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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Roger M. Young, Circuit Court Judge

Appellate Case No. 2016-001713

THE STATE, ...RESPONDENT

v.

CHAD MORRIS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

EARNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

P.O. Box 836
Sumter, South Carolina 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly, pursuant to Rule 701, SCRE, admitted lay witness opinion testimony estimating the speed of Appellant's boat at the time of the fatal collision where that testimony was rationally based on each witness' perception and was helpful to the jury in properly deciding the case. Furthermore, whether any error in admission of such testimony was entirely harmless where Appellant was acquitted of reckless homicide by operation of a boat and he admitted during trial he was guilty of negligent operation of a water vessel.

STATEMENT OF THE CASE

Chad Morris (Appellant) was indicted by the grand jury of Clarendon County for "reckless homicide by operation of boat" (2014-GS-14-0329 – Count 1) and "watercraft/ operator fails to render assistance, death results" (2014-GS-14-0329 – Count 2). He was represented by Shaun C. Kent, Esquire. (R.p.1). The State was represented by Assistant Solicitor Chris Durant of the Third Circuit Solicitor's Office. On July 11-15, 2016, Appellant proceeded to trial by jury. At the conclusion of trial, he was found guilty of: (1) negligent operation of a water device as a lesser included offense of reckless homicide by operation of boat and (2) failure to render assistance in a collision or accident resulting in death. Appellant was sentenced by the Honorable Roget M. Young to five (5) years' imprisonment for failure to render assistance and thirty (30) days' concurrent imprisonment for negligent operation of water device. (R.p.623-624; SROA p. 47-48; R.613-p.622). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Shortly after midnight, in the early morning hours of July 4, 2014, twenty-one-year old Hailey Bordeaux (Victim) was killed when the stationary boat she and three friends had taken out on Lake Marion was struck by a bass boat driven by Appellant. Following an investigation, Appellant was charged with reckless homicide by operation of boat and failure to render assistance after a boating accident where death results. He was taken to trial by jury for the crimes. (R.p.1; p.48-p.53; p.583-p.600).

Following jury qualification and selection, the trial court excused the jurors and heard pretrial motions. (R.p.4-p.5). After discussing a possible stipulation regarding the autopsy report, the solicitor advised the court the State was opposed to Appellant's pretrial motion to prohibit the use of the word "speed" and his request that witnesses not be allowed to testify as to speed. The State argued testimony about the speed of Appellant's boat was admissible lay witness opinion testimony as long as the witnesses had a reasonable opportunity to observe the boat's speed. The solicitor acknowledged the State would have to lay a foundation prior to admission but argued that if this was done, the testimony should be allowed. Appellant responded that his motion was intended to prohibit testimony that he was "speeding" because there is no speed limit on the lake, but acknowledged the witnesses could testify he was going fast, or a high rate of speed, or something of that nature. However, he objected to testimony about an exact estimate of speed in miles per hour. The solicitor advised the judge the State did intend to elicit testimony from eyewitnesses estimating a specific rate of speed in miles per hour. He argued such testimony was allowed in South Carolina and advised the State would provide the court with supporting case law after it addressed other pretrial matters. (R.p.7-p.11).

When the case resumed the following morning, the trial judge advised the parties he needed to hear from the possible witnesses to determine if the State could establish a proper

foundation for admitting the testimony they intended to give about speed. The solicitor explained he had three witnesses who had given statements to law enforcement in reference to speed, but they each gave only an estimated speed range based on their experiences on the lake rather than an exact number. Appellant said he still objected to the testimony. (R.p.28-p.29). The State then proffered the testimony of Stephen Stafford.

Stafford testified that on the night of the collision he was staying at his family's lake house. He said he had been around boats his whole life and his family owns a boat. Stafford said he drives the boat almost every weekend and explained it is a bass boat similar to the one driven by Appellant. He testified he was on the boat struck by Appellant and had an opportunity to observe Appellant's boat prior to the collision. Stafford said he was watching Appellant's boat the entire time as it came closer and closer and estimated it was going at least fifty miles an hour. He testified that in his experience, Appellant's boat was going about as fast as it would go. Stafford noted the motor was trimmed up, which lifted the bow of Appellant's boat so that it was riding just on the pad, and was making a slapping noise against the water. He explained the significance of driving with the motor trimmed up is to gain speed. (R.p.30-p.34).

When Stafford completed his proffered testimony, the solicitor advised the court the other two witnesses who could estimate the speed of Appellant's boat would not be present until later that afternoon. Appellant argued the speed estimates were not relevant where there are no speed limits on the lake. The solicitor responded that because there are laws which prohibit vessels from driving too fast for conditions, speed is relevant to reckless operation of a boat. Appellant complained that allowing such testimony would "spit in the face of Rule 701" because it involved asking a lay witness to give an opinion about something that would require expert testimony. The trial court noted the statute required that the jury determine whether Appellant

was operating a boat in a reckless disregard to the safety of others and that speed would play into that determination. As a result, the court ruled it would allow such testimony with the proper foundation where the particular witness was qualified to give the testimony based on his or her experience with boating. The trial court held Stafford had the requisite experience and would be allowed to testify as to the speed of Appellant's boat. (R.p.37-p.41).

Next, the jury was sworn and the trial court gave brief preliminary instructions to the jury. (R.p.47-p.48). The solicitor gave an opening statement focusing on a comment Appellant made shortly after the boat he was driving on July 4, 2014, struck a stationary boat, killing Victim. The solicitor described the burden of proof, the elements of the charged offenses, and the facts the State intended to prove at trial. (R.p.48-p.53). Appellant responded with his own opening statement claiming there were two sides to the story of the fatal collision that night. He argued that while he was civilly responsible, financially responsible, morally responsible, and ethically responsible for the death, he was not criminally responsible because the crash was simply a tragic accident. Appellant attacked the concept of a layperson attempting to estimate the speed of a boat on the lake, arguing only a scientist or an expert could do so. He briefly described the evidence the defense intended to elicit or introduce at trial and emphasized the overall defense theory that the collision was completely unintentional and an accident. (R.p.53-p.58).

Next, the State presented its case in chief, first calling the three individuals from the stationary boat who survived the crash. Stafford took the stand to describe the day's events leading up to the collision, the crash itself, and the aftermath. He repeated the testimony previously given in camera in regard to his experience with boating, and then estimated, without objection, that Appellant's boat was going between 50 and 60 miles an hour when it struck his

boat and killed Victim. (R.p.58-p.93). Caroline Cromer and Justin Cromer, who were newlyweds at the time of the crash, also described the events in detail. (R.p.93-p.136). Following a lunch break, the State proffered testimony from two eyewitnesses who saw the collision from shore and said they could estimate the speed of Appellant's boat at the time of the crash—Jonathan Brent Waynick and Zanne Morris.

Waynick testified he owned a bass boat similar to Appellant's boat and drove it on the lake two or three times a week, six or seven months out of the year, for fifteen of the past twenty-one years. He estimated Appellant's boat was going between forty and fifty miles per hour when it hit Victim's boat. (R.p.136-p.145). Morris testified she had driven boats on the lake every weekend of every summer and sometimes during the week for at least fifteen years. She said she drove a deck boat rather than a bass boat, but explained it would go forty-five miles an hour at its top speed. Morris estimated Appellant's boat was going faster than the speed at which she pulls her children when they are tubing, which is between thirty and thirty-five miles per hour. (R.p.150-p.156). After hearing additional arguments from the parties as to the admissibility of the proffered testimony, the trial court ruled both Waynick and Morris would be allowed to testify as to the estimated speed of Appellant's boat at the time of the collision. The trial court found they were not giving expert opinion testimony about a specific speed, but instead were giving admissible lay witness opinion testimony on an estimated range of speed based on their respective experience with boats, and that such testimony would help the jury in determining whether Appellant's conduct was reckless. (R.p.149 & p.156). Following the ruling, Waynick and Morris testified before the jury, describing the collision they witnessed from the shore of the lake and estimating the speed of Appellant's boat when it hit the stationary boat. (R.p.156-p.184).

The State proceeded to call additional eyewitness to the collision, emergency and law enforcement officials who responded to and investigated the scene, and several individuals who attempted to render assistance after the crash. Jordan Waynick and Martin Ken Rosenfield saw the collision from the shore. (R.p.184-p.201). Chris Graham, a paramedic with Clarendon County EMS, responded to the scene and attempted to treat Victim. (R.p.202-p.208). Danny Floyd, director of the Clarendon County 911 dispatch operating center at the time of the collision, authenticated the audio recording of the emergency calls made to Clarendon County 911 and that recording was admitted into evidence. (R.p.209-p.218). DNR Officer Mark Jervey responded to the collision and took a statement from Appellant when Appellant eventually came to the DNR clubhouse after the crash. (R.p.218-p.249). DNR Investigator Tony Spires was the lead investigator assigned to the incident and responded to the scene from his home in York County. He talked to Appellant at approximately 4 a.m. the morning of the accident and also spoke with him in more detail the following day at a grocery store parking lot in Sumter. Spires was qualified as an expert in the field of boating collision and investigation and he gave opinion testimony about the damage to the two boats and how it likely occurred. He opined that driving a boat fifty miles per hour at night is reckless. (R.p.249-p.326).

Rusty Harrington, who knew Appellant because his oldest daughter and Appellant were in school together when they were younger, was hosting a party on the lake the night of the crash. He did not witness the collision; however, Appellant came to his house shortly after it occurred to tell him about hitting the stationary boat. Harrington confirmed what he had said in his statement to police: that when he told Appellant to go talk to the DNR officers at the recovery scene at Scarborough's Landing to tell his side of the story, Appellant said: "I ain't going tonight. I'll talk to them in the morning." (R.p.326-p.341). James Gregory Mains met

Appellant the night of the collision and had been hanging out with Appellant and following Appellant's boat around the lake during the course of the evening. Mains did not witness the collision from his boat, but he did arrive on the scene immediately after it happened and attempted to assist. He helped get Victim onto the deck boat that had also arrived at the scene and that took Victim to Scarborough's Landing. (R.p.341-p.352). DNR Officer Jordan Douglas was not on call the night of the accident but got a call about it from his supervisor, so he got dressed and took his boat out on the lake to try to assist. He began looking for a bass boat that fit the description of the one that had struck the stationary boat and ultimately encountered Appellant and the passengers from his boat at Harrington's property. Douglas talked to Appellant and asked him to get in his boat and follow Douglas over to Scarborough's Landing, which Appellant did. (R.p.352-p.370).

Erica Flesch was at a dock next to Harrington's house and saw the stationary boat in the water just before the crash. She heard the collision but did not see it and she directed Douglas to Harrington's house when Officer Douglas drove past looking for Appellant's boat. (R.p.371-p.377). Laughton Jones was with Flesch at the dock where they had just pulled in for the evening. He described being on the lake earlier that night when a bass boat came up fast behind him and jumped his wake. Later, as he was turning his boat in to dock, he saw what appeared to be the same bass boat coming back at a fast rate of speed. He commented to his friends that he thought that boat was going to kill somebody. Jones also remembered seeing the stationary boat as he was docking because he veered around it slightly in order to get his boat into his slough. While he and Flesch were at the dock, he heard the collision and immediately took his boat back out to assist at the scene. Jones helped get Victim onto the deck boat and then he followed them to Scarborough's Landing to wait for EMS and DNR. (R.p.377-p.390).

