STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2014-001340

THE STATE,

Respondent,

vs.

MAURICE ANTHONY ODOM,

Appellant.

INITIAL BRIEF OF RESPONDENT

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The trial judge did not abuse his broad discretion by qualifying a witness as an expert in canine handling and by permitting the witness to testify about using a tracking dog to follow the trail of one of the burglars involved in the break-in because the evidence and testimony presented during trial established the witness' testimony could assist the jury in understanding the issues raised in Appellant's case, the witness was personally qualified to testify as an expert, and the subject matter of the witness' testimony met a threshold level of reliability in light of the witness' expert qualifications, the acuteness of the tracking dog's sense of smell, the reliability of the tracking dog, the reasonableness of the time period during which the tracking dog was placed on the suspect's trail, and the lack of contamination to the suspect's trail before the dog began tracking the suspect.

STATEMENT OF THE CASE

In November of 2011, Appellant Maurice Anthony Odom was arrested following an investigation into a break-in at a gas station and convenience store located in Clinton, South Carolina. In February of 2012, the Laurens County Grand Jury indicted Appellant for one count of second-degree burglary, one count of conspiracy, and one counts of grand larceny in an amount greater than $2,000 but less than $10,000. On June 9, 2014, a jury trial was commenced in the Laurens County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of fifteen years for second-degree burglary, five years for conspiracy, and five years for grand larceny. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Just after 2:43 a.m. on November 11, 2011, Deputy Nick Moye of the Laurens County Sheriff's Office heard a security alarm going off as he drove by a BP gas station and convenience store located on Highway 72 in Clinton, South Carolina, a short distance away from an exit off of Interstate 26.[1] (Tr. p. 75; pp. 78-79; p. 93; p. 263). Upon hearing the alarm, Deputy Moye notified dispatch of what he had heard, learned the store's security company had just reported the alarm to law enforcement, and drove towards the store to investigate. (Tr. pp. 76-77). As he approached the store, he observed one of the store's side windows had been shattered, and, when he drove closer, he saw a man climb out of the broken window and flee towards the back of the store. (Tr. pp. 81-84; p. 90). In response, Deputy Moye pursued the fleeing man but was unable to apprehend him before the man escaped into a wooded area directly behind the store. (Tr. pp. 83-84). The deputy then returned to the store, secured the scene, and waited for other officers to arrive. (Tr. p. 83).

Shortly thereafter, numerous law enforcement officers arrived at the scene along with Hardik Patel, the owner of the store, and his brother, Ramesh Patel ("Ramesh"). (Tr. p. 84; pp. 91-94). Once the store was secured, the Patels looked inside, discovered substantial damage to the store, and found merchandise scattered all over the store's floor. (Tr. p. 83). They then reviewed the surveillance footage captured by the store's security system and observed two masked burglars smash one of the store's windows with a rock, enter the store, and fill black trash bags with cartons of cigarettes along with money from a cash register drawer. (Tr. pp. 102-104; pp. 111-113). Additionally, they

[1] The store's hours of operation were 8:00 a.m. to 10:00 p.m. (Tr. p. 92).

observed one of the burglars smash the store's office's mirrored window, enter the office, and steal more cigarettes and money from inside. (Tr. p. 104; p. 107). The brothers then took an inventory of the money and goods gathered by the burglars during the break-in and determined those items had a cumulative value of over $5,000. (Tr. pp. 98-98; pp. 122-123; p. 273).

Meanwhile, the investigating officers attempted to locate the suspects involved in the burglary and found a black Chrysler 300 parked nearby along the eastbound side of Interstate 26 a short distance away from an exit ramp. (Tr. p. 264; p. 268). Officer Tyrone Goggins of the Clinton Department of Public Safety then responded to the vehicle's location, verified the vehicle had not been there long due to the fact its engine was still warm, and learned the vehicle was registered to Appellant Maurice Anthony Odom at an address in Wilmington, North Carolina. (Tr. p. 261; pp. 264-265; p. 267). In response, Officer Goggins asked another officer to remain in position to watch the vehicle while he confirmed there were no other vehicles parked along Interstate 26 in that area. (Tr. pp. 268-270; p. 272). After verifying Appellant's vehicle was the only vehicle in the area, Officer Goggins returned to the store, requested assistance from a State Law Enforcement Division ("SLED") tracking team, met with the victims, reviewed the surveillance footage of the incident, and inspected the scene. (Tr. pp. 272-280). During his inspection, the officer located the burglars' abandoned trash bags, which were filled with cartons of cigarettes from the store, along with a rock on the floor of the store's office. (Tr. p. 171; pp. 278-280). Officer Goggins then collected the rock as evidence and returned the stolen property to the Patels after it was inventoried. (Tr. p. 114; p. 278; pp. 281-282).

Shortly thereafter, at approximately 5:00 a.m., members of the SLED tracking unit, including Senior Agent Reid Creswell, arrived at the scene of the incident. (Tr. pp. 188-190; p. 193; p. 202; p. 215; p. 237; p. 251). Upon arriving, Senior Agent Creswell was advised of the specific location where the suspect entered the wooded area behind the store after the break-in and verified the suspect's trail had not been contaminated by anyone else entering the woods. (Tr. pp. 208-209; p. 216; p. 237). He then deployed Judy, a bloodhound-bluetick hound mixed-breed dog trained in tracking human scents, at a neutral location near where the suspect entered the wooded area and followed her into the woods. (Tr. pp. 191-192; pp. 207-208; p. 239). Shortly after Judy entered the wooded area, she indicated she had picked up a scent and began tracking the scent through the woods. (Tr. pp. 218-219; pp. 240-241). As Senior Agent Creswell followed Judy through the woods, he personally observed signs of environmental disturbances confirming a person had recently fled along the path Judy was tracking and eventually began observing footprints. (Tr. p. 219; p. 242; pp. 246-247). As they continued along the trail, Judy led Senior Agent Creswell to a location near Interstate 26 where the footprints the agent had observed converged with another set of footprints. (Tr. p. 222; pp. 243-246). Judy then led Senior Agent Creswell to a location along Interstate 26 directly across from where Appellant's car had been parked a short time earlier before she lost the suspect's scent.[2] (Tr. p. 212; p. 214; p. 222; pp. 248-249). However, by that time, Appellant's car was no longer present because someone had removed it from its position along the side of Interstate 26 when the officer who had been asked to maintain

[2] During trial, Senior Agent Creswell explained vehicles rapidly travelling along Interstate 26 would have dissipated the scent that had been left there by the suspect, which explained why Judy lost the trail at that location. (Tr. pp. 211-212; pp. 223-224; p. 247).

surveillance of the car failed to do so during the time period the tracking team was following the suspect's trial. (Tr. pp. 286-287).

Subsequently, on November 18, 2011, Officer Goggins drove to an address he found for Appellant in Barnwell, South Carolina, in an attempt to speak with him about the incident and see if his vehicle was at that address. (Tr. pp. 290-291). After arriving at Appellant's address, Officer Goggins was unable to locate Appellant. (Tr. p. 292). However, he found Appellant's vehicle parked there and verified it was the same vehicle that had been parked along Interstate 26 at the time of the incident. (Tr. pp. 297-298). Furthermore, the officer located Christopher Mixon at that location, and Mixon was taken into custody based on outstanding warrants for his arrest.[3] (Tr. p. 292). Thereafter, Officer Goggins spoke with Mixon, Mixon inculpated himself and Appellant in the burglary of the BP gas station and convenience store on the date of the incident, and Appellant was arrested for his crimes. (Tr. p. 181; p. 296). Appellant was then indicted for second-degree burglary, grand larceny, and conspiracy, and he proceeded to trial. (Tr. p. 13; Indictments).

During trial, Deputy Moye testified about his discovery of the break-in on the date of the incident, and Ramesh testified about the damage the burglars inflicted upon the store along with the value of the items taken during the burglary. (Tr. pp. 76-84; pp. 94-114). Furthermore, Mixon testified for the prosecution and recounted the details of his and Appellant's roles in the incident. (Tr. pp. 153-154). Specifically, Mixon stated Appellant drove the two of them to the BP gas station and convenience store located on Highway 72 on November 11, 2011, they dropped off a rock Appellant had brought with

[3] At the time of Mixon's arrest, an officer from the Barnwell Police Department was assisting Officer Goggins. (Tr. p. 292).

them at the store, and Appellant then drove them away from the store and parked his vehicle along the side of Interstate 26. (Tr. pp. 155-159). After that, Mixon indicated the two of them walked back to the store, Appellant smashed one of the store's windows with the rock, an alarm went off, and they climbed through the window and began loading the store's tobacco products into some trash bags they had brought along with them. (Tr. pp. 160-163; p. 165). Shortly after that, Mixon testified he saw a police officer arrive at the store, Appellant also saw the officer, and Appellant quickly fled back out of the broken window and away from the scene. (Tr. pp. 166-167). After Appellant fled, Mixon stated he ran across the street from the store, went into the woods, and began making his way back to Appellant's vehicle. (Tr. pp. 167-168). Roughly two hours later, Mixon testified he met back up with Appellant and the two of them fled from the area in Appellant's car. (Tr. pp. 169-170). Mixon stated he then received some money from Appellant for his participation in the break-in, returned home, and was arrested some time later. (Tr. pp. 170-171).

Following Mixon's testimony, the solicitor called Senior Agent Creswell to the witness stand, and the agent began testifying about his involvement in the investigation into the incident. (Tr. pp. 188-189). During his testimony, Senior Agent Creswell confirmed he had twenty-two years of experience working for SLED, had worked for the bloodhound tracking unit as a full-time member for three years, had four-and-a-half years of experience working in the tracking unit in total, and had two years of tracking experience at the time of the incident. (Tr. pp. 188-189; p. 193). He further stated he used Judy, who was a mixed-breed hound dog, in the investigation into the break-in and indicated Judy was the "number one dog" at SLED and was "exceptional" at tracking. (Tr. pp. 190-191). In explaining Judy's skill in tracking, he noted hounds are known to

have acute senses of smell and are able to track raft, which he explained was a term for the skin cells that naturally fall off of individuals, along with ground scents. (Tr. p. 191). He testified Judy's tracking abilities were highly acute in order for her to become the "number one dog" at SLED, and he noted Judy, who had eight or nine years of tracking experience at the time of the incident, had been with SLED since she came there as a puppy in roughly 2002 or 2003 to begin her training in tracking. (Tr. p. 192). Furthermore, regarding his own relevant training, Senior Agent Creswell stated he was trained by experienced canine handlers at SLED after joining the tracking unit, worked with tracking dogs every day during the time period he was a full-time member of the unit, participated in year-round training while a member of the unit, and went on approximately fifty tracking excursions with Judy during that time. (Tr. pp. 193-194).

Once Senior Agent Creswell had testified about the training and experience he and Judy had received, the solicitor moved for the agent to be qualified as an expert in canine handling. (Tr. p. 194). Defense counsel then objected, arguing it was unnecessary for Senior Agent Creswell to be qualified as an expert in order for him to testify about where he followed Judy to on the date of the incident. (Tr. p. 194). Thereafter, the trial judge excused the jury from the courtroom, the solicitor discussed the matter with defense counsel, and defense counsel conceded Senior Agent Creswell did, in fact, need to be qualified as an expert in order to testify in Appellant's case. (Tr. pp. 195-196). Defense counsel then questioned Senior Agent Creswell outside of the presence of the juror and elicited testimony establishing the agent had no "recognized" training in dog tracking, had not written any publications about dog tracking, and did not read any periodicals regarding dog tracking. (Tr. pp. 196-197). Following that testimony, defense counsel argued Senior Agent Creswell should not be qualified as an expert in light of the

fact he did not have any "recognized" training in or read any publications on dog tracking while contending his work in dog tracking did not render him an expert on that subject. (Tr. p. 198). In rebuttal, the solicitor argued Senior Agent Creswell was qualified as an expert based on his knowledge, skill, training, and experience and noted the agent had two years of dog tracking experience at the time of the incident, had trained in dog tracking on a daily basis, and had gone on fifty tracking excursions with Judy. (Tr. p. 199).

After considering the arguments of counsel, the trial judge indicated he believed additional questioning based on the Supreme Court's decision in State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009), was necessary before he rendered his decision on the admissibility of the testimony. (Tr. p. 201). Thereafter, the trial judge, defense counsel, and the solicitor elicited further testimony from Senior Agent Creswell. (Tr. pp. 201-232). During that testimony, the agent indicated Appellant's case was the first time he had been offered as an expert in canine handling, noted both bloodhounds and bluetick hounds have acute senses of smell for human scents, indicated Judy had always been accurate or reliable when he worked with her, and confirmed Judy was specifically trained in tracking human scents. (Tr. pp. 201-203; p. 207). He further conceded he was not personally aware of any cases where Judy's tracking work had resulted in a conviction. (Tr. pp. 203-205). However, he reaffirmed Judy was the "number one dog" at SLED before her retirement based on her success at tracking, noted success in tracking was not always measured by the apprehension of a suspect, and indicated Judy had successfully tracked a suspect in a drug case with such accuracy that she sat on top of the suspect while he was hiding underneath some pine straw at the end of the trail. (Tr. pp. 203-206). He further noted he was personally able to verify Judy's skill in tracking by

observing footprints and signs of environmental disturbances while following her along a trail. (Tr. pp. 206-207). Regarding his work with Judy on the date of the incident, Senior Agent Creswell indicated he deployed Judy just a few hours after the break-in, which he explained was within a reasonable time period for her to be able to track a human scent trail. (Tr. pp. 207-208; p. 211). Additionally, he noted they entered the wooded area at a neutral spot to ensure the trail had not been contaminated, Judy noticeably indicated she picked up a scent, and he observed noticeable signs of the suspect's flight as Judy led him through the woods. (Tr. pp. 217-220). Furthermore, he testified he believed Judy was following a "definite" trail on the date of the incident and was a reliable dog based on his training, experience, and prior work with her. (Tr. pp. 224-225).

At the conclusion of that testimony, the trial judge ruled Senior Agent Creswell met the requirements for qualification as an expert in canine handling and his expert testimony satisfied all of the requirements for admissibility. (Tr. pp. 233-234). However, the trial judge indicated "in some respects" he believed the decision to be a "close call" while noting there were some areas where defense counsel might be able to attack the agent's testimony. (Tr. p. 233). The jury then returned to the courtroom, Senior Agent Creswell resumed his testimony, and the agent informed the jury of how Judy picked up a scent trail near where the burglary suspect had been observed entering the woods after the incident and followed that trail to a location along Interstate 26. (Tr. pp. 236-249).

Thereafter, Officer Goggins testified about his investigation into the burglary, which led to Appellant's arrest. (Tr. pp. 261-298). During his testimony, Officer Goggins confirmed to the jury Appellant's car was parked along Interstate 26 at the time of the incident and its engine was still warm at that time. (Tr. pp. 264-268). Additionally, the officer stated someone removed the car from the area during the search

for the burglars at a time when no officers were watching the vehicle, and he noted the SLED tracking team tracked the suspect who fled through the woods to a location in close proximity to where Appellant's car had been parked. (Tr. pp. 268-269; pp. 286-288). Furthermore, Officer Goggins noted Appellant's vehicle was later found at Appellant's home in Barnwell just a few days after the incident in the same area where he located Appellant's accomplice in the crimes. (Tr. pp. 288-293; pp. 297-298).

Subsequently, at the conclusion of trial, the jury convicted Appellant of all of the indicted offenses.[4] (Tr. p. 371). The trial judge then sentenced Appellant to concurrent terms of imprisonment of fifteen years for second-degree burglary, five years for conspiracy, and five years for grand larceny. (Tr. p. 402).

[4] After the verdict was announced on the afternoon of the third day of the proceedings, defense counsel informed the trial judge she had been advised earlier that morning by Appellant one of the jurors had discussed Appellant's case with the juror's incarcerated boyfriend on the preceding night. (Tr. pp. 374-375). Defense counsel further asserted Appellant had provided her with additional information about the juror after the verdict had been announced, and Appellant was permitted to provide that additional information to the trial judge. (Tr. pp. 375-376). Specifically, Appellant informed the trial judge he had given the names of the jurors who had been selected to serve on the jury in his case to other prisoners who were being detained with him at the jail on the preceding night and a prisoner called "Cheese" indicated he knew one of the jurors. (Tr. p. 376; pp. 386-387). Appellant stated he then arranged for "Cheese" to speak to the juror using the assistance of his wife, and "Cheese" learned from the juror she and the other jurors allegedly wanted Appellant's trial to be over. (Tr. pp. 376-377). Appellant further confirmed he brought the matter to defense counsel's attention that morning before the trial resumed. (Tr. p. 383). Following the statements of defense counsel and Appellant, the trial judge questioned the juror identified by Appellant as having spoken with "Cheese." (Tr. pp. 385-386). The juror confirmed she spoke with "Cheese" on the preceding night and indicated "Cheese" questioned her after advising her Appellant had been asking about her at the jail. (Tr. pp. 386-387). The juror additionally stated she told "Cheese" she was tired of the jury process but otherwise informed him she could not tell him anything about the case. (Tr. pp. 386-387). Furthermore, the juror confirmed the call from "Cheese" had no impact on her decision in Appellant's case and was not mentioned to any of the other jurors. (Tr. p. 388). Following the juror's remarks, defense counsel moved for a mistrial on the basis of alleged jury misconduct that she did not to report to the trial judge or the solicitor until after the verdict and that was initiated by her own client in an attempt to influence a seated and sworn juror selected for service in his case. (Tr. p. 390; p. 395). However, the trial judge denied the mistrial motion. (Tr. p. 396).

ARGUMENT

The trial judge did not abuse his broad discretion by qualifying a witness as an expert in canine handling and by permitting the witness to testify about using a tracking dog to follow the trail of one of the burglars involved in the break-in because the evidence and testimony presented during trial established the witness' testimony could assist the jury in understanding the issues raised in Appellant's case, the witness was personally qualified to testify as an expert, and the subject matter of the witness' testimony met a threshold level of reliability in light of the witness' expert qualifications, the acuteness of the tracking dog's sense of smell, the reliability of the tracking dog, the reasonableness of the time period during which the tracking dog was placed on the suspect's trail, and the lack of contamination to the suspect's trail before the dog began tracking the suspect.

Appellant contends the trial judge erred by admitting Senior Agent Creswell's expert testimony regarding dog tracking. In support of that contention, Appellant maintains the testimony was improperly admitted because the State allegedly failed to establish a sufficient foundation for the admission of the evidence by failing to show Senior Agent Creswell was personally qualified as an expert and his dog had been found to be reliable. To the contrary, Senior Agent Creswell's testimony regarding dog tracking was properly admitted during trial because it satisfied all of the requirements for the admission of expert testimony. Specifically, the evidence and testimony presented during trial established the agent's testimony could assist the jury in understanding and resolving the issues raised in Appellant's case. Likewise, the evidence and testimony presented during trial demonstrated Senior Agent Creswell personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert in canine handling. Furthermore, the evidence and testimony presented during trial established Senior Agent Creswell's testimony was reliable in light of his own expert qualifications, the acuteness of his tracking dog's sense of smell, the proven reliability of his tracking dog, the reasonableness of the time period during which his tracking dog was placed on the suspect's trail, and the lack of contamination to the suspect's trail before the dog

began tracking the suspect. As a result, Senior Agent Creswell's expert testimony was admissible, and the trial judge did not abuse his broad discretion by qualifying the agent as an expert and permitting him to present his expert testimony regarding dog tracking to the jury. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Likewise, a decision as to whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent a prejudicial abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); see State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State

v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.").

ANALYSIS

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-446, 699 S.E.2d at 175. "The qualification of a witness as an expert falls largely within the discretion of the trial judge." State v. Myers, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

> 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; see also State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001) (explaining an expert's testimony is admissible where "it is relevant and based on some factual predicate in the record"). Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required

knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

A witness can properly be qualified as an expert where "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, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness' knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467; see State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996) ("The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony."). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the jury in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). Significantly, "[t]he test for qualification [as an expert] is a relative one that is dependent on the particular witness's reference to the subject[,]" and "defects in the amount and quality of education and experience go to the weight of the

expert's testimony and not its admissibility." Lee v. Suess, 318 S.C. 283, 285-286, 457 S.E.2d 344, 346 (1995).

In addition to ensuring the expert is qualified, the trial judge must also ensure the testimony "meets a threshold level of reliability, regardless of whether it is scientific or nonscientific." State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See White, 382 S.C. at 274, 676 S.E.2d at 688 ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony."). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

Upon consideration of those requirements for the admissibility of expert testimony, South Carolina courts have historically found expert testimony regarding dog tracking testimony to be proper and admissible during criminal trials. See State v. Johnson, 306 S.C. 119, 127, 410 S.E.2d 547, 552 (1991) ("Testimony of a dog handler based upon his observation of a tracking dog may be properly admitted into evidence."); State v. Childs, 299 S.C. 471, 476-477, 385 S.E.2d 839, 842-843 (1989) (holding the trial judge properly admitted the expert testimony of a bloodhound handler in regard to his

work with bloodhounds during the investigation into Childs' crimes). Likewise, "an overwhelming number" of courts from other jurisdictions in the United States permit the introduction of such expert testimony. State v. White, 372 S.C. 364, 378, 642 S.E.2d 607, 614 (Ct. App. 2007). Significantly, in South Carolina, expert testimony regarding dog tracking is admissible if the following foundational factors are established: "(1) the evidence shows the dog handler satisfies the qualifications of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated." White, 382 S.C. at 272, 676 S.E.2d at 687.

