ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2017-002531

THE STATE,

Respondent,

vs.

ANGELITA WRIGHT

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Chief Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306
(843) 958-1900

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2017-002531

THE STATE,

Respondent,

vs.

ANGELITA NICOLE WRIGHT,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Chief Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF THE CASE

Respondent agrees with Appellant's Statement of the Case.

STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence presented at trial was that Appellant and the victim, Brent Tessnear, had previously been married and had children together. However, they had been estranged for two years by December 26, 2015. *See* ***R. 196; 270.***

Brandon Blackwood testified that he was twenty years old and graduated from high school in 2016. He met Appellant through her cousin, Christine Hamrick, roughly five months before December 26, 2015. Although he "knew of" Brent Tessnear through Appellant, he did not know Brent. Around 3:00 p.m. on December 26th, Blackwood was at Christine's residence in Pacolet when Appellant asked if he would take her to Brent's house in Cowpens "to get [the] Christmas presents for her children." ***R. 194-96.***

Blackwood drove Appellant to Brent's house in his white truck. Blackwood remained in the truck, but she went up to the house and knocked on the door. Brent answered the door and they spoke briefly, before going into the house. When Appellant returned to the truck fifteen minutes later, she was visibly upset and yelling that she could not believe Brent. Because she appeared "[a]ngry" and "bitter," Blackwood asked what Brent had done. Appellant said that he had returned the children's Christmas gifts, took the money he got and "bought drugs with it." ***R. 196-98.***

Appellant then drove them back to a store in Pacolet where she bought some cigarettes. She also bought some Malibu rum for Blackwood at his request. Their next stop was at Carol

Barzilay's house.[1] Blackwood had never been drunk before and he drank almost half of the rum on the way to her house. Appellant got out and spoke to Carol once they reached her house, but Blackwood initially remained in the truck because he was drunk. ***R. 198-200.***

He eventually got out and introduced himself to Carol, and he spoke to his friend, who had arrived. Soon, Appellant was yelling, "[T]here's no way in hell he just did this." Blackwood asked her why she was angry and she told him that Brent had "posted pictures of her private parts" on indicated they were her private parts. Appellant was "furious" and repeatedly said, "[H]e's got two minutes to take those down" and that she was "going to have to find somebody to go and beat his ass" if he did not remove the pictures. She had not been drinking in Blackwood's presence. ***R. 200-01.***

Appellant thereafter went into Carol's residence for about fifteen minutes. When she returned, she drove Blackwood's truck because he was too drunk to drive. She went to a woman's house in Cherokee County because Appellant wanted to locate her brother and ask him to beat up Brent for her. Appellant also unsuccessfully tried calling her brother. Next, she drove back to Brent's house but no one answered the door. ***R. 201-03.***

Before they left Brent's house, Johnathan Sellars and Amber Gossett arrived. Jonathan had not seen Brent. At Appellant's insistence, Johnathan called Chavis Tessnear but Chavis had not seen him either. Appellant drove the group to Chavis' house and they remained there for some period of time. When they left, they walked back to Brent's house. ***R. 203-04.***

No one answered Appellant's knocks on the front door and the window even though she yelled for Brent. The front door was locked. So, she went to the back door and was able to get

[1] Apparently, Blackwood did not know Carol's last name and referred to her as Appellant's "friend Carol." ***R. 198-99.***

inside. She emerged about fifteen minutes later and said that the only present that she found was a bike for her boy, which Blackwood and Johnathan put into the bed of the truck. Appellant then drove by the home of a woman named Tammy, whom Blackwood had never met, because Appellant mistakenly thought that Brent might be there. ***R. 205-06.***[2]

The next place that Blackwood remembered going to was the Spinx station in Spartanburg, where Appellant met her friends. Again, Appellant drove. She got out of the truck and into her friends' vehicle. After speaking to her friends, she told Blackwood to go to the nearby Arby's and she would meet him there in a minute.[3] Appellant and her friends pulled into the Arby's ten minutes later, and Blackwood got the bike out of the truck bed at Appellant's request, so that she could show it to her friends. ***R. 206-09.***

After her friends left, Blackwood told he needed to get home because he had a midnight curfew and it was after 12:00 a.m. He stated that he would drive himself home. However, Appellant told him to relax and that she would drive because he was too drunk to drive. Blackwood eventually acquiesced and allowed her to drive. By the time he awoke, Appellant was getting out of the truck at the Li'l Cricket in Cowpens again, even though he did not have any reason to be in Cowpens. ***R. 209-11.***

Brent was coming out of the store a she approached it and she ran into him. They then had a heated argument for five to ten minutes, in which they yelled at each other. When Appellant got back into the truck, she repeatedly refused to tell Blackwood what was wrong and insisted that she was fine. She thereafter drove. After making sure that no cars were coming, she pulled out of the parking lot and headed on N. Main St. She then turned on Graveyard St. (S 566), which is by the

---

[2] Brent was dating Tammy Yosa at the time. ***R. 284.***

[3] Blackwood testified that the Arby's was less than a minute away from the Spinx station. ***R. 253.***

Hardee's. ***R. 211; 214-15***.

Blackwood saw a man walking in the road and warned her to "watch out." Appellant initially slowed her speed and turned on her bright lights. Despite Blackwood saying, "'make sure you don't hit him,'" she floored the truck when the man was in the center of the road and did not stop because she apparently recognized Brent. Appellant continued driving until she reached her apartment in Pacolet. From there, Blackwood drove to his mother's house in Cherokee County. ***R. 216-17***.

Less than twenty-four hours after Appellant killed Brent, she sent Blackwood a text at 12:57 a.m. on December 28th in which she said, "You in town? I was walking to the store. LOL." ***R. 221***. Blackwood spoke police on the 29th. On his way to meet with law enforcement, Appellant sent him a text telling him that "you need to call me ASAP." ***R. 218-20***.

Blackwood indicated in his original statement that Appellant was driving the truck when she struck and killed Brent. Blackwood admitted that he gave inconsistent statements to the Assistant Solicitor and police when he met with them to prepare for the original trial date. He had even given a statement stating that he was driving. He testified, however, that he had smoked marijuana before giving the false confessions, and that he had felt threatened and pressured to falsely confess. He was adamant at trial that Appellant was the driver, that he did not have a reason to be in Cowpens at 2:00 a.m., that he did not know that Brent walked up and down Graveyard St., and that he had not received any deal in exchange for his testimony. ***R. 221-23***.[4]

Alaina Miller testified that she misplaced her cell phone in her home around 3:00 a.m. on December 27, 2017. Her boyfriend did not have a cell phone. So, she was going to drive to a nearby

[4] Defense counsel impeached him with his inconsistent statements on cross-examination (***R. 230-42; 248-49***), and Appellant later called Assistant Solicitor Spencer Smith and the officers involved in taking those inconsistent statements as defense witnesses. *See* ***R. 368-405; 474-80***.

gas station and have them call her number. Her boyfriend was going to stay home to listen for the ring in order to locate her phone. After she had driven a short distance past the railroad tracks on Cemetery St., she saw a man's feet in the roadway. "[H]is head was on the white line that comes before the 'X' on a railroad sign," and he was lying face down. ***R. 65-67.***

She circled the man but he did not move. So, she immediately went back home and told her boyfriend what she had seen. They then walked to the store to call the police, but stopped a passing car and the occupant of the car called 911. Alaina went to the gas station, but did not see any officers. So, she went back to where she had found the victim. It was approximately 3:15 a.m. by that time. ***R. 66-69.***

Sgt. Ruth Wolfe, of the Cowpens Police Department, testified that she was dispatched at 3:03 a.m. on December 27, 2015, "to assist an ambulance on Cemetery Street in reference to a man down." Emergency personnel were present by the time she arrived on the scene, which "was near the 'X' on the railroad (sic) on Cemetery Street." An African American man, Alaina Miller, and Ms. Miller's boyfriend were also present, but none of them could identify Brent. Sgt. Wolfe collected a green plastic bag, a cell phone, keys, a lighter, and some grocery items that were laying in the roadway near the emergency personnel. She placed these items in the trunk of her vehicle and then went to Spartanburg Regional Hospital. ***R. 69-73; 77.***

When she finally saw Brent, she recognized him because she had seen him earlier that morning at the Li'l Cricket in Cowpens. She had gone into the store shortly before 2:00 a.m. on the 27th to get a cell phone charger to use in her vehicle. When he went to purchase his items, she noticed that he had apparently been drinking. She asked him whether he had been drinking and he admitted that he had "a few" Jägermeisters earlier. He also explained that he lived behind the Hardee's off of Hwy. 29 and Oakland St. Sgt. Wolfe intended to offer him a ride, even though he

was not grossly intoxicated. However, he was already walking in the direction of his home by the time that she had paid for the cell phone charger at 2:02 a.m. ***R. 73-75; 78-79; 81-82.***

Inv. Jeanie Burnett testified that she went to Spartanburg Regional Hospital on the morning of December 27th and saw Brent's body, as part of her duties as an investigator with the Spartanburg County Coroner's Office. "He had a couple of abrasions on his body that [were] not consistent with falling out in the road." These injuries included bruises on his ankles, "scuff marks" on his shoulder blades and his legs, and an injury "above his right eye." In light of what Inv. Burnett observed, she had Sgt. Wolfe take her to the area where Brent's body had been discovered. ***R. 334-35.***

Once Inv. Burnett got to the scene, she had the area cordoned off, as a potential crime scene. Between 5:00 and 6:00 a.m., Inv. Burnett called Appellant and asked Appellant to meet her because she needed to speak with Appellant about something. Although she identified herself as a Spartanburg County employee, she did not tell Appellant that she worked for the Coroner's Office. Yet, Appellant immediately asked, "Is he okay? I want to make sure he's alright." ***R. 336-37; 340-41.***[5]