After the State rested, the jury was excused and Appellant moved for a directed verdict, making detailed arguments as to why he believed he was entitled to a directed verdict on each charge. The State responded and the trial court denied the motions. (R.p.390-p.415). Appellant then presented evidence in his defense. First he called Franklin Wayne Card, who was a passenger in Appellant's boat the night of the crash. Card described the events preceding the collision and then described the moment they struck the stationary boat. He explained that after the crash lots he heard screaming and yelling back and forth between the boats about who was at fault. Card yelled: "Shut the fuck up everybody" and started asking if everyone was okay. When he learned Victim was in the other boat bleeding, he asked Mains to try to calm people down and assist. At that point, other boats began arriving and took the Victim away. Card testified both his wife Jessica Long, and Mains' wife Lori, called 911. He said Appellant's boat was the last boat to leave the scene after the wreck. (R.p.418-p.450). Appellant then elicited testimony from Lori Mains, Jessica Long, Jones' friend Daniel Brunson, and Harrington's daughter Stephanie Barkley about the night of the collision. (R.p.451-p.531). During Brunson's testimony on direct, he estimated Appellant's boat was going 40 to 50 miles an hour at the time of the crash although no foundation had been laid. (R.p.502, lines 11-17).

Finally, Appellant testified on his own behalf. He claimed he was only going about 20 miles an hour at the time of the crash and that he never saw lights on the stationary boat before the collision. Appellant insisted this incident was all just a terrible accident. (R.p.532-p.569). The defense rested and the State briefly called Jones in reply. Appellant renewed all of his motions from trial including his motion for a directed verdict. The motions were again denied. (R.p.569-p.582; SROA p.1). The parties then made closing arguments and the trial court charged the jury on the law, which included instructions on the burden of proof, the presumption

of innocence, reasonable doubt, direct and circumstantial evidence, criminal intent, and the relevant statutes. (SROA p.2-p.46). After deliberating for approximately 2 ½ hours, the jury returned with a verdict. It found Appellant guilty of: (1) negligent operation of a water device as a lesser included offense of reckless homicide by operation of boat and (2) failure to render assistance in a collision or accident resulting in death. Appellant was sentenced to five (5) years' imprisonment for failure to render assistance and thirty (30) days' concurrent imprisonment for negligent operation of water device. (R.613-p.622).

ARGUMENT

The trial court properly, pursuant to Rule 701, SCRE, admitted lay witness opinion testimony estimating the speed of Appellant's boat at the time of the fatal collision because that testimony was rationally based on each witness' perception and was helpful to the jury in properly deciding the case. Furthermore, any error in admission of such testimony was entirely harmless where Appellant was acquitted of reckless homicide by operation of a boat and he admitted during trial he was guilty of negligent operation of a water vessel.

Appellant argues the trial court "committed reversible error by admitting improper lay witness testimony as to the mile per hour speed lay witnesses believed [his] boat was travelling at the time of the fatal collision" because the lay witnesses lacked the necessary skills, training, and experience to accurately estimate the speed of his boat at night. (Brief of Appellant, p.3). The State disagrees and submits Appellant's argument is without merit. The trial judge properly admitted the lay witnesses' opinion testimony estimating the speed of Appellant's boat pursuant to Rule 701, SCRE, because the testimony was based on each witness' individual perception and was helpful to the jury in properly deciding the case. In addition, Appellant suffered no prejudice from the admission of such testimony where he was acquitted of reckless homicide by operation of a boat and where he specifically admitted during trial he was guilty of negligent operation of a water vessel. Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests within the sound discretion of the trial judge. *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015); *State v. Simmons,* 384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App. 2009). "To warrant reversal based on the

admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *State v. Singleton*, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting *Fields v. Reg'l Med. Ctr. Orangeburg,* 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Law / Analysis

As a general rule, all relevant evidence is admissible. *State v. Aleksey,* 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000); Rule 402, SCRE. Evidence that assists the jury in arriving at the truth of an issue is relevant and admissible unless otherwise incompetent. *State v. Sweat*, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004). Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. *In the Matter of Care and Treament of Corley*, 353 S.C. 202, 205, 577 S.E.2d 451, 453 (2003); *State v. King,* 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). It is not required that the inference sought should necessarily follow from the fact proved. *See Sweat*, 362 S.C. at 127, 606 S.E.2d at 513. Indeed, evidence is relevant if "logically relevant" to establish a material fact or element of the crime; it need not be "necessary" to the State's case in order to be admitted. *Id.* (citing *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364 (1990)).

Lay witnesses are permitted to offer opinion testimony when the opinion or inference: (1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special

knowledge, skill, experience, or training. Rule 701, SCRE; *see State v. Williams*, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the determination of a fact in issue, and c) does not require special knowledge."). "[C]onclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury." *State v. McClinton*, 265 S.C. 171, 176-77, 217 S.E.2d 584, 586 (1975).

It is a general rule that any person of ordinary intelligence, who has an opportunity for observation, is competent to testify as to the rate of speed of a moving automobile. 94 A.L.R. 1190. The weight to be given to the testimony of a witness as to the speed of an automobile is for the jury. *Id.* This general rule is commonly accepted in our sister states both near and far. *See, e.g., Reedman v. State*, 593 S.E.2d 46, 51 (Ga. 2003) (holding the opinion testimony of an eyewitness may be used to establish the speed of an automobile); *State v. Green*, 335 S.E.2d 176, 177-78 (N.C. 1985) ("It is well settled that a lay witness may testify as to his opinion about the speed of a moving vehicle. The prerequisite to such testimony is that there was an opportunity to see the event being testified about. . . . As long as the time and distance of the observation enable the witness to do more than hazard a guess, the testimony is admissible."); *Howard v. State*, 346 So.2d 918, 920 (Miss. 1977) (acknowledging the general rule that "a witness who observed the moving object in question will be permitted to estimate its speed if he possesses some knowledge or experience, however slight, which will enable him to form an opinion.) (quoting CORPUS JURIS SECUNDUM); *State v. Bettencourt*, 723 A.2d 1101, 1111 (R.I. 1999) ("Where exact speed is not an issue, a witness need not be qualified as an expert before being allowed to testify as to the speed of a moving vehicle. As long as the time and distance of the observation enable the witness to do more than hazard a guess, the testimony is admissible. The brevity of an

observation and an approximation of speed go not to the admissibility of the evidence, but to the weight or the evidence and the credibility of the witness."); *Quist v. Commonwealth*, 338 S.W.3d 778, 784 (Ky. Ct. App. 2010) (holding a police officer's testimony was admissible as a lay witness estimate on the speed of the vehicle, based on his personal observations). Similarly, our supreme court has approved admitting lay witness opinion testimony as to the miles per hour speed of a vehicle. *Livingston v. Oakman*, 251 S.C. 611, 613-14, 164 S.E.2d 758, 759 (1968) (holding the defendant's testimony that plaintiff's automobile was traveling at a speed of 35 to 40 miles per at the time of the collision was of value to the jury even though she only saw the vehicle "an instant" before the crash). In approving such testimony, the Court noted: "The probative value of the testimony of defendant as to the speed was for the jury to determine." *Id.* at 614, 164 S.E.2d at 759.

While the general principle is usually applied to testimony estimating the speed of a moving automobile, the principle has been found equally applicable to lay witness opinion testimony about the speed of other vehicles and vessels, when a proper foundation has been laid. *See, e.g., Stotler v. Chicago & A. Ry. Co.*, 98 S.W. 509, 515 (Mo. 1906) (affirming the trial court's decision to admit a mass of testimony from persons who had observed the speed of a **train** and who had made such observations through a series of years upon the speed of trains by watching their passage); *Torrez v. Willett*, 115 N.W.2d 393, 396 (Mich. 1962) (reversing the trial court's exclusion of offered testimony of the plaintiff's witness as to the estimated speed of a **boat** just prior to an accident). In *Torrez*, the Michigan Supreme Court noted the proffered witness "testified he had driven a motor boat probably a hundred times in the previous 6 or 7 years and had opportunity to estimate his motor boat's speed, and also, to estimate the speed of other boats, both while driving his boat and when standing on the shore; and, that he had

observed defendant operating the boat for 10 to 15 minutes prior to the accident." *Id.* The court acknowledged defendant had several valid points he could develop on cross examination and argue to a jury in regard to the lack of probative value of the testimony, but they were not sufficient to disqualify the plaintiff's witness from expressing his opinion as to the speed of the defendant's boat, and the testimony should have been allowed. *Id.*

Here, the trial judge properly admitted the testimony of all three State's witnesses who gave an estimated rate of speed of Appellant's moving boat. The witnesses' testimony satisfied the requirements for lay opinion testimony under Rule 701, SCRE, as the testimony was based on their own perceptions of the speed of Appellant's boat, the testimony was helpful to the jury, and the testimony was based on their personal knowledge and experience with boats. The testimony was not confusing or spurious. Instead, the testimony was crucial in enabling the jury to assess the credibility of Appellant and the other witnesses in their conflicting accounts about the speed of Appellant's boat, which was an important issue in a case of alleged recklessness. Furthermore, the testimony did not improperly invade the province of the jury in deciding the case. The witnesses merely aided the jury in properly determining whether Appellant's speed was indicative of reckless operation of his boat, which in turn enabled the jurors to accurately determine whether Appellant was guilty of the indicted offense.

Appellant cites *State v. Fripp*, 396 S.C. 434, 721 S.E.2d 465 (Ct. App. 2012), as an example of admissible lay witness testimony and argues the circumstances of the testimony given in his case are different. Yet, the rationale behind admitting the testimony is quite similar. Indeed, the testimony of the three individuals who had significant experience boating on Lake Marion while observing other boats on the lake and tracking the speed of their own boats offered the jury a perspective it could not acquire in whatever limited exposure it had to boating and the

relative speed of boats. As in *Fripp*, their testimony was helpful to the jury in gaining a better understanding of other testimony offered at trial, and in the determination of facts in issue. It provided the jury with the opinion of those who had both the opportunity to observe Appellant's moving boat at the time of the collision as well as foundational knowledge and experience regarding the speed of boats. In both cases, the lay witness opinion testimony was properly admitted.

Next, relying on *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001), and *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 764 S.E.2d 249 (Ct. App. 2014), Appellant argues the testimony should have been excluded because it consisted of opinions that required special knowledge, skill, experience, or training. However, the three witnesses who estimated the speed of Appellant's boat did merely that: they "estimated" the speed within a range rather than giving an expert opinion as to exact speed based on measurements, damage to the boats, or other factors that might be known to a person with scientific, technical, or other specialized knowledge based on experience, training, or education. Those lay witness opinion estimates of speed were properly admitted by the trial court after the State established each witness' basic foundational experience with boating and the fact that he or she observed the movement of Appellant's boat at the time of the collision. As explained above in regard to testimony about the speed of a moving automobile, the probative value of this admissible evidence was properly left for the jury to determine. *See Green*, 335 S.E.2d at 177 ("The ability of a witness to accurately determine the speed is a question of credibility rather than a question of admissibility."). The trial judge did not abuse his discretion in admitting the lay witness opinion testimony, and his ruling was supported by the evidence in the record.

In any event, Appellant suffered no prejudice from the admission of the testimony estimating the speed of his boat because he was acquitted of reckless homicide by operation of a boat. The only argument Appellant made at trial was that the speed estimates were not relevant where there are no speed limits on the lake. The solicitor responded that because there are laws which prohibit vessels from driving too fast for conditions, speed is relevant to reckless operation of a boat. Nevertheless, Appellant complained that allowing such testimony would "spit in the face of Rule 701" because it involved asking a lay witness to give an opinion about something that would require expert testimony. In other words, Appellant objected to the lay witness opinion testimony because he believed the jury would use it to determine he was being reckless. Here, the jury determined Appellant was not being reckless. Indeed, he was only convicted of the lesser included offense of negligent operation of a water vessel, a crime he specifically admitted during closing argument at trial. (R.p.583, lines 2-4). Thus, Appellant could not have been prejudiced by this opinion testimony. For all of these reasons, Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

EARNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
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CERTIFICATE OF COUNSEL

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

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J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

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