STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2012-210207

THE STATE, ...RESPONDENT

v.

STEVEN KRANENDONK, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly qualified investigator Robin Camlin as an expert in navigational boating rules and admitted her testimony pursuant to Rule 702, SCRE, where her knowledge, experience, training, and education demonstrated that her technical and specialized knowledge would assist the jury to understand the evidence or determine a fact in issue, and where her testimony was appropriately offered "in the form of an opinion or otherwise"?

2. Whether Appellant's pre-trial challenge to the trial court's admission of evidence of his blood alcohol content is not preserved for appellate review because Appellant failed to renew his objection at trial, and even if preserved, whether the trial court properly admitted the evidence where the officer had probable cause to seize Appellant's blood pursuant to section 50-21-116 of the South Carolina Code?

STATEMENT OF THE CASE

Appellant was indicted by a Richland County grand jury for two counts of reckless homicide by operation of a boat (2011-GS-40-05469 & -05472).[1] He was represented by Jonathan Harvey, Esquire. (R. p.1). On March 5-9, 2012, Appellant proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable G. Thomas Cooper, Jr., to two concurrent terms of ten (10) years' imprisonment. (R. p.673, line 23-p.674, line 5). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief. This Brief of Respondent (the State) follows.[2]

[1] Appellant was also indicted for two counts of felony boating under the influence resulting in death and one count of felony boating under the influence resulting in great bodily injury; however, the State elected to proceed at trial only on the two counts of reckless homicide by operation of a boat. (R. p.10, line 1-p.11, line 4).

[2] For purposes of this initial brief, the State has adopted the convention proposed in Appellant's initial brief in regard to identifying pages from the trial transcript, portions of which were prepared by different court reporters. The State consents to the removal of Appellant's footnote number 1 from his final brief and will likewise eliminate this corresponding footnote from its final brief.

STATEMENT OF FACTS

On the night of May 1, 2010, Appellant crashed his father's 23-foot Key West boat, the "Peacemaker," into the port/left side of a 21-foot Sylvan boat, the "Lucky Strike," driven by Robert Christofoli. (R. p.274, lines 10-24). Amber Golden and Kelli Bullard, two of three passengers on the Lucky Strike, died as a result of the crash.

Appellant's blood was drawn at the hospital following the crash and tested for alcohol. Prior to trial Appellant moved to suppress results from the blood alcohol test. (R. p.11, lines 12-24; p.13, lines 20-25). The State called two officers with the South Carolina Department of Natural Resources (DNR) during the ensuing suppression hearing. Sergeant Kevin Roosen described responding to the crash on the night of May 1, 2010, and his interactions with Appellant at Lake Murray Marina. Appellant reported he was driving the Peacemaker at the time of the crash. He said he was going approximately 30 to 35 miles an hour when he first saw another vessel ahead of him and to the right. Appellant told Roosen he maintained his course and speed and shortly thereafter ran into something. Roosen did not find any alcohol on the boat, but was nevertheless instructed to perform field sobriety tests to see if he could determine whether Appellant was under the influence. At approximately 12:15 a.m. on May 2, 2010, Roosen conducted five standard field sobriety tests and concluded Appellant satisfactorily completed each test. As a result, he did not place Appellant under arrest for boating under the influence at the scene. (R. p.14, line 5-p.24, line 11).

At 10:30 p.m. on the night of May 1, 2010, Sergeant Rhett Bickley was on duty and was called to work regarding a boating accident at the lake. He reported to Palmetto Richland Hospital where he interacted with several individuals involved in the crash in an effort to determine what had happened and to secure evidence. After talking to three

other people Bickley talked to Appellant shortly before 3:30 a.m. In response to a direct question in the hospital waiting room, Appellant acknowledged he was part of the boating accident and was the operator of one of the boats. Bickley observed Appellant had bloodshot eyes and could smell alcoholic beverage, and learned from Appellant that Appellant had been drinking that day. (R.p.28, line 18-p.36, line 25). Bickley testified that:

> Based on the fact that he had identified himself as the operator of the boat and the fact that he identified that he had been drinking during the day and the fact that I was the only officer who did not have the ability to get him out of there to a Data Master establishment, I asked that I be given a blood sample based on the inability to get him to the standard Data Master procedure.

(R. p.37, lines 1-7). Bickley testified he was aware there had been a fatality in the crash and told Appellant that because of the fatality involved, Appellant was required by law to provide a blood sample. At the time of the blood draw Bickley was not aware Appellant had passed field sobriety tests near the scene of the crash. (R. p.37, lines 8-24).

On cross-examination Bickley noted that before he talked to Appellant, Appellant's friend and passenger on the Peacemaker, Harrison "Eric" Hair, said he and Appellant "had been partying that day." (R.p.46, line 23-p.47, line 2). He also noted Appellant himself disclosed he had been drinking alcohol the day of the crash. Under further cross-examination, Bickley acknowledged that at the time of the blood draw he did not know what happened in the crash, or who was at fault. He agreed he had made a statement in response to a question from the solicitor that he "didn't know [Appellant's] position in the accident," and that "based on that statement" in isolation, he did not have probable cause to obtain a blood sample. (R. p.46, line 17-p.51, line 6). However, on re-direct Bickley clarified that even though he did not know who was at

fault or the primary contributor to the crash, he believed that the totality of the information he had supported his conclusion that Appellant might be a party to felony boating under the influence. (R. p.51, line 8-p.52, line 4). The trial judge suspended review of Appellant's motion to suppress and proceeded to qualify and select the jury. (R. p.55, line 19-p.56, line 4).

After jury selection, the trial court heard extensive arguments in regard to the motion to suppress. The State contended the following facts constituted probable cause to believe Appellant violated the felony boating under the influence statute: (1) Bickley's knowledge there had been a crash resulting in death, (2) Appellant's admission he was operating one of the boats and had been drinking alcohol that day, (3) Hair's statement that he and Appellant had been partying that day, and (4) the smell of alcohol on Appellant at the hospital. The trial judge took the matter under advisement and said he would render a decision the following morning. (R. p.57, line 18-p.74, line 20). The following morning the trial judge recalled Bickley to the stand and questioned him about the decision to obtain a blood sample from Appellant. Bickley repeated the information from his previous testimony, with a few additional details about the type of alcohol Appellant admitted drinking and the alleged number of drinks he had consumed. (R. p.91, line 9-p.100, line 18). Ultimately the trial court found that, considering the totality of the circumstances, Bickley had probable cause to draw the blood because he had probable cause to believe Appellant violated the boating under the influence statute, section 50-21-113 of the Code. (R. p.100, line 19-p.107, line 22).

At trial, when Sergeant Bickley began testifying about his discussion with Appellant at the hospital after the crash, Appellant stated: "Your Honor, I just want to

renew my previous objection now to preserve it. Thank you, Your Honor." The trial judge replied: "Well, over the defendant's objection." (R. p.416, lines 15-24). Bickley then described the discussion and the specific information he relied upon to draw the blood. When the solicitor asked him to read the "advisement of implied consent rights" form, Appellant said: "Your Honor, just out of an abundance of caution, there is - - I just want to renew my objection with specificity to the probable cause without making a statement. I just want to protect that objection. Thank you, Your Honor." (R. p.418, lines 1-8). Bickley then read a portion of the form and described requesting a blood sample from Appellant. He identified State's exhibit number 53 as the actual blood sample taken from Appellant and described how it had been provided to SLED for testing. (R. p.418, line 10-p.423, line 9). The State then asked to introduce the blood sample into evidence. The trial judge asked: "Over the defense objection; is that correct?" Appellant responded: "No objection, Your Honor," and the blood was admitted into evidence. (R. p.423, lines 10-17).

Later during trial, SLED forensic toxicologist Tim Grambow described testing the blood samples taken from Appellant and Christofoli, the operator of the Lucky Strike. He issued reports for alcohol values on both subjects, finding Appellant's blood was 0.117 percent ethanol, and Christofoli's blood was 0.01 percent ethanol, an amount deemed toxicologically insignificant. Grambow then described how alcohol can affect behavior, ability to process data, ability to multi-task, and vision. (R. p.544, line 22-p.554, line 8). Appellant raised no objection to Grambow's testimony.

During the course of the trial several State's witnesses testified about general boating rules of navigation. Lexington County officer and former DNR officer Glenn

Davis mentioned "the rules of navigation" in discussing Appellant's initial statement about seeing green and white lights before the crash, and in interpreting the damage to the two boats. (R. p.139, lines 10-13; p.141, line 24-p.142, line 14). On cross-examination he was specifically asked about "the rules of the road" including operating safely, and maintaining a safe lookout. (R. p. 160, lines 3-10). Christofoli, the driver of the Lucky Strike, testified about boating rights of way and being the "give way" boat when you see a red light. (R. p.279, line 12-p.280, line 11). DNR Officer Roosen testified on cross-examination about "navigational lights" and how they are used to navigate boats. (R. p.379, line 1-p.380, line 6).

Later the State called Sergeant Robin Camlin, an investigator with DNR, to describe her participation in the investigation of the crash. She had been with DNR for twenty-two years and worked her way up from field officer to investigator, a position she held for five years. Camlin testified that in addition to conducting investigations, she instructs new DNR officers on boat operation and boating under the influence. She explained that boats are different from cars because boats do not have brakes or blinkers, and that to stop a moving boat you have to use the throttle and have ample time. (R. p.448, line 23-p.450, line 18).

Camlin became involved in Appellant's case on the night of May 1, 2010, when she received a statewide "incident page" about a double fatality on Lake Murray. She responded to Lake Murray Marina and arrived at the same time as DNR investigator Ray Lewis. Roosen were already at the scene. Camlin was assigned to assist Roosen in conducting an inventory of the Peacemaker. She discovered the proper safety equipment on board and did not find any contraband or alcohol. Next Camlin reported to Bundrick

Island to inventory the Lucky Strike, which had been brought to the DNR station by barge. She found safety equipment, shoes, a wallet, an empty beer can, and a full beer can on board. (R. p.452, line 15-p.457, line 25).

Camlin then went to the Hospital to help Lewis interview the people who had been involved in the crash, some of whom were receiving medical treatment for their injuries. Lewis and Camlin took statements from Christofoli, Appellant, and Colt Lax, the third passenger on the Lucky Strike. They also had Appellant draw a diagram to try to help explain what happened. Appellant told Camlin that before the crash the Peacemaker was coming from Lighthouse Marina and had entered open water, and the other boat was coming in from his right, between Susie Ebert Island and the Coast Guard station. The diagram was admitted into evidence. Next, Camlin and Lewis left the hospital to interview two passengers from the Peacemaker and several other people with information about the events leading up to the crash. Camlin noted that several witness statements indicated Appellant had purchased alcohol earlier that day and that Appellant had consumed alcohol throughout the day. (R. p.458, line 1-p.464, line 7).

Camlin was then asked about boat terminology and "the rules and regulations of boating safety." She said that when you see a red light on another boat, you are supposed to stop or alter your course of action, and that failure to do so would be against the "navigational rules." Camlin explained that if you see a red light and a white light it means the other boat is approaching from the right and that the other boat should maintain its course and speed while you slow down or alter course to avoid a collision. She said that when a boat is approaching from the right, you would never see its green light. Appellant did not object to or otherwise challenge this testimony. Camlin testified

Appellant told her he first saw the other boat about 100 yards from him. She noted the Peacemaker was equipped with a radar and that Appellant told her he had also seen the other boat on the radar. Appellant first told Camlin he had seen both red and green lights as the other boat approached, but then said he only saw a red light, eventually reverting to his original claim of having seen both green and red lights. Ultimately, when Camlin asked Appellant what he should do when he sees a red light and a white light, Appellant was unable to respond. She said Appellant told her the other boat was approaching from the "2:30 position" on a clock, that he had taken a boater education class when he was 14 or 15, and that he estimated the Peacemaker was travelling about 35 miles an hour when he saw the other boat. (R. p.466, line7-p.471, line 6).

On cross-examination, Appellant questioned Camlin about the "nighttime navigational procedures" she had discussed on direct examination. Camlin said that under the rules of the water, all boat operators must be on the lookout for the lights of other vessels. She explained boats have a red light on the portside, a green light on the starboard side and a white light on the stern. Camlin described the difference between the "stand-on" vessel which should maintain its course and speed during an encounter, and the "give-way" vessel, which should alter its course, slow down, or take the throttle all the way off to avoid a collision. (R. p.481, line 25-p.484, line 1). Camlin proceeded to answer a series of questions from Appellant about various light combinations and the proper course of action for a boat operator stating: "You have to abide by the navigational rules - - when you make your decisions, yes." (R. p.484, line 2-p.485, line 18).

On re-direct, the solicitor asked Camlin if Appellant would have been able to cause the damage caused to the Lucky Strike if he had only seen a green light before impact. Appellant objected and his objection was sustained because the question called for speculation. The solicitor then asked questions about the specific location of the boats prior to the crash; however, the trial court sustained Appellant's further objections stating: "She wasn't there. She can't recreate the accident." (R. p.489, line 14-p.492, line 5). Ultimately the trial court commented: "I sustain the objection to this entire line of questioning. She is not in a position to recreate the accident. She can say what she saw. She can say what he did but asking her opinion about how the accident happened is outside the rules." (R. p.492, lines 1-5) (emphasis added). The following exchange then took place:

> Q: Okay. And Mr. Harvey asked you about both operators having to remain alert.
>
> A: Yes.
>
> Q: What, if anything, did Mr. Kranendonk do to show you he did not remain alert?
>
> A: Well, there were a number of things as far as violating the navigational rules.
>
> Q: Why don't you tell us what he did.
>
> A: Well, he didn't show that he was responsible as an operator. He didn't take due regard to - -
>
> Mr. Harvey: Your Honor, that's speculation based upon a question. She has answered the question he saw red and green lights. He gave a chronology of what he observed. They've now isolated and taken out the totality of his responses based on a hypothetical that's not in evidence. I object to the question.

Ms. Sampson: Your Honor, I asked her what did he tell her that shows him [sic] did not remain alert. I'm talking about his whole conversation. I didn't ask just for specifics.

The Court: She can say what he said. She just can't interpret it in terms of fault for this accident.

Ms. Sampson: I'm not asking her for fault. I asked her - -

The Court: Well, it sounded like it.

Q: I can state my question again. What, if anything, did Mr. Kranendonk tell you that shows that he did not remain alert?

A: (There was no response).

The Court: That's the same, the same question. She can say what he said.

(R. p.492, line 25-p.494, line 7) (emphasis added).

After asking several questions about Appellant's statement to investigators the solicitor asked: "What do the regulations say to do?" Appellant objected contending: "That, again, is outside the purview of her expertise." After the jury was excused, the solicitor sought to qualify Camlin as an "expert in boat regulations." Appellant responded that Camlin had already "testified at length" in regard to the lights on boats and had "given her opinion about what's proper and improper," and therefore, her expert qualification and further testimony would be "cumulative" and would not "aid the trier of facts." The trial judge noted that although there had been testimony about lights, he did not think he had allowed testimony about operating a boat. Appellant and the solicitor agreed they had both already asked Camlin about the "rules of navigation" and elicited her opinion about operating a boat. The court asked if Appellant would then admit her qualification. Appellant responded that the substance of her testimony would be "cumulative" and would not "aid the trier of fact" and sought exclusion under Rule 403

of the South Carolina Rules of Evidence. He contended there had already been "ample testimony" from Camlin to aid the jury in determining what a boat operator is "supposed to do based upon the information applicable to [Appellant's] case." Appellant conceded he asked Camlin about the general "navigational rules" but objected to the State asking Camlin to draw an opinion from the specific facts of his case because those were not known. The solicitor explained that in attempting to prove Appellant acted with "reckless disregard" of the safety of others under the charged offense the State should be able to show Appellant's disregard for basic boater safety rules he either does not know, or was taught and failed to follow. The trial court ruled Camlin would be allowed to testify about the rules of navigation "given the burden on the State." Appellant responded that if the State was going to qualify Camlin as an expert, he wanted to impose an objection "on the grounds that I'm articulating here" in order to make sure the issue was preserved. The trial judge told the solicitor to go ahead and qualify Camlin "over his objection." (R. p.496, line 5-p.501, line 7).

During the State's proffer, Camlin testified she had been a boater her entire life and that she had taken her first boating class when she was hired by DNR in 1990. She said she attended the Federal Law Enforcement Training Center for advanced maritime law enforcement and was awarded a captain's license by the United States Coast Guard. Camlin held the license for approximately eight years but it was not current because she had not renewed it at the time of Appellant's trial. She testified she had been teaching boater education courses on behalf of DNR for both the public and other law enforcement officials for 12 to 14 years, including serving as the primary instructor for the DNR marine law enforcement boating school. Camlin testified she teaches classes on boating

under the influence, general boater education, and marine law enforcement, and that the law enforcement classes include teaching "navigation rules of the road." (R. p.501, line 13-p.505, line 16).

Following voir dire, the trial court asked: "Objection to her qualification?" to which Appellant responded: "Renew my objection." The trial court ruled:

> All right. Well, although this is not scientific testimony, I think she qualifies under 702.
>
> She said - - whatever opinion she may offer, may assist the trier of fact, the jury, to understand the evidence or determine a fact at issue.
>
> The fact in issue certainly is the recklessness or lack of recklessness charged in the indictment. That is a fact in issue.
>
> I think she has at least specialized knowledge to assist the trier of fact to understand the evidence to determine a fact in issue. I'm going to allow her testimony.

(R. p.507, line 20-p.508, line 6). Appellant sought clarification that the ruling would not allow reconstructing the crash, but was only in regard to allowing Camlin's testimony about the navigational rules. The court stated: "Well, she can offer an opinion based on a hypothetical that if ABC and D occurred, is that within the navigational rules or does it comply with the navigational rules in that the State of South Carolina. I think she can offer that." The court continued: "Well, you know, it's certainly not a bright line, it's a line that she should not be able to cross, but I hope counsel can examine her within the rules of evidence." The court noted Appellant's objection. (R. p.508, line 7-p.509, line 6).

When the jury returned, Appellant went over Camlin's qualifications and offered her as "an expert in the field of boating rules and regulations." She was admitted over Appellant's earlier objection and allowed to provide additional testimony as an expert.

Camlin proceeded to identify and explain several specific rules from the book of "Navigation Rules" including: Rule 5 (proper look out), Rule 6 (safe speed), Rule 8 (action to avoid collision), Rule 15 (crossing situation), and Rule 16 (action by the give-way vessel). Although Appellant objected to some of the testimony on grounds that Camlin was improperly offering an opinion on what Appellant was interpreting at the time of the accident, those objections were overruled. In regard to each rule, Camlin described the rule, testified as to what Appellant himself said about his actions before the crash, and then offered an opinion on whether, based on those actions, Appellant acted in compliance with the rules. (R. p.511, line 2-p.517, line 20).

At the end of the trial, the court charged the jury as follows:

> The rules of evidence ordinarily do not permit witnesses to testify about their opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art or science or profession may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case like any other evidence with the weight you think it deserves. If you decide the opinion of the expert witness was not based on sufficient education or experience, or if you conclude for reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard that opinion in its entirely.
>
> An expert witness, in other words, is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you're not required to accept an expert's opinion, even though it's not contradicted.

(SROA, p.1, line 23-p.2, line 18) (emphasis added).

ARGUMENT

I.

The trial court properly qualified investigator Robin Camlin as an expert in navigational boating rules and admitted her testimony pursuant to Rule 702, SCRE, where her knowledge, experience, training, and education demonstrated that her technical and specialized knowledge would assist the jury to understand the evidence or determine a fact in issue, and where her testimony was appropriately offered "in the form of an opinion or otherwise."

Appellant argues the trial court erred in qualifying DNR Investigator Camlin as an expert in "navigational rules" and then allowing her to offer opinions which exceeded the scope of her expert qualification. Specifically he contends Camlin's testimony "amounted to recreation of the accident, which [the trial judge] had previously ruled was inadmissible." Appellant further contends Camlin offered opinions on what Appellant did wrong instead of limiting her testimony to hypothetical situations. He alleges the State deliberately "attempted to hide the ball by first qualifying Camlin as an expert in navigational rules who would be presented with hypotheticals, and then immediately eliciting testimony concerning specific actions or non-actions taken by [Appellant]."

The State disagrees and submits the trial court acted well within its discretion in qualifying Investigator Camlin as an expert in boating rules and regulations based on her education, training, and experience. Furthermore, the trial court properly admitted Camlin's expert testimony pursuant to Rule 702, SCRE, because she possessed technical or specialized knowledge which could assist the jury to understand the evidence or determine a fact in issue. Finally, Camlin's testimony was appropriately offered pursuant to Rule 702 "in the form of an opinion or otherwise" and did not amount to a re-creation of the crash in violation of the limits allegedly imposed by the trial court. Indeed, Camlin

merely offered opinions based on "facts" gleaned from Appellant's own statements to DNR investigators.

Initially, the State submits Appellant waived any right he might have had to challenge the trial court's decision to qualify Camlin as an expert in navigational rules, or to challenge her testimony as an expert, because Appellant opened the door to her testimony by eliciting "expert" testimony from Camlin about boating rules and regulations prior to raising any objection at trial. See State v. Dunlap, 353 S.C. 539, 541-42, 579 S.E.2d 318, 319 (2003) (deciding not to reach the defendant's challenge to the admissibility of evidence on appeal where the defendant opened the door to admission of that evidence at trial). In any event, the State submits the trial court properly qualified Investigator Camlin as an expert in boating rules and regulations based on her education, training, and experience.

The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a

prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support. Morris, 376 S.C. at 206, 656 S.E.2d at 368; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995).

The South Carolina Rules of Evidence provide:

> 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.

Rule 702, SCRE. Thus, there are several criteria that must be considered by the court in deciding whether to admit expert testimony. First, the court must determine if the scientific, technical, or specialized knowledge purportedly held by the witness would assist the jury to understand the evidence or determine a fact in issue. Second, the court must determine if the proffered witness in fact possesses scientific, technical, or specialized knowledge to qualify as an expert. Finally, in its general gatekeeping function, the court must determine if the type of expert testimony offered meets a "reliability threshold" for the jury's ultimate consideration. White, 382 S.C. at 269-70, 676 S.E.2d at 686; State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011).

There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge. State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App.1997); State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (Ct. App.1991). The test for qualification of an expert is a relative one that is

dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony. Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176 (2002); Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App.2003); see also Gooding, 326 S.C. at 252-53, 487 S.E.2d at 598 ("To be considered competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'"). An expert is not limited to any class of persons acting professionally. Gooding, 326 S.C. at 253, 487 S.E.2d at 598; Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). There is no exact requirement concerning how knowledge or skill must be acquired. Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988).

The party offering the expert testimony has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); Henry, 329 S.C. at 274, 495 S.E.2d at 466. Generally, however, defects in the amount and quality of the expert's education or experience go to the weight to be accorded the expert's testimony and not to its admissibility. Id.; Morris, 376 S.C. at 203, 656 S.E.2d at 366; Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct. App. 2001).

During the State's proffer, Camlin testified she had been a boater her entire life and that she had taken her first boating class when she was hired by DNR in 1990. She

said she attended the Federal Law Enforcement Training Center for advanced maritime law enforcement and was awarded a captain's license by the Coast Guard. Camlin testified she had been teaching boater education courses on behalf of DNR for both the public and other law enforcement officials for 12 to 14 years, including serving as the primary instructor for the DNR marine law enforcement boating school. She testified she teaches classes on boating under the influence, general boater education, and marine law enforcement, and that the law enforcement classes include teaching "navigation rules of the road." (R. p.501, line 13-p.505, line 16). The trial court found that although Camlin was not offering "scientific testimony," she still qualified as an expert under Rule 702 because her specialized knowledge and opinions may assist the jury to understand the evidence or determine a fact at issue – specifically whether Appellant acted with recklessness or not as charged in the indictment. The trial judge further found Camlin in fact possessed the specialized knowledge of boating navigational rules to assist the trier of fact. (R. p. 507, line 20-p.508, line 6).

The State submits that in light of the evidence proffered, the trial court clearly did not abuse its discretion in qualifying Camlin as an expert in boating rules and regulations. Camlin identified and explained several specific rules from the book of "Navigation Rules" including: Rule 5 (proper look out), Rule 6 (safe speed), Rule 8 (action to avoid collision), Rule 15 (crossing situation), and Rule 16 (action by the give-way vessel). She described each rule, testified as to what Appellant himself said about his actions before the crash, and then offered an opinion on whether, based on those actions, Appellant acted in compliance with the rules. (R. p.511, line 2-p.517, line 20). She did not offer an opinion on whether a violation of the rules would constitute "recklessness" and did not

improperly offer testimony on an issue of law. See Commander, 396 S.C. at 264, 721 S.E.2d at 318 (noting that expert testimony on issues of law is usually inadmissible). Thus, here testimony was appropriately offered in the "form of an opinion or otherwise."

Boating rules and regulations are not within the range of knowledge of the average juror. Indeed, Camlin had acquired by study or practical experience such knowledge of boating rules and regulations as would enable her to give guidance and assistance to the jury in resolving a factual issue which was beyond the scope of the jury's good judgment and common knowledge, namely whether Appellant's actions or omissions violated those boating rules and regulations. Henry, supra; Goode, supra. In other words, Camlin was better qualified than the fact finder to form an opinion on the subject of boating rules and regulations. This is all that was required for the trial court to qualify her as an expert and to admit her testimony. Ellis, supra; Mizzell, supra; Gooding, supra. It was simply a judgment call made in the trial court's sound discretion. It does not rise to the level of an abuse of that discretion simply because Camlin was not a published author or a presenter at seminars. Indeed, nothing in the record shows the trial court's decision was based on a factual conclusion without evidentiary support. Morris, supra; Gooding, supra; Seuss, supra. Furthermore, because Camlin was properly qualified as an expert witness, any further objections to Camlin's qualifications went to the weight of her testimony, not its admissibility. Martin, 391 S.C. at 515-16, 706 S.E.2d at 44. Finally, the State submits that in light of the trial court's jury charge on expert witnesses, Camlin's testimony could not have been given greater weight than that of a lay witness and, therefore, could not have been unduly prejudicial to Appellant. State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009).

For all of these reasons, the State submits the trial court's qualification of Camlin as an expert in navigational boating rules and admission of her testimony under Rule 702, SCRE, did not constitute an abuse of discretion. Additionally, to the extent Camlin should not have been qualified as an expert, Appellant suffered no prejudice from her testimony. Therefore, Appellant's conviction should be affirmed.

II.

Appellant's pre-trial challenge to the trial court's admission of evidence of his blood alcohol content is not preserved for appellate review because Appellant failed to renew his objection at trial, and even if preserved, the trial court properly admitted the evidence where the officer had probable cause to seize Appellant's blood pursuant to section 50-21-116 of the South Carolina Code.

Appellant argues the trial court erred in admitting evidence of his blood alcohol content because the State lacked probable cause to seize his blood under section 50-21-116 of the South Carolina Code. He contends the officer lacked probable cause to believe Appellant violated section 50-21-113[3] when the officer seized the blood pursuant to section 50-21-116. Appellant argues the facts supporting probable cause were "shaky" particularly in light of the fact Appellant had already passed a field sobriety test conducted by another officer. Appellant claims that despite the seizing officer's lack of actual knowledge about the field sobriety test, his "imputed" knowledge of this "exculpatory fact" weighs against the finding of probable cause. The State disagrees and submits Appellant's argument is both unpreserved for appellate review and without merit. By failing to make a contemporaneous objection when the blood alcohol evidence was actually introduced into evidence at trial, Appellant waived his right to pursue this argument on appeal. Additionally, probable cause to seize Appellant's blood existed because the facts and circumstances within the seizing officer's knowledge were sufficient for a reasonable person to believe Appellant had committed felony boating under the influence. Therefore, this argument should be denied and dismissed with prejudice.

[3] The South Carolina Code titles this offense: "Operation of moving water device while under the influence of alcohol or drugs resulting in property damage, great bodily injury or death;" however, this crime is commonly known as felony boating under the influence.

Initially, the State submits Appellant's challenge to admission of the blood alcohol evidence is not preserved for appellate review. In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001); see State v. Wiles, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009) ("This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection.").

Here, although Appellant made a pre-trial motion to suppress the blood alcohol evidence and attempted to renew that motion during the seizing officer's testimony, he failed to object when the blood was introduced, and failed to object to testimony about Appellant's blood alcohol concentration. Indeed, Appellant affirmatively stated he had no objection to the admission of the blood. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."). Accordingly, Appellant's pre-trial objection to the admission of the blood alcohol evidence was expressly waived, and the issue cannot properly be raised or reviewed on appeal. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); see also State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal."). Thus, Appellant is procedurally barred from raising this issue on appeal, and his conviction should be affirmed.[4]

[4] Appellant appears to argue no further objection was needed after the pre-trial ruling to preserve this issue for appellate review. He contends the pre-trial admissibility finding was "final" because the solicitor mentioned Appellant's blood alcohol level during her opening statement. (Brief of Appellant, p.21-22). However, this does not relieve Appellant from his obligation to renew his objection when the blood alcohol

In any event, the State submits Appellant's argument is without merit. In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Manning, 400 S.C. 257, 264, 734 S.E.2d 314, 317 (Ct. App. 2012). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. Id.

Section 50-21-116 of the South Carolina Code provides in part:

> Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs, if there is probable cause to believe that the person violated or is under arrest for a violation of Section 50-21-113.

S.C. Code Ann. § 50-21-116 (2008) (emphasis added). Section 50-21-113 in turn provides in part:

> A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs operates a moving water device, or is in actual control of a moving water device within this State and causes great bodily injury or death of a person other than himself, is guilty of a felony.

S.C. Code Ann. § 50-21-113 (2008). Probable cause to arrest without a warrant exists when the "circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe a crime has been committed by the person to be arrested." Manning, 400 S.C. at 267, 734 S.E.2d at 319 (quoting State v. Cuevas, 365 S.C. 198, 203, 616 S.E.2d 718, 721 (Ct. App. 2005)). In determining whether probable cause exists, all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received. Id. Probable cause turns not

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evidence was offered at trial if he wished to preserve the issue for appeal. The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented, State v. Kornahrens, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986); however, opening statements themselves are not evidence. See Gilchrist v. State, 350 S.C. 221, 226 n.1, 565 S.E.2d 281, 284 n.1 (2002) (acknowledging the PCR court's finding that opening statements and closing arguments are not evidence).

on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. Id. (quoting Jackson v. City of Abbeville, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (Ct. App. 2005)).

The Appellate court reviews the circuit court's probable cause determination under a "clear error" standard. Baccus, 367 S.C. at 48–49, 625 S.E.2d at 220; Manning, 400 S.C. at 267, 734 S.E.2d at 319. The finding that an arrest was made based upon probable cause is conclusive on appeal where supported by evidence. State v. Jones, 268 S.C. 227, 233, 233 S.E.2d 287, 289 (1977); Manning, 400 S.C. at 267, 734 S.E.2d at 319. Here, the trial court found that under the totality of the circumstances Sergeant Bickley had probable cause to draw Appellant's blood because he had probable cause to believe Appellant violated the felony boating under the influence statute, section 50-21-113 of the Code. (R. p.100, line 19-p.107, line 22). The State submits a reasonable person with Bickley's knowledge would have probable cause to believe Appellant violated the relevant statute. Bickley knew there had been a fatal boat crash. Appellant admitted to Bickley he was operating one of the boats in that crash and admitted he had been drinking alcohol that day. Eric Hair, a passenger on Appellant's boat, told Bickley he and Appellant had been partying that day. Appellant had bloodshot eyes and smelled of alcohol even though it was more than three hours after the crash. The State submits these circumstances were certainly sufficient to establish probable cause. Compare to Manning, 400 S.C. at 268, 734 S.E.2d at 319 (finding probable cause to arrest Manning for driving under the influence where the officer knew Manning was the driver, Manning smelled of alcohol, and Manning had sustained trauma consistent with an accident) and

Cuevas, 365 S.C. at 204, 616 S.E.2d at 721 (finding probable cause to arrest Cuevas for driving under the influence where Cuevas left the scene of the accident, had a strong smell of alcohol on his breath, had an open beer container in his vehicle, and had a bruise on his chest).

The State further submits Appellant's argument, that Sergeant Bickley's "imputed" knowledge of Appellant passing the field sobriety tests should weigh against the finding of probable cause is likewise without merit. The doctrine of "collective knowledge" holds that probable cause may be based on collective knowledge of all law enforcement officers involved in an investigation and need not be based solely on information within the knowledge of the officer on the scene if there is some degree of communication. See State v. Dunbar, 345 S.C. 479, 493, 581 S.E.2d 840, 848 (Ct. App. 2003) (citing United States v. Morales, 238 F.3d 952 (8th Cir. 2001)), vacated in part by 356 S.C. 479, 581 S.E.2d 840 (2003) (finding the Court of Appeals was incorrect to base its decision on an argument not raised to the trial court below). Thus, probable cause may rest on the collective knowledge of law enforcement officers when reliable communication exists between them, and where the actual officer seeking a warrant lacks the specific information himself to form the basis for probable cause but sufficient information to justify the search was known by other law enforcement officers initiating or involved with the investigation. United States v. Hensley, 469 U.S. 221, 230-33 (1985). This rule exists because, in light of the complexity of modern police work, the seeking officer cannot always be aware of every aspect of an investigation; sometimes his or her authority to seek a search warrant is based on facts known only to his or her superiors or associates. The collective knowledge doctrine was developed in recognition

of the fact that with larger or taxed police departments and mobile defendants, an officer seeking a warrant might not be aware of all the underlying facts that provided probable cause, but may nonetheless act reasonably in relying on information received by other officers in his or her department. See Whitely v. Warden, 401 U.S. 560, 568 (1971) ("Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause.").

The focus of the collective knowledge inquiry, as with any inquiry in regard to probable cause, is whether circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe a crime has been committed by the person to be arrested. Manning, supra. Nothing in the doctrine suggests the inquiry should shift to a balancing test to see if facts which would otherwise support probable cause are outweighed by facts which do not simply because the probable cause finding can be supported by collective knowledge. Indeed, the folly of such a suggestion is evident in Appellant's assertion that "police are not allowed to withhold information from each other in order to bolster an officer's probable cause determination." If facts and circumstances are sufficient to support probable cause, then additional facts and circumstances, known or unknown by the arresting officer, cannot vitiate probable cause.

For all of these reasons, the State submits the trial court properly admitted evidence of Appellant's blood alcohol content and Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
September 26, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2012-210207

THE STATE, ...RESPONDENT

v.

STEVEN KRANENDONK, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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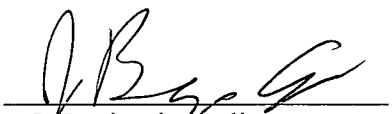
BY: 
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PROOF OF SERVICE

I, Angela Bennett, Executive Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated September 26, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 26th, day of September, 2013.

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