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**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

**S.C. Supreme Court**

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**Appeal from Horry County  
The Honorable Steven H. John, Circuit Court Judge  
Appellate Case No. 2013-000805**

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**THE STATE,**

**RESPONDENT,**

**V.**

**JIMMY LEE SESSIONS,**

**PETITIONER.**

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**ALAN WILSON  
Attorney General**

**JOHN W. McINTOSH  
Chief Deputy Attorney General**

**DONALD J. ZELENKA  
Assistant Deputy Attorney General**

**WILLIAM EDGAR SALTER, III  
Senior Assistant Attorney General**

**P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305**

**JIMMY A. RICHARDSON, II  
Solicitor, Fifteenth Judicial Circuit**

**P.O. Drawer 1276  
Conway, SC 29528-1276  
(843) 915-5460**

**ATTORNEYS FOR RESPONDENT.**

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## STATEMENT OF ISSUES ON APPEAL

1. The trial judge committed reversible error by allowing into evidence a pair of tennis shoes alleged to connect Sessions with prints left at the crime scene, as the State failed to establish the provenance of the shoes before December 2008, when they were taken from a bag at the detention center purported to contain Sessions' personal belongings.
2. The trial judge committed reversible error by allowing SLED "victimologist" Mike Prodan to testify about the "victimology, method of operation, motive, things like that," of the murders, as his testimony violated Rule 702, SCRE, *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), and - on point as a case can be, since it involves the same witness - *State vs. Tapp*, S.C. Ct. App. Opinion No. 4529, refiled February 18, 2010.

## COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the Court of Appeals correctly upheld the trial judge's admission of Sessions' tennis shoes (**State's Ex. 88**) into evidence because the State established an adequate foundation for their admission, and Sessions' argument about the insufficiency of the chain of evidence goes more to the weight he feels that the jury should have accorded to these non-fungible items and not to their admissibility?
- II. Whether the Court of Appeals correctly found that any error in the introduction of the State's expert testimony on crime scene analysis and victimology was harmless beyond a reasonable doubt?

### ALTERNATIVE SUSTAINING GROUND [ Argued in Argument II].

- III. Whether Sessions' challenge to the State's expert testimony on crime scene analysis and victimology is procedurally barred because his relevancy objection is too general to preserve any issue for appellate review?

## STATEMENT OF THE CASE

The Horry County Grand Jury indicted Petitioner, Jimmy Lee Sessions, (Sessions) in July 2007 for two murders (07-GS-26-2962), burglary in the first degree (07-GS-26-2968) and armed robbery (07-GS-26-2961). Co-defendant Christopher Stephens was indicted for two counts of accessory before the fact of the two murders and armed robbery. The victims were Jamilla Hightower and Monica Wall. Johnny Gardner, Esquire, represented Sessions. Bobby G. Frederick and Laura L. Hiller, Esquires represented Stephens.<sup>1</sup>

Sessions and Stephens were jointly tried on these charges before the Honorable Stephen H. John on February 2-6, 2009. tried with him. The jury found Sessions guilty of all three charges and Stephens guilty of the charges against him. Sessions received concurrent life sentences for the murders and concurrent thirty year sentences on the other offenses. Sessions received current sentences of forty years imprisonment for the accessory convictions. A timely Notice of Appeal was served and filed by each defendant. The Court of Appeals affirmed in a January 30, 2013, unpublished Opinion. *State v. Sessions*, 2013-UP-063 (S.C. Ct.App., Jan. 30, 2013), **App. 1-4**. A timely rehearing petition (**App. 5-12**) was denied on March 20, 2013. **App. 13**. The Petition for Writ of Certiorari was filed on June 19, 2013.

## ARGUMENTS

- I. **The trial judge properly allowed the State to introduce State's Ex. 88, Sessions' tennis shoes, into evidence because the State established an adequate foundation for their admission, and Sessions' argument about the insufficiency of the chain of evidence goes**

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<sup>1</sup> Assistant Solicitors Bradley Coy Richardson and Donna Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. A November 2008 trial on the charges ended in a mistrial. Charges against Marshal Stephens were dismissed for lack of evidence.

**more to the weight he feels that the jury should have accorded to these non-fungible items and not to their admissibility.**

Sessions maintains that the trial judge erroneously allowed the State to introduce his tennis shoes, **States' Ex. 88**, since the State allegedly failed to establish an adequate chain of custody before they were removed from a bag containing his personal belongings at the J. Reuben Long Detention Center. Respondent submits that his argument lacks merit because the State established an adequate foundation for the introduction of the tennis shoes, and that his argument about the supposed inadequacy of the chain of custody goes more to the weight he felt that the jury should have accorded to these non-fungible items and not to their admissibility. Alternatively, any error was harmless beyond a reasonable doubt.

**A. How the issue arose at trial.**

**1. The crime scene.**

Officer John Iannone, of the City of Myrtle Beach Police Department's Crime Scene Unit, processed the crime scene: the Myrtle Beach, South Carolina resident of Jamilla Hightower and Monica Walls. Jamilla was found face-down in her bedroom. She had pillowcase over her head with a single gunshot wound to the head. Monica was found in the bathroom adjacent to her bedroom in an identical manner. The primary differences were that Monica was nude, that she had defecated in her bedroom and that there was some feces on the bathroom floor. **R. pp. 390-417. See also R. pp. 370-404.**

In Monica's bathroom, Officer Iannone found "fecal matter" on the floor and footprints that appeared to have been left by someone stepping in it. He photographed what he had found. **State's Ex. 82.** He photographed it again after he had applied black magnetic powder on the floor. **State's Exs. 63-64; State's Exs. 77-81; State's Exs. 83-84.** He then lifted the prints by using "gel lifts."

**R. pp. 416-21.**

**2. Hearing on admissibility of Sessions' shoes.**

The trial judge held an *in camera* hearing on the admissibility of Sessions' tennis shoes immediately after Officer Iannone's testimony. The State proffered that Capt. Susan Safford would testify that **State's Ex. 88**, the tennis shoes, were taken from him sometime after he arrived at the Detention Center and that they were placed in a bag containing his personal belongings. When she received a search warrant, in December 2008, she retrieved the shoes from a bag containing Sessions' personal property. **R. p. 429.**

Sessions objected on the grounds of relevance.<sup>2</sup> **R. p. 430, ll. 3-7.** The trial judge ascertained from the State that Sessions had been arrested three months after the crime (in September 2006) in Connecticut. He remained in custody until he was transported to South Carolina. The shoes came with him and were later seized. **R. p. 430, ll. 8-24.** Sessions argued that his objection was "even clearer now, because we don't have any Connecticut folks here ... to testify about that." **R. p. 431, ll. 4-7.** The trial judge found that a defendant's shoes, unlike blood, semen or other similar articles, were "not such that they can be destroyed or diminished." Also, Sessions' chain of custody argument was something he could advance on cross-examination but did not bar their introduction. **R. p. 431, ll. 11-19.**<sup>3</sup>

Capt. Susan Safford then testified *in camera* that she is employed at the J. Reuben Long Detention Center. Her responsibilities include overseeing operations at that facility. Also, she has

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<sup>2</sup> "I believe these shoes were taken last month, or maybe even in December, for this crime that occurred two and a half years ago. I don't see any direct probative correlation to these shoes."

<sup>3</sup> Sessions, however, asserted that someone needed to but had not testified as to how the shoes got into the chain of evidence. **R. p. 431, ll. 20-23.**

access to the inmates' personal property. Under Detention Center policy, officers confiscate "any items [that inmates] are not allowed to have in the back of the facility" at booking. The property is then placed into a hanging bag on a conveyor system, much like one would see in a laundromat. Each bag is unique to the defendant and the room where these bags are kept is locked. Although Detention Center staff have access to the room, the defendants do not. If an inmate wishes to release an item of personal property, they have to execute a property release form.<sup>4</sup> **R. pp. 433-37.**

An extradition company brought Sessions to the Detention Center on November 26, 2006. His shoes were not confiscated at that time because they were not deemed contraband. However, a memorandum was issued on May 11, 2007 stating that inmates were no longer able to wear their personal shoes. So officers began collecting inmates' shoes the following Sunday. Sessions' shoes would have been seized at that time, placed into a clear plastic bag and placed into his personal property bag. Based upon an inquiry from the Solicitor's Office, she later pulled up the bag number assigned to Sessions, she retrieved **State's Ex. 88** (the tennis shoes) from his personal property bag and she gave the tennis shoes to an investigator from the Solicitor's Office. **R. pp. 434-39.**<sup>5</sup>

The trial judge rejected Stephens argument that the shoes could not be admitted because the State could not establish that the shoes were, in fact, Sessions' shoes (**R. pp. 440-41**). The trial judge found that Sessions had been transported by the transportation company to the jail in November. Then, in May 2006, there was a "change in policy," and Sessions' shoes were seized. The Detention

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<sup>4</sup> Officers thereafter check the identification of the person who retrieves the property and that passes must be signed for it.

<sup>5</sup> Sessions elicited on cross-examination that the May 11th memorandum was issued because "[a] lot of contraband was coming [into the Detention Center] inside shoes." She explained that it is difficult to property search shoes. "With inserts and soles and things." Therefore, the decision was made to no longer permit inmate's to wear their own shoes. **R. pp. 437-38.** He also established that some inmates traded their shoes in the jail, but there was no evidence that Sessions' shoes had been traded. **R. pp. 437-38.**

Center then kept the shoes “until they [were] given over according to the Subpoena, so they are the Defendant’s shoes, they were seized from him.” While he noted that the defendants “have a lot of questions y’all can ask on cross-examination,” he found that “there is no question they are the defendant’s shoes, and they were seized from him.” **R. p. 441, ll. 6-19.**

Stephens then argued that the shoes were irrelevant. However, the trial judge found that the shoes were relevant, that their “probative value outweighs any prejudice to the defendant” and that the matters raised by Stephens could be addressed on cross-examination. **R. p. 441, l. 20 - p. 442, l. 9.**<sup>6</sup> Despite this ruling, the trial judge offered to restrict the State from eliciting prejudicial matters if Sessions wanted him to do so. Defense counsel and Sessions were permitted to discuss this but the *in camera* hearing concluded without any further discussion of Sessions’ desire in this regard. **R. pp. 443-44.**

### **3. Additional testimony before the judge.**

Officer Bobby Jordan, who is employed by Myrtle Beach Police Department’s Crime Scene Unit, then testified about his involvement in the case. On June 10, 2006, at which time he recovered a projectile, pursuant to a search warrant from underneath the shower stall of Monica’s bathroom. **R. pp. 445-49.** Det. Vincent Dorio also testified about his involvement in the case. **R. pp. 451-55.**

Then, Investigator Carol Allen, who was the shift supervisor over the Myrtle Beach Police Department’s Crime Scene Unit in June 2006, testified that she had processed the kitchen floor of the residence on June 9, 2006. At that time, she dusted the kitchen floor, using two different types

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<sup>6</sup> Sessions argued that the prejudicial effect out-weighted the probative value of the shoes because to cross-examine Officer Safford about the matters raised *in camera*, he would have to elicit that he had been incarcerated in Connecticut and he would have to establish that he was "in prison." The trial judge disagreed and, again, found that "the probative value of the evidence out-weighs any prejudice to [Sessions]." So, he allowed the State to admit the tennis shoes. **R. p. 442, l. 11 - p. 443, l. 3.**

of powders, in an effort to develop possible prints. She was able to observe “two partial” shoe prints (see **State’s Ex. 52**) and, using “pro lifts” (**State’s Exs. 53-54**) she lifted each of the prints that she saw. **R. pp. 458-62.**

**4. Capt. Safford’s testimony.**

Immediately before Capt. Safford’s testimony, Sessions’ counsel informed the trial judge that Sessions “wants to raise the shoe issue, so I won’t be able to stipulate that the shoes come in.” The trial judge instructed the State to establish “as complete a foundation as you can” because, although the trial judge anticipated ruling that they were admissible, he expressly stated that he would hear any further arguments that Sessions had against their admissibility. He also instructed the defense that if it had any objection when the State sought to admit the shoes, he would send the jury out and he would hear any additional objection. **R. pp. 474-75.**

Capt. Safford then testified in the presence of the jury. Her testimony before the jury was almost identical to her earlier, *in camera* testimony. When the State offered the tennis shoes into evidence as **State’s Ex. 88**, both defendants objected. The trial judge permitted both defendants to cross-examine Capt. Safford before he ruled on their objections. **R. pp. 476-72.**<sup>7</sup>

**5. Further *in camera* arguments and the trial judge’s ruling.**

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<sup>7</sup> Sessions’ cross-examination established that Capt. Safford did not personally collect the tennis shoes and that she did not have personal knowledge about their collection. The May 2007 memorandum addressing inmate footwear “was prompted to reduce contraband coming into the facility.” Although she did not have any knowledge of inmates within the Detention Center selling shoes, she was aware that inmates traded their shoes. She was unable to determine whether the shoes collected from Sessions were the shoes that he had when he first arrived at the Detention Center. **R. pp. 482-84.** Stephens again elicited that shoes had been used in the jail as a form of currency when traded. Also, all of the Officers at the Detention Center have access to the property room. **R. pp. 484-85.**

The State, on re-direct, elicited that her duties include making sure that standard operating procedures are followed. Officers were instructed to bag the shoes, place the defendant’s name on the bag and place the bag in the defendant’s personal property bag in the evidence room. The State also elicited that the defendants do not have access to the property room. **R. pp. 485-86.** Finally, Sessions, again, established that Capt. Safford did not personally take the shoes from Sessions. **R. p. 486.**

Sessions then renewed his earlier objection *in camera*. Stephens joined in the objection and added that there was not a sufficient foundation to establish that the shoes were Sessions because the shoes were traded as a form of currency. **R. p. 487.** The trial judge found that an adequate foundation had been established because the evidence supported the inference that Sessions was in possession of the shoes and that the shoes were his. Thus, the threshold requirement for admitting the tennis shoes had been met. **R. p. 487, l. 19 - p. 488, l. 1.**

In his further findings, he again found that the shoes were non-fungible items, unlike blood, semen or other bodily fluids; that the chain of custody requirements for non-fungible items was not as strict as it is for fungible items; and that the State had “shown a proper chain of custody in this particular case.” Likewise, he again found that the defendants’ arguments raised issues that were proper for cross-examination but that they did not bar the admission of the tennis shoes. Additionally, he found that “the shoes themselves are certainly relevant to the issues at hand, any prejudice to the defendants is more than out-weighted by the probative value regarding this particular piece and type of evidence, and therefore I am going to allow the shoes into evidence.” **R. p. 488, ll. 2-17.**<sup>8</sup>

**6. Expert testimony regarding State’s Ex. 88.**

S.L.E.D. Agent Thomas Darnell is assigned to the Forensic Service Laboratory, where he is the Supervisor of the Latent-Print Department. He was qualified, without objection, as an expert in the area of footwear impressions. **R. pp. 494-96.** He had received the gel lifters (**State’s Exs. 57-62**)

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<sup>8</sup> However, he stressed that his ruling did not prevent the defendants from fully exploring all issues on cross-examination. He then indicated that he would tell the jury that he had allowed **State’s Ex. 88** into evidence, and that Sessions would be permitted to continue with this cross-examination. **R. p. 488, l. 18 - p. 489, l. 7.** This procedure was followed when the jury was brought back into the courtroom.

taken from the bathroom and the taped lifts (**State's Exs. 53-54**) that were taken from the kitchen. He was also given five pairs of shoes and asked to compare the shoes to the questioned impressions.<sup>9</sup> He concluded that the heel of Sessions' left shoe was consistent with the gel lift from Monica's bathroom floor that was introduced as **State's Ex. 61**. "In other words, it corresponded in physical design, size and shape with the left shoe of **State's 88**." He also compared the other shoes that had been submitted with **State's Ex. 61**, but they were not consistent with the unknown impression. **R. pp. 496-504; 508-09.**<sup>10</sup>

**B. Discussion.**

"The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal." *Gambell v. Int'l. Paper Realty Corp.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). To warrant reversal, an Appellant "must show both the error of the ruling and resulting prejudice." *Recco Paper & Label Co. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994); *State v. Hamilton*, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Martin*, 347 S.C. 522, 533, 556

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<sup>9</sup> In addition to **State's Ex. 88**, he received four pairs of shoes belonging to Antwann Higgins, **State's Ex. 17** and **State's Exs. 85-87**, for comparison. **R. pp. 331-32; 422; 503.**

<sup>10</sup> Another gel lift from the bathroom was too "partial to render any sort of conclusion." One of the taped lifts from the kitchen corresponded to four pairs of the shoes that had been submitted - including **State's Ex. 88** - because all four pairs "had the same outsole design." This lift "was extremely partial," which meant that he could only say that "it corresponded in physical design and I couldn't go any further, such as the size or shape or anything such as that, just because of the amount of impression was so limited." **R. pp. 504-09; 513.**

S.E.2d 706, 712 (Ct. App. 2001).

Contrary to Sessions' argument, the State was not required to establish a strict chain of custody for **State's Ex. 88** because, as the Court of Appeals correctly found, "[t]here was no dispute that this evidence was non-fungible and that Sessions had the shoes in his possession when all inmates' shoes were taken by the Detention Center staff." *Sessions*, at 2, **App. 2**. This Court has explained that

While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required: If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition. *State v. Glenn*, 328 S.C. 300, 305-306, 492 S.E.2d 393, 395 (Ct.App.1997).

*State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741-742 (2005). The Court of Appeals reached the same result in *State v. Glenn*, 328 S.C. 300, 305-06, 492 S.E.2d 393, 395 (Ct. App. 1997). See also *State v. Rogers*, 361 S.C. 178, 186-187, 603 S.E.2d 910, 914-15 (Ct.App. 2004); John W. Strong, 2 *McCormick on Evidence* § 212 at 527 (4<sup>th</sup> ed. 1992)).

Here, the State established a sufficient foundation to permit introduction of Sessions' tennis shoes through Capt. Safford's testimony, despite his contention that "the State was unable to account for these tennis shoes until after they were removed from personal-property room in December 2008, one month after the case against Sessions and Stephens ended in a mistrial."<sup>11</sup> Thus, the State

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<sup>11</sup> As discussed, Capt. Safford testified that Sessions would have had his shoes when he was received on November 27, 2006. His shoes would have been taken from him after the May 11, 2007 memorandum made inmates' shoes contraband. Consistent with Detention Center policy, they then would have been placed into a clear plastic bag and placed into his personal property bag. The shoes remained there until Capt. Safford retrieved them at the request of the Solicitor's Office. **R. pp. 434-39**. Further, each inmate's personal property bag is given a number that is unique

satisfied the requirements of *Freiburger* and *Glenn*. Also, Agent Darnell's expert testimony makes **State's Ex. 88** probative of Sessions' guilt because the shoe print was left in Monica's fecal matter that, inferably, was excreted at or near the time of her death.<sup>12</sup> Therefore, there was no error.

Finally, and to the extent that the Court finds that the trial judge erroneously admitted **State's Ex. 88**, Respondent submits that the ruling was harmless and non-prejudicial beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991); *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"). Although **State's Ex. 88** was both relevant and probative of Sessions' guilt, his guilt was conclusively proven by other evidence. The prosecution's case was that the killings occurred close to midnight on Thursday June 9, 2006, since this was when Jamilla and Monica's neighbor, Teresa Greene, heard several "pops" that sounded like fire crackers. **R. pp. 298-301.**<sup>13</sup>

In addition to SLED Agent Prodan's testimony, discussed in **Argument II**, *infra*, the State's

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to the inmate, and the property room is locked. Although Detention Center officers can access the property room, the inmates cannot. **R. pp. 434-39**. Also, there was no evidence presented that Sessions had traded his shoes that he was wearing when he was received at the Detention Center from the transportation company or that he had acquired **State's Ex. 88** through trade, or otherwise, after he arrived at the Detention Center. As a result, an extremely strong and very reasonable inference from her testimony is that **State's Ex. 88** are Sessions' tennis shoes.

<sup>12</sup> Sessions has abandoned his Rule 403, SCRE, argument on appeal, by not raising it on appeal, *see State v. Sullivan*, 277 S.C. 35, 42, 282 S.E.2d 838, 842 (1981) (an issue not argued in the appellant's brief is deemed abandoned).

<sup>13</sup> Monica was a drug dealer who sold cocaine and marijuana. **R. p. 131; 182-84**. Anyone wishing to buy drugs from her had to first telephone a request and then go to her residence to get the drugs. She kept some marijuana and cocaine that had already been bagged in the kitchen. She kept larger amounts of drugs in her bedroom. She did not allow anyone into the bedroom. **R. pp. 131-37**.

other evidence showed that:

- Sessions and Stephens came by the residence of James Pearl, who also knew both victims and purchased drugs regularly from Jamilla, on Wednesday June 8<sup>th</sup>. They were in a blue Jeep Grand Cherokee that Sessions was driving. All three men were broke and, after Pearl got into the vehicle, his friends began talking about committing some robberies. While they were talking, Jamilla came up to the vehicle and got into a verbal argument with Stephens over drug money that he owed her. She was angry when she left. **R. pp. 119-22.**
- Sessions and Stephens then discussed robbing Jamilla. Stephens said that “[h]e He couldn't rob her because she knew him, but Jimmy Lee was like, I can rob her though, ... she don't know me.” Because they knew that Jamilla would not voluntarily give them drugs or money, they said that they were “[g]oing to have to lay her down” or kill her. They asked Pearl to be the “door man,” but he refused to get involved and he got out of the vehicle. Pearl did not think that his friends knew that Monica was there. **R. pp. 122-24; 142.**
- Pearl, who learned about the murders on Friday June 10<sup>th</sup>, testified that Sessions called him later that night and invited Pearl to “come chill” with Sessions. When Pearl reached Sessions’ location, he and Sessions “had a little fling” with a girl who was there named “Poo.” He and Sessions then went into the bathroom. Sessions had a “dinner plat[e] full” of cocaine and he allowed Pearl to snort some, using a drinking straw. Pearl surmised that the cocaine was Jamilla’s based on its unique smell. While they used the drugs, Sessions told Pearl that he had killed Jamilla and Monica. Sessions also had some high-quality marijuana and the two friends smoked a “cigar of it. At some point, Sessions also showed Pearl a black semi-automatic weapon. However, Pearl was unsure whether it was a 9 mm. or a .40 caliber. **R. pp. 125-28.**
- When describing what he had done, Sessions told Pearl that “when he was in the house, and he was leaving out, he heard the shower go off, and . . . and the bathroom door opened up and [Monica] was standing there looking him in his face, so he said he rushed in the bathroom, put it - and shot her, and left her in the tub. **R. p. 129.**
- Sessions called Pearl on Saturday and he asked Pearl to send him a \$ 100.00 moneygram. While Pearl said that he would do so, he never sent it. **R. p. 130.**
- Pearl later had a telephone conversation with Stephens, in which Stephens accused him of sending the police to Connecticut after Sessions. Pearl denied doing this. **R. pp. 130-31.** Pearl did not initially come forward because he was afraid of Sessions and Stephens. **R. pp. 141-42.**
- Jamilla’s first cousin, Rodney Turner, Jr., was at the house on Wednesday, June 8<sup>th</sup>.

The house was neat at that time, **R. pp. 185-86**, but it was messy and articles were disturbed when police arrived on Friday the 10<sup>th</sup>.

- While Turner was there, Stephens came to the house between 9:30 and 10:00 p.m. on Wednesday. Stephens had come in a truck or SUV. "He had on all black when he came to the house. He was in the living room area." Also, he was "nervous, looking around." Stephens and Jamilla went outside briefly. When Jamilla returned, she was alone and she was mad. **R. pp. 186-87.**
- Shortly, thereafter, Turner drove Jamilla to another residence where she "re-up[ped]" her supply of cocaine. Afterwards, Turner drove her home. **R. pp. 187-88.**
- Turner had never seen Sessions at Jamilla's residence, but she had spoken about him. Apparently, the friendship between Sessions and Jamilla soured because of drug business disputes. **R. pp. 188-89.**
- Sometime between 9:00 and 10:30 p.m. on Thursday June 9<sup>th</sup>, Matthew Junior Campbell saw Sessions outside of the apartment complex where Campbell lives. Sessions was dressed in black clothing and he had on a black hoodie. Also, he had a gun "[o]n his side." Sessions told Campbell that "he's got to get him a lick, a robbery . . . because he's got to get out of town because he's hot." Sessions then left the complex with another person on foot. The apartment complex is within walking distance of the crime scene. **R. pp. 238-41.**
- Christy Regina Peal, James Pearl's cousin, testified that on Thursday the 9<sup>th</sup>, she was at the residence that she shared with Mildred Brown and her sister-in-law "partying and playing cards" all day. James Pearl and Phonetia Hightower (Jamilla's cousin) were also present. She had smoked a cigar full of marijuana that day. Mildred, James Pearl and Phonetia were using cocaine, while James and Mildred were drinking. At some point, Christy, Mildred and Phonetia left the residence and, at Jamilla's prior request, went to Jamilla's residence. Christy then drove Jamilla to a local Super 8 motel. When Jamilla came out of the motel, Christy drove her home. Jamilla paid her \$ 40.00 for the ride. After that, Christy and the other women went home. **R. pp. 265-76; 280.**
- At some point, Sessions came to the residence . He was dressed in black clothing, including a black hoodie, and he was wearing gloves. Phonetia left with him. **R. pp. 276-82.**
- Christy saw Phonetia later that morning and Phonetia told her that Jamilla and Monica were dead. She did not take Phonetia seriously because Phonetia often lies. However, Christy went to Jamilla's house around 1:00 p.m. or so; and Jamilla did not respond to either a telephone call or the door bell. **R. pp. 282-85; 287.**

- Antwann Higgins was another first cousin of Jamilla and they had briefly lived together at the residence where the murders occurred, along with Higgins' girlfriend, Melissa Gomez. Higgins and Melissa moved to another location when he and Jamilla argued over the fact he "had raised my hand at Melissa. Yet, they were not having any difficulties at the time of the murders. **R. pp. 303-08.** Higgins and Melissa discovered the bodies at roughly 6 p.m. on Friday, June 10<sup>th</sup>. They went next door and had a neighbor call -911. **R. pp. 309-10; 313-20; 358-64.**
- Higgins denied ever stepping into Monica's bathroom and he voluntarily submitted to gunshot residue testing. The police searched his residence, and they took the four pairs of shoes. Police also found two weapons: a .32 caliber handgun and a .25 caliber handgun. **R. pp. 324-25; 327-31.** None of the items seized connected him to the murders.
- Craig Burris, who was incarcerated while awaiting trial for an unrelated murder, was in the Jet Age "social club" one night shortly after the murders. He saw Sessions there, and Sessions invited him to get high with him at the residence of an individual named "LeeLee," in Myrtle Beach area. When Burris arrived at the residence, "LeeLee was there with his girlfriend, and Stephens was present. **R. pp. 531-35.**
- While there, Burris snorted cocaine and smoked marijuana that Sessions provided. Sessions also gave him "about a gram or two" of cocaine. Sessions and he had often shared drugs with one another, but this was the most cocaine that Sessions had ever given to him. Sessions acted as if he was celebrating and he told Burris that he "just . . . hit a lick, just like a robbery or something." Burris saw Sessions and Stephens talk, but their conversations were private. **R. pp. 535-39.**
- Expert testimony established that cartridge casings found at the scene (**State's Exs. 55-56**) were fired by the same firearm. The two projectiles - one recovered from the floor of the shower in the bathroom and the other removed from Jamilla's head at autopsy - were also fired by a single firearm. The projectiles "were most consistent with bullets that are loaded into some [.40 caliber] Smith and Weston . . . cartridges." **R. pp. 616-19.**

Thus, the State had established overwhelming evidence of guilt, separate and apart from either the evidence connecting Sessions to the shoe print or Agent Prodan's testimony. *See Bailey*, 298 S.C. at 5, 377 S.E.2d at 584. Moreover, Sessions presented testimony from his own expert in footwear identification, Donald Girndt. Girndt did not dispute Agent Darnell's findings, except as to the partial shoe print in the bathroom that Agent Darnell had opined was not sufficient for

comparison purposes. Girndt opined that this print was inconsistent with **State’s Ex. 88. R. pp. 666-73**. Particularly in light of Girndt’s testimony, any error “could not reasonably have affected the result of the trial.” *See Sherard*, 303 S.C. at 175, 399 S.E.2d at 596.

**II. Respondent submits that Sessions’ challenge to the State’s expert testimony on crime scene analysis and victimology is procedurally barred because his relevancy objection is too general to preserve any issue for appellate review. Alternatively, the Court of Appeals properly concluded that any error in the introduction of this evidence was harmless beyond a reasonable doubt.**

Relying upon the Court of Appeals’ decision in *State v. Tapp*, 387 S.C. 159, 691 S.E.2d 165 (2010) (*Tapp I*), reversed, 398 S.C. 376, 728 S.E.2d 468(2012) (*Tapp II*), Sessions maintains that the trial judge abused his discretion by allowing the State to present expert testimony on crime scene analysis and victimology through SLED Agent Michael Prodan. Respondent submits that Sessions’ challenge to Agent Prodan’s testimony is procedurally barred because his relevancy objection is too general to preserve any issue for appellate review. Alternatively, Respondent submits that the Court of Appeals properly found that any error in the admission of this evidence was harmless beyond a reasonable doubt.

**A. How issue developed at trial.**

Agent Prodan testified that he has been employed at SLED for ten years and that he was the Supervisor of the Behavioral Sciences Unit. Prior to that time, he was “the lead agent and the supervisor of the Violent Crime Analysis Unit” of the California Attorney General’s Office. Both at SLED and with the California Attorney General’s Office, his job responsibilities involved “crime scene analyses, consultation on violent crime, investigative techniques and strategies, threat assessment, interviews and interrogation, and what is generally referred to in the media as

psychological profiling.” **R. pp. 568-69.**<sup>14</sup> Agent Prodan described his educational training as “ongoing” and he explained that, “more often than not,” it involved in-service training . . . with the International Criminal Investigative Analyst Fellowship, certain training programs with the Federal Bureau of Investigation, yearly training and updates with the Association of the Threat Assessment Professionals.” He likewise engages in “self-initiated education,” by “keeping abreast of the literature involving homicide and sexual assault, and violent crime in general, and involving the literature and the texts that are available” to law enforcement and the general public. **R. pp. 570-71.**<sup>15</sup>

Both defendants objected when the State offered him as an expert in “Crime Scene Interpretation and Analyses” (**R. pp. 571-72**) and the trial judge heard their arguments *in camera*.

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<sup>14</sup> As he had in *Tapp II*, Agent Prodan also listed the extensive nature of his prior employment and his educational and other experience in the field:

[I f]irst started in violent crime training, of course, with the Las Angeles County Sheriff's Department and Police Academy in Violent Crime Investigation, but as a agent for the California Department of Justice, Bureau of Investigation, was a specialized six months program, with the advanced training center in the California Criminalistic Institute, involving crime scene analyses and criminalistic, if you would, that include courses in firearms trajectory, blood spatter interpretation, and forensic pathology.

During that time I was selected and spent a one-year Fellowship at the F.B.I. Academy in Quantico, Virginia, at the National Center for the Analyses of Violent Crime. That one year Fellowship also included courses at the Armed Forces Institute of Pathology on basic and advanced Forensic Pathology courses in Psychiatry in the Law, in the University of Virginia at Charlottesville. There were also courses at the Clark Institute of the Psychology of Aggression in Ottawa, Ontario, Canada.

There has been training over a varied of time involving the California Homicide Investigators Association, California Sexual Assault Investigators' Association, the Association of Threat Assessment Professionals.

See **R. pp. 569-70.**

<sup>15</sup> Agent Prodan is a “member of the International Criminal Investigative Analyst Fellowship, which is . . . a worldwide organization that standardizes and provides training on criminal investigative analyses profiling.” He is also “a member of the Association of Threat Assessment Professionals,” and he had previously been a member of the “California Homicide Investigators Association, and California Sexual Assault Investigators' Association.” **R. p. 570.** Agent Prodan has “been brought in on cases by law enforcement . . . many times” and he has been qualified as a crime scene analyst in a number of courts. **R. p. 571.**

Once the trial judge had ascertained that Agent Prodan's notes had been provided to the defense,<sup>16</sup> he asked the State to briefly summarize to the proffered testimony. **R. pp. 581-82.** The Assistant Solicitor explained that:

the process of my direct-examination of Agent Prodan is going to be, show him some of the State's exhibits, . . . ask him if he has had an opportunity to review them, based on his expert opinion, what do these crime scene photos tell us in reference to victimology, method of operation, motive, things like that, Your Honor. It has nothing to do specifically with the Defendants. He has not reviewed the Defendants, he has not talked with the Defendants, he has not got the Defendants' statements.

**R. p. 582.**

The defendants stated their objections to the proffered testimony. Sessions' sole objection was relevance, **R. p. 582, l. 18**, while Stephens asked that he be allowed to view the notes to prepare for cross-examination and again claimed that there had been a discovery violation. **R. p. 582, l. 21-p. 583, l. 3.** However, the trial judge found that there had not been a *Brady v. Maryland*, 373 U.S. 83 (1963) violation. He further noted that he had the notes that Agent Prodan had made provided to the defendants, and he noted that the examination would proceed after a break. **R. p. 583. ll. 12-25.** *See also R. pp. 584-85.* When the jury returned, the trial judge explained that he was "going to allow the witness to -- and is going to qualify the witness to give his opinion in the areas of Behavioral Science, Violent Crime, Methodology, Motive Behavior." **R. p. 585, l. 23-p. 586, l. 1.**

In front of the jury, Agent Prodan explained that, upon receiving a request for assistance from

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<sup>16</sup> Both defendants initially complained because the State had not disclosed that Agent Prodan would be giving the testimony at issue and because there was no report. The State, however, responded by pointing to items where the testimony was disclosed. **R. pp. 572-75.** Prodan then testified that the Assistant Solicitor had met with him about two weeks earlier, and she provided him with copies of the crime scene photographs and the autopsy report; and she asked him to testify "[t]o the materials pertaining to how the crime occurred." However, he had not kept notes, and he had not issued a report to law enforcement or the Solicitor's Office. He also had not generated any report, except for his "case notes" that were merely bullet points "to keep my thoughts on track." Even these were only generated a week before his testimony. **R. pp. 575-81.**

a law enforcement agency, he first asks for background information about the victim or victims. "It is referred to in certain literatures. . . as a Victimology, the study of the victim." The initial question he tries to answer is why the victim was selected to be a victim of a violent crime. This requires him to assess the degree of risk the person had to be a victim - whether it is a low, moderate or high risk of being a victim. In making this assessment, "we insist that the agency does not give us any information about any suspects that they may have developed. . . because we don't want to have any contamination. . . on suspect information as to what actually happened during the commission of the violent crime." **R. pp. 586-87.**

Agent Prodan explained that an individual's risk level is based upon the individual's circumstances. So, high risk victims are persons whose lifestyles put them "at a high risk of becoming a violent crime victim."<sup>17</sup> Low risk victims are those persons who are not involved in sexual affairs or prostitution, and who are not involved in criminal enterprises or drug selling. Experience and research reflect that "the lower the risk of a victim, the more likely it is that a person[ ] - - is a victim because of a person[al] cause." **R. pp. 586-88.** In between low and high risk victims are the "moderate risk victims." Those persons do not live a very risky lifestyle, but certain circumstances in their lives increases their risk of being a victim. He included convenience store clerks and cab drivers in this category, as well as persons who are "dabbling in criminal enterprises." **R. p. 588.**

The background information he received in this case was that one victim, Jamilla, "was involved in some reasonably moderate illicit drug sales." Selling illegal drugs is risky by its very nature because people will often try to steal from the person. The crime scene photographs confirmed

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<sup>17</sup> He included persons who are "involved in criminal organizations and enterprises, criminal gangs," as well as persons who traffic in narcotics or are sexually promiscuous within this category because these persons "put themselves in a position" to be "more susceptible of becoming victims of violence than anyone else."

that Jamilla had considered herself to be at risk because she had “availed herself” of a shotgun to provide her with physical protection. **R. pp. 588-89.** Agent Prodan assessed Jamilla’s risk level as moderate because of her drug trafficking. With the exception of living with Jamilla, he assessed Monica’s risk level as low. **R. pp. 589-90.**

The next step in his process is “to look at how the crime occurred” and ascertain the motive for the murders.<sup>18</sup> Here, the murders occurred in Jamilla’s residence, which is where law enforcement learned that she would primarily engage in her drug transactions. Also, the killer brought a weapon, which demonstrated some “pre-planning” by the perpetrator. Further, “[t]he victims were killed with what we typically see in a quote, unquote, drug related murder, a small to medium caliber handgun.” Nor did the perpetrator make any effort to move or otherwise “interact with” the victims’ bodies after killing them, and there was a minimal effort to destroy or conceal any physical evidence that was present,<sup>19</sup> other than taking the murder weapon. **R. pp. 590-92.** Based on these factors, Agent Prodan opined that this was “a primarily drug-related murder, and the motive for drug-related murders have to do with the discipline of the individual” perpetrator. **R. pp. 592-93; 600-01.**<sup>20</sup>

Next, Agent Prodan studied how the crimes occurred, both pre-offense and offense behavior. Before the crime, someone had to devise a plan: they had to select a particular place to rob and a

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<sup>18</sup> It is his expert opinion, based upon experience and research, that there is always a motive for violent crimes, such as murder; and that any contrary belief misunderstands violent crimes. **R. p. 590.**

<sup>19</sup> For example, the crime scene reports did not reflect that the victims’ bodies and had been washed or that any effort was made to wipe for prints. **R. p. 592.**

<sup>20</sup> Sometimes it is either to eliminate a competitor or to retaliate against a victim who owes the person money but cannot repay it. Also, drug dealers may be targeted for robbery of their drugs and money because drug dealers typically do not report robberies to the police. **R. pp. 592-93.** Agent Prodan opined that two other possible motives for drug-related murders were inapplicable in this case: the killing of an informant or a neighborhood anti-drug advocate. **R. p. 603.**

particular time to rob it; they had to bring a weapon and ammunition; and they had to develop a plan to gain entry into the residence where the murder occurred. The manner in which the murders occurred shows that the plan for the murders originated outside of the residence. **R. pp. 593-95.**

Once inside the residence, the perpetrator has to gain control over the victim, which can be done by (1) the perpetrator's "mere presence"; (2) a verbal threat; (3) physical force or (4) a weapon. In this case, neither the autopsy reports nor the crime scene photographs suggested that either Jamilla or Monica was the victim of blunt force trauma, such as defensive injuries or facial injuries. There was also no evidence of a struggle in the house or that either victim was physically restrained or "bound." Moreover, based on photographs of Jamilla in her bedroom (**State's Exs. 2 and 5**), "it appears, . . . most likely, that she was ordered to lie flat on the floor, the individual put a pillow over her head, and then fired one shot through the pillow at relatively close range into her head." **R. pp. 595-99.**

There were two possible reasons for using a pillow case in this fashion. First, it is easier, emotionally, to depersonalize the victim and shoot a pillow rather a person's head. Second, it would reduce the amount of recoil and prevent "any blow-back of blood" onto the perpetrator or his weapon. Again, this suggestion pre-planning. **R. pp. 599-600.** From his review of the crime scene photographs and autopsy reports, Agent Prodan did not see any evidence that either victim resisted. This suggested to Agent Prodan that the killer had gone into the residence with the belief that the victims would not cooperate and were potentially armed. This would explain why the perpetrator killed the victims - *i.e.*, the motive for the killings. **R. p. 600-02; 604-05.**

Over *Stephens* renewed objection to lack of relevancy, Agent Prodan was permitted to opine as to the manner in which Monica was murdered. He explained that, based on **State's Exs. 10 and**

49, she had been killed in a manner similar to Jamilla. Because there was some feces in Monica's bedroom, it appeared that she had been moved from her bedroom to the bathroom. She was moved there to kill her because she was a potential witness. **R. pp. 602-04.**

**B. Discussion.**

**1. Sessions' relevancy objection does not preserve issue for appellate review.**

As shown, Sessions' only objections were that the State had committed a discovery violation and that the testimony was not relevant. **R. pp. 572-73; 579; 582.** On appeal, he has not challenged the trial judge's ruling that there was no *Brady* violation. Therefore, that argument has been abandoned. *Sullivan*, 277 S.C. at 42, 282 S.E.2d at 842. In arguing that Prodan's proffered testimony was not relevant at trial, Sessions merely stated, "Now the objection is relevance." **R. p. 582, l. 18.** He did not argue either how or why the proffered testimony was supposedly irrelevant. He also did not advance anything close to the argument that he now raises on appeal.

On appeal, he relies upon the reversed decision of the Court of Appeals in *Tapp I*, and asserts that the testimony was also inadmissible under this Court's decision in *Tapp II*. In *Tapp II*, this Court reversed the decision of the Court of Appeals in *Tapp I*. The Court in *Tapp I* had agreed with the defendant's challenge to the qualification of Agent Prodan as an expert witness and it reversed Tapp's convictions and sentence based upon this Court's decision in *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), and its finding that the record was insufficient "for this court to determine whether Prodan should have been qualified [to testify] under *White*." *Tapp I*, 387 S.C. at 164-69, 691 S.E.2d at 167, 169 -170.<sup>21</sup> This Court granted certiorari and reversed in *Tapp II*. See 398 S.C.

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<sup>21</sup> Specifically, the Court of Appeals in *Tapp I* was concerned about the absence of findings by the trial judge of the foundational requirements under *White* that "(1) the expert has the requisite qualifications, experience, and/or credentials; (2) the methodology by which the evidence is obtained is reliable; and (3) the evidence will assist the

at 379, 728 S.E.2d at 470.

This Court found that the Court of Appeals had

misstated that White created the requirement that “the foundational reliability of nonscientific testimony must be tested prior to the qualification of an expert.” *Tapp*[I], 387 S.C. at 166, 691 S.E.2d at 169 (emphasis added). 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.” *Id.* at 166–67, 691 S.E.2d at 169. 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.

*Tapp II*, 398 S.C. at 388, 728 S.E.2d at 474-75.

This Court did not find that the trial court had erred in qualifying Prodan as an expert. *Id.* at 387-89, 728 S.E.2d at 474-75.<sup>22</sup> Rather, the Court found that “[u]nder *White*, after qualifying Prodan as an expert, the circuit judge should have then evaluated the substance of Prodan's testimony to determine if it was reliable, as required by Rule 702, SCRE.” This Court did not express any view on the reliability of his opinions. *Id.* at 387 n. 11, 728 S.E.2d at 474 n. 11. While the trial court had erred, this Court found that any error was harmless beyond a reasonable doubt because it “did not

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trier of fact.” *Tapp I*, 387 S.C. at 164-69, 691 S.E.2d at 167-70.

<sup>22</sup> The argument in the Petition is somewhat confusing but, to the extent the current argument is that Prodan was not properly qualified as an expert, his argument must be rejected in light of both the current record and this Court's decision in *Tapp II*. See also Rule 702, SCRE (“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise”); *White*, 382 S.C. at 269, 676 S.E.2d at 686 (“A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)”); *Mizell v. Glover*, 351 S.C. 392, 406, 570 S.E.2d 176, 183 (2002) (“A trial court's ruling to exclude or admit expert testimony will not be disturbed on appeal absent a clear abuse of discretion”). As the California Supreme Court in *People v. Prince*, 40 Cal.4th 1179, 1222, 156 P.3d 1015, 1047, 57 Cal.Rptr.3d 543, 580 (2007), “experts may testify even when jurors are not ‘wholly ignorant’ about the subject of the testimony. ... ‘If that [total ignorance] were the test, little expert opinion testimony would ever be heard.’” (Citations omitted).

contribute to the guilty verdict.” *Id* at 389-90, 728 S.E.2d at 475.

Here, however, Sessions did not raise any type of challenge to the foundational requirements for this testimony or to Agent Prodan’s expertise in the trial court (which would be without merit as *Tapp II* makes clear) or, more importantly, to the trial judge’s failure to fully vet the reliability of Prodan’s testimony, which this Court based its decision on in *Tapp II*.<sup>23</sup> His only objection was the unspecified lack of relevancy.<sup>24</sup> Thus, his argument on appeal is procedurally barred. *See State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989) (a party cannot argue one theory in support of his objection or motion at trial and raise a different theory on appeal); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (an objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error); *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”); *State v. Holmes*, 320 S.C. 259, 266, 464 S.E.2d 334 (1995) (appellant’s general objection to introduction of wallet during the guilt phase that it had no relevance did not preserve motion for a new trial, after the verdict in the sentencing phase,

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<sup>23</sup> This is hardly surprising, in light of the fact that Sessions had his own expert in the area of crime scene analysis, Mr. Girndt. *See R. p. 665*.

<sup>24</sup> He suggests that he objected to Prodan’s testimony as speculative. However, that was part of *Stephens*’ objection and he cannot avail himself of that objection because he did not join in it. *E.g.*, *State v. Carriker*, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (holding that the appellant’s assertion of error was not preserved because “appellant’s counsel made no objection ... at trial. While appellant’s co-defendant did object, the appellant may not utilize the objection of another defendant to gain review”); *State v. Brannon*, 347 S.C. 85, 89, 552 S.E.2d 773, 775 (Ct.App.2001) (trial judge’s failure to suppress evidence not preserved where appellant did not join in co-defendant’s motion to suppress); *State v. Nichols*, 325 S.C. 111, 123, 481 S.E.2d 118, 124 (1997) (“Finally, the remaining issues raised by appellant are not preserved for review since appellant failed to object during trial or join in his co-defendant’s objections.”).

based on prejudice arising from various items contained in the wallet).<sup>25</sup> Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Therefore; this Court should affirm based on the application of this well-settled and fundamental procedural bar. Application of the bar is particularly appropriate since Prodan’s testimony was relevant to the issues before the jury.

**2. Alternatively, any error in admitting Prodan’s testimony was harmless beyond a reasonable doubt.**

Even if this Court finds that the issue was not procedurally barred, Respondent alternatively submits that reversal still is not required because the record supports the qualification of Prodan as an expert and the Court of Appeals correctly found, as this Court had in *Tapp II*, that any error in admitting the substance of his testimony - without first vetting it for reliability - was harmless beyond a reasonable doubt because it did not contribute to the verdict. The Court of Appeals observed that this Court’s decision in *White* “was issued several months after the trial in the present case took place.” It further found that Sessions’ gatekeeper argument was preserved for appellate review based upon this Court’s decision in *Tapp II. Sessions*, at 3, **App. 3**. It then found that any error was harmless, as follows:

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

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<sup>25</sup> See also *State v. Vanderbilt*, 287 S.C. 597, 340 S.E.2d 543 (1986) (“Issues not properly preserved at trial may not be raised for the first time on appeal. To the extent that *State v. Griffin*, [129 S.C. 200, 124 S.E. 81 (1924)], may be inconsistent with this result it is overruled”).

including (1) whether shoe prints found at the crime scene matched the shoes taken from Sessions's property bag, (2) whether the shoes taken from Sessions's property bag were the same shoes he had on his person when he was initially taken into custody, (3) the reliability of a witness who allegedly heard Sessions and his co-defendant discussing how they would rob and possibly kill one of the victims, (4) the same witness's claims that the defendants requested his assistance in the crime, (5) the reliability of the testimony of Sessions's own expert in the field of footwear identification. Given these and other factual questions, we hold that any error in the trial judge's failure to properly vet Prodan's testimony for its reliability was harmless, and (6) the credibility of testimony that certain individuals knew about the deaths of the victims before the police found their bodies.

*See Sessions*, at 4-5, **App. 4-5**.

Additionally, Respondent would point to the other, overwhelming evidence of guilt set forth in **Argument I**, *supra*. Thus, any error “could not reasonably have affected the result of the trial.”

*See Sherard*, 303 S.C. at 175, 399 S.E.2d at 596.

#### CONCLUSION

For all of the foregoing reasons, this Court should deny certiorari.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III  
Senior Assistant Attorney General

P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

JIMMY A. RICHARDSON, II

Solicitor, Fifteenth Judicial Circuit

P.O. Drawer 1276  
Conway, SC 29528-1276  
(843) 915-5460

By:   
\_\_\_\_\_  
WILLIAM EDGAR SALTER, III  
ATTORNEYS FOR RESPONDENT

July 18, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Horry County  
The Honorable Steven H. John, Circuit Court Judge  
Appellate Case No. 2013-000805

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THE STATE,

RESPONDENT,

V.

JIMMY LEE SESSIONS,

PETITIONER.

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CERTIFICATE OF COMPLIANCE

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The undersigned certifies that this Return to Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 18<sup>th</sup> day of July, 2013.



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WILLIAM EDGAR SALTER, III  
Senior Assistant Attorney General  
Office of Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**Appeal from Horry County  
The Honorable Steven H. John, Circuit Court Judge  
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**THE STATE,**

**RESPONDENT,**

**V.**

**JIMMY LEE SESSIONS,**

**PETITIONER.**

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**CERTIFICATE OF SERVICE**

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I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari and Certificate of Compliance on Pettioner by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, LaNelle Cantey Durant, Esq., SCCID/Division of Appellate Defense, PO Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 18<sup>th</sup> day of July, 2013.



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WILLIAM EDGAR SALTER, III

Office of Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT