STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002445

THE STATE,

Respondent,

v.

PAULA REED ROSE,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's motion for a directed verdict because the evidence and testimony presented during Appellant's trial, when viewed in a light most favorable to the State as required, could induce a reasonable juror to find Appellant guilty of arson in the third degree, burning personal property to defraud an insurer, making a false insurance claim to obtain benefits for fire or explosion loss, and filing a false police report.

II.

The trial judge did not abuse his broad discretion by qualifying Investigator Cannon as an expert in fire scene investigation where he personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert.

III.

Appellant's argument concerning the reliability of the accelerant detection dog's alert on Appellant's slippers is not preserved for appellate review. Error preservation concerns notwithstanding, the trial judge properly admitted the evidence of the alert where the State presented sufficient evidence that the accelerant detection dog's alert to the presence of accelerant on Appellant's shoes was reliable and Investigator Gonzalez was eminently qualified and personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert in the handling of accelerant detection canines. Furthermore, any alleged error was harmless, as the evidence of the accelerant detection dog's alert to the presence of accelerants was cumulative to laboratory testing results showing the presence of accelerants on Appellant's slippers.

STATEMENT OF THE CASE

Appellant was indicted at the February 2013 term of the Grand Jury for Greenville County for making a false insurance claim to obtain benefits for fire or explosion loss (2013-GS-23-000678), burning personal property to defraud an insurer (2013-GS-23-000679), filing a false police report (2013-GS-23-000680), and arson in the third degree (2013-GS-23-000681). Appellant proceeded to a trial by jury from May 5-8, 2014, in Greenville, South Carolina. At the conclusion of trial, the jury found Appellant guilty as indicted. She was sentenced by the Honorable R. Lawton McIntosh to imprisonment for a term of one year suspended on the service of five years of probation for making a false insurance claim to obtain benefits for fire or explosion loss, one year of home incarceration with five years of probation for burning personal property to defraud an insurer, imprisonment for a term of one year suspended on the service of five years of probation for filing a false police report, imprisonment for a term of ten years suspended on the service of five years of home incarceration, and five years of probation for arson in the third degree, with all sentences running concurrently. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On July 27, 2012, at around 8:00 A.M., Appellant called 911 asserting there were three men in her garage trying to break into a safe. R. p. 314, R. p. * (911 Tape). During the call, Appellant calmly told the operator there were three men in her garage threatening her and wanting her to open the safe. R. p. * (911 Tape). Appellant said she locked the door and retreated to the inside of the home. R. p. * (911 Tape). Later in the 911 call, Appellant exclaimed that the back porch of the home was on fire. R. p. * (911 Tape). In the 911 call, Appellant makes no mention of the front porch being on fire, despite the fact that she exited the home at some point and was in front of the house. R. p. * (911 Tape).

Benjamin Temple spotted the house fire at Appellant's house as he was on his way to work. R. p. 271. Temple stated it was sometime between 8:00 A.M. and 8:30 A.M. when he observed an excessive amount of smoke. R. pp. 271-72. Temple pulled into the driveway of the home to ascertain what was happening. R. p. 272. Upon confirming the house was on fire, Temple returned to his car and called 911; the dispatcher informed him emergency responders were on their way. R. p. 272. Temple testified a woman emerged from the house and told him her dog was inside. R. p. 272. Temple asked the woman whether there were any people in the home and she replied no one was inside. R. p. 272. Temple testified the woman never mentioned anything regarding three men inside the house. R. p. 273. Temple left the home shortly after firefighters arrived. R. p. 273.

Lieutenant Douglas Proffitt of the Wade Hampton Fire Department was in the first fire engine to arrive at Appellant's house. R. p. 288. At the time of his arrival, there were no active fires at the front of the house; however, the back porch of the home was ablaze. R. p. 291. After five to six minutes, firefighters were able to get the fire under control. R. pp. 292-93. Firefighters

remained on the scene for approximately two hours. R. p. 281. Because there seemed to be an ongoing investigation by the Greenville County Sheriff's Department, the firefighters left the property once the fire was extinguished. R. p. 282.

Investigator Randy Morgan was tasked with investigating the burglary aspect of the crime while Investigator Ben Cannon and Investigator Charles Gonzalez investigated the arson portion of the crime. R. p. 368.

Investigator Morgan's Initial Investigation

Investigator Morgan, a property crimes investigator with the Greenville County Sheriff's Department, responded to the purported burglary at Appellant's home on July 27, 2012. R. pp. 353-54. Upon arriving at the scene, Investigator Morgan made contact with Appellant who told him her dog started barking so she went to the garage side door where she observed three people inside her garage. Appellant told Investigator Morgan two of the men had on ski masks and were wearing all black clothing and the third man had a "shiny bald head" and was moving the dial on a gun safe in the garage. R. p. 355. Appellant confirmed nothing was stolen from the gun safe. R. p. 356. Investigator Morgan called a forensics team to the scene and asked them to examine the gun safe for evidence. R. p. 361.

Investigator Morgan then asked Appellant to give a victim statement concerning the incident. R. p. 361. Appellant told Investigator Morgan she wanted to "freshen up" prior to meeting with him. R. p. 361. At trial, Investigator Morgan emphasized Appellant was not a suspect at the time. R. p. 362. Appellant later came to Investigator Morgan's office with her husband, Homer Rose, and her assistant, Ellie Hansen, sometime around two or three P.M. R. p. 362. Investigator Morgan testified Appellant asserted:

> Uh, uh, basically she stated around 8 A.M. that mornin', uh, she was in bed, her dog was barkin', her dog Bear was barkin' at the door, uh, apparently he has

> several different types of barks, uh, this certain bark that he was displaying was the one that when somebody shows up. Uh, she started walkin', uh, she could see through the window, she saw three people standin' inside her garage, uh, all three people had on black ski mask, uh, all black clothing, the third person, uh, was standin' in fronta the gun safe, he was a white male, had a shiny shaved head, uh, I then looked through the door, the guy closest to me stated either, she's here or someone's here, uh, said, I gra - - she then grabbed the dog and retreated to her bedroom. . . . Uh, said she then went and got a shotgun, uh, went to the head of her bed then she got a handgun. Uh, she picked up the house phone, attempted to call 911 for help, uh, the phone had no dial tone, uh, then she picked up her cell phone, she called 911.

R. pp. 364-65. Investigator Morgan testified he has been an investigator in property crimes for six and a half years and regularly investigated property crimes. R. p. 365. Investigator Morgan frequently speaks with the victims of these burglaries and described their demeanor as, "Uh, normally they're very shaken, uh, very upset. Uh, that the the one word that comes all the time is 'violated,' somebody has entered their space, somethin' that's sacred to them and somebody has violated that space." R. p. 367. Investigator Morgan stated Appellant, on the other hand, showed no emotion whatsoever when talking about the alleged attempted burglary and the burning of her home. R. p. 368.

Investigator Cannon and Investigator Gonzalez's Initial Investigation

Investigator Cannon is employed with the Greenville County Sheriff's Department as an arson investigator. R. p. 789. On July 27, 2012, Investigator Cannon was contacted about a burglary and arson at Appellant's home. R. p. 804. Investigator Cannon arrived on the scene around 9:30 A.M. R. p. 805. After inspecting the exterior of the home upon his arrival, he noted the vast majority of fire damage was on the home's back deck that connected to a sunroom. R. p. 808. After conducting his search of the exterior of the home, he made contact with Appellant. R. p. 809. Appellant was wearing a black shirt, open-toed shoes, and blue jeans. R. p. 810. Investigator Cannon testified that in his investigations of residential fires he often speaks with

the victims and has the ability to observe their demeanor. R. p. 810. Investigator Cannon stated, "They're usually fr - - they're they're usually frantic, uh, you know, not very composed. . . . and they're usually just just very distraught, uh, very frantic, basically." R. p. 811. In comparison, Investigator Cannon found Appellant to be relatively calm and thought it notable she was answering questions quickly and without hesitation. R. p. 811.

In examining the exterior of the house, Investigator Cannon smelled the odor of gasoline on the front porch and kerosene or a diesel-type fuel on the back porch. R. p. 812. Investigator Cannon noticed a red gas can on the front porch and a yellow gas can on the back porch. R. pp. 812-13. Investigator Cannon subsequently called Investigator Charles Gonzalez and asked him to bring his canine, Misty, to the location. R. p. 812. Misty is a trained accelerant detection dog. R. p. 478. Misty alerted to the presence of accelerants on both the front and back porches. R. p. 812, R. p. 816. Investigator Cannon found the origin and cause of the fire was from ignitable liquid being poured on readily available combustible material which was ignited by an open flame produced by a human element. R. p. 814. Investigator Cannon explained that by stating a "human element produced an open flame," he meant someone placed an open flame of some kind to ignite the gasoline or other ignitable liquid. R. p. 814. Investigator Cannon determined the origin and cause of the fire on the back porch was the same as the fire on the front porch. R. p. 816. Investigator Cannon took samples from the front porch as well as the back porch for further testing. R. p. 813, R. pp. 816-17.

After collecting evidence and concluding their initial investigation at Appellant's home, Investigators Cannon and Gonzalez met with Investigator Morgan and compared notes about the case. R. p. 819. Investigator Morgan told Investigators Cannon and Gonzalez about Appellant's calm demeanor during the interview and that Appellant only became passionate when discussing

a prior case in another county[1] and a book that she was writing about that case. R. p. 819. The investigators also discussed that the damage to the gun safe appeared to be superficial. R. p. 819. Investigators also found it strange that the alleged burglars did not set a concealment fire. R. pp. 819-20. Investigator Cannon explained that normally when a fire is set to conceal a crime, the fire is set in the specific location the suspects committed the crime in order to destroy potentially incriminating evidence. R. pp. 819-20, R. p. 833. Investigator Morgan noted nothing in the garage was set on fire, despite the presence of flammable materials. R. p. 370. Investigators Cannon, Gonzalez, and Morgan then decided to revisit Appellant's home for further investigation. R. p. 820.

Investigators' Second Search of Appellant's Home

Prior to returning to the scene, Investigator Cannon contacted Homer Rose and advised him they wanted to conduct a follow-up investigation at the residence. R. p. 820. Homer replied that Servpro was on the scene; however, he would have them stop until the investigation was concluded. R. p. 820. When the investigators returned to Appellant's residence, Homer was sitting in the garage in a folding chair. R. p. 498. After the investigators explained they wanted to conduct a follow-up investigation to ensure they did not miss any evidence, Homer signed a consent to search form. R. p. 498. Investigator Gonzalez noted that, at the time of the investigators' arrival, a Servpro employee was in the garage and did not enter the house or do any type of work while the investigators were there. R. p. 499. Investigator Cannon also noted it

[1] In his notes from his initial interview with Appellant, Investigator Morgan noted, "Victim mentioned during the interview that she had a criminal history because she had been arrested Oconee County several years ago but she fought the charges in court and was found not guilty." R. pp. 405-06. Appellant stated pre-trial she sued Oconee County under 42 U.S.C. §1983 and settled the case for $300,000. R. pp. 198-99. Investigator Morgan also noted during his interview with Appellant, "Victim then related that the Oconee Sheriff's Office and SLED had framed her." R. p. 407. Investigator Morgan further noted, "Victim also related she'd written a book about the ordeal and they did not want it published." R. pp. 407-08.

did not appear Servpro had begun the cleaning process when the investigators returned to the home. R. p. 821.

Upon closer examination of the safe, Investigator Cannon noticed a dozen or so superficial marks on the front of the gun safe in the garage.[2] R. p. 822. Investigator Cannon noted the marks on the safe were not deep and, "it just appeared that the paint had just been chipped away at the safe, it didn't really have a, any kind of sink marks for somebody to really put any power behind it tryin' to get into it." R. p. 822. After photographing the marks, the investigators began looking around the garage for tools that could have made the marks on the safe. R. p. 823. The investigators subsequently found a small hatchet on a shelf in the corner of the garage.[3] R. p. 823. The hatchet had burgundy paint chips on it —the same color as the gun safe. R. p. 824.

Investigator Gonzalez took Misty inside the home to search for the presence of ignitable liquids. R. p. 499. Investigator Morgan noted he entered the home through the garage and Homer Rose was in a position to see him entering the home with Misty. R. pp. 500-01. Misty is trained to "alert" to the presence of sixteen different ignitable liquids. R. p. 478-79. Investigator Gonzalez explained:

> Uh, once she finds the the odor that she is trained to find she will either lay down or sit down. She will pinpoint with her nose through, uh, her respirations and her breathing will change and she will actually pinpoint the spot to where the odor's at then she'll, at that point she'll lay down or sit down.

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[2] William Brooks is the owner of Brooks Reports, a private investigation company that specializes in fire origin investigations. Brooks contracts with State Farm and was called to Appellant's home to investigate. R. pp. 756-57. Brooks also described the marks on the safe as "superficial" and noted "it wasn't a serious attempt to enter the safe." R. p. 764. Brooks later attempted to get more information from the Greenville County Sheriff's Office but was denied because law enforcement agencies do not regularly share information regarding an ongoing investigation. R. p. 764.

[3] The shelf where the hatchet was found also contained a number of bottles and paper towels. Interestingly, none of the items around the hatchet were disturbed. R. p. 823.

R. p. 481. Misty subsequently alerted to a pair of "brown leather like moccasin type of like bedroom shoes." R. p. 502. Each slipper was subsequently placed in an empty gallon paint can.[4] R. p. 507. Investigator Gonzalez explained the slippers were placed in separate cans to avoid cross-contamination. R. p. 507. He testified the master bedroom was the only place in the house where Misty alerted. R. p. 508.

Once the investigators exited the home, Appellant and Ellie Hansen arrived. R. p. 508. Investigator Morgan asked to test the shoes Appellant was wearing that morning. R. p. 509. Appellant was wearing open-toed shoes that she removed and allowed Misty to check. R. p. 509. Misty also checked another pair of Croc-type shoes that were in the driveway. R. p. 509. Misty did not alert on either pair of the shoes. R. p. 509.

The investigators next sought to obtain Appellant's clothes she was wearing during the fire. R. p. 509. Appellant told the investigators the clothes were at Hansen's apartment. R. p. 510. She subsequently led them to Hansen's Apartment. R. p. 510.

Search of Ellie Hansen's Apartment

Investigator Gonzalez testified Appellant's demeanor completely changed when they arrived at Hansen's apartment. R. p. 511.[5] Appellant became very loud and was screaming about the investigators going into the apartment to get the clothes. R. p. 511. When Homer and Investigator Cannon arrived moments later, the investigators explained they just wanted to get Appellant's clothes from Hansen's apartment. R. p. 512. Appellant then started screaming again and told Hansen, "They're gonna go through your whole apartment, they're gonna, uh, search your room for your sex toys and your dildos, that that's all they wanna do is to go into your

[4] Investigators routinely use paint cans to collect fire debris for testing. R. p. 507.
[5] Investigator Cannon described Appellant as a totally different person when they arrived at Hansen's apartment. R. p. 828. Investigator Cannon stated, "She was screamin', yellin', uh ,and on the, she was on the phone and from what I've learned, uh, it was her attorney she was on the phone with." R. p. 828.

apartment for. . . ." R. pp. 512-13. After assuring Hansen they only wanted to retrieve Appellant's clothes from her apartment, Hansen consented to the search of her apartment. R. p. 513. They located the black shirt and blue jeans Appellant was wearing during the fire next to the kitchen counter. R. p. 514. The articles of clothing were subsequently placed in separate gallon paint cans. R. p. 514.

Forensic Examination of Collected Evidence by SLED

Agent Megan Fletcher is a forensic scientist at the South Carolina Law Enforcement Division. R. p. 698. In Appellant's case, Agent Fletcher examined four cans containing various items of fire debris. R. p. 707. Item 1 was a sample of charred wood and yard debris, Item 2 was another sample of charred wood and fire debris, Item 3 was a sample of charred wood, Item 4 was a sample of charred wood, Item 5 was an unknown dark red metallic paint chip from the head of a hatchet, Item 6 was a dark red metallic paint chip from a safe, Item 7 was a gallon can containing one tan slipper, Item 8 was a gallon can containing blue jean material, Item 9 was a gallon can containing black cloth material, and Item 10 was a gallon can containing the other tan slipper. R. p. 707.

In testing Items 5 and 6, Agent Fletcher subjected the paint chips to a chemical and elemental analysis. Agent Fletcher concluded the paint chips from the safe and the paint chips found on the head of the hatchet were physically and chemically identical. R. p. 711. After comparing the paint chips, Agent Fletcher checked the other items for the presence of ignitable liquids. R. p. 712. Items 1 and 2 both tested positive for a mixture containing a heavy petroleum distillate and a heavy aromatic. R. p. 712. Examples of heavy petroleum distillates include kerosene, diesel fuel, jet fuel, and some charcoal starters. Examples of heavy aromatics include insecticides and some industrial cleaning solvents. R. p. 712. Items 3 and 4 both tested positive

for gasoline. R. p. 713. This includes all brands of gasoline and gasohol. R. p. 713. Item 7 tested positive for a mixture containing toluene and a medium petroleum distillate. R. p. 714. Examples of medium petroleum distillates are some charcoal starters, some paint thinners, and some dry cleaning solvents. R. p. 714. Items 8 and 9 tested positive for a mixture containing gasoline and a medium petroleum distillate. R. p. 715. Finally, Item 10 tested positive for a mixture containing gasoline and a medium petroleum distillate. R. p. 714.

As to Appellant's shoes, Agent Fletcher specified that for her to determine whether an ignitable liquid was present, a liquid would have to be deposited on the items. R. p. 714. Agent Fletcher elaborated that the ignitable liquids could not have been deposited in a gaseous form. R. p. 716. It is impossible for smoke or soot to deposit ignitable liquids on clothing. R. p. 717. Agent Fletcher testified the defense's theory that the ignitable liquids found on the articles of clothing were a result of walking through the smoke was not possible. R. p. 716. Agent Fletcher noted that the ignitable liquids deposited on the shoes vaporize quickly and would only last on the shoes for a few days. R. pp. 714-15. Investigator Cannon received the testing results from SLED on August 13, 2012. R. p. 830.

Investigator Cannon's Analysis of Appellant's 911 Call

Investigator Cannon's next step in the investigation was to listen to the tape of Appellant's 911 call to see if the information in the recording matched her later statements to Investigator Morgan. R. p. 829. Investigator Cannon noticed in the beginning of the 911 call, "She said there were three men threatening her trying to get her to open the safe, uh, and what that means to me is someone is actually threaten (sic) me tryin' to get me to open the safe, exactly what it said, uh, and that's that's mentioned nowhere any any statements that I've seen

about this case." R. pp. 829-30. Investigator Cannon also thought it was odd Appellant made no mention of the front porch being on fire during the 911 call. R. p. 830.

Appellant's Visit to the Wade Hampton Fire Department

Brandon Barwick is employed with the Wade Hampton Fire Department. R. p. 447. In September of 2012, Appellant went by the fire department and asked whether the firefighters knew who she was. R. p. 615. Appellant then asked whether they kept the burn records for the property. R. p. 615. After being told the Forestry Commission kept the records, Appellant mentioned Misty's alerts on her slippers. R. pp. 615-16. Appellant told Barwick she wanted to show that she had been burning items in the past while wearing the slippers. R. p. 616.

State Farm Policy Payments

Nicholas Gregory works for State Farm Insurance as a fire loss representative. R. p. 672. Homer was the named insured on the insurance policy on the home. R. p. 673. In August of 2012, Appellant and Homer received an advance payment of $5,000. In late August, State Farm began paying for Appellant and Homer's living expenses. R. p. 680. The total payments made by State Farm for structural damage to the home totaled $238,000. R. p. 681. State Farm also made payments in the amount of $55,000 for contents of the home damaged by the fire and $16,000 for additional living expenses.

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a directed verdict because the evidence and testimony presented during Appellant's trial, when viewed in a light most favorable to the State as required, could induce a reasonable juror to find Appellant guilty of arson in the third degree, burning personal property to defraud an insurer, making a false insurance claim to obtain benefits for fire or explosion loss, and filing a false police report.

Relevant Facts

At the conclusion of the State's evidence, Defense Counsel moved for a directed verdict, asserting:

> This point, uh, close a State's case and, uh, even in the light most favorable to the State, uh, insufficient evident [sic] exists in this case to proceed at this point. Uh, how how things have gone up we don't think there's any substantial circumstantial evidence, uh, that would allow this case to go to a jury and, uh, from what we've had testimony in this case, especially the DNA evidence, truly we we submit the and in totality of the evidence that's out before you a jury would merely be speculating as to the accused guilt, uh, and that's what the evidence, the evidence in this case only is sufficient to raise a mere suspicion of guilt, we'd ask for a directed verdict.

R. p. 913. The trial judge subsequently denied the motion with respect to all indictments in the case. R. p. 926.

Discussion

Appellant asserts the trial judge erred in refusing to direct a verdict of acquittal on all of Appellant's charges. Specifically, Appellant contends, "the State's circumstantial evidence that Appellant started the fire and then lied about the attempted burglary never rose above a vague suspicion of Appellant's guilt, not amounting to proof." Br. of App. p. 23. In support of this contention, Appellant cites a number of perceived flaws in the State's case and the investigation of Appellant. These arguments lack merit. Essentially, Appellant implores this Court to weigh

the evidence and consider alternative hypotheses counter to the substantial circumstantial evidence presented by the State at trial. This Court should affirm the trial judge's ruling because the evidence and testimony presented during Appellant's trial was sufficient to establish Appellant's guilt for all elements of the charged offenses.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). The United States Supreme Court has noted:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts**.

Jackson v. Virginia, 443 U.S. 307, 319 (1979) (second emphasis added) *quoted with approval in* State v. Pearson, 415 S.C. 463, 471 n.2, 783 S.E.2d 802, 806 n.2 (2016).

If there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford v. United

States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

In Bennett, 415 S.C. 232, 781 S.E.2d 352, the South Carolina Supreme Court considered a case where the State contended this Court erred in reversing the trial judge's denial of directed verdict by weighing the evidence and considering alternative hypotheses. In examining the decision of this Court, the Supreme Court concluded this Court erroneously weighed the evidence and reversed Bennett's conviction based on its belief that there was a plausible alternative theory inconsistent with Bennett's guilt. Id. at 236. The Supreme Court clarified that analysis was, "contrary to our jurisprudence and misapprehends the court's role in making this determination." Id. In reversing this Court, the Supreme Court concluded that, in examining the evidence in the light most favorable to the State, the evidence, "could induce a reasonable juror to find Bennett guilty." Id. at 237.

In the current case, Appellant urges this Court to weigh the evidence and consider her alternative hypotheses in order to find the State's evidence insufficient. However, as discussed in Bennett, there is no requirement that the State present evidence sufficient to exclude every other hypotheses of Appellant's guilt. The evidence presented at Appellant's trial was sufficient to induce a reasonable juror to find Appellant guilty.

Viewing the evidence in the light most favorable to the State, the following substantial circumstantial evidence of Appellant's guilt of the offenses was presented: (1) Appellant's home suffered substantial damage caused by fires set on the front and back porch; (2) Appellant exhibited a strangely calm demeanor when calling 911 to report the house fire; (3) There were

inconsistencies between Appellant's 911 call where she said the purported robbers threatened her and later statements made to investigators; (4) Investigator Cannon testified about Appellant's eerily calm demeanor at the scene of the fire; (5) Investigator Morgan testified about Appellant's curiously placid demeanor during his interview with her, which he deemed suspicious in light of his training and experience; (6) The suspiciously superficial marks on the gun safe the purported burglars were trying to break into and the locating of a hatchet placed carefully on a shelf in the garage. Laboratory testing confirmed paint chips found on the hatchet matched samples from the safe; (7) Misty "alerted" on Appellant's shoes and subsequent laboratory testing showed the presence of a medium petroleum distillate and gasoline[6]; (8) Appellant was suddenly apoplectic when investigators sought to collect her clothing from Hansen's Apartment; (9) Testing of Appellant's clothing revealed the presence of a medium petroleum distillate and gasoline; (10) Appellant visited the Wade Hampton Fire Department to seek burn records to explain the presence of the ignitable liquids on her shoes (a scientific impossibility according to Agent Fletcher); (11) Appellant and Homer Rose received $309,000 in insurance benefits in State Farm as the result of the fire.

Viewing all of this evidence together with the natural and logical inferences to be drawn from it, the jury could rationally conclude Appellant was guilty of each element of the four indicted offenses. The theory of guilt presented by the State's evidence could induce a reasonable juror to infer that Appellant started the fire at her home to reap nearly $309,000 in insurance proceeds and that Appellant concocted a fantastical tale of an armed robbery that was later debunked by investigators in order to conceal her own involvement. Also, Appellant's

[6] This evidence is rendered more significant by Agent Fletcher's testimony that the accelerant residue could not have been left there in a gaseous form, it only could have been deposited as a liquid. Agent Fletcher also noted the residue would only last a few days in its present form, which eliminated the possibility that it was somehow left there in the months before.

suspiciously calm demeanor through most of the investigation as well as her angry eruption at Hansen's apartment provided the jury evidence of conduct by Appellant tending to show consciousness of her guilt. See State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) (South Carolina courts have historically and consistently recognized "any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt" and is a circumstance that should be submitted for the jury to consider). While Appellant places great emphasis on State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001), the facts of the instant case are distinguishable from Lollis because the circumstantial evidence of Appellant's guilt is exponentially greater than that in Lollis.[7]

In Appellant's case, the factual issues raised by the evidence could only appropriately be resolved by the jury. See State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. Among other considerations is the credibility of the witnesses, including that of the appellant himself."). Contrary to what is required before a directed verdict should be granted, Appellant's case did not present a complete failure of evidence of her guilt. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). Instead, substantial circumstantial evidence of Appellant's guilt for each of the indicted offenses was presented. Appellant's convictions and sentences should be affirmed.

[7] See Bennett, 415 S.C. at 237 n.2, 781 S.E.2d at 354 n.2 ("We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holdings in those cases are limited to their peculiar facts.")

II.

The trial judge did not abuse his broad discretion by qualifying Investigator Cannon as an expert in fire scene investigation where he personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert.

Relevant Facts

At the time of trial, Investigator Cannon had been employed with the Greenville County Sheriff's Office for ten years. R. p. 789. Investigator Cannon moved into his role as an arson investigator in October of 2011. R. p. 790. As part of his training, Investigator Cannon attended the National Fire Academy in Maryland, which is a two week, eighty hour class specifically designed for determining the origin and cause of fires. R. p. 791. Investigator Cannon also attended a fire pattern certification course, a basic fire investigation course through the Criminal Justice Academy, and approximately one-hundred-thirty hours of online certified fire investigation classes. R. p. 790. Investigator Cannon also continues to obtain forty hours a year in continuing education classes. R. p. 790.

At the time of trial, Investigator Cannon had investigated fifty to fifty-five residential arsons, twenty to twenty-five vehicle-based arsons, and four or five commercial arsons. R. p. 790. Investigator Cannon elaborated that he previously investigated arsons similar to Appellant's case. R. pp. 790-91. Investigator Cannon was previously qualified as an expert in the origin and cause of fires in the Thirteenth Circuit. R. p. 791.

Defense Counsel objected to Investigator Cannon's qualification as an expert. R. p. 791. Defense Counsel pointed to the fact that Investigator Cannon did not belong to any professional associations as alleged proof that he was not qualified to testify as an expert. R. p. 791. During voir dire of the witness, Defense Counsel also questioned Investigator Cannon regarding perceived deficiencies in Investigator Cannon's education and experience in order to assert these

alleged deficiencies should prevent his qualification as an expert. R. p. 792. After examination of Investigator Cannon by both parties, the trial judge found Investigator Cannon qualified as an expert due to his education and experience in investigating eighty arson cases. R. p. 801.

Discussion

Appellant asserts the trial judge erred in qualifying Investigator Cannon as an expert in the origin and cause of fires because the State failed to demonstrate he lacked the requisite knowledge, skill, experience, training, and education to offer an opinion. In support of this assertion, Appellant cites various perceived flaws in Investigator Cannon's education and experience. Puzzlingly, Appellant also makes a lengthy argument in regard to perceived flaws in Investigator Cannon's investigation of the arson at Appellant's home. This argument lacks merit, as the evidence and testimony presented during trial demonstrated that Investigator Cannon was eminently qualified and personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert in the origin and cause of fires.

As a threshold matter, a portion of Appellant's argument is not preserved for appellate review. Appellant relies heavily on regulations published by the National Fire Protection Association in support of his assertion that Investigator Cannon used unreliable and discredited investigation techniques. While Investigator Cannon's investigation was criticized on cross – examination and during closing argument, no argument whatsoever was presented contending Investigator Cannon's investigation was deficient because he failed to comply with the National Fire Protection Association guidelines cited by Appellant. As such, this argument is not preserved for appellate review. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (ruling the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review). An argument not raised to and ruled on by the trial court is not

preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge." Id.

As to the portion of Appellant's argument that is preserved for appellate review, "[E]xpert 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. "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's 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, 554-55, 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, 285-86, 457 S.E.2d 344, 346 (1995).

Appellant's critiques of Investigator Cannon's education and experience at the time of the fire are irrelevant, as Investigator Cannon's education and experience at the time of trial is the relevant standard. At the time of trial, Investigator Cannon had been an arson investigation with the Greenville County Sheriff's Department for over two-and-a-half years. During those two-and a-half-years, he investigated between fifty and fifty-five residential arsons, twenty to twenty-five vehicle-based arsons, and four or five commercial arsons. In addition to his practical experience, Investigator Cannon previously attended an eighty-hour course at the National Fire Academy in Maryland as well as a fire pattern certification course, a basic fire investigation course through the Criminal Justice Academy, and approximately one-hundred-thirty hours of online certified fire investigation classes. Investigator Cannon also completed forty hours per year in continuing education classes. In light of his extensive education and experience, Investigator Cannon was qualified as an expert witness on the origin and cause of fires in the Thirteenth Judicial Circuit on a precious occasion.

All of the above demonstrates Investigator Cannon possessed more than adequate experience to testify as an expert in the cause and origins of fires. Investigator Cannon had sufficient educational and occupational credentials to give him knowledge far beyond the ken of the average lay juror. All of Appellant's criticisms of Cannon's education and experience go towards the weight of his testimony and not its admissibility. 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)); State v. Peer, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App.

1996) (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). Thus, Appellant's criticisms of Investigator Cannon's investigations were appropriate for cross-examination or closing argument; however they do not affect Investigator Cannon's qualification as an expert. Investigator Cannon possessed the requisite knowledge, skill, training, and experience to qualify as an expert. Appellant's convictions and sentences should be affirmed.

III.

Appellant's argument concerning the reliability of the accelerant detection dog's alert on Appellant's slippers is not preserved for appellate review. Error preservation concerns notwithstanding, the trial judge properly admitted the evidence of the alert where the State presented sufficient evidence that the accelerant detection dog's alert to the presence of accelerant on Appellant's shoes was reliable and Investigator Gonzalez was eminently qualified and personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert in the handling of accelerant detection canines. Furthermore, any alleged error was harmless, as the evidence of the accelerant detection dog's alert to the presence of accelerants was cumulative to laboratory testing results showing the presence of accelerants on Appellant's slippers.

Relevant Facts

During a pre-trial motions hearing, Appellant made a series of vague arguments concerning the reliability of the accelerant detection dog and Investigator Cannon's qualifications. See R. pp. 38-51. While immensely difficult to follow, Defense Counsel's argument seems to intersperse vague arguments concerning the dog's reliability with allegations of discovery violations on the part of the State and general criticisms of the handling of the crime scene. R. pp. 38-51. Defense Counsel argued:

> I mean, there's a big question regardin' the use of a dog in this case, they got, they wanna bring a dog, I guess they are. . . . Well that's one thing, that's the search of the house, that's the one again they don't, you now, have it here but I guess we eliminate that, as you mentioned you're not as concerned about it, but if we eliminate the dog and reliability as an expert and we think we've got grounds to do that and that will be gone. . . ."

R. p. 38. The trial judge then asked whether there was any issues on dog certification and training. R. p. 39. Defense Counsel responded:

> Absolutely, it's yeah, here. . . . Yeah, I think the only one out there is tracking dogs, we kinda likened it, we also did some, uh, just, uh, that we did a non - - scientific and non-scientific, it's just interesting. Well again, and and, Judge, I didn't, I wasn't at the solicitor's convention in October with Justice Beatty speaking but this is the second arson case I've had with the Greenville County Sheriff's Office team and I, and I wanna at least bring that on the record here.

R. p. 39.Defense Counsel continued:

> [W]e go to the search itself and that's when we have this whole issue with the dog and reliability, it's so important in this case and that's what I want you to look at it at both ways, it's not just the dog that is irreliable but the use of the dog in this, in this manner. We've got a fire that's called in at little bit after eight that morning, the fire's put out I don't know by nine o'clock probably, they're on the scene, these investigators with the arson team are there. They released the scene I think about 12:20, I think if you look at the call log everyone's gone at 12:20 and releasing the scene means, Hey, Roses, do what you need to do and they get Servpro out there. We've got the, we've got the records showing the Servpro documents signed that afternoon, Servpro personnel in and outta that house cleanin' up,[8] movin' through, they're walkin' through the debris, gas fire on the front porch, diesel fire on the back. We've got photos that, uh, Investigator Cannon thankfully took that morning, I think I put those in with the, uh, look and see if those might be in there, uh, where are my photos, photo? Oh, here they are. The shoes, photos of the shoes and, again, it's two part, you can look at the dog and there's a whole issue om boy it's frightening to think they're gonna try to say this dog is reliable, that someone's life can be put in jeopardy from this dog coming in their house but beyond that even if the dog was the best in the world, how can it be reliable in a case like this?

R. pp. 40-41. Defense Counsel later agued:

> [B]ut we have a dog that's been layin' in gasoline earlier run - - apparently running around saying he hit on the shoes, we don't have a photo of it, and what's - - I would suggest to you somebody's moved 'em, somebody's touched 'em, there's no reliability and the dog it's interesting 'cause 'cause they wanna say this dog is reliable 'cause and I was getting' back to the thing with Justice Beatty and and discovery, we put in discovery in this case.

R. p. 44. The trial judge noted his confusion with Defense Counsel's arguments, stating, "Well I hear you ranting - - but I don't hear anything - - specific." R. p. 46. The trial judge later asked Defense Counsel:

> Wasn't it in Jardines[9] case or somethin' outta Florida where they said as long as you can show the dog had been through the pro - - properly certified through a recognized program then that gives you and he's he passed that and that's

[8] Defense Counsel's argument directly conflicts with the testimony of Investigators Gonzalez and Cannon who testified the Servpro employee was in the garage when they arrived and it did not appear Servpro had begun the cleaning process. R. p. 499, R. p. 501, R. p. 821

[9] Florida v. Jardines, 569 U.S. 1 (2013).

probable cause? This is a drug search analysis, isn't that the same, essentially the same thing you're lookin at here?

R. p. 49. Defense Counsel replied:

> I'm not familiar. What I would say is I would hope just like the, just like the curr - - the argument we're havin' on the other one that in in a case such as that where you've gotta prove that that they've gotta bring someone in there to prove that, they can't just come in with a hearsay form, some printed out thing. This this form, Judge, again gets back to is this reliable. The the dog is trained to hit on paint thinner.

R. pp. 49-50. The trial judge responded:

> I would agree with you - - Mr. Riordan, that they would have the obligation established in the foundation of certification and that this is a recognized program, I think that's what is required but once they do that you don't - - they don't have to bring in their weekly field reports and all that if I understand the law, that's up to - - you to challengin' that - - challenged that.

R. p. 50. Defense Counsel replied:

> Well - - and I, and I'm definitely challenge it and and and that's when Your Honor comes in but you've got - - they've got to show to you the reliability and that's what I get to. All of this I'm talkin' about the reliability here when it's basically, it's basically the word of Gonzalez, that's all we've got and he shows on his form, it's funny, they put out the different things he's he's trained in: charcoal, lighter fluid, they misspell charcoal, I mean, that's what we're talkin' about, that's the du - - that's how this lady sits here right now, this is the stuff we're talkin' about. Shoes have been moved, clearly contaminated, same with this dog. Again, I'd ask just on that these shoes be excluded, that Your Honor can look at the totality of the circumstances, that is unreliable, that's your unreli - - and frightening that someone could be sittin' here facin' a case based on that.

R. pp. 50-51.

During Investigator Morgan's testimony at trial, Defense Counsel objected when Investigator Morgan began discussing Investigator Gonzalez's sweep of Appellant's home with Misty. R. p. 371. Specifically, Defense Counsel argued, "Your Honor, I have just certain objection in regard to the arson dog goin' in. . . . Uh, if he's gonna get into the use of the dog, yeah, we talked about just preserve the objection for expertise, that's - - all." R. p. 371.

Prior to Investigator Gonzalez's testimony, the solicitor noted, "[A]fter this witness will be the witness with the canine, uh, and I - - we know you wanna do an in camera hearing prior to the qual - - qualification of him and the dog as an expert. . . ." R. p. 379. The trial judge replied:

> Well let me, let me ask you this, - - it seemed like why - - when we ended up yesterday that I heard from the State as long as you present proper foundation then that would be allowed, if you don't then it's like any other evidentiary matter: if the foundation's not laid doesn't come in.

R. p. 379. The trial judge continued, "I don't' nec - - necessarily need to see any fur - - I mean, I got enough to glean what I'm gonna hear about from all the preliminary." R. p. 379. The trial judge elaborated:

> - - at the end of the hours of preliminary testimony we had yesterday I don't feel the need to have any further. I know what I'm gonna hear and I I, you know, my ruling will be and I'll let you object, uh, Mr. Riordan, that long as the appropriate foundation is laid on the admission of the testimony about the drug dog then you'll be allowed, okay.

R. p. 380.

Investigator Gonzalez testified he had been employed with the Greenville County Sheriff's Department since March of 2001 and had been assigned to the criminal investigation division since 2005. R. p. 476. At the time of trial, Investigator Gonzalez had worked in law enforcement for twenty-one years. R. p. 476. Investigator Gonzalez is a certified fire and explosion investigator as well as a certified fire investigator instructor. R. p. 477.

Investigator Gonzalez went to Kasseburg Canine in New Market, Alabama for six weeks of accelerant detection dog training with Misty. R. p. 478. Investigator Gonzalez testified Misty had obedience training before being imported from Holland and was then, "exposed or imprinted on ignitable liquids and from that point on is when I begin training with her from the beginnin' of the imprint to the end of 'til certification." R. p. 478. As part of her training in Alabama, Misty was exposed to sixteen different ignitable liquids and taught to search for those liquids. R. pp.

478-79. Investigator Gonzalez was also taught how to know when she is alerting on ignitable liquids and how to handle Misty in fire scenes. R. p. 479. After completing the program in Alabama, Investigator Gonzalez and Misty went to Austin, Texas to conduct fire scene training with the State Fire Marshall's Office. R. p. 479. After being certified by that program, Investigator Gonzalez and Misty returned to Greenville in March of 2011. R. p. 479. Investigator Gonzalez and Misty go through an annual certification with the North American Police Work Dog Association, which is a recognized organization for certification of police canines. R. p. 479. Investigator Gonzalez noted:

> Uh, when we go to these certifications or these, uh, canine workshops, uh, they bring in a master trainer from different locations, uh, there's only two: there's there's one in California, one in Texas, I go to these workshops every year, so, uh, this particular master trainer he uses, he evaluates the dog and myself, how I handle the dog, how the dog searches and how I reward the dog once she, uh, finds the the trained odor and the master trainer will place these odors out in different venues such as interior finds, uh, outside, we do open area searches and, uh, building searches with her and he evaluates those and and grades her on on those and it's, uh, she can't miss. She can't miss an odor of those odors that they put out, if so then she would fail the certification.

R. pp. 480-81. Investigator Gonzalez stated that as part of her alert process, Misty "will pinpoint with her nose through, uh, her respirations and her breathing will change and she will actually pinpoint the spot to where the odor's at. . . ." R. p. 481. Once she locates the odor, Misty will either sit or lay down. R. p. 481. Investigator Gonzalez testified he worked one hundred-forty-two fire scenes with Misty and she never had a false alert. R. pp. 481-82. Investigator Gonzalez was subsequently qualified as an expert in the handling of accelerant detection canines. R. p. 482. Defense Counsel simply noted, "Subject to my earlier objection, judge." R. p. 482.

Discussion

Appellant avers the trial judge erred in admitting evidence of Misty's "alert" to Appellant's slippers as well as the subsequent test results confirming the presence of various

accelerants. In support of this argument, Appellant cites the factors governing the admissibility of scientific evidence as well as the test regarding the admissibility of expert testimony related to dog tracking evidence from State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).[10] Appellant asserts the trial judge erred in admitting the evidence of Misty's alert because: 1) Investigator Gonzalez lacked the necessary training, skills, and experience to properly investigate the fire scene with Misty and assess the reliability of her alerts and 2) The State failed to present sufficient evidence that the use of Misty to detect the ignitable liquid on Appellant's slippers was reliable. These arguments lack merit. Initially, Appellant's arguments concerning reliability are not preserved for appellate review. Further, the State presented sufficient evidence that Misty's alert to the presence of accelerant on Appellant's shoes was reliable. Similarly, the evidence and testimony presented during trial demonstrated Investigator Gonzalez was eminently qualified and personally possessed the requisite knowledge, skill, training, and experience to qualify as an expert in the handling of accelerant detection canines.

As discussed in Respondent's Issue II, under 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. 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).

[10] Appellant's citation to the White factors and to the standard for admission of scientific evidence is contradictory. Notably, in White, the South Carolina Supreme Court rejected the contention that dog tracking evidence must satisfy the standard for "scientific based" expert testimony under State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). Similarly, the evidence of the accelerant dog's alert does not constitute scientific evidence.

The Trial Judge Properly Qualified Investigator Gonzalez as an Expert Witness

In support of her assertion that Gonzalez lacked the necessary training skills and expertise to utilize Misty or assess her reliability, Appellant notes Gonzalez and Misty completed training only three months prior to the fire at Appellant's home. Appellant also avers that Investigator Gonzalez's decision to not collect comparison samples somehow affects Investigator Gonzalez's qualification of a witness. These arguments are unconvincing, as Investigator Gonzalez was highly credentialed and qualified to testify as an expert witness. As noted in Respondent's Issue II, Appellant conflates perceived deficiencies in the investigation with a witness's proper qualification as an expert. Appellant's argument concerning her perceived flaws in the investigation are appropriate for cross-examination or closing argument; however, they have no bearing on Investigator Gonzalez's proper qualification as a witness where he possessed the necessary knowledge, skill, training, and experience to qualify as an expert.

As a threshold matter, to the extent that Appellant argues Investigator Gonzalez's investigation was insufficient for failure to comply with various guidelines published by the National Fire Protection Association, these arguments were not raised at trial and are unpreserved for appellate review. An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997).

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's 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, 554-55, 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).

Appellant's argument concerning Investigator Gonzalez is erroneously rooted in the fact that he and Misty completed training only three months prior to the fire. First, Investigator Gonzalez's experience at the time of the fire is irrelevant as to whether he was properly qualified as an expert witness. The critical inquiry is whether Investigator Gonzalez had the requisite experience at the time of trial. Investigator Gonzalez's trial testimony clearly established he had the necessary knowledge, skill, training, and experience to qualify as an expert. At the time of trial, Investigator Gonzalez had been employed in law enforcement for an impressive twenty-one years and had been employed in the criminal investigations division of the Greenville County Sheriff's Department since 2005. As to Investigator Gonzalez's partnership with Misty, Investigator Gonzalez and Misty completed a six week accelerant dog training course in New Market, Alabama. Investigator Gonzalez also completed further training with the state Fire Marshall's Office in Austin, Texas and received a certification from that program. Investigator

Gonzalez and Misty go through a rigorous annual certification process through the North American Police Work Dog Association where any false alerts prohibit them from receiving their certification. At the time of trial, Investigator Gonzalez had investigated one hundred-forty-two fire scenes together. Misty maintained a **perfect record** through all of those fire scenes, never falsely alerting to the presence of accelerant.

All the above demonstrates Investigator Gonzalez possessed more than adequate educational and occupational credentials to give him knowledge and insight far beyond the ken of the average lay juror. All of Appellant's criticisms of Investigator Gonzalez's credentials and the investigation itself go towards the weight of his testimony and not its admissibility. Cf. Henry, 329 S.C. at 277-78, 495 S.E.2d at 468-69 ("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)); State v. Peer, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996) (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). The trial judge, thus, properly qualified Investigator Gonzalez as an expert in the handling of accelerant detection canines.

The State Presented Sufficient Evidence that Misty's Alert to the Presence of Accelerant on Appellant's Shoes was Reliable

Initially, The State would note Appellant's argument concerning the reliability of Misty to detect accelerant on Appellant's slippers is not preserved for appellate review. Defense

Counsel's arguments concerning reliability at trial were vague, rambling, and difficult to understand. These arguments were confusing, non-specific and insufficient to preserve the issue for appellate review, as it is impossible to understand exactly what Appellant was arguing below. See State v. Byers, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011) ("An objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error."); State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground."); State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (finding a broad generic objection not sufficient to preserve issue for review on appeal); State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding [a] general objection is ordinarily insufficient to preserve an issue for appeal). As noted earlier, Appellant's arguments concerning the National Fire Protection Association guidelines are not preserved, as there was no argument raised concerning the guidelines at trial.

Additionally, in Appellant's issue statement, she argues the trial judge erred in admitting evidence of Misty's alert, as well as the subsequent test results. However, Appellant makes no argument whatsoever in the body of her brief concerning the admissibility of the test results. Appellant's "argument" regarding the admissibility of the test results is therefore conclusory and waived for appellate review. Appellate courts will not consider arguments or issues raised on appeal in a conclusory or unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161, 164 (2012). See also State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal). This Court should, therefore, disregard Appellant's conclusory statements concerning the admissibility of the test results confirming the presence of accelerant on Appellant's slippers.

Error preservation concerns notwithstanding, Misty's alert to the presence of accelerant on Appellant's shoes was reliable. While Appellant looks at the issue of reliability through the lens of the South Carolina Supreme Court's opinion in State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), the White factors were formulated specifically for dog tracking evidence. Due to the inherent differences between dog tracking and accelerant detection, the evidentiary framework from White is not directly applicable in the current case. White is, however, instructive concerning the criteria the Court should use regarding Misty's reliability. In White, White conceded the qualifications of the dog handler, Officer Gunter; however, he asserted the dog tracking evidence in the case was unreliable. Id. at 271. In finding the evidence reliable, the Court found:

> Beyond Officer Gunter's extensive training and experience, there was ample evidence concerning the training and reliability of the dog, Aurie. Aurie is a German shepherd that descended from a bloodline of known police and military working dogs. Through testing, Aurie has been certified in several areas of tracking, yet Aurie's strongest skill is tracking people. Officer Gunter and Aurie, as of the trial, had been "partners" in excess of seven years and had accomplished approximately 750 tracks together. The finding of reliability is well supported by the record, and we find no abuse of discretion in the admission of the dog tracking evidence.

Id.

Similarly, in Florida v. Harris, ___U.S.___, 133 S.Ct. 1050 (2013), the United States Supreme Court examined the reliability of drug detection dogs in a probable cause context. The Florida Supreme Court created a strict evidentiary check-list, whose every item the State had to satisfy, in order to establish reliability. Id. at 1056. Under the Florida Supreme Court's decision, an alert could not establish probable cause unless the State introduced comprehensive documentation of the dog's prior "hits" and "misses." Id. In overturning the decision of the Florida Supreme Court, the Court noted:

> [E]vidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs. After all, law enforcement units have their own strong incentive to use effective training and certification programs, because only accurate drug-detection dogs enable officers to locate contraband without incurring unnecessary risks or wasting limited time and resources.

Id. at 1057. The Court further found:

> In short, a probable-cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the circumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. In all events, the court should not prescribe, as the Florida Supreme Court did, an inflexible set of evidentiary requirements. The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime.

Id. at 1058.

As was the case in White and Harris, Misty's reliability was readily apparent due to her impressive training credentials and zero error rate. Misty completed a six-week training course at Kasseburg Canine in New Market, Alabama, as well as additional training with the State Fire Marshall's Office in Austin, Texas. Misty received certifications from both programs. Misty was also certified by the North American Police Work Dog Association and had been re-certified by that organization every year at the time of trial. Investigator Gonzalez noted Misty had worked one-hundred-forty-two fire scenes with him and had never had a false alert. All of this provides demonstrative proof of controlled settings where Misty performed reliably due to her extensive

training. Misty's reliability in the case was further bolstered by the laboratory test's confirmation of the presence of accelerant. Strangely, Appellant blatantly ignores the laboratory's confirmatory testing of the slippers when making her argument that Misty's alert was unreliable.

Appellant cites the time interval between the fire and Misty's search of the home as cause to find her alert unreliable. Appellant contends the "release" of the home to Servpro contaminated the scene to the point of tainting all of the incriminating evidence found in the home. This argument is directly refuted by the testimony of Investigators Cannon and Gonzalez, who both stated that at the time of their arrival at the home, the Servpro employee was in the garage and it did not appear that the clean-up process had begun. Furthermore, Agent Fletcher clarified the accelerant would stay on the shoes for several days. A gap of a few hours between the fire and Misty's alert does nothing to dispel the definitiveness of the liquid still being present. Appellant asserts photographs appearing to show the slippers moved several inches prove the scene was contaminated; however, on cross-examination by Defense Counsel, William Brooks noted he could not tell whether the shoes moved a few inches. Upon further interrogation by Defense Counsel, Brooks stated, "I don't know that I would be concerned about possible contamination if a shoe is moved four or five inches." R. p. 783. As noted by Brooks, it is unclear whether the shoes moved, however a movement of a few inches does little to affect the presence of the accelerant on Appellant's slippers or otherwise taint the crime scene. While Appellant's argument concerning scene contamination may have made for effective cross-examination, there is not such evidence of contamination that would affect the reliability of Misty's alert or the admissibility of the evidence at trial.

As conceded by Appellant, a number of other jurisdictions have found accelerant detection dog alerts to be reliable. See State v. Buller, 517 N.W.2d 711 (1994) (finding

foundational requirements were met concerning accelerant detection dog's alert where the dog was sufficiently reliable, despite fact that later laboratory testing proved inconclusive); Yell v. Commonwealth, 242 S.W.3d 331, 336-337 (2007) ("As to Robert's claim that the evidence of PJ's alerts to the presence of accelerants at the fire scene was unreliable because it was contradicted by the negative results of the lab testing of the samples, we believe that there was a sufficient showing of reliability to allow the evidence despite the negative laboratory results."); State v. Schultz, 58 P.3d 879 (2002) (finding use of canines to help detect the presence of accelerants as an investigative tool is generally accepted within the fire investigation community, and therefore expert testimony concerning use of canines for that purpose will typically be admissible if helpful to trier of fact. Use of canines to determine accelerant use in the absence of laboratory testing is that testimony is subject to threshold showing of reliability as novel scientific evidence). In the present case, Misty's alert was particularly reliable where the showing of her training and reliability was accompanied with a confirmatory laboratory test.

Finally, any alleged error in admitting evidence of Misty's "alert" to the presence of accelerants is harmless where the State later presented laboratory testing confirming the presence of ignitable liquids on Appellant's slippers. When other properly admitted testimony reveals essentially the same information, the jury's exposure to improper evidence is harmless. State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001). Appellant makes no argument concerning the admissibility or reliability of the laboratory testing, nor does she make any argument that Misty's alert failed to provide probable cause for the State to seize and test Appellant's slippers. The laboratory testing revealed the same fact as Misty's alert: that there was an ignitable liquid on Appellant's slippers. Therefore, the evidence was merely cumulative

to the properly admissible testimony of Agent Fletcher who discussed the positive laboratory tests of Appellant's slippers. Appellant's convictions and sentences should be affirmed.

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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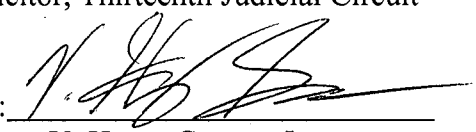
BY: 
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December 29, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002445

THE STATE,

Respondent,

v.

PAULA ROSE,

Appellant.

CERTIFCATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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