Also, when Inv. Burnett asked Appellant where she was, Appellant said that she was home in Pacolet and had not seen Brent. She then admitted that she was on the Ashville Hwy. Inv. Burnett later met with Appellant in the emergency room of the hospital. While it only took her roughly twenty minutes to get the hospital, Appellant was already there when she arrived. ***R. 339-40; 342.***

Inv. Michael Nix, who works in the crime scene unit of the Spartanburg County Sheriff's

[5] Inv. Burnett made the call in the presence of Sgt. Wolfe and she could tell that another person was also in Appellant's car. ***R. 339.***

Office, went to the scene at the intersection of Cemetery and Oakland Streets on the morning of December 27th. Inv. Burnett asked to look at Brent's body and assess what he thought happened. He looked at the body and concluded that Brent had been struck by a vehicle. In addition to photographing the scene, he collected evidence and measured how far some evidentiary items that he found were from the railroad crossing. Although he was told that Brent's body was found close to the railroad crossing, the evidence he found was over two hundred feet from it. Also, he did not find any vehicle parts or tire marks in the roadway. ***R. 315-26.***

Nineteen year old Johnathan Sellars testified that he was living with Brent's son, Chavis, in Cowpens, on December 26, 2015. Johnathan did not know Appellant at the time but he knew Brandon Blackwood from school. Between 8:00 and 9:00 p.m. on the 26th, he saw Blackwood and Appellant Brent's house. They were traveling in Blackwood's truck but Appellant was driving. Appellant was mad and wanted to know where Brent was because of photographs on Facebook. ***R. 183-86; 191-92.***

Johnathan and Amber Gossett thereafter rode with them as Appellant headed to a trailer in Pacolet.[6] Before they reached this trailer, Appellant briefly received a call from Brent and told him that she would be there in fifteen minutes.[7] She then turned around and headed back to Cowpens. As they drove, Appellant said that Brent "don't deserve the ground he walks on or the air he breathes." She dropped Johnathan and Amber there. In light of Appellant's comment the previous day, Johnathan was concerned when he heard on December 27th that Brent was dead. ***R. 186-88;***

---

[6] She did not explain why she was going there. ***R. 192.***

[7] Appellant told Brent that she loved him in that conversation. ***R. 189.*** Johnathan's testimony vacillated on whether this was before or after her malicious remark, but he ultimately testified that was before it. ***R. 191.***

191-92.

Carol Barzilay testified that Appellant and Brandon Blackwood went to Ms. Barzilay's Pacolet, South Carolina residence between 8:00 and 9:30 p.m. on the night of December 26, 2015, and they stayed there for thirty to forty-five minutes. Appellant was driving Blackwood's white Ford 150 truck. She had apparently been drinking and she was "ranting and raving" about pictures "of her body parts" that Brent had posted on Facebook. Ms. Barzilay attempted to calm Appellant and called Brent using Appellant's cell phone. When confronted, he denied posting the photographs. Appellant then spoke to him. Afterwards, she told Ms. Barzilay, "I'm going to kill the f----ing bastard." Appellant was driving when they left and said that she was going to Brent's residence. ***R. 118-22***.

Amy Padgett testified that she was Brent's first cousin and that she had met Appellant through him. Amy and her daughter, Hannah, were staying at Ms. Barzilay's residence on December 26, 2015. Slightly before 9:00 p.m. that night,[8] Appellant pulled into the driveway of the residence at a high rate of speed, "slammed the brakes," and got out the white truck. Blackwood was in the truck but she was driving. Several mini bottles of liquor fell out of the truck as she got out. Appellant "was livid" about some pictures "of her body parts" that Brent had posted on Facebook and she wanted to use Hannah Padgett's phone to call him. Hannah overheard her say that she was going to kill him. ***R. 126-28; 137-40***.

Hannah and Amy testified that Appellant used her phone "to get on Facebook." Hannah also saw Appellant and Blackwood drinking while they were there. She was driving the truck when they left. ***R. 128-29; 140***. Amy testified that after Appellant saw the photographs, she called Brent

[8] Seventeen year old Hannah was positive about the time because she had walked back from a store that closed at 9:00 p.m. ***R. 126***.

on her flip phone and asked him why he had posted the pictures of her. They went "back and forth." Although he denied that he had posted the pictures, Appellant told him, "[Y]ou have two minutes to take these pictures off or ... I'm coming to kill you." When Blackwood asked Appellant if she wanted him "to do it" for her, she replied, "[N]o, I can take care of my own."***R. 140-41.***

Both Appellant and Blackwood were stumbling. So, Amy told both of them that they had been drinking and needed to lay down. In spite of this plea, they got back into the truck and sped away, with Appellant driving. ***R. 140-41.*** Hannah Padgett confirmed that Appellant was driving the truck when she and Blackwood left. ***R. 129.***

Amy learned that Brent was dead around 7:30 or 8:00 on December 27th when Eric Edgins, who was dating Carol Barzilay at the time, showed her a text that Appellant had sent him.[9] Because Amy could not believe that her cousin was dead, Amy got Appellant's cell phone number from Mr. Edgins and called her. Appellant was crying. She confirmed that he was dead and, when asked what happened, said "the Evans guy beat him to death." ***R. 141-42.*** Amy saw Appellant later on the 27th at Spartanburg Regional Hospital. ***R. 142.***

Appellant "seemed nervous." ***R. 143.*** According to Amy, the women had the following conversation:

> [Appellant] was standing off to the side kinda bent down. And I walked up to her and I hugged her, and I'm like ... are you okay. And she was like I can't believe they did this to Brent. And I was like who. And she said the Evans boy beat him to death. Brian Evans had beat him to death. And I asked could I see him, because I couldn't believe that he was actually gone. I wanted to see for myself. But the hospital refused to let anyone see him.

R. 143, lines 2-9.

---

[9] Eric Edgins, who had at one point been in a relationship with Appellant, also testified for the State. He corroborated Amy's testimony that he showed her a text that he had received from Appellant on the 27th stating that Brent was dead. ***R. 327-28; 331.*** He also testified that he received on the 29th in which she stated, "'I see you believe in me so much ... you think I murdered Brent.'" ***R. 329-30.***

Hannah likewise testified that when she was at the hospital on the 27th, she heard Appellant say "something about Brian Evans and some other person" killed Brent. ***R. 129***. Both Hannah and Amy testified that Appellant rode with them when they left the hospital and asked to go to Brent's residence because she needed to get his phone. While Hannah testified that Appellant claimed that she had permission to get his phone, Amy testified that Appellant had papers in her hands and claimed that the Spartanburg Sheriff's Office had authorized her to get his phone. Therefore, Amy drove her to his Cowpens residence. ***R. 129-31; 143***.

When they reached his house, Appellant got out of the truck and tried to get into the house. However, it was locked. Appellant then went to the back of the residence and picked up a brick, but Hannah stopped her from using it to break into the house. So, Appellant and Hannah got back into the truck. The police pulled Amy as they were driving away and asked why they were at Brent's house. In response to Amy's explanation that Appellant led them to believe it was okay for them to be there because she had asked to go there and had "paperwork," officers told them not to come back to the property because "it was all under investigation and nobody was allowed there. Although Appellant seemed "up tight," she spoke to the Chief of Police. ***R. 143-44***.

On December 28th, Amy drove Appellant to the funeral home. On the way there, Appellant was quiet at times she was quiet, but "she would break down at moments. And then it was almost like she was very nervous." Appellant "called the life insurance people" while they were at the funeral home because "she was trying to figure out if he had life insurance and who was the beneficiary of the life insurance." She was unsuccessful because the company would not give her any information. ***R. 145***.[10]

[10] Brent's son by a previous marriage, Brett Tessnear, testified that his father had a life insurance policy with Mutual of Omaha Life Insurance and that he was the sole beneficiary. ***R. 358-59***.

Bridget Miller testified that she was Brent's sister and that she had known Appellant most of Appellant's life. Although they had their "ups and downs," the women were close. Bridget remembered seeing Appellant and Blackwood on December 26th, at the Spinx gas station in Spartanburg. It was around 10:00 p.m. and Bridget was preparing to go to the flea market early the next morning. While her husband was in the store, Appellant and Blackwood pulled up in his truck. Bridget apparently scared Blackwood when she tried to speak to him because he backed the truck up over a curb and drove to a nearby Arby's. ***R. 260-64.***

Appellant got into Bridget's vehicle and she told Bridget that she was trying to sell a TV. After Bridget's husband came out of the store, he got into the truck and the three went to the Arby's where Blackwood had parked. She saw the bicycle for Appellant's son in the truck bed. Appellant told Bridget that she had to get Blackwood home because he was drunk. Appellant insisted on driving the truck even after Bridget reminded her that she did not have a driver's license and she declined Bridget's offer to follow her home. ***R. 263-65.***

Bridget then went home and went to bed. She next saw Appellant sometime close to 5:00 a.m. the following morning after she stopped by her father's house before she went to the flea market.[11] Blackwood was with Appellant at that point. Appellant went with Bridget to help her set up at the flea market. As they were headed to Hardee's to eat, Appellant told Bridget that "she was scared that Brent had got beat up over ... a cell phone," and that Bridget needed to get in touch with him and "go check on him." ***R. 266-68.***

Bridget, whose phone was at home charging, said that she would do something later. She added that if Brent had done "something to Jeff, Jeff will just knock him around a little bit but he

---

[11] Bridget explained that she had to be at the flea market when it opened at 6:00 a.m. to get a good "place." ***R. 266.***

won't hurt him ... because [Jeff was] like a nephew to him." In this conversation, Appellant appeared to be concerned about Brent. However, she finally told Bridget about trying to stop him from selling the children's Christmas gifts. ***R. 268-69; 273-74; 279-80.***

