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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES L. GINTHER,

PETITIONER.

Appellate Case No. 2024-000516

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals err in affirming the trial judge's refusal to limit the opinion testimony of the expert witness in forensic firearm examination to consistencies in the comparison of the firearm and the shell casing?

STATEMENT OF THE CASE

The Sumter County grand jury indicted James L. Ginther for murder and kidnapping. (2018-GS-43-0206). On April 8, 2019, Ginther proceeded to a jury trial before Judge R. Ferrell Cothran, was found guilty, and was sentenced to life for murder and no sentence for kidnapping. He appealed. The case was remanded to reconstruct portions of the record which was accomplished by agreement. On February 7, 2024, after full briefing, the Court of Appeals affirmed. State v. Ginther, 2024-UP-046 (Ct. App. 2024). The *relevant portion* of the Opinion was as follows:

> **PER CURIAM**: James L. Ginther appeals his convictions for murder and kidnapping, and sentence of life imprisonment without parole. On appeal, he argues (1) the trial court erred in refusing to limit a forensic firearms examination expert's opinion testimony to "consistencies" between test-fired shell cartridges from Ginther's gun and a fired shell cartridge found at the crime scene,[.] .....We affirm pursuant to Rule 220(b), SCACR.
>
> 1. We hold the trial court did not abuse its discretion in admitting opinion testimony from a witness qualified as an expert in forensic firearms examination that Ginther's gun fired a shell cartridge found at the crime scene. See *State v. Wallace*, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023) ("We review a trial court's ruling on the admission or exclusion of evidence—when the ruling is based on the South Carolina Rules of Evidence—under an abuse of discretion standard."); *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018) ("A trial court's ruling on the admissibility of expert testimony constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law."). Ginther did not object to the expert's qualification or the reliability of the methodology used to form the expert's opinion. See 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."); *Wallace*, 440 S.C. at 544, 892 S.E.2d at 313 ("To admit expert testimony under Rule 702, the proponent—in this case the State—must demonstrate, and the trial court must find, the existence of three elements: 'the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.'" (quoting *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999))). With no challenge to the expert's qualification or methodology, there was no reason to limit the expert's testimony to "consistencies" between the fired shell cartridge found at the crime scene and the test-fired shell cartridges from Ginther's gun. See *State v. Hackett*, 215 S.C. 434, 445, 55 S.E.2d 696, 701 (1949) (explaining that courts "allow the introduction of expert testimony to show that the bullet which killed the deceased was fired from a particular pistol

or rifle . . . [if] the witness . . . is, by experience and training, qualified to give an expert opinion in the field of ballistics.").[1]

[Discussion of Appellate Issue 2 Omitted from the Opinion]

AFFIRMED.

1 To the extent Ginther argues the trial court erred by failing to conduct a hearing on the reliability of the methodology used by the expert pursuant to *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010), and by failing to limit the expert's testimony to "a reasonable degree of ballistic certainty," we hold these issues are not preserved for appellate review. See *State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) ("To properly preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court[.]"); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.").

Ginther, *supra*. A Petition for Rehearing was denied. This petition followed.

STATEMENT OF FACTS

On November 16, 2017, at about 4:00 a.m., Suzie Ginther ("Suzie") was kidnapped by her ex-husband appellant James L. Ginther ("Ginther") on her way to work and taken behind a dam in a wooded area of Sumter County and murdered. Her body was placed in a shallow grave there and covered. She did not arrive at work at 5:00 a.m. as scheduled. That afternoon around 5:00 p.m., a deer hunter accidentally discovered her body because 1 of Suzie's feet was sticking out of the grave. Police arrived and found 1 fired 9mm shell casing and blood next to the grave. In a parking area nearby, police found signs of a struggle, a work glove, and packaged tampons just like those in Suzie's clothing. The autopsy revealed Suzie was shot 1 time in the back of the head and expired in the muddy grave, and she was having vaginal bleeding when murdered. (R. 247-284; 167-196; 287-306; 359-391; 61-106; 113; 133-52; 224-38; 327-59; Stip. of Rec. Rachael Salak; 555-60).

Suzie's abandoned van, which she usually drove to work, was found at 7:00 a.m. about 1 mile from her Sumter County home. The van was registered to Ginther, so he was questioned the morning Suzie disappeared at his home in Columbia, S.C. near where Suzie worked, *Pet Smart*.

Ginther's fiancé, Rachael Salek, testified that the night before Suzie's murder Ginther did not sleep with Rachael or upstairs in their home. Around 6:00 a.m. the next morning, Rachael got up and as she descended the stairs Ginther came into their home from the back door. Ginther told Rachael he had been in an altercation with Suzie which Rachael understood to be in person. Ginther then took off his clothes and put them in the washer. Then he showered. The police arrived to question Ginther about the van. Rachael testified Ginther became agitated when he found out Suzie's van was still in his name. Later, when Ginther learned Suzie's body had been accidentally discovered he became more upset. Ginther did not grieve over his ex-wife's death and on Thursday cleaned his 9mm semi-automatic pistol outside the home. On Saturday, police obtained a DNA sample from Ginther but only after Rachel challenged him on his lack of cooperation in his wife's death. Ginther informed police he did own a 9mm pistol and showed it to them but would not give them the gun. Ginther was a security guard, had military training, and owned a Taser. On Sunday, Rachael confronted Ginther about Suzie's death and Ginther admitted he murdered Suzie. He told Rachel he murdered Suzie for Rachael, their newborn infant, and his 2 children by Suzie. Ginther took his 9mm pistol and fled South Carolina. Rachael contacted the police and told them what she knew. Police obtained an arrest warrant for murder for Ginther. Ginther fled through North Carolina, Virginia, West Virginia, and wrecked his car in Kentucky after falling asleep. Kentucky police took Ginther into custody and when they saw him struggling in the back of a police car, he was searched and his 9mm pistol was taken from him. He was returned to this State. (R. 73; 105-24; 61-106; 167-96; 224-38; 555; 560; 314-91; 287-306; 148; 27; 406-35; 247-84; 508-56; 570-77; 30; 394-404; Stip. of Rec. R. Salek & Agent Gainey; State's Ex. 62).

Ginther's 9mm pistol was sent to SLED for comparison. It was determined by a SLED Firearms Identification Expert that Ginther's gun did fire the fired 9mm shell casing found next to

Suzie's body, State's Ex. 72.[1] It was also determined by SLED's DNA lab that Ginther's DNA was contained in the work glove found in the parking area near Suzie's body. (R. 411-35; 435-52).

WHY THE PETITION SHOULD BE DENIED

In his Petition, Ginther challenges the Court of Appeals' findings as to the admissibility of the forensic firearms expert's identification of the fired 9mm casing found next to Suzie's grave to Ginther's 9mm pistol. The Court of Appeals correctly decided this issue, and even if it did not, this limited testimony was harmless given the overwhelming evidence of Ginther's guilt and what the expert would have testified to even under Ginther's argument. Any error was harmless.

Ginther now *argues* the Court of Appeals erred because Judge Cothran *allegedly* erred in not granting a Watson hearing and *allegedly* this issue was preserved for appellate review. Ginther is wrong on both counts. This Court should deny the petition. As the Court of Appeals correctly set forth in its Opinion, Ginther stipulated to the qualifications of the State's firearms expert **and** did not challenge the methodology employed by the expert to make the match between the shell casing found at the crime scene and Ginther's gun. (See BOA, p. 11). What Ginther stipulated to and did not challenge is the very purpose of a Watson hearing. Further, Ginther did not request a Watson hearing below, but only stated he *might need one*, but after the State agreed not to introduce the S.L.E.D. report with the language to the exclusion of all other weapons, and the court informed Ginther he was going to admit the testimony; Ginther acquiesced to the trial court's ruling and merely objected when the expert testified before the jury. Further, the cases to which Ginther cites are outdated minority opinions and are not controlling in South Carolina, and the more recent authority and majority opinion holds such testimony of the firearms expert is admissible. Finally,

[1] The expert also determined State's Ex. 72 was a fired 9mm casing stamped WIN just like ammo found in Ginther's home and bullet fragments found at autopsy, which were too badly damaged to identify to a particular weapon, were 9mm consistent with State's Ex. 72 and Ginther's gun.

what Ginther wants to limit the expert to was equally damning and there was other overwhelming evidence of guilt, so there could be no prejudice to Ginther, and any error would be harmless.

What occurred at trial

Pre-trial, Ginther informed Judge Cothran he may have an objection to a portion of the S.L.E.D. ballistics report (R. 15, ll. 19-25), and later informed the court he may have an objection to some of the ballistics testimony and *might* need a hearing. (R. 125). Later in the trial, 2 witnesses prior to the State's firearms expert testifying, Ginther made the following objection *in limine*:

> Mr. Bridges: And then my other objection[2] will be with the report. The other report where Item one –where basically the forensic examiner tested the cartridge case. He claims that matching and individual identifying characteristics were found and it was concluded that Item One was fired by Item 19.
>
> My objection would be that – I've consulted with an expert, my own, Richard Earnest. Through my consultation with him and also through my - - now, this is not South Carolina precedent, but there is a case; United States v. Green Federal Case. That kind of language that that firearm fired that cartridge case to the exclusion of other firearms in the world I think - - I don't know if he can actually make that claim.
>
> I think that's beyond the scope of what he can say. He can say there are things that match up. There are things that are consistent, but I don't think he can say that conclusory language. If that report itself comes into evidence I will object to that at that point.
>
> THE COURT: Okay.
>
> MR. FINNEY: Your Honor I don't think I intend to put in his report, the written Report. But I do plan on asking him whether the cartridge found near the body was examined and compared to the gun taken from the Defendant. And my anticipation is he's going to say it was examined microscopically and determined to be fired by that gun.
>
> THE COURT: Okay.
>
> MR. BRIDGES: That's when I would say my objection.
>
> THE COURT: I understand. Whatever he says you can cross-examine him on it.

[2] The previous objection alluded to was a preliminary firearm's report not relevant here. (R. 392).

I mean based on what information you have. I mean I'm assuming the question is proper and you can object to the question or form of the question, but it's his opinion if he's qualified to give one you can obviously cross examine him on that. Whether it's accurate or not or whatever.

MR. BRIDGES: Okay.

THE COURT: Based on your information.

MR. BRIDGES: Thank you, Your Honor. My main concern was just the report coming in as is, and if he doesn't introduce the report I think that will cut down.

(R. 392, ln. 22–394, ln. 12). [The remainder of the discussion is about chain of custody.]

Ginther offered no testimony from his expert and did not ask for an evidentiary hearing. There is no evidence in the record Ginther even provided the Court below with the citation or a copy of the case he cited for his objection.[3] (R. 392-96). He did not argue or request the State's expert should only be allowed to testify to a reasonable degree of scientific or ballistic certainty. He argued only the expert should not be allowed to testify the shell casing was a match to Ginther's gun to the exclusion of all other firearms or weapons. (R. 392-94).

After 2 witnesses testified, the firearms expert Chad Smith testified. Ginther did not object to Smith's qualifications **or** the methodology that he used. (R. 411-22; BOA, p. 11). Ginther only objected when Smith was asked about his ultimate conclusion or expert opinion:

Q: All right. Did you come up with a conclusion as to whether that fired casing was fired by that Luger?

A. Yes, sir. I did.

Q. And what was your conclusion?

A. I was able to conclude that ---

MR. BRIDGES: Raise my previous objection.

---

[3] The only way Respondent knows what case Ginther is referring to is by reference to his brief. (IBOA, p. 9, citing United States v. Green, 405 F.Supp.2d 104, 124 (D.Mass. 2005).

THE COURT: Okay. It's so noted. Go ahead.

THE WITNESS: Yes, sir I was able to conclude that the fired cartridge case submitted as State's Exhibit 72 was fired by this particular firearm, State's Exhibit 68 [Defendant's gun].

(R. 422, ll. 4-13). While the expert testified it was his opinion or conclusion the fired shell casing found at the scene was fired by Ginther's gun, he did not testify his opinion was to the exclusion of all other firearms in the world. (R. 423-26). Thereafter, Ginther thoroughly cross-examined the expert. (R. 426-32). The expert admitted he had not tested every other 9mm firearm in the world and did not compare the casing to any other firearm. (R. 428-29). Ginther was not prohibited from cross-examining the expert about any information Ginther had from his consulting expert or the case opinion he mentioned to the Court. On re-direct, the Solicitor asked the expert to clarify his testimony as to the shell casing and Ginther renewed his previous objection. (R. 433). Which Judge Cothran overruled. (R. 433). The expert confirmed it was his conclusion State's Ex. 72, the fired shell casing, was fired by Ginther's gun. (R. 433, ll. 17-19). Again, he did not testify his opinion was to the exclusion of all other guns in the world. (R. 433-34). The State did not introduce the expert's report containing the complained of language. (R. 411-33; 392-194).

At the completion of the State's case, Ginther did not testify or introduce any evidence. He did not introduce his own firearm and toolmark expert's counter-opinion. However, he was not prohibited from introducing any evidence he wished to impeach the State's expert's opinion on cross-examination or in his case in chief. (R. 574-78; 588). The trial court also gave a limiting instruction to the jury that it should consider expert testimony as any other witness. (R. 652-53).

On appeal to the Court of Appeals, Ginther argued Judge Cothran should have prohibited the state's firearm expert from testifying that based on microscopically comparing a fired shell casing from Ginther's gun with the fired shell casing found near the victim's body [State's Ex.

72], he concluded in his expert opinion State's Ex. 72 was fired by Ginther's 9mm pistol. Contrary to Ginther's assertions in his brief below, at no time did the State's firearm expert testify his opinion "was to the exclusion of all other firearms or weapons" in the world. (R. 392-94; 411-35). Ginther raised an additional issue not raised below or in his issue on appeal, the State's expert should have been required to state his expert opinion was to a reasonable degree of scientific or ballistic certainty. (IBOA, pp. 1 & 10). Ginther also argued in his brief another issue not raised below *and* not raised in the issue on appeal, that *while he did not specifically challenge the methodology used to make the comparison between the fired shell casing found next to victim's body and the test casing fired from Ginther's gun, or the expert's qualifications*, he believes the request to limit the testimony and citation to Green, triggered the court's duty as gatekeeper pursuant to Rule 702, SCRE and Watson v. Ford Motor Co., 389 S.C. 434, 445, 699, S.E.2d 169, 174 (2010), to determine if the methodology was reliable. (See 392-94; IBOA, p. 11). The record shows Ginther did not request a Watson hearing below when he raised his objection or when the expert testified at trial. (R. 392-94; 422, 433). He did not challenge the qualifications of the expert witness. (R. 392-94; 411-35). And, he conceded in his brief to the Court of Appeals he did not challenge the scientific methodology used to make the comparison by the expert. (BOA, p. 11).

Ginther now raises this argument again, in his Petition, but as the Court of Appeals correctly found in its Opinion, this issue was not raised below and is not preserved for appellate review. Even if it was, it would have no merit where Ginther stipulated to the qualifications of the expert **and** did not and does not challenge the methodology the expert used to make the match. (BOA). Further, the cases cited by Ginther are old, outdated, minority opinions that have since been criticized and are not binding in this State.

As will be shown, the issue raised below is moot, and the issues now raised are not preserved for appeal, were waived, or Ginther acquiesced to Judge Cothran's ruling. Again, Ginther did not request a Watson hearing and offered no evidence below in support of his objection, just his statement his consulting expert told him the State's expert could not state what he stated in his report and referenced a case without providing the citation or opinion to Judge Cothran. (R. 392-94). Further, Ginther acquiesced to the court's ruling stating he really only wanted to keep out the expert's report, and given the State was not offering the written report, his cross-examination and challenge to the expert would be reduced or limited. (R. 394). While he did renew his previous stated objection at the time the expert testified, he had already acquiesced to the trial court's ruling or waived the issue, and the State did not elicit from its' expert the particular language that he challenged earlier, "to the exclusion of every other firearm." (R. 422, 433). As to the merits, Ginther is simply wrong, and he cannot prove prejudice on this record given the overwhelming evidence of guilt. In support of these new arguments, Ginther argued additional case authority he did not cite to Judge Cothran below. (IBOA, p. 11). However, as will be shown, he cited to *a minority* of jurisdictions and many of the cases he cites to *are outdated*, limited to their peculiar facts, or are *wrongly decided* as recognized by the most recent authority.

The first objection raised on appeal, that the State's firearms expert's opinion the shell casing found at the scene was fired by Ginther's gun to the exclusion of all other weapons, should have been limited, is moot because contrary to Ginther's argument in his brief below, the State's expert never testified his opinion "was to the exclusion of all other firearms." (R. 374-76; 393-417). Further, the State did not introduce the expert's report with that challenged language or even attempt to introduce it. (R. 392-94; 411-35). This appellate ground has no merit.

Ginther's new argument in his brief that Judge Cothran should not have allowed this expert's opinion the shell casing found at the crime scene was fired by Ginther's gun [without the above challenged language], was waived below and is not preserved for appeal. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998)(issue is not preserved for appeal because it was not raised below); State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998); State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000)(issue conceded in the trial court cannot be argued on appeal).[4] The case Ginther cited in his objection to Judge Cothran below, Green, specifically dealt with a challenge to testimony *of a particular expert* using *a particular method* that shell casings came from a particular gun to the exclusion of every other firearm in the world. Green, 405 F.Supp.2d **at 107, 108-09, 121**. Because of the failures of that expert *in qualifications*, *methodology*, and *in providing an error rate*, the Court would only allow him to testify to consistencies he observed and not render a match to the exclusion of all other firearms in the world. Id. Here as the Court of Appeals correctly found in its Opinion, Ginther **did not challenge the expert's qualifications or his methodology.** As a result, there was no merit to this argument and Green simply did not apply.

The next issue raised, that the expert's opinion testimony should have been limited to a reasonable degree of scientific or ballistic certainty, as found by the Court of Appeals, was not preserved. (R. 392-94). Ginther never raised this below. (R. 392-94). This new argument is not preserved. Wilder Corp., 330 S.C. 71, 497 S.E.2d 731; Powers, 331 S.C. 37, 501 S.E.2d 116.

Finally, Ginther's argument raised for the first time in the body of his brief below that his objection triggered the need for a Watson hearing is not preserved. First, this issue was not raised in the statement of issue on appeal or even alluded to. (IBOR, p. 1). Rule 208(b)(1)(B), SCACR,

[4] As will be discussed herein, case authority recognizes a difference between an expert opinion a fired component came from a particular weapon *and* a match to the exclusion of all other firearms.

Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000)(Ordinarily, no point will be considered on appeal which is not set forth in the statement of issues on appeal).[5] Second, Ginther stated his objection was to the report and the language to the exclusion of all other firearms. When it was conceded the report would not come in, he did not request a Watson hearing, ask to call witnesses, or ask to take testimony from the State's expert. (R. 392-94). In fact, earlier, Ginther had told the Court he had an objection to the report and may have an objection to some testimony and *might* need a hearing. (R. 15 & 125). Instead, when the time came to request a hearing, he stated the fact the State agreed not to enter the report with the offensive language would limit his objection and shorten it, and then stated he would object when the witness testified to his expert opinion. (R. 392-94). When Judge Cothran ruled preliminarily he would allow the expert's opinion and Ginther could impeach the witness with the information provided by his consulting expert *and* the opinion in Green, Ginther did not object that Judge Cothran did not hold a Watson hearing or make findings pursuant to State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). He agreed to Judge Cothran's ruling. (R. 392-94). Ginther acquiesced to the ruling. Benton, 338 S.C. 151, 526 S.E.2d 228; TNS Mills Inc. v. South Carolina Department of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998)(issue conceded in the trial court cannot be argued on appeal). Immediately, before the witness testified, Ginther did not ask for a Watson/Rule 702, SCRE hearing or object that one had not been held. (R. 392-94). And, when he objected during the testimony before the jury, he referred to his previous objection, and the expert did not use the language "to the exclusion of all other firearms." This issue is not preserved for appeal because it was not raised below or raised in the statement of issue on appeal. Wilder Corp. (issue not raised below is not preserved for appeal); Rule

[5] *But see* Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001)(issue may be considered when the statement of issue read in conjunction with argument adequately raised the issue).

208(b)(1)(B), SCACR, Calhoun, 339 S.C. 96, 529 S.E.2d 14 (Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal). Finally, as the Court of Appeals found, there is no merit to this appeal and the issues that were preserved. Ginther, *supra.*

Standard of Review

The decision whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)(citations omitted). The court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006)(citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." State v. Grubbs, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003). There is no abuse of discretion by Judge Cothran as the Court of Appeals correctly found. Ginther.

Ginther now argues Judge Cothran should have prevented the firearms expert from testifying in his opinion the fired shell casing found near victim's body was fired by Ginther's 9mm pistol. There is no merit to this argument either. Historically, a witness skilled in firearm and toolmark examination [commonly called ballistics or firearms identification] may testify that a particular bullet or shell casing came from a particular gun. *See* State v. Hackett, 215 S.C. 434, 444-47, 55 S.E.2d 696, 701-02 (1949); State v. Bullock, 235 S.C. 356, 378-79, 111 S.E.2d 657, 668 (1960)(proof that defendant's gun fired bullet that struck 2nd victim was admissible because it showed whoever fired that bullet also killed the deceased in the same shooting). This type of

testimony has been regularly admitted in South Carolina. *See* Hackett; Bullock. In Hackett, this Court set forth that this type of expert testimony was reliable and explained the process by which the expert reaches his opinion:

> Thereafter, on March 3, 1948, the sheriff, accompanied by a deputy, carried the pistol, the bullet and the two discharged shells to Washington, and turned these exhibits over to Mr. Zimmers, a technical ballistics expert with the Federal Bureau of Investigation. The examination was made by Mr. Zimmers on the same day. The sheriff and his deputy returned to Greenwood with these exhibits and they were put into a shoe box and placed in the vault in the office of the county treasurer of Greenwood County.
>
> It is now common knowledge that by means of the science of ballistics, it may often be determined that a bullet was fired from a certain pistol, and it is the modern tendency of our courts to allow the introduction of expert testimony to show that the bullet which killed the deceased was fired from a particular pistol or rifle, where it is first definitely shown that the witness by whom such testimony is offered is, by experience and training, qualified to give an expert opinion in the field of ballistics. 22 C.J.S. Criminal Law, § 565, page 876; 26 Am.Jur., § 440, page 460. The weight of such testimony is for the determination of the jury.
>
> Before giving his testimony concerning the comparison tests which he made, Mr. Zimmers, the technical ballistics expert, who had seven years experience in the firearms department of the Federal Bureau of Investigation, testified at length as to his qualifications and training. He stated that he had been a witness as a technical ballistics expert in about eighty cases, and he described in minute detail the tests upon which he predicated his unqualified opinion that the bullet which had been taken from the body of Mr. Hunt was fired from appellant's pistol. He explained that he had fired several test bullets from this pistol for the purpose of comparison. He testified in part as follows:
>
> 'A. The first thing I did was to examine the bullet superficially to determine whether it could have been fired in this gun, and when I determined that was so, I then proceeded to test the bullet and cartridge cases and compared that with the bullet and cartridge cases submitted by Sheriff White and that was carried out on an instrument known in the Fire-Arms Identification Department as a comparison microscope. That instrument consists of two separate and distinct compound microscopes which are joined by a common eye piece. By having the two eye-pieces it is possible to view simultaneously two separate and distinct objects which are placed on the two separate stages of this compound microscope.'
>
> 'In so doing it is possible to examine the pattern of the microscopic marks which appear on the bullets which are fired from a particular weapon. The pattern of the microscopic markings if they are duplicated on both, that is on a bullet which is

> removed from the person's body, and a bullet or bullets which are fired from the suspect's weapon, it is possible then to identify that particular weapon as having fired the bullet submitted for comparison, and such an examination as that was conducted in this case.'
>
> 'The examination is based on these microscopic markings found on the surface of the bullet by virtue of the marks imparted to the bullet as it passes thru the gun barrel. When a weapon is manufactured, the manufacturer will insert in the gun barrel a definite turn that is referred to as 'lands' and 'grooves'. The grooves are the portion which are cut into the gun barrel in a spiral motion so that any projectile fired thru the gun barrel will have imparted to its surface the spiral motion to give the true trajectory while the bullet is in flight. The tools used in making these lands and grooves will impart to the surface of the gun barrel certain imperfections as the tools used are pulled thru and along the gun barrel on the machining operation, which leaves small pits and lines on the inside of the gun barrel, and each of these will in turn impart to a bullet fired thru the barrel of the gun a pattern of scratches which are characteristic to that gun barrel and to no other gun barrel. In addition to such marks left by the tool used to manufacture the gun barrel there are other marks which can be imparted by virtue of dust, rust, corrosion or anything else which might get into the gun barrel because the user has not taken care of it. By virtue of the aggregate number of imperfections on the inside of a gun barrel, and the manner in which these imperfections get there, it is safe to conclude that there could be no two weapons which will impart to the surface of a bullet the same pattern of microscopic markings.'
>
> 'It has found by scientific tests that it is not possible for two weapons to exist that impart the same pattern of microscopic markings. It is similar in this respect to finger printing examination where it has not yet been found that any two persons have identical fingerprints. The same is true of weapons, each leaves its own identifying marks characteristic to that weapon alone and no other weapon can impart similar markings.'
>
> Mr. Zimmers gave detailed testimony as to the ejector and extractor markings of the weapon and the pattern imparted to the discharged shells, and fully explained to the jury by photographs magnified thirty times, the special and peculiar indentations made by the firing pin of appellant's pistol upon the cap in the cartridge case.

Hackett, 215 S.C. at 444–47, 55 S.E.2d at 701–02. Even though this type of expert testimony has been readily admitted and found reliable, it came under challenge in other jurisdictions beginning around 2004-05, *see* Green, *supra*, and increased with the National Academy of Research of the

National Academy of Sciences ("NAR") reports in 2008/2009[6] and the President's Counsel of Advisors on Science and Technology ("P-CAST") report in 2016. These reports criticized the science of firearm identification and stated further studies needed to be done before its validity could be accepted. However, as discussed herein, after the early challenges and the issuance of these reports, these reports themselves came under criticism, flaws were found in these reports and those who issued them, and further blind studies recommended by the reports *and* case opinions were conducted verifying the science of firearms identification was in fact valid. As a result, recently, after the 2008/2009 NAR reports and the 2016 P-CAST report, the majority of courts have rejected the arguments raised in the early challenges, those raised after the reports were issued, and now raised here, including both state and federal courts. State v. Miller, 852 S.E.2d 704 (N.C. App. 2020), *appeal dismissed*, 856 S.E.2d 108 (N.C. 2021); Ficklin v. Commonwealth, 2022 WL 3640906 (Ky. April 18, 2022)(*Unpublished*); Missouri v. Mills, 623 S.W.3d 717 (Mo. Ct. App. 2021); People v. Rodriguez, 106 N.E.3d 436, 442-45, 447, 449-51 (Ill. 2018); State v. Boss, 577 S.W.3d 509, 518-19 (Mo. App. W.D. 2019). *See* Nebraska v. Wheeler, 956 S.W.2d 708 (Neb. 2021) State v. Lee, 217 So.3d 1266 (La. Ct. App. 4th Cir. 2017); State v. Goudeau, 372 P.3d 945 (Ariz. 2016); United States v. Otero, 849 F.Supp.2d 425, 437-38 (D.N.J. 2012), *aff'd* 557 F.App'x 146 (3rd Cir. 2014). These courts and others allowed an expert to testify based on his expertise and training, and on his examination of test evidence against the evidence from the crime scene, a bullet or shell casing was a match to or came from a particular gun. Id.; United States v. Casey, 928 F.Supp. 2d. 397 (D.P.R.2013)(2008/2009 NAR reports did not prevent firearms expert from giving his opinion or to the certainty of his opinion of a match).

[6] The NAR reports are also referred to in case opinions as the NAS reports. For uniformity, Respondent will use "NAR" but reference which report by the year 2008 or 2009.

In Miller, 852 S.E.2d 704 (N.C. App. 2020), the Court rejected the argument made here. Miller, like Ginther, cited cases from other jurisdictions and the NAR and P-CAST reports to exclude the State's firearms expert's testimony shell casings from the defendant's gun matched those at the crime scene. The State's expert was questioned about the P-CAST report and testified she disagreed with elements of the report and that report should be viewed with caution as it was created by academics not firearms examiners. She then testified how she conducts her microscopic comparison and had previously done so in 350 to 400 examinations, her work was not rushed, and peer reviewed with concurrence in her findings. The trial court admitted the evidence under Rule 702, N.C.R.E., in its discretion finding the expert's opinion was the product of reliable principles and methods which she applied in this case based on her testimony under extensive foundation and *voir dire* questioning. The trial court understood some scholars have questioned the reliability of this sort of testimony, and the court weighed that against the expert's explanation of her principles and methods and her testimony about why she believed them to be reliable. The Court found the trial court's determination the expert's testimony satisfied Rule 702's 3-pronged test, despite some evidence from Miller challenging the reliability of this type of expert testimony, was not arbitrary; it was a reasoned decision. Id. The appeal to the N.C. Supreme Court was dismissed. Likewise, in State v. Griffin, 834 S.E.2d 435 (N.C. App. 2019), the Court again affirmed the admission of the very type of evidence admitted here. Id. Miller and Griffin followed a series of unpublished opinions from the N.C. Court of Appeals affirming the admission of this exact type of testimony challenged here. State v. Williams, 814 S.E.2d 925 (N.C. App. 2018)(*Unpublished*); State v. McGraw, 779 S.E.2d 787 (N.C. Ct. App. 2015)(*Unpublished*).[7] Like Miller, *supra*, both Courts

[7] Williams was decided after Daubert v. Merrell Cow Pharmaceuticals, Inc., 509 U.S. 579 (1993) was adopted by the N.C. Legislature and McGraw was decided under the prior standard. South Carolina has not adopted Daubert or Frye v. United States, 293 F.1013 (1923). *See* State v. Council,

found expert testimony identifying a fired component to a particular weapon was admissible over challenges raised pursuant to the P-CAST and the NAR reports in Williams and the NAR 2008 report and other documents in McGraw. The experts did not have to testify to a reasonable degree of scientific or ballistics certainty, or that the evidence was only consistent. The trial court's instructions to the jury regarding expert testimony, cross-examination of the expert, and the availability of a defense expert were found sufficient to challenge the expert before the jury. McGraw; Williams; *See also* State v. Dinkins, 319 S.C. 415, 462 S.E.2d 59 (1995)(similar).

Ginther cited 2 cases from the District of Columbia, United States v. Tibbs, 2019 WL 4359486 (D.C. Super. Ct. Sept. 5, 2019) (*Trial order*) and Williams v. United States, 210 A.3 734 (D.C. 2019). However, recently, the Kentucky Court of Appeals refused to follow those decisions finding the expert testimony as admitted in this case had long been admissible in Kentucky and was still admissible; and, recognized its Supreme Court held this testimony was admissible after the 2009 NAR and 2016 P-CAST studies were issued. Williams v. Commonwealth, 2020 W.L. 1488775 (Ky. Ct. App. 2020)(*Unpublished*)(citing Garrett v. Commonwealth, 534 S.W.3d 217 (Ky. 2017). In Garrett, 517 S.W.3d at 222-23, the appellant argued a firearm expert should not be allowed to testify a particular bullet came from a particular gun, relying on the NAR 2009 report. In a decision occurring after both the 2009 NAR and the 2016 P-CAST reports, the Court held the testimony was admissible under Daubert criteria. Garrett, 517 S.W.3d at 22-23. As held in Williams and Garrett, "the proper avenue for the defendant to address his concerns about the methodology and reliability of the expert witness' testimony was through cross-examination as well as testimony from his own expert witness." Williams, citing Garrett, 534 S.W.3d at 223; *See*

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335 S.C. 1, 515 S.E.2d 508 (1999); State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990); Rule 702, 703, 704, and 403, S.C.R.E. *See also* Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).

also Council, 335 S.C. at 21-22; 515 S.E.2d at 519 (same); Dinkins, 319 S.C. at 418; 462 S.E.2d at 69. The Court followed Garrett in Ficklin, supra (Ky. April 18, 2022)(*Unpublished*).[8]

Similarly, Green is not helpful to Ginther. It dealt only with the admissibility of a particular expert's testimony he found a match "to the exclusion of all other guns." The court found based on that expert's lack of professional certification, failure to follow national or his own departments standards in conducting his comparison, his lack of proficiency testing, the lack of testability of the method being conducted at the time, which could have been done, lack of note taking, and other deficiencies, the expert would only be allowed to testify to the consistencies he noted in the compared evidence not visible to the jury. Id.; United States v. Harris, 502 F.Supp. 3d 28, n. 4 (D.D.C. 2020)(distinguishing Green); United States v. Perkins, 342 Fed. Appx. 403 (10th Cir. 2009) (explaining the holding in Green)(*Not selected for publication in Federal Reporter*).[9]

In Missouri v. Mills, 623 S.W.3d 717 (Mo. App. 2021), the Court was confronted with the same issue and objection raised here and another.[10] The appellant also alleged the trial court should

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[8] In Ficklin, the appellant raised the 2009 NAR and 2016 P-CAST reports in opposition to the firearms examiners' testimony 2 fired shell casings came from the same gun. The Court upheld the validity of the science of firearms identification, finding the trial court did not abuse his discretion in admitting the expert's testimony, and affirmed its admission. Id. The Court held the fact that the expert did not testify consistent with the 2009 NAR report's recommendation that his opinion was within a reasonable degree of scientific certainty was not preserved for appeal. Id.

[9] Green also recognized the early challenges to firearms identification in 2004/2005 had been rejected by numerous other courts because of the longstanding acceptance of ballistics reliability including by the U.S. Supreme Court. Id. citing United States v. Hicks, 389 F.2d 514, 526 (5th Cir. 2004); United States v. Foster, 300 F.Supp.2d 375, 377 n. 1 (D.Md. 2004); (*Unpublished*); United States v. Williams, 2004 WL 2980027 (S.D.N.Y 2004)(*Not reported in F.Supp. 2d*) & referencing United States v. Scheffer, 523 U.S. 303, 313 (1998) (other citations omitted).

[10] The appellant in Mills first alleged he should have been allowed to cross-examine the State's firearms expert with the NAR and P-CAST reports. The Court held the appellant was not allowed to cross-examine the expert with the NAR or P-CAST reports because he offered no expert testimony as to those reports' reliability, simply the reports and other courts had accepted them, and the State's expert testified both the NAR and P-CAST reports were flawed and not reliable and not conducted by those in the appropriate field of expertise. Id., citing State v. Carter, 559

have held a Daubert hearing and excluded the expert's testimony a shell casing found at the crime scene came from a particular gun. The Court found the firearms expert's testimony was sufficiently reliable and was properly admitted. The expert could testify in his expert *opinion* the shell casing was a match to a particular gun, but the weight to be given to his testimony was for the jury after thorough cross-examination as had occurred in this case. Mills, 623 S.W.3d 730-32, *referencing* State v. Boss, 577 S.W.3d 509, 518-19 (Mo. App. W.D. 2019)(firearm and toolmark examination evidence was sufficiently reliable to be admitted over a challenge based on the 2009 NAR report, even if the results somewhat relied on "subjective analysis' and the examiner's expertise and experience, and the expert could testify to their conclusions regarding the same of a match; defendant could cross-examine expert or call his own expert; weight and credibility was for the jury). Nebraska agreed. *See* Nebraska v. Wheeler, 956 S.W.2d 708 (Neb. 2021)(state's firearms expert was qualified in the face of the 2016 P-CAST report, and testimony 7 fired shell casings came from the same gun was not overly prejudicial where defendant dropped challenge to ballistics methodology on appeal as here, and expert did not testify another gun could not have been fired at the scene only that 7 shell casings she examined came from the same gun). Louisiana reached the same result. State v. Lee, 217 So.3d 1266 (La. Ct. App. 2017). Relying in part on United States v. Otero, 849 849 F.Supp. 2d 425. 431-38 (D.N.J. 2012), *aff'd* 557 Fed. Appx. 146 (3rd Cir. 2014), which was released after the 2008 and 2009 NAR reports, the Court upheld the admissibility of the expert's opinion of a match, as did the Otero Court. Lee. Illinois also agreed after both the NAR reports and the P-CAST report. People v. Rodriguez, 106 N.E.3d 436, 442-45, 447, 449-51 (Ill. App. 2018)(expert witness could testify to his opinion a particular piece of evidence came

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S.W.3d 92, 96 (Mo. App. W.D. 2018)(excluding NAR and P-CAST reports where no foundation was laid as to their reliability as learned treatises and State's expert testified they were not reliable).

from a particular weapon, and the NAR 2009 report's concerns went to weight not admissibility). And, the Court noted this was fully explored on cross-examination of the witness. Id. at 451. Recently, a California appellate court rejected Ginther's argument holding the firearms expert could testify a fired shell casing at the crime scene matched a test casing fired from a gun found on the defendant and, in her opinion, came from the defendant's gun. People v. Therman, 2021 W.L. 4859299 (Cal. App. 3rd District, October 19, 2021)(*Unpublished*)(following the analysis in People v. Azcona, 58 CalApp.5th 504 (Cal.App. 6th Dist., filed December 10, 2020, modified, January 11, 2021), but reaching a different result).[11] The Court in Therman noted the trial court admitted the evidence in part because **flaws have been discovered in the P-CAST report** since it was issued; it was not the only opinion on the subject, the U.S. Attorney General and the F.B.I. had rejected that report, and it had been refuted by the Association of Firearm and Toolmark Examiners (AFTE).[12] The way for the defendant to address the testimony is through cross-examination of the expert and calling his own expert. United States v. Brown, 973 F.3d 667, 702-04, (7th Cir. 2020). Finally, Washington agreed. State v. DeJesus, 436 P.3d 834, 841-44 (Wash. App. 2019)(admitting ballistics identification testimony over a challenge relying on P-CAST

[11] In Azcona, the court held the error below was to allow language such as "to the practical exclusion of all other guns" when the expert did not present evidence at the pre-trial hearing to support that conclusion except his statement he had done numerous studies trying to see what could happen by random chance. Id. 58 Cal.App. at 513-15 (also reversing for an issue not raised here).
[12] Further "black box studies" were conducted as the P-CAST report recommended, which demonstrated the science of firearm's identification was reliable and had a miniscule error rate, if any, and the P-CAST committee did not include any firearm examiners or researchers in the field, thus raising the question whether the P-CAST report criticism would even constitute a lack of acceptance in the "relevant scientific community." United States v. Harris, 502 F.Supp.3d 34-38, 42-43 (D.D.C. 2020). Harris also recognized the 2008 and 2009 NAR studies were outdated due to intervening scientific studies and repeatedly rejected by courts as a proper basis to exclude firearm identification testimony. Id. at 34-38. Harris was decided after Williams, cited by Ginther.

report and noted a number of courts had also rejected similar challenges relying on the 2008 and 2009 NAR reports).

Since the NAR reports and the P-CAST report, several federal Courts of Appeals have also upheld the admissibility of firearms identification testimony as admitted here without limitation. Brown, 973 F.3d at 702-04 (7th Cir. 2020); United States v. Gil, 680 Fed. Appx. 11 (2d Cir 2017)(*Unpublished Summary Order*); *see* United States v. Godinez, 7 F.4th 628, 633-36 (7th Cir. 2021)(upholding another district court's admission of firearms identification expert testimony).[13] Federal district courts have also held since the P-CAST report firearms identification expert testimony admissible. Merritt v. Arizona, 2021 WL 1541635, at *3 (D. Ariz April 2021)(*Slip Copy*); United States v. Romero-Lobato, 379 F.Supp.3d 111, 1114 (D.Nev. 2019)(admitting firearms identification testimony over objection based on 2009 NAR and 2016 P-CAST reports).[14]

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[13] In Brown, the trial court admitted the same testimony as here over the concerns in the P-CAST report. Several firearm experts testified shell casings found at 1 crime scene were fired by the same gun that fired casings at another scene. Id. at 702-04. The Court affirmed the admission of the evidence not giving great weight to the P-CAST report and noting after an extensive hearing below, the court found the methodology employed by the firearm experts was almost uniformly accepted by federal courts; the method had been tested and subject to peer review; 3 different peer-reviewed journals addressed the AFTE method, several reliability studies had been conducted and the error rate was miniscule including sometimes better than algorithms developed by scientists; and, firearm analysis was widely accepted beyond the judicial system. Id. The Court found the contentions or concerns from the P-CAST report could be raised on cross-examination and went to the evidence' weight, not its admissibility. And, expert testimony is still testimony not irrefutable fact, and its ultimate persuasive power is for the jury to decide. Id. at 704.

[14] *See also* United States v. Johnson, 2019 WL 1130258 at *1-2 (S.D.N.Y. Mar. 11, 2019)(*Not reported in F.Supp*)(admitting firearms identification testimony over objection relying on 2008 /2009 NAR and 2016 P-CAST reports); United States v. Simmons, 2018 WL 658693 (E.D. Va. 2018)(*Not reported in F.Supp.*). Many courts have rejected the findings of the P-CAST report. *See* United States v. Chavez, 2021 WL 5882466, at *17-18 (N.D. Cal. Dec. 13, 2021)(*Slip Copy*)(admitting governments' agreed to limited firearms identification testimony over challenge based on NAR and P-CAST reports, noting the 2009 and 2016 committees were not members of the forensic ballistic community, and rejecting defendant's citation to authority of the minority view relied on by appellant here, including that the minority court expanded the definition of relevant scientific community, and even including that definition, the firearm identification methodology still has overwhelming acceptance in the U.S. and worldwide).

Ginther also argues the expert's testimony States' Ex. 72 was fired by Ginther's gun should have been limited to a reasonable degree of ballistic or scientific certainty. Multiple courts that agree with this unpreserved issue, do not limit the expert to testimony which Ginther argued below, that the expert only found consistencies in the evidence comparison. *See* United States v. Johnson, 875 F.3d 1265 (9th Cir. 2017)(limiting opinion of a match only to a reasonable degree of ballistic certainty); United States v. Hunt, 464 F.Supp.3d 1262 (W.D. Okla 2020)(similar).[15]

Finally, Ginther argues his *in limine* objection triggered Watson v. Ford Motor Co.. The Court of Appeals correctly found this issue was not preserved. Ginther. As shown, the *in limine* objection was to the SLED Report coming in because of the language of a match to the exclusion of all other weapons or firearms, which the State agreed it would not introduce. When Ginther informed the court he would raise the same objection to the expert's testimony, Ginther acquiesced to the trial court's ruling that he could cross-examine the expert on what his consulting expert had told him and what was in the case opinion he referenced. And, when the expert testified, the State

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[15] *See also* United States v. Cerna, 2010 WL 3448528, n. 4 (N.D. Cal. 2010)(*Not reported in F.Supp.2d*); United States v Diaz, 2007 WL 485967 (N.D. Cal. 2007); United States v. Monteiro, 407 F.Supp.2d 351, 372 (D. Mass. 2006)(allowing expert to give opinion of a match to a reasonable degree of ballistic certainty, if expert follows established standards for intellectual rigor in toolmark identification field)[Note: Montiero is cited Ginther's brief, however, Montiero did not hold that the expert could only testify to consistencies in the compared evidence. Montiero initially excluded the expert's opinion because he did not document his findings which would insure reliability of the results and testability. If the government met those standards, the expert could testify to a match to a reasonable degree of certainty in the field of ballistics. Id.]; United States v. McCluskey, 2013 WL 12335325, *10 (D.N.M. February 7, 2013)(*Not reported in F.Supp.*)("to a practical certainty" or "practical impossibility of different origin"); United States v. Harris, 502 F.Supp.3d 28 (D.C. 2020)(limiting testimony to DOJ guidelines of such expert testimony and when a match can be testified to); *See also* United States v. Glynn, 578 F.Supp.2d 567, 574-75 (S.D. N.Y. 2008)(allowing expert to testify it was "more likely than not" bullets matched)(other citations omitted including some in Ginther's brief). This practice by several district courts has been criticized as limiting or re-structuring an expert's testimony which is clearly admissible under Rule 702. 70 Baylor L. Rev. 93, *The Admissibility of Firearms and Toolmarks Expert Testimony in the Shadow of PCAST*, Baylor Law Review (Winter 2022).

did not attempt to or introduce the offensive language. Ginther never requested Judge Cothran conduct a Watson hearing or make findings pursuant to State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979) or State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999); *See also* State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). As a result, this issue was waived and abandoned at trial.

Regardless, as shown above, this type of expert testimony has been found reliable by this Court and repeatedly admitted in our courts. *See* Hackett, 215 S.C. 434, 55 S.E.2d 696; Bullock, 235 S.C. at 378-79, 111 S.E.2d at 668. In fact, this Court explained the methodology by which a firearms expert makes his determination. Hackett, 215 S.C. at 444–47, 55 S.E.2d at 701–02. Judges are presumed to know the law, and Judge Cothran would have been aware of our case precedent admitting this type of expert testimony. The firearms expert testified to the same methodology before the jury. **(R. 411-435). Ginther does not challenge and did not challenge the expert's qualifications. (IBOA & R. 421).** He had been qualified over 50 times. (R. 421). **Ginther did not challenge the methodology the expert used to reach his opinion. (IBOA p. 11).** Ginther does not contest the testimony was helpful to the jury. Even if he did, the challenge would hold no merit. Scheffer, 523 U.S. at 313 (recognizing helpfulness of this testimony to the jury); Hackett, *supra*. The evidence' probative value outweighs any prejudicial effect. Council, *supra*. It is unfair prejudice the SCRE prevent, not the true importance of the evidence and its natural resulting effect on the case. State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998). As a result, there was no error in admitting the expert's testimony. White, 382 S.C. at 270-71; 676 S.E.2d 686-87. The expert conceded he had not tested every other 9mm firearm in the world and did not compare the casing to any other firearm. (R. 428-29). Judge Cothran also properly charged the jury it should consider expert testimony as any other witness and determine

its credibility for themselves and give it whatever weight they determined appropriate. White, at 271, 676 S.E.2d at 687. This dispelled any aura of infallibility.

Additional Sustaining Ground/Lack of Prejudice

Ginther cannot show prejudice for several reasons including the language he specifically objected to was not testified to nor the report entered. (R. 392-94; 411-35). Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506, 509 (2015). Further, Ginther has not shown allowing the expert to give his opinion the fired shell casing was fired by a particular weapon, rather than the opinion was to a reasonable degree of scientific or ballistic certainty, or the markings on the shell casing were perfectly consistent with being fired from Ginther's 9mm pistol, influenced the verdict. The evidence of Ginther's guilt was overwhelming. Further, expert testimony using the language Ginther suggests would only confirm his guilt when combined with all of the evidence, including his fiancé's testimony of his admissions and confession of guilt, his DNA being found in the glove found near the crime scene, and his flight from the State. Fields.

CONCLUSION

For the above stated reasons, the Petition for Certiorari should be denied.

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