vacillated on whether this was before or after her malicious remark, but he ultimately testified that was before it. *App. 169.*

on Facebook. Ms. Barzilay called Brent using Petitioner's cell phone. When confronted, he denied posting the photographs. Petitioner then spoke to him. Afterwards, she told Ms. Barzilay, "I'm going to kill the f----ing bastard." Petitioner was driving when they left and said that she was going to Brent's residence. *App. 96-100.*

Amy Padgett testified that she was Brent's first cousin and that she had met Petitioner 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, Petitioner 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. Petitioner "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. *App. 104-06; 115-18* Hannah and Amy testified that Petitioner used her phone "to get on Facebook." Hannah also saw Petitioner and Blackwood drinking while they were there. She was driving the truck when they left. *App. 106-07; 118.* Amy testified that after Petitioner saw the photographs, she called Brent 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, Petitioner told him, "[Y]ou have two minutes to take these pictures off or ... I'm coming to kill you." When Blackwood asked Petitioner if she wanted him "to do it" for her, she replied, "[N]o, I can take care of my own." *App. 118-19.* Both Petitioner and Blackwood were stumbling. 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 Petitioner driving. *App. 118-19.* Hannah Padgett confirmed that Petitioner was driving the truck when she and Blackwood left. *App. 107.*

Amy learned that Brent was dead around 7:30 or 8:00 on December 27th when Eric Edgins,

who was dating Carol Barzilay, showed her a text that Petitioner had sent him.⁴ Because Amy could not believe that her cousin was dead, Amy got Petitioner's cell phone number from Mr. Edgins and called her. Petitioner was crying. She confirmed that he was dead and, when asked what happened, said "the Evans guy beat him to death." *App. 119-20*. Amy saw Petitioner later on the 27th at Spartanburg Regional Hospital. *App. 120*. She "seemed nervous." *App. 121*. According to Amy, the women had the following conversation:

[Petitioner] 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.

App. 121, lines 2-9.

Hannah likewise testified that when she was at the hospital on the 27th, she heard Petitioner say "something about Brian Evans and some other person" killed Brent. *App. 107*. Both Hannah and Amy testified that Petitioner 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 Petitioner claimed that she had permission to get his phone, Amy testified that Petitioner 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. *App. 107-09; 121*. When they reached his house, Petitioner got out of the truck and tried to get into the house, but it was locked. She 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. Petitioner and Hannah got back into the truck. The police stopped them as

⁴ Eric Edgins, who had at one point been in a relationship with Petitioner, testified and corroborated Amy's testimony that he showed her a text received from Petitioner on the 27th stating that Brent was dead. *App. 310-11; 314*. He also testified that he received one on the 29th in which she stated, "I see you believe in me so much ... you think I murdered Brent." *App. 312-13*.

they were driving away and asked why they were at Brent's house. In response to Amy's explanation that Petitioner 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 Petitioner seemed "up tight," she spoke to the Chief of Police. *App. 121-22.*

On December 28th, Amy drove Petitioner to the funeral home. On the way there, Petitioner was quiet at times, but "she would break down at moments. And then it was almost like she was very nervous." Petitioner "called the life insurance people" while they were at the funeral home because, however, the company would not give her any information. *App. 123.*⁵

Bridget Miller testified that she was Brent's sister and that she had known Petitioner most of Petitioner's life. Although they had their "ups and downs," the women were close. Bridget remembered seeing her 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 Bridget's husband was in the store, Petitioner 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. *App. 238-42.* Petitioner 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 Petitioner's son in the truck bed. She told Bridget that she had to get Blackwood home because he was drunk. Petitioner 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. *App. 241-43.*

⁵ Brent's son by a previous marriage, Brett Tessnear, testified that his father had a life insurance policy, and that he was the sole beneficiary. *App. 341-42.*

Bridget then went home and went to bed. She next saw Petitioner 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. Blackwood was with Petitioner. Petitioner went with Bridget to help her set up at the flea market. Petitioner 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." *App. 244-46*. 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 won't hurt him ... because [Jeff was] like a nephew to him." In this conversation, Petitioner appeared to be concerned about Brent. However, she finally told Bridget about trying to stop him from selling the children's Christmas gifts. *App. 246-47; 251-52; 257-58*.

Petitioner received a phone call from the Coroner's Office at 5:57 a.m. Petitioner put the call on speakerphone at Bridget's request. Bridget got mad when the caller refused to answer any of Bridget's questions. *App. 247-48*. The two arranged to go to the hospital for a meeting. Petitioner called a male cousin and asked, "[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 and that he had died. Bridget went home; Petitioner was required to stay. *App. 248-50*.

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. *App. 159-61*.

Sherry Riley testified that she was related to Brent and had raised him and Bridget after their mother died. Sherry testified that her home was less than a mile away from Brent's house. *App. 259-60.* 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. *App. 261.* He then showed her a text message that Petitioner 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.

App. 261-62. Brent asked her to check on the connector and left. *App. 262.* He later called her between 10:00 and 10:40 p.m., as Sherry and her husband were headed to a friend's house. Brent 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. *App. 262-63.* For the Rileys to get home, they had to drive by the area 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. They 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. *App. 263-65.*

Frances Dalton testified that she had met Petitioner and Brent through her former boyfriend, Robert, and that she lived two houses away from Petitioner. Petitioner 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.” *App. 266-68*. She also said that “she was worried about he had posted some naked pics 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. *App. 268; 272*. When the three friends ran out of cigarettes, Petitioner 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. Petitioner was very quiet on the walk there and on the way back home. Frances testified that this was not normal for her, particularly since she had been expressing so much concern for Brent only minutes earlier. Shortly after they returned home, Bridget Miller arrived and Petitioner left with her. Finally, Frances denied being with Petitioner between 1:00 and 2:00 a.m. on the 27th. *App. 267-70; 273*.

Odessa Erwin was working as the cashier at the Li’L Cricket in Cowpens, and remembered both Sgt. Wolfe and Brent coming into the store “around maybe 1:30, 2:00 o’clock-ish.” (Sic). *App. 234-35*. She testified that Brent “appeared ... normal” not “irate or anything.” She did not see a man and a woman fighting in the parking lot that morning. *App. 235-36*.

Inv. Thomas Clark, with the Spartanburg County Sheriff’s Office, assisted with an interview of Petitioner on December 29, 2015. *App. 127; 132*. 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. Petitioner 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.” *App. 132-33*. Petitioner and Blackwood later went back to Brent’s house with a man named Johnny, to get her son’s bicycle. *App. 133-34*. 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. *App. 134*. “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 Petitioner permission to get Brent’s cell phone. *App. 134-35*.

Lindsey McGraw 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 County Sheriff’s Office. *App. 76-77*. Inv. Clark asked him to perform a forensic examination of three cell phones in this case: Petitioner’s, Brent’s, and Blackwood’s. 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. *App. 76; 78*. 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.” *App. 77*. Because Petitioner’s flip phone did not support any of the Cellebrite 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. *App. 78-80*.

Sgt. Brandon Letterman testified on direct examination that he is a computer and cell phone forensics analyst for the Spartanburg County Sheriff's Office. In connection with this case, he photographed Petitioner's South Carolina ID Card (*see State's Ex. 7*), which she had left in the driver's side door of Blackwood's truck (*see State's Ex. 8*), and also executed a search warrant that enabled him to photograph (*see State's Ex. 3-A*) the phone call logs on Petitioner's cell phone. Using Cellebrite, he did a forensic extraction of the contact list on her phone as well. *App. 328-33*; *State's Ex. 3-B* (pdf. of information extracted). Her 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 Petitioner'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. *App. 333-37; 339-40*. (Thus, she 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).

Sgt. Letterman testified in reply. 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 Petitioner'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 from 11:19 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. *App. 471-76; 479*. An outgoing text message was sent from Petitioner’s phone at 2:10:28 a.m. on the 27th. 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. *App. 476-79*. The last text messages from Blackwood’s phone were sent to Petitioner at 11:17 and 11:26 p.m. on the 26th. His phone was not active at 2:09 a.m. *App. 476-77*.

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). “[Q]ualification 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). A “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)).

ARGUMENT

The Court of Appeals properly affirmed the trial judge's ruling qualifying Sgt. Letterman as an expert in "cell phone forensics and cell tower mapping" because he had acquired knowledge of these areas through study, and practical experience and his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury's good judgment and common knowledge. And, while Petitioner continues to complain about his qualification as a expert in mapping, she cannot show any prejudice as no testimony was actually received from Sgt. Letterman as to mapping.

A. How the Issue developed at trial.

Petitioner's cross-examination of Inv. Clark elicited that the Sheriff's Office had obtained and reviewed the cell phone records for Petitioner, victim and Blackwood. *App. 144-46*. The 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 investigator was able to map the phones. *App. 148-50*. Petitioner elicited that her cell phone records reflected that she received text messages from Blackwood's phone around 2:00 a.m. on December 27th. *App. 146-47*. On cross-examination of Blackwood, Petitioner questioned him about text messages that he sent to her, received at 2:09 a.m. on December 27th. His response was, "I do not recall texting her." *App. 221-22*.

After the State had rested and the jury had been excused, defense counsel 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.” *App. 349-50*. Assistant Attorney General Abee⁶ stated,

This was prepared in response to their expert. [Defense counsel] 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.

App. 350.

Petitioner presented Mr. Tom Slovenski as part of her case-in-chief. *App. 394-447*. Mr. Slovenski was qualified as an expert in cell phone forensics and cell phone mapping without objection. *App. 400, lines 3-9*. He testified that he had received the T-Mobile call detail records for Petitioner’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. *App. 401-02; 408-10*. 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. *App. 410*. He mapped the location of her 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. *App. 411-12*. He explained that he “was given the charge of mapping certain key locations,” Petitioner’s address on Cleveland Street in Pacolet, Oakland St. and Cemetery Rd. in Cowpens, and the Scotchman or Li’l Cricket in Cowpens. *App. 413-14*. He opined that the cell tower near Petitioner’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. *App. 418-20*. Mr. Slovenski further testified that her phone was in the Cowpens

⁶ Ms. Abee’s name is misspelled throughout the trial transcript.

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. *App. 421-26.*

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. *App. 427-32.* Without objection, the State introduced Petitioner’s cell phone records on cross-examination as State’s Ex. 12. *App. 435.* 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 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. *App. 435-37.* He explained that any previously received text messages would be received once the phone is activated again. Petitioner’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. Also, her 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 review a phone report for Blackwood. Finally, Petitioner’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. *App. 437-44.*

On redirect, Petitioner 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. *App. 444-45*.

After the defense had rested, the State indicated that it had a rebuttal witness and it recalled Sgt. Letterman. *App. 465*. 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. *App. 466*. 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. *App. 466-68*.

The State proffered Sgt. Letterman as an expert in cell phone forensics and cell tower mapping, but Petitioner indicated that she wanted to voir dire his qualifications. *App. 468*. 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. *App. 468-70.*

Petitioner 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."

App. 470. 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. *App. 470-71.*

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. *App. 471.* Sgt. Letterman then testified to the matters discussed in the "Statement of Facts."

B. Disposition of the Issue by the Court of Appeals.

The Court of Appeals affirmed the trial judge's ruling:

Addressing the qualification concern, Sergeant Letterman testified he had been a cell phone and computer forensics analyst for SCSO for seven months, and he shadowed Investigator Lindsey McGraw for a month before starting in his current position. At the time of Wright's trial, Letterman had performed between seventy-five and eighty forensic cell phone examinations and analyzed cell phone tower information between thirty and forty times. He used GeoTime and Cellebrite for the forensic examination of cell phones—after receiving training from the manufacturers in the use of these programs for the extraction of phone data. Sergeant Letterman participated in a five-day training program for Cellebrite and a one-day training for GeoTime. Although Letterman admitted he had never before testified as an expert nor published literature in the field, he had previously presented at a national homicide conference on a case involving phone mapping.

We find the circuit court did not abuse its discretion in finding Sergeant Letterman

had the necessary training and expertise in the area in which the State sought to qualify him. Sergeant Letterman shadowed another investigator before starting in his current position, had been a cell phone and computer forensics analyst for seven months, and had prior field experience in numerous investigations. The manufacturers of GeoTime and Cellebrite trained Letterman, who then used these programs to extract cell phone data for analysis in prior investigations. *See e.g., Warner*, 430 S.C. at 88, 842 S.E.2d at 366–67 (“Church’s expertise was based on his vast experience with historical cellular records, as well as his knowledge of and experience with how cellular phones, towers, and networks operate. The text of Rule 702 states expertise can be based on experience.”); Rule 702, SCRE (stating that an expert may be qualified “by knowledge, skill, experience, training, or education”); *State v. Ellis*, 345 S.C. 175, 177–78, 547 S.E.2d 490, 491 (2001) (officer qualified as an expert in crime scene processing and fingerprint identification was qualified to testify to measurements taken at the scene, recovery of shell casings, and identification of blood stains, but was not qualified to testify regarding the location and position of the victim’s body based on crime scene reconstruction).

(App. 10-11).

C. The Court of Appeals properly affirmed because the trial judge did not abuse his discretion in qualifying 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. “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). “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)). “In general, courts allow experts to testify if

they are more qualified in the field than a juror on the subject” and “[d]efects 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).

Petitioner submits that Sgt. “Letterman lacked the Rule 702, SCRE qualifications to testify as a ‘cell tower mapping’ expert.” (Pet. at 6). Petitioner complains Sgt. Letterman “only attended a one-day training class on the software (GeoTime) he used for mapping....” (Pet. at 6). However, as the Court of Appeals noted:

Addressing the qualification concern, Sergeant Letterman testified he had been a cell phone and computer forensics analyst for SCSO for seven months, and he shadowed Investigator Lindsey McGraw for a month before starting in his current position. At the time of Wright’s trial, Letterman had performed between seventy-five and eighty forensic cell phone examinations and analyzed cell phone tower information between thirty and forty times. He used GeoTime and Cellebrite for the forensic examination of cell phones—after receiving training from the manufacturers in the use of these programs for the extraction of phone data. Sergeant Letterman participated in a five-day training program for Cellebrite and a one-day training for GeoTime. Although Letterman admitted he had never before testified as an expert nor published literature in the field, he had previously presented at a national homicide conference on a case involving phone mapping.

Notably, the Court of Appeals referenced *State v. Warner*, 430 S.C. 76, 842 S.E.2d 361 (Ct.App. 2020), *aff’d in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022), which found: “The number of times a court has qualified a witness as an expert or found a method reliable will almost never be relevant to the trial court’s Rule 702 task, as what matters is the method’s endorsement by the relevant field, not the bench.” 430 S.C. at 87, 842 S.E.2d at 366. In short, “[e]very 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 programs⁷ “can and do,

⁷ 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;”

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. Cronin*, 466 U.S. 648, 665 (1984) (“Every experienced criminal defense attorney once tried his first criminal case”). 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.⁸ Petitioner’s reliance on *State v. Andrews*, 424 S.C. 304, 316, 818 S.E.2d 227, 234 (Ct. App. 2018), *reh’g denied* (Sept. 20, 2018), is misplaced. In *Andrews*, the court of appeals 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 also held in *Andrews* 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,

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 – a pointed note by the Court of Appeals. (App. 10-11).

⁸ See *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).

inadmissible.” *Id.* at 318, 818 S.E.2d at 235.

In contrast, in the present case, Sgt. Letterman did have expertise in the area to which he testified at trial. Petitioner simply did not think that he had sufficient qualifications. 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 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. *App. 468-70; 479-82.*

Therefore, Sgt. Letterman’s testimony fully supports the finding that he was qualified to testify as an expert under Rule 702, SCRE. Even so, “[r]eversal of a trial judge’s qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice.” *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 142 (2010). Petitioner simply cannot prove prejudice because no mapping testimony was actually received. As the Court of Appeals found:

Letterman’s testimony was narrowly focused on his examination of phone records obtained from cellular providers—an area in which he had the necessary knowledge and experience. His testimony never ventured into more complex areas of forensic mapping which may indeed have required greater training and expertise than Letterman possessed. Moreover, the exhibits Sergeant Letterman discussed during his rebuttal testimony were “call detail records that were sent from the . . . cell phone company” that had already been admitted into evidence without objection earlier in the trial.

App. 11. To be clear, Petitioner does not contest Sgt. Letterman’s qualification in cell phone forensic examination. Consequently, Petitioner cannot show prejudice. No relief is due.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that petition should be denied.

Respectfully Submitted,

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⁹ Senior Assistant Attorney General William Edgar Salter, III, represented Respondent in the South Carolina Court of Appeals litigation; however, Mr. Salter has since retired from the Attorney General's Office. The above signed counsel acknowledge, however, Mr. Salter's work in this appeal which includes much of the argument relied upon in this return.