Appellant received a phone call from the Coroner's Office at 5:57 a.m. This was while she and Bridget were at the Hardee's and Bridget was able to hear the conversation because Appellant put the call on speakerphone at her request. The caller needed to come to Appellant's house and speak with about Brent. Bridget told the caller that she did not have enough gas to go to Pacolet. So, the caller agreed to meet them at Spartanburg Regional Hospital. Bridget got mad when the caller refused to answer any of Bridget's questions because Brent and Appellant had been separated for two years. ***R. 269-70.***

Once they reached the hospital, Appellant called a male cousin and repeatedly asked him "[W]hat do I do[?] [W]hat does it mean[?]"Bridget told her it meant either Brent was on life support, "or I don't want to mention the other thing, or maybe he's in jail." Later, hospital staff told the women that Brent was unconscious when found behind the Hardee's and that he had died. Bridget went home but Appellant was required to stay. ***R. 270-72.***

Margo Kirk testified that Brent was her cousin, that they were close, and that they lived within walking distance of each other at the time of his murder. He contacted her in the early morning hours of December 27th and asked if she had "a way to the store" because he needed cigarettes. She told him that she did not have a vehicle. Although she likewise needed cigarettes and the store was less than a mile away, she declined his invitation to walk to the store with him. He posted on Facebook at 1:50 a.m. that he was on his way there. ***R. 181-83.***

Sherry Riley testified that she was related to Brent and had raised him and Bridget after their mother died. Sherry had seen Appellant but did not know her. Sherry testified that she lived

in Cowpens on December 26, 2015, and that her home was less than a mile away from Brent's house. She and Brent had a good relationship because he had gotten his life straightened out, had a good job and was buying a home. ***R. 281-82.***

Brent went by Sherry's house on December 26th and wanted to know if she had a pigtail connector to use on his dryer. She did not know and told him that she would ask her husband when he got home. ***R. 283.*** He then showed her a text message that Appellant had sent him:

> And it said if you don't take that off of [Facebook] I'm going to come to Cowpens and kill you. And I said what did you put on [Facebook?] And he said it was a woman's private. And he tagged her and tagged different ones in it, and I said, boy, you know better than to do stuff like that.

R. 283-84. Brent asked her to check on the connector and left. ***R. 284.***

He later called her between 10:00 and 10:40 p.m., as Sherry and her husband were headed to a friend's house. He was trying to get in touch with Tammy Yosa, a girl he was dating but Sherry did not know how to reach her. Brent also asked her and her husband to come by his place on their way home. Sherry told him that she did not know if they could stop by because it might be late. Brent next called her at 2:06 a.m. on the 27th. She could tell that he had been drinking. He wanted to know whether she had asked her husband about the pigtail connector and she told him that her husband had one but that he would have to find it. ***R. 284-85.***

In order for the Rileys to get home, they had to drive by the Hardee's near the crime scene. As they drove by after 2:30 a.m., the road was blocked and both police and an ambulance were present. So, the Rileys stopped at the Li'l Cricket and her husband went inside to find out what had happened. When he returned, he told Sherry that the cashier said someone had been hit by a vehicle. He later told her that Brent had been hit. ***R. 285-87.***

Frances Dalton testified that she had met Appellant and Brent through her former

boyfriend, Robert, and that she lived two houses away from Appellant on December 26, 2015. Appellant called Robert between 3:00 and 4:00 a.m. on the 27th and asked for Robert and Frances to come out and talk to her. They met her outside and then the three of them went into her house. In this conversation, she appeared to be "real worried about Brent, saying that he had gotten into a lot of trouble and that she was worried about what may happen to him." She also said, him and her (sic) had messed up before but ... he'd never messed up like this, that he was on drugs real bad and had done traded all the kids' Christmas but the bicycle that was there. ***R. 288-89***.

She also said that "she was worried about he had posted some naked pies of some girl and worried about ... the woman's boyfriend hurting Brent," and she was scared because Brent had stolen a cell phone from a dangerous drug dealer. ***R. 290; 294***. When the three friends ran out of cigarettes, Appellant offered to buy cigarettes and a drink if Frances and Robert would walk to the Li'l Crick with her. They agreed and all three walked to the store. Appellant was very quiet on the walk there and on the way back home. Frances testified that this was not normal for Appellant, particularly since she had been expressing so much concern for Brent only minutes earlier. Shortly after they returned home, Bridget Miller arrived and Appellant left with her. Finally, Frances denied being with Appellant between 1:00 and 2:00 a.m. on the 27th. ***R. 289-92; 295***.

Odessa Erwin was working as the cashier at the Li'L Cricket in Cowpens, on December 26, 2015. Few people came in during her 11:00 p.m. to 7:00 a.m. shift "because it was after the holidays." She remembered both Sgt. Wolfe and Brent coming into the store "around maybe 1:30, 2:00 o'clock-ish." (Sic). ***R. 256-57***.

She testified that Brent "appeared ... like any normal person. .... [H]e wasn't irate or anything." Ms. Erwin could see the entire parking lot and she did not see a man and a woman fighting in the parking lot that morning. Nor did she tell anyone that she had seen a fight. ***R. 257-***

58.

Inv. Thomas Clark, with the Spartanburg County Sheriff's Office, assisted Cowpens Chief of Police Makupson with an interview of Appellant on December 29, 2015, and they obtained a written statement. ***R. 149; 154***. She admitted that she called Blackwood on December 26th and asked him to take her to Brent's house so that she could get her children's Christmas presents and that she got upset because he had sold the gifts and was "possibly high or on drugs." After Carol Barzilay called her and told her "about some pictures on [F]acebook that her husband had posted," she went to Ms. Barzilay's house in Pacolet. Appellant also admitted that she posted on Brent's Facebook page, "'If he did not remove my name I was going to come up there to Cowpens and whip Brent.'" ***R. 154-55***.

Appellant and Blackwood later went back to Brent's house with a man named Johnny, to get her son's bicycle. ***R. 155-56***. To that point, her statement was generally consistent with the testimony of persons with whom she came into contact on the 26th. Yet, she claimed that after they left Brent's house the second time, Blackwood dropped her off at her Pacolet apartment. She called Robert Blackwell and Marie Dalton. ***R. 156***.

"They came over to her apartment and they smoked dope." The three walked to a local store "between 1:00 and 2:30 [a.m.]." She then waited on Brent's sister, Bridget, to come pick her up. She later rode with Bridget back to Bridget's house and they "'smoked until the coroner's office called her.'" Inv. Clark denied giving Appellant permission to get Brent's cell phone. ***R. 156-57***.

Lindsey McGraw[12] testified that he is computer forensic examiner in the South Carolina Attorney General's Office and that he had previously worked in this capacity for the Spartanburg

[12] Mr. McGraw testified that Cellebrite is used by law enforcement throughout the world. ***R. 98***.

County Sheriff's Office. ***R. 97-98***. Inv. Clark asked him to perform a forensic examination of three cell phones in this case: Appellant's LG B450; Brent's Coolpad Model 3320A; and Blackwood's LG TracFone. Using Cellebrite, a "hardware tool that is used to extract data from cell phones," he attempted to perform a forensic extraction on the three phones. ***R. 98; 100***.

Cellebrite has the capability of performing three potential types of examinations on cell phones: a logical extraction of data, a file system extraction of data, and a physical extraction of data. A logical extraction of data is what the phone's user can see on the phone and does not typically include deleted data. A file system extraction includes this information, as well as application data. A physical extraction of data "is the entire bit for bit data that's available on the device to include operating system information, file system information, deleted data, anything that's available on the phone that's electronic in nature." ***R. 99***.

Because Appellant's flip phone did not support any of Celebrities' extraction methods, Mr. McGraw took digital photographs (State's Ex. 2) of the information he found on the phone's SIM card. There were "35 inbox messages and 92 outbox messages." He also photographed the text messages. The date and time for the earliest text message that she received was 6:30 p.m. on December 27, 2015. The date and time for the earliest text message that she sent was 6:47 a.m. on the 27th. ***R. 100-02***.[13]

Sgt. Brandon Letterman testified on direct examination that he is a computer and cell phone forensics analyst for the Spartanburg County Sheriff's Office, and that he was a Senior Investigator with the Office's cold case homicide unit. In connection with this case, he photographed Appellant's South Carolina ID Card (*see* State's Ex. 7), which she had left in the driver's side door

[13] Mr. McGraw did a logical extraction on the other two phones but was likewise unable to retrieve any deleted information from them. ***R. 103-04***.

of Blackwood's truck (*see* State's Ex. 8). Sgt. Letterman also executed a search warrant that enabled him to photograph (*see* State's Ex. 3-A) the phone call logs on Appellant's cell phone. Using Cellebrite, he did a forensic extraction of the contact list on her phone as well. ***R. 345-50***; State's Ex. 3-B (pdf. of information extracted).

Appellant's call logs reflected that she called Tindall Corporation at 4:26 p.m. on December 28th and again on Tuesday the 29th. She likewise called United of Omaha Life Insurance Company at 4:30 p.m. and again at 4:48 p.m. on December 28th. Sgt. Letterman contacted the manufacturer of Appellant's phone and was informed that text messages had to be manually deleted. Also, her phone had a storage capacity of 256 megabites, which means that it could hold approximately 1,828,571 S.M.S. text messages, or messages without anything attached to them. ***R. 350-54; 356-57***. (Thus, Appellant did not have any reason to delete the texts from the phone prior to December 27, 2015, because there was adequate space to store more information).

Dr. John Wren is the forensic pathologist who performed an autopsy on Brent's body. Brent's body was clothed when the autopsy began, and the "major" injury on the external examination of Brent's body was "an irregular torn area in the right [mid-chest] that covered about 13 by 5 centimeters, which is about 5 by 2 inches." Dr. Wren also observed "a pattern area along the left shoulder of the shirt near the seam with linear marks separated by about half an inch and covering an area of about 2 by 1 inch, which looked like a tire mark to me. Further, Brent's lip was bruised, his front teeth were chipped, he had abrasions and small lacerations on the right side of his face, and he had "abrasions and contusions scattered over his body." Those on his shoulders and back were "consistent with road rash." ***R. 304-08***.

Dr. Wren testified that the primary internal injury was Brent's "liver had actually ruptured open from a pressure type injury or extreme blow to the abdomen, although I didn't see anything

externally. .... It was a deep laceration that actually separated the right lobe of the liver." I would require "either constant pressure force or an extreme blow to cause the liver to lacerate like that." This injury cause extensive hemorrhaging in the rear of the abdominal wall. ***R. 308-09.***

Dr. Wren found that there was a laceration across the top of Brent's right kidney that likewise separated the top portion of his kidney from the bottom portion. ***R. 308.*** Dr. Wren opined that the cause of death was internal hemorrhaging, secondary to a lacerated liver and kidneys, and secondary to blunt force trauma. He also opined that these injuries were "consistent with a pedestrian versus vehicle encounter." ***R. 309-10.***

Sgt. Letterman was the prosecution's only reply witness. *See* Arguments, *infra*. He testified that he had reviewed Blackwood's Verizon Wireless cell phone records, which were introduced without objection as State's Ex.s 1-A (DVD with log of ingoing and outgoing calls) and 1-B (DVD with log of ingoing and outgoing text messages). The T-Mobile call data records for Appellant's phone (State's Ex. 12) reflected that all calls from line 478 through 486 were listed as call forwarding. This meant that either the phone was off, it had "died," or it was busy, and the call was forwarded straight to voice mail from11:19 p.m. on the 26th until 2:04 a.m. on the 27th. She received the nine text messages that had been previously sent to her within fourteen seconds after she turned the phone back on, including two texts from Blackwood. ***R. 488-93; 496.***

An outgoing text message was sent from Appellant's phone at 2:10:28 a.m. on the 27th. Thus, she used the phone at that time. The first incoming text after that message was at 2:10:11 a.m. and she then received a text from Brent's phone at 2:18:32 a.m. She did not use her phone again until 3:08:31 a.m. ***R. 493-96.***

According to Sgt. Letterman, the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th. Also, his phone records reflected that his

phone was not active at 2:09 a.m. ***R. 493-94.***

STANDARD OF REVIEW

In criminal cases, appellate courts only review errors of law. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "The qualification of an expert witness and the admissibility of the expert's testimony are matters largely within the trial court's discretion." *State v. Harris*, 318 S.C. 178, 181, 456 S.E.2d 433, 435 (Ct. App. 1995). "The trial court does not abuse its discretion in qualifying experts and allowing their testimony as long as the witnesses have 'acquired by study or practical experience such knowledge of the subject matter of [their] testimony as would enable [them] to give guidance and assistance to the jury in resolving a factual issue [that] is beyond the scope of the jury's good judgment and common knowledge.'" *State v. Mealor*, 425 S.C. 625, 645-46., 825 S.E.2d 53, 64 (Ct. App. 2019) (quoting *State v. Anderson*, 407 S.C. 278, 285, 754 S.E.2d 905, 908 (Ct. App. 2014) (quoting *State v. Goode*, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991))). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *State v. Herrera*, 425 S.C. 558, 562, 823 S.E.2d 923, 924 (2019) (quoting *State v. Douglas*, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)).

"The admission of reply testimony is a matter within the sound discretion of the trial judge." *State v. Stewart*, 283 S.C. 104, 106, 320 S.E.2d 447, 449 (1984); *State v. Huckabee*, 388 S.C. 232, 243, 694 S.E.2d 781, 786 (Ct.App. 2010) (finding no abuse of discretion by the trial judge in allowing reply testimony when it was limited in scope to contradict a previous contention raised by the defendant and not admitted to complete the State's case-in-chief). Admission of testimony that is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion. *See State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986); *State v.*

South, 285 S.C. 529, 535, 331 S.E.2d 775, 779 (1985) ("Any arguably contradictory testimony is proper on reply, and the trial judge properly exercised his discretion"). "Just what evidence is admissible in reply in a given case, as opposed to being offered as part of the evidence-in-chief, is a question which of necessity has to rest largely in the sound discretion of the trial judge." *State v. Hinson*, 253 S.C. 607, 619, 172 S.E.2d 548, 554 (1970). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Respondent submits that applying this standard of review, the Court should affirm the trial judge's ruling and the judgment of conviction should be affirmed.

ARGUMENTS

I. The trial judge did not abuse his discretion by qualifying Inv. Brandon Letterman as an expert in "cell phone forensics and cell tower mapping" under Rule 702, SCRE, because he had acquired such knowledge of these areas, through study and practical experience, that his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury's good judgment and common knowledge, and Appellant's attacks on his qualifications go to the weight she believes should have been accorded to his testimony rather than its admissibility.

Respondent submits that the trial judge did not abuse his discretion by qualifying Inv. Brandon Letterman as an expert in "cell phone forensics and cell tower mapping" under Rule 702, SCRE, because he had acquired such knowledge of these areas, through study and practical experience, that his testimony assisted the jury in resolving factual issues that were beyond the scope of the jury's good judgment and common knowledge. Also, this is not a complex field and many courts have concluded that lay witnesses can present this evidence. Further, Appellant's attacks on his qualifications go to the weight she believes should have been accorded to his testimony rather than its admissibility.

A. How Issues I and II developed at trial.

Appellant's cross-examination of Inv. Thomas Clark elicited that the Sheriff's Office had obtained the cell phone records for Brent Tessnear, Appellant and Brandon Blackwood by a search warrant and that these records had been reviewed to compare them to statements and information that had been received. Although the records for Brent and Blackwood were stated in Eastern Standard Time, Appellant's records were stated in Universal Time Code (U.T.C.), and five hours had to be subtracted from the times listed on her records to accurately determine the time of any transaction. ***R. 166-68***. Appellant also elicited that her cell phone records reflected that she received text messages from Blackwood's phone around 2:00 a.m. on December 27th. ***R. 168-69***.

The various records were turned over to a forensic phone investigator in the Sheriff's Office for possible cell tower mapping. While "there were several things with her phone that were not able to be corroborated because of the type of phone it was, and there were things that were not on her phone that could not be pulled up," eventually the forensics investigator was able to map the phones. ***R. 170-72***.

On cross-examination of Brandon Blackwood, Appellant questioned him about text messages that he sent to Appellant and which Appellant received at 2:09 a.m. on December 27th. His response was, "I do not recall texting her." ***R. 243-44***.

After the State had rested and the jury had been excused, defense counsel White noted that Inv. Clark had mentioned that the Spartanburg County Sheriff's Office "had done [cell tower] mapping" but that counsel had not received any evidence of mapping in discovery. The State informed counsel that "they did this recently in response to our indications that we would have someone" testify to mapping. Counsel then asked that the State provide the information, "so that we can review and prepare for cross-examination, if necessary, and allow our expert to review

that." ***R. 366-67.***

> Assistant Attorney General Abee[14] stated,
> Your Honor, again, specifically, just like Ms. White said.
>
> This was prepared in response to their expert. Ms. White did share with us some slides that her expert intends to use. Therefore, we had it prepared in rebuttal to that. If they want to look at it, we have no problem with it. That's fine.

R. 367. In response to the trial judge's inquiry as to when the State would provide the information to defense counsel, Ms. Abee indicated that she had it in her bag (***R. 367***) and no issue has been raised regarding disclosure of information underlying Sgt. Letterman's testimony.

Appellant presented Mr. Tom Slovenski as part of her case-in-chief. ***R. 411-64.*** Mr. Slovenski was qualified as an expert in cell phone forensics and cell phone mapping without objection. ***R. 417, lines 3-9.*** He testified that he had received the T-Mobile call detail records for Appellant's flip phone from December 25, 2015, at 7:03 p.m., to December 27th, at 6:59 p.m. He also explained that the time of the transaction for T-Mobile records is stated in Universal Time Code, which is five hours ahead of Eastern Standard Time. So, it is necessary to subtract five hours from the listed for a transaction in order to determine when the transaction occurred. ***R. 418-19; 425-27.***

Mr. Slovenski testified that when the records reflect a gap in time, this could mean that the phone lost power, that it had been turned off, or that the user was in an area where that did not have coverage. ***Tr. 427.*** He mapped the location of Appellant's cell phone between 2:00 and 3:00 a.m. on December 27th by using a software program called Trax, which he stated is widely accepted by law enforcement in America. ***R. 428-29.***[15]

---

[14] Ms. Abee's name is misspelled throughout the trial transcript.

[15] This software is manufactured by a company of which he is "a corporate partner." ***R. 429, lines 11-14.***

He explained that he "was given the charge of mapping certain key locations" and was Appellant's address on Cleveland Street in Pacolet; Oakland St. and Cemetery Rd. in Cowpens and the Scotchman or Li'l Cricket in Cowpens. ***R. 430-31***. He opined that the cell tower near Appellant's residence covers a radius of roughly six miles and that all of the "traffic" on her phone between 2:00 and 3:00 a.m. on the 27th used the cell phone tower near her Pacolet residence and that her phone would have had to use a different tower if it was being used in Cowpens. ***R. 435-37***.

Mr. Slovenski further testified that her phone was in the Cowpens area "between 7:47 and 8:46 [p.m.]" on the 26th. 9:00 p.m. as well as earlier in the afternoon on December 26th. The phone was in the area of downtown Spartanburg and then heading back to Pacolet around 10:30 p.m. on the 26th. The next activity was at 2:00 a.m. and the phone was in Pacolet at the time. After 2:19 a.m. the phone was moving back to downtown Spartanburg and it was used in Spartanburg between 3:08 and 5:55 a.m. on the 27th. He testified that the phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th. ***R. 438-43***.

Mr. Slovenski conceded on cross-examination that his testimony was based on the cell phone towers the phone used and that a cell phone only hits on a tower when it is in use. Nor was he using G.P.S. tracking software. Also, he estimated the range of the cell phone tower and he did not know the actual range of the towers. ***R. 444-49***. Without objection, the State introduced Appellant's cell phone records on cross-exanimation as State's Ex. 12. ***R. 452***. Mr. Slovenski agreed that an incoming call would go to call-forwarding if a person turned a phone off and that if a cell phone was turned off, a person could neither receive incoming calls or text messages nor send calls or text messages. He also agreed that it if incoming calls on a cell phone went to call-forwarding for three hours it "[c]ould be that the person had turned off the phone during that period.

R. 452-54.

He explained that any previously-received text messages would be received once the phone is activated again. Appellant's phone records indicate that call-forwarding began on her phone at 11:19 p.m. on the 26th and continued until 2:04 a.m. on the 27th. Appellant's phone records reflected that she received a series of text messages in two second intervals, beginning at 2:09:38 a.m. the last four text messages were from Blackwood's cell phone, but Mr. Slovenski testified that he was not asked to a phone report for Blackwood. Finally, Appellant's phone pinged off of the Pacolet tower when she received a text message at 2:18 a.m., and the next activity on her phone was not until 3:08 a.m. ***R. 454-61.***

On redirect, Appellant established that the text messages received at 2:09 a.m. had pinged off of the tower in Pacolet, and some of the call-forwarding reflected in her records were her own outgoing calls. ***R. 461-62.***

After the defense had rested, the State indicated that it had a rebuttal witness and it recalled Sgt. Letterman. ***R. 482.*** Sgt. Letterman testified that he was the "[c]ell phone and computer forensic analyst for the Spartanburg County Sheriff's Office and that he had been in that position for seven months. He had performed between 75 and 80 forensic cell phone examinations and he had analyzed cell phone tower information, including cell tower mapping, "probably 30 or 40 times" in his career. ***R. 483.***

In response to the State's question about his training in the field, Sgt. Letterman testified that for cell phone tower mapping, the Sheriff's Office uses a software program called GeoTime. He had received training through the company that manufactures this software on how to use the company's hardware and software, and he had used it for three months. For cell phone data records, the Sheriff's Office uses a software program called Cellebrite. He had been using Cellebrite for

seven months and he had been certified as a "Cellebrite operator" after taking a class presented by Cellebrite. Additionally, he had shadowed Inv. Lindsey McGraw for a month before entering his current position. ***R. 483-85.***

The State proffered Sgt. Letterman as an expert in cell phone forensics and cell tower mapping, but Appellant indicated that she wanted to voir dire his qualifications. ***R. 485.*** In response to her questioning, he testified that the training he had received for Cellebrite was a week-long program and his training for GeoTime software was for one day. Also, he had never testified as an expert in the area and he had not published in the area or done further research. However, he had presented "at a national homicide conference in Dallas, Texas, on a homicide case that involved cell phone mapping." This was based upon his training and experience and he had not done the mapping in that case. ***R. 485-87.***

Appellant objected to Sgt. Letterman's testimony based on his lack of "qualifications as a cell phone forensic examiner and map[per]." She also objected because he had testified in the State's case-in-chief. She added that he had not obtained "any additional training since that point ... that would allow him to be deemed an expert to come in as a rebuttal witness to our expert." ***R. 487.***

The State responded by noting that Sgt. Letterman had earlier testified as a fact witness because he had been involved as a fact witness in the case. His involvement as a cell phone examiner did not occur until he had changed positions in the Sheriff's Office. The State also argued that the qualifications to testify as an expert under Rule 702, SCRE, are "knowledge, skill, experience, training or education." An expert is not required to have previously testified because every expert must have a first time testifying in court. ***R. 487-88.***

The trial judge qualified him as an expert in the areas of forensic cell phone examination

and mapping, over objection. The trial judge also found that he was a proper rebuttal witness. ***R.* 488**. Sgt. Letterman then testified to the matters discussed in the "Statement of Facts."

B. The trial judge properly qualified Sgt. Letterman as an expert.

The qualification of an expert witness and the admissibility of the expert's testimony are matters largely within the trial court's discretion." *Harris*, 318 S.C. at 181, 456 S.E.2d at 435. See also *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). "There is no exact requirement concerning how knowledge or skill must be acquired." *Honea v. Prior*, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988) (citation omitted). In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather should make a broad inquiry. *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016), *reh'g den.* (July 13, 2016). "The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject." *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004).

"The trial court does not abuse its discretion in qualifying experts and allowing their testimony as long as the witnesses have 'acquired by study or practical experience such knowledge of the subject matter of [their] testimony as would enable [them] to give guidance and assistance to the jury in resolving a factual issue [that] is beyond the scope of the jury's good judgment and common knowledge.'" *Mealor*, 425 S.C. at ___, 825 S.E.2d at 64 (quoting *Anderson*, 407 S.C. at 285, 754 S.E.2d at 908 (quoting *Goode*, 305 S.C. at 178, 406 S.E.2d at 393). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *Herrera*, 425 S.C. at 562, 823 S.E.2d at 924 (quoting *Douglas*, 369 S.C. at 429-30, 632

S.E.2d at 848). See also *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 142 (2010) ("Reversal of a trial judge's qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice").

Notwithstanding Appellant's arguments to the contrary, Respondent submits that the trial judge did not abuse his discretion by qualifying Sgt. Letterman as an expert. The South Carolina Supreme Court has liberally construed Rule 702, SCRE. *See State v. Ford*, 301 S.C. 485, 488, 392 S.E.2d 781, 783 (1990) ("South Carolina ... has never specifically adopted the [*Frye v. United States*, 293 F. 1013 (D.C.Cir.1923)] test and has employed a less restrictive standard in regard to the admissibility of scientific evidence"); *Mealor*, 425 S.C. at ___ n. 13, 825 S.E.2d at 67 n. 13. "In general, courts allow experts to testify if they are more qualified in the field than a juror on the subject. .... Defects in an expert witness' education and experience go to the weight, not the admissibility, of the expert's testimony." *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005).

This is true even though Sgt. Letterman had never previously been qualified as an expert. "Every expert found to be qualified by a court must be so designated a first time." *Clena Investments, Inc. v. XL Specialty Ins. Co.*, 280 F.R.D. 653, 662 (S.D. Fla. 2012). Sgt. Letterman's education and experience in using the Cellebrite and GeoTime software programs[16] "can and do, in and of themselves, satisfy the relatively low threshold established by Rule 702." *Clena Investments, Inc.*, 280 F.R.D. at 662. *Cf. United States v. Cronic*, 466 U.S. 648, 665 (1984) ("Every

[16] Again, he had received training through the companies that manufacture the software programs he had used: GeoTime and Celebrite; he had been certified as a "Cellebrite operator;" he had been using GeoTime for three months; he had been using Cellebrite for seven months; he had performed between 75 and 80 forensic cell phone examinations; and he had analyzed cell phone tower information, including cell tower mapping, "probably 30 or 40 times" in his career. Additionally, he had shadowed another officer with expertise in this area for a month.

experienced criminal defense attorney once tried his first criminal case"). Moreover, the field of expertise at issue - cell phone forensics and cell tower mapping – is not an overly complex area. *Cf. Castellon v. State*, 302 S.W.3d 568, 571 (Tex. App. 2009). *Contra Hamrick v. State*, 426 S.C. 638, 648-49, 828 S.E.2nd 601 (2019) (finding, without any supporting citation(s) and contrary to its own well-settled precedent on the qualification of experts, that "[a]ccident reconstruction is a highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand"). Indeed, many courts have determined that testimony such as that at issue, which merely describes the information in a cell phone record, is proper lay testimony and does not require an expert.[17]

Indeed, this Court rejected a similar argument in *State v. Peer*, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). In *Peer*, the defendants – owners of a "non-alcoholic dance club

[17] This Court has previously affirmed a case pursuant to Rule 220(c), SCACR, in which the appellant asserted that his murder and armed robbery convictions should be reversed because the trial court allegedly erred in permitting two witnesses to testify regarding cell phone location data without qualifying them as experts. *See State v. McDonald*, 2017-UP-285, 2017 WL 4791156, at *1 (S.C. Ct. App. July 12, 2017). Other jurisdictions have likewise consistently found testimony that simply describes the information in a cell phone record, such as that given by Sgt. Letterman, is proper lay testimony. *See Collins v. State*, 172 So.3d 724, 743 (Miss. 2015) (holding that testimony that merely informs the jury as to the location of cell phone towers is proper lay testimony when it is based upon the personal observations of the witness); *Perez v. State*, 980 So.2d 1126, 1131-32 (Fla. 3d Dist. Ct. App. 2008) (finding a cellular company's records custodian was not required to be qualified as an expert to testify regarding geographic coverage of a typical cell tower and factually explain the contents of phone records); *United States v. Baker*, 496 Fed. App'x 201, 204 (3d Cir. 2012) (finding a federal agent's testimony as to his use of computer mapping software to create map of defendant's general location from cell phone records did not involve expert testimony); *United States v. Evans*, 892 F. Supp. 2d 949, 953 (N.D.Ill. 2012) (finding creation of a map plotting cell towers utilized by a defendant's phone does not require specialized knowledge and is admissible through lay opinion testimony); *Burnside v. State*, 352 P.3d 627, 636 (Nev. 2015) (holding the State was not required to notice as an expert witness a detective who made a map of cell phone sites that handled calls from cell phones registered to the defendant).

for teenagers" – were convicted of two counts of reach of the peace. *Id.* at 549, 466 S.E.2d at 377. On appeal, they claimed that a police officer was erroneously qualified as an expert "in sound" and that he was erroneously permitted "to testify concerning the noise ordinance" because he allegedly "lacked sufficient knowledge to be deemed a sound or noise expert." *Id.* at 554, 466 S.E.2d at 380. This Court, however, rejected their argument.

The Court observed that the officer testified that he had worked for the Greenville County Sheriff's Office for roughly five and a half years; that an officer who was certified in the use of sound meter equipment at issue had trained him; that he had been conducting these tests for a and a half; that he had "handled probably ten cases;" and that the officer had "demonstrated for the jury how a sound level meter works." *Id.* The Court further observed that "[t]he 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. .... Defects in the amount and quality of education and experience go to the weight of the expert's testimony and not to its admissibility." *Id.* at 554-55, 466 S.E.2d at 380.

The Court then held that "[p]ursuant to the foregoing principles, we conclude the trial judge properly exercised his discretion in qualifying Deputy Gardner as an expert in sound, and as such, his testimony concerning the noise ordinance was proper." *Id.* at 555, 466 S.E.2d at 380-81.

Courts from other jurisdictions have reached the same result under facts that are similar to those presently before the Court. *See e.g.*, *Warthan v. State*, 927 N.E.2d 425 (Ind. Ct. App. 2010) (police officer qualified to testify as an expert on crash reconstruction even though he did not belong to any professional organization regarding crash investigation or reconstruction, had no higher education or degree in the field, had only conducted one prior accident reconstruction on

his own, was not published, and had not previously testified as an expert witness because officer had participated in a six-week course and additional training on crash reconstruction and was certified as a crash reconstructionist); *Belk, Inc. v. Meyer Corp., U.S.*, 679 F.3d 146, 162 (4th Cir. 2012), *as amended*, (May 9, 2012); *Marsal v. East. Carolina Univ.*, 2011 WL 13233801, at *3 (E.D.N.C., Apr. 15, 2011). *See also Robinson v. GEICO General Ins. Co.*, 447 F.3d 1096, 1100 (8th Cir. 2006) ("Gaps in an expert witness's qualifications or knowledge generally go to the weight of the witness's testimony, not its admissibility").

Appellant's reliance on this Court's decision in *State v. Andrews*, 424 S.C. 304, 316, 818 S.E.2d 227, 234 (Ct. App. 2018), *reh'g denied* (Sept. 20, 2018), is misplaced. In *Andrews*, this Court held that the trial judge did not abuse his discretion by refusing to qualify Investigator Terry Gainey as an expert in interrogation and force science because

> [d]espite Investigator Gainey's twenty years' experience in law enforcement, Andrews failed to demonstrate how Investigator Gainey was qualified to give expert testimony on fragmented post-shooting interrogation memory of a non-officer shooter. Investigator Gainey's one-week course on force issues in law enforcement did not address interviewing non-officer shooters and only dedicated one day to cognitive interviewing.

Id. at 317, 818 S.E.2d at 234. The Court in *Andrews* also held that the trial judge erred by allowing opinion testimony from EMT paramedic Kimberly Graham as to the victim's location at the time of the shooting because her testimony that the victim "'was standing on the porch' when he was shot—exceeded the scope of her expertise in emergency medical services and was, therefore, inadmissible." *Id.* at 318, 818 S.E.2d at 235.

In the present case, however, Sgt. Letterman did have expertise in the area to which he testified at trial. Appellant simply did not think that he had sufficient qualifications. Again, this is not an overly-complex field and to the extent that she believed that Sgt. Letterman was not properly

qualified to testify as an expert, her remedy was to point out any and all defects in his qualifications, knowledge or expertise through her cross-examination of him. *See Austin*, 387 S.C. at 41, 691 S.E.2d at 145; *Peer*, 320 S.C. at 554-55, 466 S.E.2d at 380; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997) ("Greenwood was ... free to cross-examine Hawkins on the methods he used to make these calculations; however, any defects in the amount or quality of his experience go to the weight of his testimony and not to its admissibility"). This is precisely what she did. ***R. 485-87; 496-99***.

Likewise, Sgt. Letterman's inability to perform extractions on Appellant's or Blackwood's cell phones did not render him unqualified to testify as an expert. Rather, he explained the reasons for this and, once again, these are matters that also went to the weight that Appellant believed his testimony should receive and not his qualifications to testify as an expert. *See Austin*, 387 S.C. at 41, 691 S.E.2d at 145; *Peer*, 320 S.C. at 554-55, 466 S.E.2d at 380.[18]

---

[18] Further, the admission of his testimony is in no way analogous to the testimony of the forensic interviewer of child sexual assault victim that the Supreme Court found was improperly admitted in *State v. Kromah*, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013). Although experts are not permitted to offer an opinion as to another witness' credibility, the Supreme Court found in *Kromah* that "[i]t is undeniable that the primary purpose for calling a 'forensic interviewer' as a witness is to lend credibility to the victim's allegations. " *Id.* at 358, 737S.E.2d at 489. Therefore, the Court in *Kromah* set forth a list of statements that should not be elicited from a forensic interviewer:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or
- an opinion that the child's behavior indicated the child was telling the truth.

Id. at 360, 737 S.E.2d at 500. In contrast, Sgt. Letterman's testimony was not based upon hearsay statements by another witness and his opinions did not directly comment upon the truthfulness of any witness.

Appellant's argument that the trial judge erred by admitting Sgt. Letterman's testimony without passing upon the reliability of his testimony is not preserved for appellate review because the same argument was not presented to and passed upon by the trial judge. See *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal"); *Hickman v. Hickman*, 301 S.C. 455, 457, 392 S.E.2d 481, 482 (Ct.App. 1990) (issue not presented to and passed upon by the trial court cannot be considered on appeal). Nor is there merit to her contention in this regard.

In *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009), the Court found that "[a]ll expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration."[19] The Court in *White* held that

> the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact.

Id. at 274, 676 S.E.2d at 689.

However, the "reliability" determination is not whether the individual expert is credible. Rather, it is whether the field to which the expert will give testimony is reliable. See *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74–75, 735 S.E.2d 650, 655 (2012) (In determining whether to admit expert testimony, the trial court must determine whether "the substance of the testimony [is]

---

[19] Therefore, the Court in *White* overruled this Court's decision in *State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct.App.1997), "to the extent that it suggests that only scientific expert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence." *White*, 382 S.C. at 273, 676 S.E.2d at 688.

reliable. .... It is this final requirement of reliability which is the central feature of the inquiry") (citation omitted); *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999) ("When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable"). The Supreme Court's decision in *State v. Tapp*, 398 S.C. 376, 388-89, 728 S.E.2d 468, 474-75 (2012), very clearly makes this point:

> For the most part, the court of appeals' rendering of *White* was correct. However, the court misstated that *White* created the requirement that "the foundational reliability of nonscientific testimony must be tested *prior* to the qualification of an expert." .... The court additionally stated, "this court is left with no guidance on what test or elements must be satisfied to establish the foundational reliability *necessary to qualify an expert* in the fields of crime scene analysis and victimology."..... To be clear, the reliability of a witness's testimony is not a pre-requisite to determining whether or not the witness is an expert. The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined *prior* to determining the reliability of the testimony.

State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012) (citations omitted).

Thus, in *Council*, the issue was whether the results of the mtDNA analysis was sufficiently reliable and the Court held that this had been established. *See Council*, 335 S.C. at 19-21, 515 S.E.2d at 517-18. In *White*, the question for the trial judge to resole was whether the dog tracking evidence was reliable. *See White*, 382 S.C. at 271, 676 S.E.2d at 687. Here, the trial judge was required to determine the reliability of forensic cell phone examination and mapping evidence. He had already been required to do this when Appellant's own expert in the area testified, which explains why she did not raise this argument in the trial court.

Respondent would likewise note that several courts have rejected challenges to the reliability of cell phone mapping technology, with some finding that it is so well accepted in both

science and law that a hearing on its admissibility is unnecessary. *See, e.g., Jackson v. Allstate Ins. Co.*, 785 F.3d 1193, 1204 n. 5 (8th Cir. 2015) (rejecting a challenge to the reliability of cell phone mapping technology); *United States v. Lewisbey*, 843 F.3d 653, 659 (7th Cir. 2016) ("Using call records and cell towers to determine the general location of a phone at specific times is a well-accepted, reliable methodology"); *United State v. Jones*, 918 F.Supp.2d 1, 6-7 (D.D.C. 2013) (finding the reliability of cell phone mapping is so well-established that a *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), hearing was unnecessary); *People v. Wells*, 2007 WL 466963, at *11 (Cal.Ct.App.2007) ("It is simply not true, as defendant contends, that the use of cell phones to locate a caller is new to the law. Cell phone evidence has been introduced for that purpose in a number of cases across the country...."); *People v. Davis*, 2006 WL 2965368, at *10 (Cal.Ct.App.2006) ("[T]he technology in question is neither new to science or the law."); *Pullin v. State*, 272 Ga. 747, 534 S.E.2d 69, 71 (2000).

