THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2014-UP-210 (S.C. Ct. App. filed June 4, 2014)

Appellate Case No: 2014-002084

State of South Carolina, ... Respondent,

v.

Steven Kranendonk, ... Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the trial court's decision to qualify investigator Robin Camlin as an expert in navigational boating rules and admitting 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 the Court of Appeals properly affirmed Petitioner's conviction where Petitioner's pre-trial challenge to the trial court's admission of evidence of his blood alcohol content was not preserved for appellate review because Petitioner 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 Petitioner's blood pursuant to section 50-21-116 of the South Carolina Code.

STATEMENT OF THE CASE

Petitioner 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, Petitioner 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). Petitioner timely filed a notice of intent to appeal and his conviction and sentence were affirmed in an unpublished opinion from the Court of Appeals. State v. Kranendonk, Op. No. 2014-UP-210 (S.C. Ct. App. filed June 4, 2014) (App.p.1-p.2). Petitioner submitted a Petition for Rehearing on June 19, 2014, and by Order filed August 25, 2014, the Petition was denied. (App.p.3-p.10). On October 6, 2014, Petitioner submitted a Petition for a Writ of Certiorari to this Court and now this Return on behalf of Respondent (the State) follows.

STATEMENT OF FACTS

On the night of May 1, 2010, Petitioner 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 four people on the Lucky Strike, died as a result of the crash.

Petitioner's blood was drawn at the hospital following the crash and tested for alcohol. Prior to trial Petitioner moved to suppress results from the blood alcohol test. (R.p.11, lines 12-24; p.13, lines 20-25). At the suppression hearing, Department of

[1] Petitioner was also indicted for two counts of felony boating under the influence (BUI) resulting in death and one count of felony BUI 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).

Natural Resources (DNR) Sergeant Kevin Roosen described responding to the crash on the night of May 1, 2010, and his interactions with Petitioner at Lake Murray Marina. Petitioner reported he was driving the Peacemaker at the time of the crash. 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 Petitioner was under the influence. At approximately 12:15 a.m. on May 2, 2010, Roosen conducted five standard tests and concluded Petitioner satisfactorily completed each test. As a result, Roosen did not place Petitioner under arrest for BUI at the scene. (R.p.14, line 5-p.24, line 11).

At 10:30 p.m. on the night of May 1, 2010, DNR Sergeant Rhett Bickley was on duty and was called regarding a boating accident at the lake. He reported to Palmetto Richland Hospital where he interacted with several individuals involved in the crash. Bickley talked to Petitioner shortly before 3:30 a.m. In response to a direct question in the hospital waiting room, Petitioner acknowledged he was part of the boating accident and was the operator of one of the boats. Petitioner had bloodshot eyes, smelled of alcohol, and admitted 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 Petitioner that because of the fatality involved, Petitioner was required by law to provide a blood sample. At the time of the blood draw Bickley was not aware Petitioner 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 Petitioner, Petitioner's friend and passenger on the Peacemaker, Harrison "Eric" Hair, said he and Petitioner "had been partying that day." (R.p.46, line 23-p.47, line 2). 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 responded to a question from the solicitor that he "didn't know [Petitioner'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 Petitioner might be a party to felony BUI. (R.p.51, line 8-p.52, line 4).

After jury selection, the trial court heard extensive arguments in regard to the motion to suppress, 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 Petitioner. Bickley repeated the information from his previous testimony, with a few additional details about the type of alcohol Petitioner 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 Petitioner violated the BUI 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 Petitioner at the hospital after the crash, Petitioner 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, Petitioner 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 Petitioner. He identified State's exhibit number 53 as the actual blood sample taken from Petitioner 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?" Petitioner 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 Petitioner and Christofoli, the operator of the Lucky Strike. He found Petitioner's blood was 0.117 percent ethanol and Christofoli's blood was 0.01 percent ethanol, which is an amount deemed toxicologically insignificant. Petitioner raised no objection to Grambow's testimony.

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

Glenn Davis (R.p.139, lines 10-13; p.141, line 24-p.142, line 14; p.160, lines 3-10), . Christofoli, (R.p.279, line 12-p.280, line 11); and DNR Officer Roosen. (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 Petitioner'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, Petitioner, and Colt Lax,

the third passenger on the Lucky Strike. They also had Petitioner draw a diagram to try to help explain what happened. Petitioner 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 Petitioner had purchased alcohol earlier that day and that Petitioner 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. Petitioner did not object to or otherwise challenge this testimony. Camlin testified Petitioner told her he first saw the other boat about 100 yards from him. She noted the Peacemaker was equipped with radar and that Petitioner told her he had also seen the other boat on the radar. Petitioner 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 Petitioner what he should do when he sees a red light and a white light, Petitioner

was unable to respond. She said Petitioner 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, Petitioner 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 Petitioner 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 Petitioner would have been able to cause the damage caused to the Lucky Strike if he had only seen a green light before impact. Petitioner 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 Petitioner'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 Petitioner's statement to investigators the solicitor asked: "What do the regulations say to do?" Petitioner 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." Petitioner 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. Petitioner 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 Petitioner would then admit her qualification. Petitioner 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 [Petitioner's] case." Petitioner 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 Petitioner acted with "reckless disregard" of the safety of others under the charged offense the State should be able to show Petitioner'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." Petitioner 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 Petitioner'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 Petitioner 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). Petitioner 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 Petitioner's objection. (R.p.508, line 7-p.509, line 6).

When the jury returned, Petitioner went over Camlin's qualifications and offered her as "an expert in the field of boating rules and regulations." She was admitted over Petitioner'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 Petitioner objected to some of the testimony on grounds that Camlin was improperly offering an opinion on what Petitioner 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 Petitioner himself said about his actions before the

crash, and then offered an opinion on whether, based on those actions, Petitioner 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).

CERTIORARI

Petitioner argues this Court should grant certiorari because the Court of Appeals failed to address: (1) the issue of whether Camlin's opinions exceeded the scope of her qualification, and (2) the issue of imputed knowledge in regard to admission of evidence of his blood alcohol content. The State disagrees and submits the Court of Appeals adequately addressed the issues raised. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of applying existing precedent to the particular facts and

circumstances of Petitioner's case. It properly found: "no error in Camlin's qualification and admission of her expert testimony;" and no error "in admitting evidence of [Petitioner's] blood alcohol content." Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

I.

On appeal to the Court of Appeals, Petitioner argued 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 contended Camlin's testimony "amounted to recreation of the accident, which [the trial judge] had previously ruled was inadmissible." Petitioner further contended Camlin offered opinions on what Petitioner did wrong instead of limiting her testimony to hypothetical situations. He alleged 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 [Petitioner]." He repeats those contentions here.

The State submits the Court of Appeals properly affirmed the trial court's decision. 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 "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 Petitioner's own statements to DNR investigators.

Initially, the decision of the Court of Appeals was proper on procedural grounds. Petitioner waived any right he might have had to challenge the trial court's decision because he opened the door by eliciting her "expert" testimony about boating rules and regulations prior to raising any objection. State v. Dunlap, 353 S.C. 539, 541-42, 579 S.E.2d 318, 319 (2003). In any event, the trial court properly qualified 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 Petitioner 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 Petitioner himself said about his actions before the crash, and then offered an opinion on whether, based on those actions, Petitioner 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 Petitioner'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. 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 Petitioner. 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, Petitioner suffered no prejudice from her testimony. The Court of Appeals properly affirmed the trial court's decision.

II.

On appeal to the Court of Appeals, Petitioner argued 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 contended the officer lacked probable cause to believe Petitioner violated section 50-21-113 when the officer seized the blood pursuant to section 50-21-116. Petitioner argued the facts supporting probable cause were "shaky" particularly in light of the fact Petitioner had already passed a field sobriety test conducted by another officer. Petitioner claimed 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. Petitioner now raises similar arguments in his Petition for Certiorari. However, Petitioner's argument to the Court of Appeals was both unpreserved for appellate review and without merit.

Petitioner'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 Petitioner; (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).

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).

Here, although Petitioner 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 Petitioner's blood alcohol concentration. Indeed, Petitioner 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) (finding counsel's statement that he had 'no objection' to evidence previously challenged in a motion in limine amounted to a waiver of any issue Dicapua had with that evidence). Accordingly, Petitioner's pre-trial objection to the admission of the blood alcohol evidence was expressly waived, the issue could not properly be raised or reviewed on appeal, and Petitioner's conviction was appropriately affirmed.

In any event, the State submits Petitioner'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 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 Petitioner's blood because he had probable cause to believe Petitioner 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 Petitioner violated the relevant statute. Bickley knew there had been a fatal boat crash. Petitioner 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 Petitioner's boat, told Bickley he and Petitioner had been partying that day. Petitioner 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.

Petitioner's argument, that Sergeant Bickley's "imputed" knowledge of Petitioner 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 Petitioner'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 Court of Appeals properly affirmed the trial court's decision to admit evidence of Petitioner's blood alcohol content.

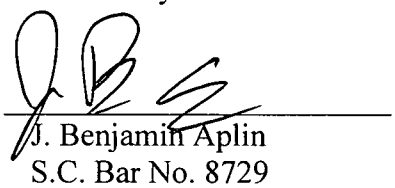
CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

BY: 
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
October 29, 2014

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 2014-UP-210 (S.C. Ct. App. filed June 4, 2014)

Appellate Case No: 2014-002004

State of South Carolina, ... Respondent,

v.

Steven Kranendonk, ... Petitioner.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated October 29, 2014, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

David Alexander, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 29th, day of October, 2014.

Angela Bennett
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ALAN WILSON
ATTORNEY GENERAL

October 29, 2014

David Alexander, Appellate Defender
South Carolina Commission on Indigent Defense
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Post Office Box 11589
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RE: The State, Respondent, v. Steven Kranendonk, Petitioner
Appellate Case No. 2014-002044

Dear Mr. Alexander:

I am enclosing two (2) copies of the Return to Petition for a Writ of Certiorari in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Daniel E. Shearouse
(original and six copies enclosed)
Victim Services