In the case sub judice, the evidence and testimony presented during trial established: (1) Senior Agent Creswell's expert testimony regarding dog tracking could assist the jury in understanding and resolving the issues raised in Appellant's case; (2) Senior Agent Creswell had the requisite knowledge, skill, training, and experience to qualify as an expert; and (3) the subject matter of Senior Agent Creswell's testimony was reliable. See Martin, 391 S.C. at 513, 706 S.E.2d at 42 (instructing expert testimony is admissible where the trial judge finds: "(1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable"). Under those circumstances, the trial judge did not abuse his discretion by qualifying Senior Agent Creswell as an expert in Appellant's case and permitting him to testify before the jury about Judy's tracking of one of the burglars who committed the break-in at the BP gas station and convenience store on the date of the incident.

Initially, Senior Agent Creswell's expert testimony was necessary in Appellant's case to assist the jury in understanding how Judy was able to track the suspect who fled behind the store after the break-in because information about how a trained tracking dog follows a suspect's scent after a crime constituted a subject matter beyond the ordinary knowledge of the jurors. See Watson, 389 S.C. at 446, 699 S.E.2d at 175 ("[I]n executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury."). Therefore, the trial judge correctly determined it was necessary for Senior Agent Creswell to testify as an expert in order to explain how Judy tracked the suspect on the date of the incident.

Beyond the ability of the agent's testimony to assist the jury, Senior Agent Creswell was also personally qualified to offer an expert opinion in regard to canine handling and Judy's tracking of the suspect in Appellant's case based on his own knowledge, skill, training, and experience. See Henry, 329 S.C. at 278, 495 S.E.2d at 469 ("[T]he relevant inquiry concerning qualification of the proffered expert is whether the witness possesses the necessary skill, learning, education, training, knowledge, or experience to enable the witness to give opinion testimony."). Specifically, Senior Agent Creswell testified he had four-and-a-half years of experience in total working as a part of the SLED bloodhound tracking unit, was a full-time member of that unit for three years, and had two years of tracking experience at the time of the incident. Additionally, he indicated he personally received training from experienced dog handlers at SLED after joining the tracking unit and was involved in daily, year-round training in dog tracking while he was a member of the unit. See Martin, 391 S.C. at 513-514, 706 S.E.2d at 42-43

(finding no error in the qualification of a witness as an expert even though the witness' expertise was based in part on in-house training he had received through his employment at SLED). Furthermore, he indicated he personally went on approximately fifty tracking excursions with Judy, and he demonstrated his knowledge regarding tracking by explaining how a trained tracking dog is able to detect and follow the skin cells that fall off of an individual that is being tracked. Critically, Senior Agent Creswell's practical experience in tracking coupled with his training from other experienced dog handlers and his knowledge of the mechanics of how dogs are able to track scents demonstrated his expertise on the subject matter and enabled him to assist the jury with a matter beyond the knowledge of an ordinary layperson.[5] See Honea v. Prior, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988) ("A witness may be competent to testify as an expert

[5] In arguing Senior Agent Creswell was not personally qualified to testify as an expert on canine handling, Appellant points to the fact the experts in other dog tracking cases decided by appellate courts in South Carolina had more years of tracking experience than Senior Agent Creswell, had gone on more tracking excursions than the agent, and had been qualified as expert witnesses in the past. Importantly though, matching the exact qualifications of other previously-qualified experts is not a prerequisite to testifying as an expert in South Carolina, and the cases relied upon by Appellant for his contention in no way established a dog tracking witness can only be qualified as an expert if he or she meets or exceeds the qualifications of the witnesses found to be experts in those earlier cases. Cf. State v. Clute, 324 S.C. 584, 595-596, 480 S.E.2d 85, 91 (Ct. App. 1996) ("[Clute] claims the arresting officer should not have been qualified as an expert because he had not completed twenty hours of training in administering the HGN test and because he administered the HGN test improperly. Clute cites State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993), in support of these arguments. . . . In Sullivan, the Court held that HGN test results were admissible where the arresting officer had approximately twenty hours of training in administering the test. However, the Court **did not establish twenty hours as a threshold requirement for an officer to qualify as an expert** in administering the test." (emphasis added)), overruled on other grounds by State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). As a result, Senior Agent Creswell's knowledge, skill, training, and experience were sufficient to qualify him as an expert in canine handling despite the fact other witnesses who may be considered **more** qualified than him on that subject matter could have existed. See Henry, 329 S.C. at 273, 495 S.E.2d at 466 ("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."); cf. Myers, 301 S.C. at 255, 391 S.E.2d at 554 (holding the trial judge committed reversible error by **refusing** to qualify a witness as an expert in the field of blood spatter patterns and their interpretation due to the facts the witness had only attended a one week seminar on that subject and had never previously testified in court in regard to blood pattern interpretations); State v. Tillman, 304 S.C. 512, 519, 405 S.E.2d 607, 611 (Ct. App. 1991) (holding the trial judge properly qualified a witness as an expert in distinguishing tire patterns where the witness was the manager of a tire store, had been employed by a tire company for six years, had attended classes on recognizing tire patterns, and stated he could recognize different tire marks based on his training and experience).

although the witness acquired his or her knowledge t**hrough practical experience and not by scientific study, training, or research.**" (emphasis added)); see also Gadson v. Mikasa Corp., 368 S.C. 214, 228, 628 S.E.2d 262, 270 (Ct. App. 2006) ("An expert is not limited to any class of persons acting professionally. There is no exact requirement concerning how knowledge or skill must be acquired." (citations omitted)); cf. Peer, 320 S.C. at 554, 466 S.E.2d at 380 (finding no error in the trial judge's qualification of a witness as an expert in sound where the witness had over five years of law enforcement experience, was trained by **another** officer who was certified in the use of sound meter equipment, was capable of demonstrating how a sound level meter worked, and had handled approximately ten cases during the one-and-a-half years he had been conducting sound tests); State v. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991) (finding no abuse of discretion in the qualification of a witness as an expert on a "lane of impact" issue where the witness had twelve weeks of training that included some specific training on determining the point of impact in accidents, one week of road training with a municipal police force, and four to five months of experience as a state trooper). As a result, the trial judge properly found Senior Agent Creswell to be personally qualified as an expert in canine handling.

Finally, Senior Agent Creswell's testimony about Judy's tracking of the burglary suspect met the threshold level of reliability necessary for it to be admissible during Appellant's trial. Critically, looking to the relevant foundational factors established in Appellant's case, Senior Agent Creswell's testimony demonstrated he personally possessed the necessary qualifications to be considered an expert canine handler based on his own knowledge, skill, training, and experience. Cf. Henry, 329 S.C. at 277-278, 495 S.E.2d at 468-469 ("The challenge mounted by Henry blithely ignores the recognized

principle of law that a witness is competent as an expert provided the witness has acquired by reason of study or experience or both such knowledge and skill in a business, profession, or science that **she is better qualified than the jury** to form an opinion on the particular subject of testimony." (emphasis added)). Likewise, the testimony presented during trial established Judy was part bloodhound and part bluetick hound, which Senior Agent Creswell indicated were both breeds of dog characterized by an acute sense of smell. See Debruler v. Commonwealth, 231 S.W.3d 752, 758 (Ky. 2007) (recognizing some breeds of dogs, including bloodhounds, are commonly known to have remarkably acute senses of smell). Similarly, Senior Agent Creswell's testimony made clear Judy had received eight to nine years of training in tracking humans by the date of the incident and had been trained in tracking since she was a puppy. Additionally, the agent's testimony established Judy was reliable even though no evidence was presented establishing she had been certified in an area of tracking. Cf. State v. Morris, 376 S.C. 189, 204, 656 S.E.2d 359, 367 (2008) ("Despite Appellant's argument to the contrary, the status of [the witness's] law license is completely irrelevant to his qualification as an expert. The evidentiary rule governing the qualification of experts says nothing about professional licensing requirements, and a licensing requirement seems wholly incompatible with Rule 702's operational framework."). Specifically, Senior Agent Creswell confirmed Judy was the "number one dog" at SLED based on her proven reliability as a tracking dog, indicated he was able to personally verify Judy's reliability while she was tracking by observing environmental disturbances that confirmed an individual had recently used the trail Judy was leading him along, and noted Judy was so accurate she stopped directly on top of a suspect she was following on one occasion while the suspect was attempting to hide underneath some pine straw at the end of the

trail. Cf. Childs, 299 S.C. at 477, 385 S.E.2d at 843 (finding expert dog tracking testimony to be admissible where the witness testified he personally found the tracking dogs he used to be reliable). Finally, Senior Agent Creswell confirmed Judy was placed on the burglary suspect's trail less than three hours after the break-in, which he stated was a reasonable time period for Judy to be able to track the suspect's scent, and steps were taken to ensure the suspect's trail had not been contaminated before Judy began tracking. Cf. State v. Brown, 103 S.C. 437, 444, 88 S.E. 21, 23 (1916) (finding dog tracking testimony to be inadmissible because the dogs did not begin tracking until over fifteen hours after the crime, which was outside of the fifteen-hour time window in which the witness testified the dogs could reliably track a scent). Based on the establishment of those foundational factors, the trial judge properly found a sufficient threshold level of reliability had been established and correctly admitted Senior Agent Creswell's expert testimony. See White, 382 S.C. at 272, 676 S.E.2d at 687 ("[A] sufficient foundation for the admission of dog tracking evidence is established if (1) the evidence shows the dog handler satisfies the qualifications of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated.").

Because Senior Agent Creswell's testimony satisfied all of the requirements for the admission of expert testimony in South Carolina, his expert testimony on dog tracking could properly be introduced during trial, and Appellant could only properly challenge that testimony through cross-examination and by calling the jurors' attention to any defects or deficiencies he believed existed in regard to the knowledge, skill, training, or

experience of the agent or of Judy. See Wilson v. Rivers, 357 S.C. 447, 453, 593 S.E.2d 603, 605 (2004) ("Any defects in the amount of [an expert's] education and experience, if any, go to the weight of his testimony and not its admissibility."); see also Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 596 (1983) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."); see generally 31A Am. Jur. 2d Expert and Opinion Evidence § 90 ("Such matters as defects in an expert's education or experience, the lack of an expert's specialization or lack of specialized training, the degree of an expert's certainty as to his or her opinion, or the quality of the expert's conclusions go to the weight to be given expert opinion testimony. Furthermore, the mere fact that controversy, or even substantial controversy, surrounds an expert's conclusion or opinion goes to the weight to be given such testimony." (footnotes omitted)). Accordingly, the trial judge did not abuse his broad discretion by qualifying Senior Agent Creswell as an expert and permitting the agent to present his expert testimony to the jury, and his ruling was not arbitrary, unreasonable, or unfair.[6]

[6] Notwithstanding the fact the trial judge committed absolutely no error in admitting Senior Agent Creswell's expert testimony, any error that could have resulted from the admission of that testimony was entirely harmless in light of the other evidence and testimony presented during trial. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."); see also United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"). Critically, aside from Senior Agent Creswell's testimony, Officer Goggins testified without objection the SLED tracking team tracked the suspect through the woods and to a location near where Appellant's vehicle had been parked along Interstate 26. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."). Additionally, the evidence and testimony presented during trial other than the dog tracking evidence established Appellant's vehicle was parked along the interstate in close proximity to the scene of the break-in in the middle of the night with a warm engine and without any innocent reason for it to be there and was removed from its position along the interstate just a few hours after the crime at a time when the law enforcement officer who was supposed to be watched the vehicle failed to maintain his surveillance of it, and Appellant's accomplice testified before the jury and identified Appellant as the person who committed the break-in along with him. See State v. Tench, 353

See Fields, 363 S.C. at 26, 609 S.E.2d at 509 ("A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair."). Appellant's convictions should be affirmed.

S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt); see also State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("The jury had before it positive identifications of each of the defendants. Such identifications were not denied. It is academic that failure of the defendants to testify created no inference of guilt against them. They did not have the burden of proving anything. However, undisputed testimony is more conclusive than testimony which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence."). Furthermore, Senior Agent Creswell's testimony in no way directly established the identity of the person Judy was tracking after the break-in and, instead, only became probative of Appellant's guilt if the jurors believed the testimony indicating Appellant's car was parked along the interstate **and** Appellant was the one who parked the car there in order to participate in the burglary. See State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Accordingly, under those circumstances, any error in the admission of Senior Agent Creswell's testimony could not have impacted the verdict in Appellant's case and was harmless beyond a reasonable doubt. See Schneble v. Florida, 405 U.S. 427, 432 (1972) ("[U]nless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal is not required. In this case, we conclude that the 'minds of an average jury' would not have found the State's case significantly less persuasive had the testimony as to Snell's admission been excluded. The admission into evidence of these statements, therefore, was at most harmless error." (citation omitted)).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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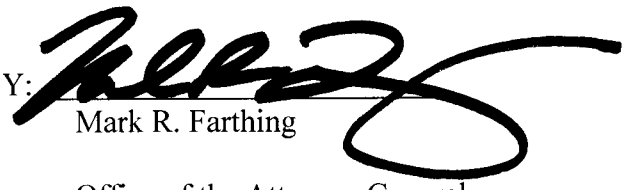
BY: 
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May 13, 2015

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2014-001340

THE STATE,

Respondent,

vs.

MAURICE ANTHONY ODOM,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served. This 13th day of May, 2015.

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May 13, 2015

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RE: State v. Maurice Anthony Odom – Appellate Case No. 2014-001340

Dear Ms. Caudy:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services