Moreover, the fundamental problem with Appellant's argument is that it would require a trial judge to usurp the role of the trier-of-fact because it "misconstrues the difference between a [trial judge's] evaluation of an expert's reliability, which is required by [*White*] and an expert's believability or persuasiveness, which is reserved for the trier of fact." *See Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1293 n. 7 (11th Cir. 2005). As the Eleventh Circuit explained in *Maiz v. Virani*, 253 F.3d 641, 665 (11th Cir. 2001), a trial judge's "gatekeeper role ... 'is not intended to supplant the adversary system or the role of the jury.'" (Citation omitted). *See also Int'l Adhesive Coating, Co. v. Bolton Emerson Int'l*, 851 F.2d 540, 545 (1st Cir. 1988) ("When the factual underpinning of an expert's opinion is weak, it is a matter affecting the weight and credibility of the testimony-a question to be resolved by the jury"); *Smith v. Ford Motor Co.*, 215 F.3d 713, 721 (7th Cir. 2000) ("The soundness of the factual underpinnings of the expert's analysis and the correctness of the

expert's conclusions based on that analysis are factual matters to be determined by the trier of fact").

Therefore, Respondent submits that Sgt. Letterman's testimony fully supports the finding that he was qualified to testify as an expert under Rule 702, SCRE and the above cases interpreting it, even though it was not necessary for him to be so qualified.[20]

II. Assuming that the Court finds this issue preserved for appellate review, the trial judge did not abuse his discretion by permitting the State to call Sgt. Letterman in reply because his testimony was contradictory of and in rebuttal to evidence presented by Appellant on her cross-examination of Brandon Blackwood and in her case-in-chief.

Initially, Respondent submits that Appellant's argument is not preserved for appellate review. On appeal, Appellant argues that "[Sgt.] Letterman did not limit his testimony to issues Slovenski discussed" and that "[c]omparing his two direct examinations further demonstrates his reply testimony was the State attempting to tie up loose ends in its case and not a true rebuttal of specific issues Wright raised in her defense." These arguments, however are not preserved for review by this Court on appeal.

Prior to Sgt. Letterman's testimony, Appellant objected because he had testified in the State's case-in-chief. She added that he had not obtained "any additional training since that point

---

[20] *See McDonald*, 2017-UP-285, 2017 WL 4791156, at *1. *See also Collins*, 172 So.3d at 743 (holding that testimony that merely informs the jury as to the location of cell phone towers is proper lay testimony when it is based upon the personal observations of the witness); *Perez*, 980 So.2d at 1131-32 (finding a cellular company's records custodian was not required to be qualified as an expert to testify regarding geographic coverage of a typical cell tower and factually explain the contents of phone records); *Baker*, 496 Fed. App'x at 204 (finding a federal agent's testimony as to his use of computer mapping software to create map of defendant's general location from cell phone records did not involve expert testimony); *Evans*, 892 F. Supp. 2d at 953 (finding creation of a map plotting cell towers utilized by a defendant's phone does not require specialized knowledge and is admissible through lay opinion testimony); *Burnside*, 352 P.3d at 636 (holding the State was not required to notice as an expert witness a detective who made a map of cell phone sites that handled calls from cell phones registered to the defendant).

... that would allow him to be deemed an expert to come in as a rebuttal witness to our expert." ***R. 487***. She did not thereafter raise an objection that any matter to which he testified went "beyond the scope of permissible rebuttal evidence." Rather, her argument was simply that he should be allowed to testify in reply because he testified in the State's case-in-chief and he had not acquired any additional expertise that he did not have at the time he first testified.

A party cannot argue one theory at trial and a different theory on appeal. *See State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989); *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997). Also, "[t]o be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal." *Watts*, 321 S.C. at 167, 467 S.E.2d at 278. "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *See also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). *See also I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (explaining that imposing issue preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law and arguments; and noting that the purpose of an appeal is to determine whether the trial court erroneously acted or failed to act, and when appellant's contentions are not presented or passed upon by the trial court, such contentions will not be considered on appeal). Therefore, Respondent submits that her argument is not preserved for appellate review. *Id.*

Yet, even assuming *arguendo* that the Court finds the issue properly before it on appeal, Respondent submits that the trial judge did not abuse his discretion by permitting the State to call Sgt. Letterman in reply because his testimony was contradictory of and in rebuttal to evidence that she presented on her cross-examination of Brandon Blackwood and in her case-in-chief.

"The admission of reply testimony is a matter within the sound discretion of the trial judge." *Stewart*, 283 S.C. at 106, 320 S.E.2d at 449; *Huckabee*, 388 S.C. at 243, 694 S.E.2d at 786 (finding no abuse of discretion by the trial judge in allowing reply testimony when it was limited in scope to contradict a previous contention raised by the defendant and not admitted to complete the State's case-in-chief). Admission of testimony that is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion. *See Todd*, 290 S.C. at 214, 349 S.E.2d at 340; *South*, 285 S.C. at 535, 331 S.E.2d at 779 ("Any arguably contradictory testimony is proper on reply, and the trial judge properly exercised his discretion"). "Just what evidence is admissible in reply in a given case, as opposed to being offered as part of the evidence-in-chief, is a question which of necessity has to rest largely in the sound discretion of the trial judge." *Hinson*, 253 S.C. at 619, 172 S.E.2d at 554. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *McDonald*, 343 S.C. at 325, 540 S.E.2d at 467.

As discussed above, the State's reply testimony "was prepared in response to their expert." ***R. 367***. And, it was clearly presented in order to rebut evidence offered by Appellant suggesting that Blackwood was supposedly sending text messages to her at 2:09 a.m., when Blackwood had testified that he was with her and had witnessed her murder Brent Tessnear. First, Appellant questioned Blackwood about text messages that he sent to Appellant and which she received at 2:09 a.m. on December 27th. His response was, "I do not recall texting her." ***R. 243-44***. Specifically, Sgt. Letterman's testimony rebutted that of Mr. Slovenski, who testified that Appellant's phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th and that all of the "traffic" on her phone between 2:00 and 3:00 a.m. on the 27th used the cell phone tower near her Pacolet residence. ***R. 435-43***.

On the other hand, Sgt. Letterman testified that The T-Mobile call data records for Appellant's phone (State's Ex. 12) reflected that all calls from line 478 through 486 were listed as call forwarding. This meant that either the phone was off, it had "died," or it was busy, and the call was forwarded straight to voice mail from11:19 p.m. on the 26th until 2:04 a.m. on the 27th. She received the nine text messages that had been previously sent to her within fourteen seconds after she turned the phone back on, including two texts from Blackwood. ***R. 488-93; 496.***

An outgoing text message was sent from Appellant's phone at 2:10:28 a.m. on the 27th. Thus, she used the phone at that time. The first incoming text after that message was at 2:10:11 a.m. and she then received a text from Brent's phone at 2:18:32 a.m. She did not use her phone again until 3:08:31 a.m. ***R. 493-96.*** Also, Sgt. Letterman had reviewed Blackwood's Verizon Wireless cell phone records, which were introduced without objection as State's Ex.s 1-A (DVD with log of ingoing and outgoing calls) and 1-B (DVD with log of ingoing and outgoing text messages). According to Sgt. Letterman, the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th. Also, Blackwood's phone records reflected that his phone was not active at 2:09 a.m. ***R. 493-94.***

Likewise, Appellant's contention that Sgt. Letterman's testimony was not in rebuttal to the testimony of Mr. Slovenski because Sgt. Letterman testified to the results of his forensic evaluation of Blackwood's phone but Mr. Slovenski did not examine Blackwood's phone is without merit. This contention ignores that Mr. Slovenski's expert opinion put Appellant's phone in Pacolet when the text messages were received at 2:09 a.m. on the 27th, with the implication from both his testimony and Appellant's cross-examination of Blackwood being that he sent the text messages at that time, when he had actually sent the text messages on the night of the 26th.

Her argument that Sgt. Letterman addressed the cell phone extraction on his direct

examination in the State's case-in-chief does not show an abuse of discretion by the trial judge, and ignores, as it necessarily must, that the matters to which he testified at that point did not require an expert to admit. Rather, it was limited to matters on Appellant's call logs, such as the time and date of the calls and the number called. *See* ***R. 348-54***. Moreover, while Respondent agrees that reply testimony may not be used *to complete* the State's case in chief, this does not mean that if it could have been admitted in the case-in-chief, it cannot be admitted in reply. *See Stewart*, 283 S.C. at 107, 320 S.E. 2d. at 449 (admission of reply testimony of an admission by defendant that "he stabbed the old woman" was proper reply to contradict the alibi claim, even though a defendant's admission would have been admissible in the case-in-chief). *Cf. State v. Robinson*, 223 S.C. 314, 75 S.E.2d 465 (1953); *State v. Farrow*, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998).

Admissibility in the State's case-in-chief is the very test of non-collateral matter admissible in reply. *State v. Brock*, 130 S.C. 252, ___, 126 S.E.2d 28, 28-29 (1924) (reply testimony should not be admitted where the testimony involves a collateral issue). In determining whether or not the matter is a collateral issue, the test is whether the party offering the reply testimony would have been allowed to prove the fact in question as part of its case; if so, the matter is not collateral. *State v. Bailey*, 279 S.C. 437, 440, 308 S.E.2d 795, 797 (1983); *Brock*, 130 S.C. at ___, 126 S.E.2d at 29.[21] The same is true in the present case. Even if admissible as part of the State's case-in-chief, it

[21] For example, in a murder case, where the defendant testified the deceased victim grabbed the barrel of the gun as it was fired, it was proper to present reply there were no powder burns on the deceased hands, which tended to show the deceased did not have hold of the barrel of the gun at the time it was fired. *See State v. McDaniel*, 68 S.C. 304, ___, 47 S.E. 384, 385 (1904). Obviously, the fact that the deceased had no powder burns on his hands could have been admitted in the State's case in chief as part of the findings at autopsy; however, this testimony was not necessary to complete the State's case in chief. It was therefore proper reply once the defendant testified the deceased grabbed the barrel of the gun to rebut and contradict it. *Id.* Just because the probative value became enhanced on reply, it did not preclude its admission on reply.

was properly admitted in reply because it rebutted evidence presented by Appellant.

Moreover, Appellant's reliance on this Court's opinion in *State v. Prather*, 422 S.C. 96, 810 S.E.2d 419 (Ct. App. 2017), *reh'g denied* (Mar. 22, 2018), *cert. granted* (Aug. 3, 2018), is misplaced for several reasons. First, the Supreme Court has granted the State's petition for writ of certiorari in *Prather* to review this Court's decision. Second, as noted by Judge Williams' dissent in *Prather*, a fair reading of the record in that case reveals the following:

> At trial, Prather testified to being outside Victim's residence when the purported "staging and undoing" occurred. Moreover, Prather claimed he did not participate in any of these acts and testified Phillips was inside the residence when these acts occurred. When examining his claims in the context of his entire testimony, Prather inferred that only one person committed these acts. Conversely, the State's reply testimony contradicted Prather's notion that only one person participated in these acts. Importantly, the testimony was in response to Prather's testimony and was introduced to counter Prather's testimony—even though it did not directly implicate Prather. Specifically, LaRosa's testimony indicated two individuals were at the crime scene based on the types of personalities involved in "staging" and "undoing."

Prather, 422 S.C. at 110-11, 810 S.E.2d at 426-27 (Williams, J., dissenting) (footnote omitted).[22]

Similarly, in a murder prosecution where the defendant testified he shot his son three times in rapid succession while his son was still standing, the testimony of the pathologist that the victim was shot the final time while lying on the floor with his head resting against the floor was proper reply. *See State v. McDowell*, 272 S.C. 203, 205, 249 S.E.2d 916, 917 (1978) (per curiam). The testimony of the pathologist, offered in reply, could have been admitted in the State's case in chief, but it was not necessary to complete the State's case in chief. Once the defendant claimed he fired all three shots while the victim was standing, the probative value increased to rebut and contradict the defendant's claims. *Id.*

[22] Respondent notes that Prather conceded on p. 11 of Appellant's Final Brief that LaRosa's reply testimony "contradicted Prather's testimony that he was not involved in, nor did he witness, any carving of the word 'rapist' on Stewart and had no knowledge as to Stewart's being covered with a blanket." See *State v. Robert Jared Prather*, Appellate Case No. 2014-001500, https://ctrack.sccourts.org/public/caseView.do?csIID=57167. This Court's decision does not reference this concession even though it waived the alleged error. *Cf. State v. Nathari*, 303 S.C. 188, 200, 399 S.E.2d 597, 605 (Ct. App. 1990) ("Even if this Court were to recognize recklessness as an element of felony D.U.I. by virtue of recklessness being an element in the lesser included offense of involuntary manslaughter, and if Nathari was entitled to an instruction that the State is required to prove recklessness for conviction of felony D.U.I., counsel

To the extent that the dissent's construction is correct, then the majority Opinion is in conflict with *Todd*, *Huckabee*, *South* and *Hinson*. Third and regardless of the outcome in *Prather*, Sgt. Letterman's testimony was clearly offered in rebuttal to Appellant's evidence.

Additionally, Respondent submits that Sgt. Letterman's testimony also passes a Rule 403, SCRE, analysis because the danger of unfair prejudice does not substantially outweigh its probative value. *See State v. Aleksey*, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000). It was very probative because it rebutted Appellant's evidence that Blackwood had sent text messages to her at 2:09 a.m. on the 27th and thereby circumstantially corroborated Blackwood's testimony. His testimony also rebutted the testimony of Mr. Slovenski that Appellant's phone was not in the area of Cowpens between 11:00 p.m. on the 26th and 5:00 a.m. on the 27th (***R. 438-43***) by providing an explanation: the phone may have simply been turned off during that time period, and the various text messages that she received at 2:09 a.m. on the 27th had actually been sent earlier. (Again, Sgt. Letterman testified that the last text messages sent from Blackwood's phone were sent to Appellant at 11:17 and 11:26 p.m. on the 26th, and that Blackwood's phone records reflected that his phone was not active at 2:09 a.m. ***R. 493-94***).

On the other hand, the prejudice to Appellant was *de minimis*, since Sgt. Letterman's reply testimony was very brief and was tailored only to rebut Appellant's evidence. Further, she was not only able to cross-examine both Blackwood and Letterman, she had already presented the contradictory evidence from Mr. Slovenski and she was able to rely upon his opinions in her closing. ***R. 526-39***. Accordingly, Respondent submits that the trial judge did not err by allowing

---

for Nathari conceded Nathari's recklessness in his closing argument and thereby has waived any objection to the trial court's charge in this regard").

the State to introduce this evidence in reply.

III. Any error in admitting Sgt. Letterman's reply testimony cannot serve as the basis for reversal of Appellant's murder conviction because the error was harmless and non-prejudicial beyond any reasonable doubt, since introduction of it could not reasonably have affected the result of Appellant's trial.

Finally, Respondent submits that any error in admitting Sgt. Letterman's reply testimony cannot serve as the basis for reversal of Appellant's murder conviction because the error was harmless and non-prejudicial beyond any reasonable doubt, since introduction of it could not reasonably have affected the result of Appellant's trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). "Whether an error is harmless depends on the circumstances of the particular case." *Tapp*, 398 S.C. at 389, 728 S.E.2d at 475.

There was no evidence that Blackwood had previously known Brent Tessnear, whereas Appellant had been married to him. Blackwood's testimony is the only eyewitness to the murder and he testified that Appellant deliberately struck the victim with the truck despite of Blackwood's efforts to prevent any collision. Admittedly, he was impeached through cross-examination and by the testimony of defense witnesses who testified to his statements admitting that he had killed Brent. However, no other witness provided a differing and contradictory eyewitness account. Also, with the exception of his eyewitness account of the murder, most of his testimony concerning his and Appellant's actions on December 26-27, 2015, was corroborated by other prosecution witnesses. The prosecution's evidence even tended to corroborate his testimony as to where the

crime occurred and her S.C. ID card was found in the driver's side door of Blackwood's truck.

These corroborating witnesses proved that she was determined to find the victim on the 26th and that she searched high and low to find him, even going so far as to break into his residence. The record further proved that Appellant had two distinct motives to find and kill him: she was angry because of the pictures that he had posted on Facebook and she was angry because he had returned their children's Christmas gifts and used the money to purchase drugs. Although the State is not required to prove that she had a motive, the evidence of these dual motives is circumstantial evidence of her guilt. See *State v. Needs*, 333 S.C. 134, 150, 508 S.E.2d 857, 865 (1998), *modified on other grds., State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Bell*, 302 S.C. 18, 29, 393 S.E.2d 364, 370 (1990) (conversations with first murder victim's family admissible to show motive and state of mind when he kidnapped and murdered second victim).[23] Moreover, the record reflects that she had received a text from the victim at 2:18 a.m. on the 27th.

The record is replete with statements Appellant made to or in the presence of other witnesses that demonstrated express malice,[24] including her threats to kill Brent and her statement that she was "going to have to find somebody to go and beat his ass" if he did not remove the pictures. However, one of the most damning pieces of evidence against her was a statement from

---

[23] There was no evidence that Blackwood had a motive to kill Brent.

[24] "Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." *State v. Wilds*, 355 S.C. 269, 276-77, 584 S.E.2d 138, 142 (Ct.App. 2003); *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (same). It is the doing of a wrongful act intentionally and without just cause or excuse. *Tate v. State*, 351 S.C. 418, 570 S.E.2d 522 (2002). *See also State v. Fennell*, 340 S.C. 266, 275 n. 2, 531 S.E.2d 512, 517 n. 2 (2000) ("[m]alice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it"); *Arnold v. State*, 309 S.C. 157, 163, 420 S.E.2d 834, 837 (1992) (malice "is something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief").

which malice can be inferred: her text message to Blackwood at 12:57 a.m. on December 28th (less than twenty-four hours after the murder), in which she said, "You in town? I was walking to the store. LOL." ***R. 221.***

Additionally, her actions after the crime tended to further demonstrate her guilt. The prosecution's various witnesses proved that Appellant had lied in her December 29, 2015, statement to Inv. Clark concerning her actions after she and Blackwood had retrieved her son's bicycle from Brent's house on December 26th . Also, she manually deleted all text messages from her phone for the 26th and the relevant time period on the 27th, even though her phone had a storage capacity of 256 megabites and could hold approximately 1,828,571 S.M.S. text messages and she did not have to delete any messages. Further, she attempted to get Brent's cell phone. Inferably, she intended to remove evidence of the 2:18 a.m. text message that he sent to her and any other incriminating evidence.

Several witnesses testified that after the crime she seemed nervous. Moreover, despite her repeated threats and displays of anger and malice toward the victim before the killing, she expressed supposed "concern" for his safety afterwards, while simultaneously attempting to shift focus away from her by suggesting others who might have harmed him. Also, she initially lied as to her location when contacted by the investigator from the Spartanburg Coroner's Office. Further, Appellant immediately expressed concern for the victim's wellbeing when speaking to the investigator, even though the investigator had not identify herself as being with the Coroner's Office. Moreover, she made several efforts to contact the insurance company, inferably to determine if she could collect on his life insurance.

Given the present record, any error must be viewed as harmless and non-prejudicial beyond a reasonable doubt. *Sherard*, 303 S.C. at 175, 399 S.E.2d at 596; *Bailey*, 298 S.C. at 5, 377 S.E.2d

CONCLUSION

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

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
No. 07979

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
No. 3710

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: _____
WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

August 15, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2017-002531

THE STATE,

Respondent,

vs.

ANGELITA NICOLE WRIGHT,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 15th day of August, 2019.

WILLIAM EDGAR SALTER, III.
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT