STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TAMMY CAISON MOORER,

Appellant.

Case No. 2018-001938

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Because evidence shows Victim suddenly and unexpectedly disappeared after Appellant and her husband lured her to a remote boat landing near their house, the trial court did not err in denying the motion for directed verdict for kidnapping and conspiracy.

II. The trial court did not err in allowing the prosecution to present evidence relevant to show Appellant's state of mind concerning her husband's affair, to demonstrate her control over the cell phone utilized in abducting Victim, and to counter her assertion that her husband bought a pregnancy test for Appellant, rather than Victim, because Appellant thought she was pregnant or trying to get pregnant.

III. The trial court did not err in allowing the expert witness in photogrammetry and reverse projection to express his opinion that the suspected vehicle in the surveillance footage was the Moorers' vehicle because the methodology was sound, peer-reviewed, and demonstrated in a detailed exhibit. Further, the issue is not preserved for review.

IV & V: The trial court did not err in disqualifying alleged alibi witnesses from testifying because the witnesses violated the trial court's sequestration order. Further, the trial court did not err in finding Appellant violated the notice requirement for Rule 5, SCRCrimP because Appellant did not timely provide with the rule's requirements (Appellant's issues IV & V).

STATEMENT OF THE CASE

Appellant was indicted for kidnapping and conspiracy to kidnap. Appellant joined her co-defendant, husband Sydney Moorer's motion challenging expert testimony in a hearing held April 18, 2016, before the Honorable R. Markley Dennis, Jr.

Appellant's case was called to trial on October 8, 2018, before the Honorable Benjamin H. Culbertson. The jury found Appellant guilty of both charges and Judge Culbertson sentenced Appellant to thirty years' imprisonment. Sydney Moorer was tried separately.

STATEMENT OF FACTS

Under the State's theory of the case, Appellant Moorer's husband, Sydney Moorer, had an affair with the victim, Heather Elvis. The State's theory was Victim became pregnant by Sydney, and Sydney and Appellant carried out a plan to kidnap her by luring her to an isolated boat landing near their house in Socastee in the early morning hours of December 18, 2013. It started when the Moorers' bought a pregnancy test and Sydney called Victim from a payphone. To this day, Victim has never been found.

Jessica Cooke, a manager at Tilted Kilt, was the State's first witness. Victim was a hostess at Tilted Kilt. Sydney Moorer, Appellant's husband, performed maintenance and repair work on kitchen equipment at the restaurant, typically working later hours to avoid disruption to business. Cooke observed an affair develop between Victim and Sydney, lasting four or five months, until the end of October or beginning of November. The affair ended when Victim thought Sydney's wife found out about the relationship. Cooke only saw Sydney one more time, when he picked up a check. In November, Victim came to work with a black eye. After the affair ended, Cooke noticed Victim began to gain weight during November. She changed sizes from an "A" to a "B," and

eventually a "C" size bra, and from a medium to large skirt. Tr. pp. 205-11.

Cooke testified after the break up with Sydney, Victim was scared of Appellant. Cooke testified Victim always carried her phone with her, even at work. Tr. pp. 211-13. Victim was upset when she took a pregnancy test that was inconclusive. Tr. p. 226. The State later established that law enforcement found an empty box for a pregnancy test at Victim's residence. The applicator for the pregnancy test was not found. Tr. p. 1091; pp. 1100-01.

Cooke described Victim as a reliable worker and not the sort of person who would fail to show up for work. Tr. p. 206. Cooke noted she was a friend, or even like a mom, to Victim – they texted each other and Victim shared things in her life with Cooke. The last time Cooke saw Victim was the shift before she disappeared. When Victim did not show up for the next shift, Cooke texted and called her cell phone but received no response. Tr. pp. 213-14; p. 448.

Jodie Lynn Davenport worked at Tilted Kilt as a waitress and was friends with Victim. She also testified about the affair. Tr. pp. 228-31. Afterwards, Victim received harassing texts and phone calls including a text with a picture of Sydney between a woman's legs on her phone. Victim became scared and paranoid of Appellant. She was never scared of Sydney. When Victim started gaining weight, she took a pregnancy test, which rendered an error reading. Tr. pp. 232-34. Davenport never saw Sydney again after the breakup with Victim. Tr. p. 237.

Dennis Hart, the kitchen manager at Tilted Kilt, testified Victim was always on time or called if she were late. Hart testified similarly to other witnesses about Sydney's affair with Victim. After the affair ended, Appellant called Hart and asked him to fire Victim. Hart told her he was unable to do that, and Sydney stopped working at Tilted Kilt. Hart testified Victim acted scared and concerned about Appellant. Hart also testified he never saw Appellant at work with Sydney. Tr. pp.

1063-69.

Stephanos Schiraldi went on a date with Victim the night before she went missing, on December 17, 2013. They had dinner, watched a movie at his apartment, and drove around together. It was a first date. He showed her how to drive the manual shift on his truck and took a picture of her so she could text a friend because she was excited about learning to drive a manual shift. He dropped Victim off at her apartment and texted her the next day, but never received a response. Instead, Victim's roommate called to tell him what was happening. Tr. pp. 251-59.

Victim lived with Briana Waralmann-Krason (Brii) and they worked together at Tilted Kilt. Victim moved in during November and slept on the couch or shared a bed with Brii. Brii was aware of the affair between Victim and Sydney Moorer. Brii confirmed Victim was afraid of Appellant. On the other hand, Victim loved Sydney. Sad for a while, by the end of November, Victim was back to her usual self. She was excited planning for a date on the last night before she disappeared. Tr. pp. 1532-38; 1554-55. By December, Victim was not reaching out to Sydney and no longer talked about him. Tr. p. 1557. Brii testified her and Victim were close, constantly texting each other. Tr. p. 1562. Victim never truly unpacked her belongings, she lived out of her suitcase and her bags of clothes. Brii also confirmed she did not leave a pregnancy test in the bathroom. Tr. pp. 1546-49.

A custodian from Frontier Communications, which maintains payphones, established a call was made from the payphone on Mr. Joe White Avenue in Myrtle Beach. The payphone number was (843)-444-2462. **The phone call was on December 18, 2013, at 1:33 a.m.**, to Victim's phone number and lasted for four minutes and fifty seconds. Tr. pp. 471-76.

Brii explained she was not home, but out of state, when Victim went missing. The last time **Brii talked to Victim was a phone call on December 18 at 1:44 a.m.** They talked for about two

minutes. Victim was upset, crying, and hysterical. Brii told Victim not to do anything rash and to not call Sydney. Brii never heard from Victim again. Tr. pp. 1551-52.

Officer Jonathon Martin attained Victim's cell phone records and the payphone records. The records showed a roughly four-minute, forty-second phone call between the payphone and Victim's phone, with later outgoing calls from Victim's phone to the payphone lasting only seconds in duration. Victim's last conversation before she disappeared was a phone call with Sydney's phone for a little more than four minutes. Tr. pp. 722-24.

Law enforcement obtained video surveillance and a sales record from Wal-Mart. The video surveillance and sales record showed Sydney Moorer arrive at the Wal-Mart parking lot at 1:12 a.m. and purchase a pregnancy test and cigar inside the store. He is wearing a black knit cap, black shoes, a maroon shirt with white lettering, and light tan pants. He departed from the Wal-Mart parking lot at 1:21 a.m. Tr. pp. 607-12; State's Exhibit 23.

Surveillance from a Kangaroo convenience store on the corner of Mr. Joe White Avenue and Seaboard on December 18 shows someone using the payphone in front of the store shortly after 1:30 a.m. Headlights and taillights of a vehicle are seen coming from the direction of the Wal-Mart on Seaboard and appears to be parking in the lot across the street. The resolution for the footage is poor, but the video shows an individual in light-colored pants and darker-in-color shirt using the phone. The clothing is consistent with Sydney's clothing in the Wal-Mart video. Tr. pp. 635-41; State's Exhibit 24.

Carmen Rodriguez, then a Sheriff's Deputy, met Appellant at the station when Appellant came to file a complaint her family was being harassed on January 27, 2014. Tr. p. 652. They met in a conference room and the meeting was recorded. State's Exhibit No. 25. **Appellant admitted she**

was in the truck all night with Sydney on the night of December 17 and the early morning hours of December 18. However, she claimed not to know Sydney called Victim from a payphone. Appellant said if Sydney called Victim, he must have had a reason to call. Appellant also admitted she heard Victim's voice during a phone call on Sydney's cell phone during the early morning hours of December 18. Appellant claimed Sydney did not keep secrets from her. Tr. pp. 660-65. Even though Victim was missing, Appellant spoke about Victim in a derogatory manner during the interview. Tr. p. 669. Appellant claimed she and Sydney were in an open marriage. Tr. p. 688.

Victim's car was found at Peachtree Landing in Socastee at 4 a.m. on December 18, only four miles from Appellant's house. Tr. p. 270; p. 273; pp. 288-89. The simple route between the house and the landing is from Highway 814 to Mill Pond Road, and then Peachtree Road. Tr. pp. 274-75. Officer Casey Guskiewicz was on his regular early morning patrol when he saw a suspicious vehicle irregularly parked at the landing at about four a.m. Tr. pp. 270-73; pp. 276-77. The car was locked, in fine condition, but parked in an odd spot. At 4:03 a.m., Officer Guskiewicz ran a license check confirming the vehicle was not stolen. It was a small landing with a small parking area, the only useful purpose was as a boat landing. Tr. pp. 277-80.

Officer Kenneth Canterbury and Victim's father, who had a key to the vehicle, went to Peachtree Landing. The car appeared operable and there were no signs of struggle. The vehicle was messy, with clothes and receipts piled inside, but no phone, purse, keys, or personal identification inside. Tr. pp. 343-49. Victim's father provided cell phone records showing the last call on Victim's phone was with Sydney Moorer. Tr. pp. 350-51; pp. 355-56.

A T-mobile custodian established a phone number ending in 8152 was in Victim's father's name. The account remained open for some time afterwards, but the last phone record is December

18, 2013, at 3:41 a.m. That last call was from 3175, Sydney's phone. Tr. p. 409; pp. 412-13.

The Sprint custodian established two cell phone numbers in Tammy Moorer's name: one ending in 3174 and one ending in 3175. Tr. p. 386. The phone records show a call placed from 8152, later established as Victim's phone number, to 3175, considered to be Sydney's phone, on December 18 at 3:17 a.m. lasting 261 seconds. Four more phone calls from Victim's phone routed directly to 3175's voicemail a little later at 3:38, 3:39; 3:40, and 3:41 a.m. Tr. pp. 390-94.

On November 2, 2013, around the time Appellant found out about the affair, a thirty-nine second phone call made from 3174, later established as Appellant's phone, at 12:45 a.m. to Victim's phone and was blocked by the caller so Victim would be unable to see who was calling her. Tr. pp. 395-97. Appellant made another call to Victim's phone again the morning of November 2, with a block on the caller ID at 1:13 a.m. lasting seven seconds. Tr. pp. 397-98; see Tr. pp. 414-15 (Victim's phone records showing the calls, but without the caller's phone number).

The State introduced Exhibit 16, summarizing the phone calls between 3175 (Sydney's phone) and 8152 (Victim's phone). There were roughly 400 to 500 calls, back and forth, for each month from July 2013 to October 2013. This reduces drastically in November to only sixty-four calls between the two numbers and then **only six phone calls in December. All six phone calls in December were the same day, December 18, between 3:16 a.m. and 3:41 a.m.** Tr. pp. 416-21. One call at 3:17 a.m. lasted 4.15 minutes. The remaining calls were short in duration – .03 minutes. Tr. pp. 423-24.

Aaron Edens testified as an expert in cell phone forensics and cell phone locations. Tr. p, 769. He testified Victim's phone was at her residence from 1:17 a.m. until 2:31 a.m. The phone arrived at Long Beard's Bar at 2:42 a.m. Victim made phone calls from Long Beard's after 3 a.m.

Tr. pp. 779-82. At 3:35 a.m. and 3:37 a.m., Victim's phone made calls from Peachtree Road, which is in transit to the landing. At 3:37 a.m., the phone reached Peachtree landing. Edens testified the records would indicate at 3:42 a.m., the phone was at the Waccamaw Wildlife Refuge, which Edens did not believe was accurate. Edens noted after 3:42 a.m., Victim's cell phone ceased collecting any more data, including GPS, WiFi, or tower data. Edens testified he would expect data to continue being collected from the phone if it were operational. Tr. pp. 783-85. Edens was unable to do the same analysis for Appellant and Sydney's phones because their accounts were deleted. Tr. p. 789.

Michael Melson, president and founder of Hawk Analytics, testified as an expert in cellular technology and historical records analysis. Tr. p. 478; p. 481, p. 491. Melson explained he used his company's self-designed software to analyze cell phone call records and cell tower location data to track the historical location and movements of cell phones. Tr. pp. 518-21.

Melson analyzed the phone records introduced at trial to establish a "pattern of life" analysis. Tr. p. 522. Melson explained, "We all carry our phones, for the most part. We carry them 24/7 almost, most of us, so they end up documenting what is our normal routine and we can often then see in the records when something different than normal happens. So we do what's called this "pattern-of-life analysis, ..." Tr. p. 522, lines 17-25.

Melson noted the significant volume of calls between Victim's phone and Sydney's phone which suddenly ceased on November 2. Likewise, the significant contact between Appellant and Sydney's phones prior to November 2 also abruptly ended. Tr. pp. 524-26. Using cell phone tower records, he noted Victim's phone and Sydney's phone were often being used in the same area until November 2. Tr. pp. 526-32.

After November 2, Appellant's phone increased usage in the Myrtle Beach area, specifically

the towers serving the area where Sticky Fingers and Tilted Kilt are located. Tr. p. 529. **As Melson explained, suddenly after November 2, the same areas Appellant's phone is interested in are the same areas Victim's phone is located.** Sydney's phone would be in the same location also. Tr. p. 536.

He noted 3174 and 3175 were out of town starting around November 21, in locations out West such as California and Las Vegas. Victim's phone, which prior to November could be located in North Myrtle Beach as well as Myrtle Beach, now stayed primarily in Myrtle Beach during this period of time. Tr. pp. 536-38.

Melson explained during the night of December 17, into the early hours of December 18, Sydney and Appellant's phones were together. Tr. p. 543. On the evening of December 17, both Sydney and Appellant's phones were around Long Beard's Bar around 11 p.m. and leaving around 12:30 a.m. Tr. pp. 549-50. At around 1 a.m., Appellant and Sydney's phones are using the two towers by Wal-Mart until 1:15 a.m. At 1:30 a.m., records show they are in the area around the Kangaroo Express on Mr. Joe White Avenue – where the payphone is located – until at least 1:40 a.m. Tr. pp. 550-53.

Data shows no activity between 1:40 and 3:02 a.m.; but by 3:02 a.m., the Moorers likely arrived home. Tr. p. 554, lines 4-20. A separate law enforcement witness testified to detecting a powering event: Sydney's phone was turned on after having been turned off at 3:02 a.m. Tr. p. 1506. The next activity occurs when Sydney's phone received four calls between 3:16 and 3:17 a.m. using the tower consistent with his phone being in the vicinity of his residence. Tr. pp. 553-54. The 3:17 a.m. phone call was four minutes long. Tr. p. 555, line 22 – p. 556, line 8.

Victim's phone records are consistent with Victim being at her home at the time her phone

received the 1:30 a.m. phone call from the Kangaroo Express payphone; the same time, based on phone and tower records, Sydney and Appellant were in the area by the Kangaroo Express payphone. Victim calls her roommate at 1:41 a.m. Then Victim leaves her residence around 2:30 a.m. and is in the area near Longbeard's until around 3:30 a.m. Victim is placing outgoing calls from her phone to the payphone between 2:30 a.m. and 3:05 a.m. There are nine phone calls from Victim to the payphone, all a few seconds, indicating no ensuing conversations. Tr. pp. 560-66.

Victim is in the area of her residence when she makes outbound calls to Sydney's phone at 3:16 and 3:17 a.m. After the four-minute conversation ensuing from the 3:17 a.m. call, the next records show the phone utilizing a tower consistent with her being at Peachtree Landing between 3:38 and 3:41 a.m. Melson testified Victim would need to leave pretty shortly after the 3:17 a.m. phone call to arrive at Peachtree Landing by that time. Tr. pp. 566-69. There is no more activity after 3:41 a.m. from her phone. Tr. pp. 570-71.

Melson also noted on three of the six days prior to December 18, both 3174 and 3175 were at Broadway on the Beach, the area where Tilted Kilt is located. The only time Victim's phone was located at Peachtree Landing was the morning of December 18. Her phone was never by the Moorer residence. Tr. pp. 572-74.

David Quandt owns D&S Sitework, a business located off of Mill Pond Road about a mile away from Peachtree Landing. Tr. pp. 888-89. Quandt provided law enforcement video surveillance footage of the road which showed a vehicle going towards the landing at 3:39 a.m. and returning in the other direction at 3:46 a.m. The next vehicle captured on the footage is a police vehicle at 4:10 a.m. Tr. pp. 894-96. Quandt lived off of Peachtree Road for the past twenty years and the best route to the landing from the vicinity of the Moorer's is Route 814 to Mill Pond Road.

Tr. p. 884; p. 898. Quandt admitted a lot of trucks drive to or by his business, but he confirmed on redirect examination neither his customers nor employees would have a reason to be driving a truck to his business between 3:30 a.m. and 4:30 a.m. in the morning. Tr. p. 905; p. 915.

Joyce Aland lived on Route 814 between the Moorer's residence and the landing. Tr. pp. 813-16. She provided law enforcement surveillance footage from her house. Tr. pp. 821-22. The footage showed a vehicle passing by the house going in the direction of the landing at 4:45 a.m. that night, and passing the house going in the other direction at 4:54 a.m., according to the time stamp. Aland explained the time stamp was an hour ahead of the actual time. She estimated the landing was five minutes from her house. Tr. pp. 830-31; pp. 834-36. While there were at least three ways to go to the landing from the Moorer's vicinity, she explained the most obvious way is to take 814 past her house. Tr. pp. 824-25; p. 850.

Jimmy Gunter, an account manager at Beach Ford testified Appellant and Sydney purchased a black 2013 Ford F-150 Platinum Four-wheel drive truck with HID headlights on November 8, 2013. Tr. pp. 804-05; p. 808-10. Law enforcement took pictures of the Moorers' F-150 on December 27, 2013, that showed it had a toolbox in the back. Tr. pp. 1603-04.

Grant Fredericks testified as an expert in forensic video analysis. Fredericks testified he interprets data through scientific processes such as photographic video comparison, photogrammetry, and reverse projection. Tr. pp. 918-19. Fredericks has been admitted to testify as an expert about 200 to 300 times. Tr. p. 922. His experience and qualifications are more thoroughly examined in the Respondent's argument challenging his testimony.

Fredericks explained the use of measurements in video analysis is referred to as photogrammetry. Photogrammetry includes many kinds of measurements including reverse

projection. Reverse projection is a process to conduct measurements including reflection of light, shapes of objects, size of objects, and the distance of objects. Tr. pp. 918-19. In the instant case, Fredericks explained he provided analysis utilizing reverse projection photogrammetry. Fredericks conducted an analysis of the Moorer's Ford F-150 under reverse projection photogrammetry by examining the reflective patterns off the vehicle and similar vehicles compared to images captured showing the passing truck in the video surveillance. Tr. pp. 948-51. This included analysis of the headlight spread patterns from the vehicles. Tr. pp. 923-24. Fredericks testified he used these techniques in his analysis for over thirty years and has been qualified using these specific techniques over a dozen times. Tr. p. 924.

Fredericks performed the reverse projection analysis by staging various vehicles in conditions nearly identical as possible to the images captured in surveillance videos. Tr. p. 950. Fredericks explained the headlight spread pattern for each vehicle is unique, and the analysis concerning the uniqueness of headlight spreads has been published and tested in numerous publications. Fredericks utilizes the ACE-VR methodology in his analysis. Tr. p. 932; p. 936. Fredericks made comparisons to several similar style four-door trucks, including other Ford F-150s by putting the trucks in the same position at night, and he then compared each vehicle to the Moorers' truck. Fredericks explained, "The purpose was to define and demonstrate that classification could be established under these lighting conditions by examining primarily the positioning of all of the lights, reflective lights and reflection off the roadway, comparing the known vehicle to other vehicles of different classes." Tr. p. 987, line 22 – p. 988, line 2. Fredericks explained his analysis demonstrated, "even vehicles of the same make, model and year have different reflective features, primarily in the headlights." Tr. p. 988, lines 8-12.

Fredericks explained his process, "Well when I do photographic video comparisons, my first task is to attempt to eliminate the vehicle. So my first attempt would be to find points of inconsistency between the questioned vehicle and known vehicle. If I can't find points of inconsistency, can I define class, which I did in this case. Once we define class, can I define uniqueness, which was done in this case." Tr. p. 1005, lines 13-20.

Fredericks concluded the Moorer's vehicle matched the suspect vehicle, opining:

> I have formed an opinion that the vehicle that passed by the residence at 814 was – the questioned vehicle is the known vehicle. It is the same vehicle that went – continued southbound passed the Sitework. Once it got out of the camera view, I have no opinion about where it went.
>
> It's the same vehicle that continued northbound seven minutes later. It's – the questioned vehicle and the known vehicle are one in the same, that continued northbound past the residence at 814. Once it got out of camera view, I have no opinion as to where it may have gone. So that's my opinion.

Tr. p. 1004, line 20 – p. 1005, line 8. Fredericks made clear his opinion was not based purely on the headlight pattern. Tr. p. 1006.

Fredericks noted he even ran another black F-150 limited edition identical to the Moorer's. Despite featuring the same configuration and headlights, and possessing the same "specs" and features, "and it appeared to be identical[,] and [it] totally turned on the headlights." Tr. pp. 1007-08. As an additional element of the analysis, Fredericks analyzed other traffic occurring at the surveillance location between December 17, 2013 and January 1, 2014, and he did not see any vehicles matching the vehicles in the surveillance. Tr. p. 997.

Another part of Fredericks' analysis was to examine the footage and the surveillance time stamps to determine if it was possible for the same vehicle to be in the same footage at both locations for both on the initial trip and in the return direction. The internal clock for a surveillance

camera often deviates from the actual time, so it is common for the police investigator recovering the footage to make a note of the timestamp on the DVR and compare the actual time to establish an offset. Fredericks uses this offset for timing when synchronizing the time. Tr. p. 960. Law enforcement noted for one of the cameras, the time stamp was 3:39 and was "accurate." Because it was only synchronized to the minute rather than second, there was a two-minute margin of error. This margin of error applied for both the inbound and outbound footage, resulting in a four-minute margin of error. Tr. pp. 961-65; pp. 968-69. This margin of error accounts for the vehicle appearing at first blush to hit D&S Sitework at 3:46 and the residence at 3:45 (a minute earlier). Tr. pp. 967-68. Frederick noted the vehicle was out of view of the D&S Sitework camera for seven minutes and the residential camera for ten minutes. He found he was easily able to drive the distance between the cameras in the three minute time frame. Further, Fredericks was able to drive down 814 and past D&S Sitework to the landing and make the return trip with in the timeframe for the vehicles depicted in the surveillance. Tr. pp. 966-67.

Horry County Officer Brian Wilson and two other officers went to the Moorers' residence and Appellant allowed them inside. Officer Wilson noted video cameras outside the house but tried not to call attention to them. Appellant's father suggested footage was available, but Appellant adamantly insisted the cameras were tore up and not working. Tr. pp. 642-43.

Lieutenant Peter Cestare was one of the officers making a preliminary visit to the Moorers' house on December 20, 2013, prior to a later search in February 2014. He noticed a spent shotgun casing, a bag of concrete mix, and a bottle of cleaning solution by a camper next to the play area outside. Tr. p. 1178. Lieutenant Cestare also noticed three surveillance cameras on the outside of the house. Tr. pp. 1181-82. Appellant let Lieutenant Cestare go inside the camper, but claimed she

did not have a key to the black F-150 when he asked to look inside the truck. Tr. pp. 1187-88. A Sam's Club representative testified the Moorers' purchased a new camera surveillance system on December 21, 2013, the day after law enforcement visited the Moorers' house and noticed the surveillance cameras. Sidney Moorer's name was on the receipt. Tr. pp. 1269-72.

Jacob Lee Melton was friends with Appellant's son and spent a lot of time at the Moorers. He testified Appellant had an I-phone and Sydney had both an I-phone and a flip-phone. He sometimes stayed the whole week; therefore, he was very familiar with the layout of the house. Tr. p. 1227; pp. 1230-31. Sydney kept a gun in the nightstand in the master bedroom and owned multiple shotguns. Tr. p. 1236. Melton testified back in 2013, there was a computer monitor in the house showing a split screen with four views of the outside the house. Tr. pp. 1234-35; pp. 1258-60. On cross-examination, Melton asked if it was possible the camera he saw was the camera the Moorers' purchased on December 21 and he answered, "no." Tr. p. 1244.

Melton and Appellant's son often went with Sydney when he was working at the restaurants, and after the restaurants closed, they played video-games on the restaurants' TV screens and Sydney cooked for them. Appellant rarely went with Sydney, and if she did, the kids came along. Tr. pp. 1224-25. Melton never knew Appellant to ride to work with Sydney and never knew Sydney and Appellant to be gone together from the house all night. Tr. p. 1240. Melton testified Sydney got a tattoo with Appellant's name – Tammy – spelled out, near his waistline. Melton testified he heard Appellant say Sydney would not be getting the tattoo "if he weren't messing around with that girl." It was the only tattoo he ever saw on Sydney. Tr. pp. 1237-39; pp. 1258-59.

Lindsey McGraw, a forensic computer investigator analyzed an API module from the Ford F-150's Sync Gen 2 System. Tr. pp. 1291-93. She explained the SD card she examined gathers

navigational information for the vehicle, but if the SD card is not fully inserted, an error reading appears on the vehicle's touchscreen. Tr. p. 1296. The system showed locations of the vehicle in November, but not in December. A gap in information occurs until the vehicle is located in Kissime, Florida on January 16, 2014. McGraw concluded the navigational system was not working or the SD card was removed during December. Tr. pp. 1209-1307.

Officer Will Lynch performed a Cellebrite "dump" for both Sydney and Appellant's I-phones. State's Exhibits Nos. 109-12. **There was communication between the two phones before November 2, but no further communication between the spouses' phones from November 2 until December 18, at about 4:30 a.m.**, when Appellant sends a text to Sydney asking him to bring her orange juice and pot-stickers followed by his response. Tr. pp. 1339-41; pp. 1381-82. Based on the contents of those records, from November 2 to December 18, Appellant appeared to be using both phones until the early morning hours of December 18. Tr. pp. 1347-48.

Texts on Appellants' phone contradict her alleged casual attitude about the affair and expose her animus for Victim. On November 2, 2013, Appellant concludes a text to an acquaintance, "I'm going through some really bad shit tonight." Tr. p. 1355, lines 6-15. Appellant also received texts helping her find old texts on Sydney's phone. Tr. pp. 1356-57. On November 5, Appellant texted, "just got a period from the little cunt." Tr. p. 1357. In a text apparently to Appellant's daughter, Appellant wrote, "Your dad is an evil, twisted freak and I am being punished for it." Tr. p. 1359, lines 2-5. In a text sent November 6 to Appellant's sister, Appellant surmised, "I think that bitch is in hiding" after the sister texted her Victim was not at Tilted Kilt. Tr. p. 1359. A November 15 text reads, "Kind of looks like Sydney's girlfriend." A follow-up text adds "but her beard wasn't that thick." Tr. p. 1361. During an exchange of texts with an acquaintance, Appellant advises that if her

cell phone dies, her "other number is the same but ends in 5." Tr. pp. 1361-62.

Deleted from her cell phone, but obtained from a spreadsheet extraction on the Moorers' computer is a text from Appellant saying she is ready to date again, she has zero love for Sydney, and Sydney "fucked shit up big time." Tr. pp. 1362-63. Another text from Appellant tells a friend she passed on a lot of "hot dick," especially in her first years of marriage and advises she fell out of love with Sydney two years ago. Tr. p. 1364. Appellant sent a text advising, "Now, he had to stay chained to the bed until further notice while I live my life as a single woman, it's all good." Tr. p. 1366, lines 9-12. Appellant used a computer app replicating a Magic Eightball, asking it if "Sydney was in love with his whore." In a December 7 text, Appellant advises the recipient her battery was dying, to text her other phone. Tr. p. 1368.

Appellant's phone shows multiple searches on December 10 for "Search Near the Beach SC Cougar Life." A response to a text from her daughter about when they would arrive home replies, "In a minute. He's fixing lights at Olive Garden." Tr. p. 1377, lines 1-10. A text message on December 16 relates Appellant is "ready for new boy contact." Tr. p. 1379, lines 8-25. An additional search was for phases of the moon on December 11. Tr. p. 1375.

There were several texts on Appellant's phone on December 18. At 1:47 a.m., a text from the sender asks Appellant, "Y'all going to the store? We don't need the ad, it's online now." At 3:10 a.m., Appellant replies, "Got he [sic] ad." Then the aforementioned text from Appellant to Sydney's phone at 4:37 a.m., "Can you please bring me an orange juice with the pot stickers." The reply from Sydney's phone is "Yes, ma'am. Tr. p. 1381. Therefore, Appellant's phone is suddenly communicating with Sydney's phone again within an hour after Victim disappears.

A series of text messages **on Sydney's phone**, starting at 12:30 a.m. on November 2,

memorializes the moments Appellant learned about Sydney's affair with Victim. At 12:30 a.m., Sydney's phone receives a text simply reading, "Sydney." The reply sixteen minutes later is "Yeah." Then "Wuz up?" Sydney's phone replies, "Who the fuck is this?" and asks, "Why would you fucking text at 12:30 a.m. and not respond?" Victim's phone replies, "What in the world?" And an hour later, another text from Victim's phone, "Sorry, my phone was fucking up all night . . . . [B]ut you've got some explaining to do." Sydney's phone responds, "Why is that?" and, "Who is this?" Victim responds, "Nobody you need to worry about anymore." Sydney's phone responds, "You want to call me right now and explain yourself, it would be the wise thing to do." Tr. pp. 1384-85.

At 8:21 p.m. on November 2, Victim texts, "So when does Sidney get his phone back?" An hour and a half later, the response: "This is him, but we can't talk anymore." Victim responds, "Can you call for just a minute. The response is, "No I love family." Victim concludes a follow up text, "I understand this can't go on anymore. I just want to know that your wife isn't going [to] show up at my job, because I lost hours today because they sent me home after she kept calling." Tr. pp. 1385-86.

Five hours later, Sydney's phone (but not Sydney?) asks Victim, "[W]hat do you want to talk about?" Victim responds, "I think you're a little obsessed with me." After responding "it was a bore," Sydney's phone advises, "If you want to speak to me, call now, otherwise leave me alone forever." Victim responds, "Really? So that's why you are still childishly texting me from your cheating husband's phone?" Tr. pp. 1386-87.

Texts afterwards indicate Appellant is using Sydney's phone, with incoming messages addressed to "Mom." There is another message from the phone, "Mommy can't wait to be skinny."

Tr. pp. 1388-89. Then a series of sexually suggestive texts begin on December 16, two days before the abduction; the context of the messages indicates Appellant rather than Sydney is sending the suggestive messages, further indicating Appellant is controlling what used to be Sydney's phone. Tr. pp. 1389-95. These are more thoroughly discussed in the argument addressing Appellant's character evidence claim.

Lynch noted on December 18, there was no activity from Appellant's phone between 1:47 and 3:10 a.m. Tr. p. 1405. On Sydney's phone, there was a four minute call at 3:17 a.m. from Victim. Tr. p. 1409. There were four calls from Victim at 3:30 a.m., 3:38 a.m., 3:39 a.m., 3:40 a.m., and 3:41 a.m. Tr. p. 1406. There was no activity on either Appellant's phone or Sydney's phone between 3:30 a.m. to 4:00 a.m. Tr. pp. 1407-08. Lynch noted none of the texts from November 2, 2013, until December 18, 2013, indicate Sydney was using his own phone. Suddenly, on December 18, there is the exchange of contact between Sydney's phone and Appellant's phone. Records indicate he has his phone back again. There is no more sexting with males on Sydney's phone. Tr. pp. 1413-15.

James Phillip Perry examined the computer seized from the Moorers' home and discovered someone purchased and used an extraction software, Tenorshare, on November 13, 2013, to extract texts from Sydney's phone. Tr. pp. 1485-88; p. 1493. It showed texts not found from law enforcement's Cellbrite dump. These texts reveal more information about Appellant discovering the affair. Tr. p. 1493; p. 1498. One of the texts from Sydney's phone to Victim's phone posits "Who the fuck is this?" Another warns, "Someone is about to get their ass beat down." Tr. p. 1497, lines 2-24. Sydney's phone advises Victim:

> You want to call me right now and explain yourself? It would be wise thing to do. I've been having Sydney followed since January of

> 2012. It's best you call back and speak immediately. Save yourself. I'm giving you one last chance to answer before we meet in person, only one. Hey, Sweetie, you ready to meet the Mrs., the kids want to meet you?

Tr. p. 1498, lines 8-15. Another chain of texts has Sydney's phone calling Victim "DJ" and Victim seems perplexed, asking who is DJ. Victim responds, "Ha ha ha, is that what he told you my name was? I guess you're right, he is a liar." Tr. p. 1500, lines 3-10.

Irene Moorer, Sydney's mother, lives in Lebanon, South Carolina. She testified she only saw Sydney alone without Appellant one time since they were married. Tr. pp. 1645-46. On Christmas Eve in 2013, Sydney, Appellant, and their children all showed up unexpectedly at Irene's house at 10 p.m. During the visit, Appellant said she beat the "hell out of" Sydney for having the affair. Tr. p. 1647-48.

Laura Garlitz was friends with Appellant and their families socialized together. She testified the Moorer family made a surprise visit to show their new black Ford F-150 on the Saturday before Victim went missing. Garlitz testified Appellant was drinking, and Garlitz smoked marijuana with Appellant, which they never did before. Tr. p. 464.

After Victim went missing, Appellant told Garlitz that Sydney and Victim only had oral sex. Tr. pp. 465, lines 17-19. Appellant told her she talked on the phone with a boy from a rock band while sitting in the closet. Later, when it appeared Garlitz's son would be a trial witness, Appellant posted a Facebook entry complaining Garlitz's son was not loyal to the Moorers. Tr. p. 465-67.

Donald Demarino, Sydney's cousin, testified after the kidnapping and after the Moorers were released, Sydney showed a picture of Victim on his flip-phone while they were alone together at a family cookout. Demarino understood the picture was for Appellant. Although the photograph is not described in detail, Victim did not appear to have her freedom, and she did not look like she

would be able to leave wherever she was of her own accord. Based on the picture, Demarino did not expect anyone to ever hear from Victim again. Tr. pp. 1660-65; p. 1677; p. 1680. In a subsequent phone call with his mother, Demarino told her it was not true, but he explained to the jury he recanted to his mother to keep her from worrying. Tr. p. 1694; pp. 1700-04.

Ashley Caison, Appellant's sister, was the first witness for the defense. She lives wih her parents, next door to the Moorers. Ashley claimed Sydney got his tattoo in January 2012. Tr. pp. 1882-83. Appellant watched the children the night of December 17 into the morning hours on December 18. While the Moorers were out, Appellant picked up a coupon for Ashley that she asked for. They both enjoyed couponing which often led to shopping at odd hours. At 3:10 a.m., Appellant texted her she had the ad and was home. Ashley gathered the children and watched as they walked across the yard to Appellant's house. Ashley testified Sydney and Appellant were standing outside their door waiting for the children. Tr. pp. 1877-79; pp. 1894-99; pp. 1903-04.

The defense also presented testimony that Appellant tested positive on a pregnancy test and was six weeks and six days pregnant on March 28, 2014. Tr. pp. 2077-78; p. 2101.

Finally, Appellant testified in her own defense. She claimed she was trying to get pregnant during the family trip to California. She missed her period several times and thought she was pregnant other times. She took several pregnancy tests between November and her arrest date. Tr. p. 2117. She lamented her supporters were afraid to show up in the courtroom. Tr. p. 1221.

Appellant first learned about the affair between Sydney and Victim on November 1. At first, Sydney told her the affair was with a man. She spoke with Victim and thought she was a nice girl. Victim explained everything. She explained they already planned a vacation out west before she found out about the affair and decided to follow through with the three week trip in November. Tr.

pp. 2129-35. **Appellant claimed she was mad at Sydney for about 72 hours after discovering the affair and then was over it.** Tr. p. 2157. She claimed Sydney got the "Tammy" tattoo on January 16, 2012, at 4:00 p.m. and she did not force Sydney to get the tattoo. Tr. p. 2159; p. 2165.

Appellant testified she did not go to Peachtree Landing on December 18, and to her knowledge, neither did the Ford F-150. Tr. pp. 2168-69. She admitted her and Sydney each had a pair of novelty handcuffs for play, but she never handcuffed Sydney to the bed. She admitted there were a pair of real handcuffs in the house but she did not know where they were. Tr. pp. 2173-74. She claimed she did not have any functioning surveillance cameras for the house until they started to be stalked. Tr. p. 2185; p. 2192.

She explained the 3:10 a.m. text, admitting she and Sydney arrived home then. Tr. pp. 2196-98. When they arrived, pursuant to the usual routine, Appellant's sister sent the children home, and the children went to sleep, except her oldest son, who stayed up playing video games. Tr. p. 2199.

Appellant claimed she sometimes helped Sydney with work. She was with Sydney the night Victim disappeared. They worked at Longhorns and stopped by Sticky Fingers twice. **She admitted they purchased the pregnancy test at Wal-Mart that night.** Appellant claimed she had sex with Sydney both before and after the visit to Wal-Mart in the truck that night. Tr. pp. 2203-05; p. 2209. She explained after the second time, they stopped at a gas station to clean up. Appellant claimed she was unaware of Sydney using a payphone. She claimed "Sydney denies that to me." Tr. pp. 2205-07. **However, on cross-examination, she volunteered that Sydney told the police he made the payphone call.** Tr. p. 2306, lines 9-22. They made their last stop at Sticky Fingers, picked up the Bi-Lo flyer, and headed home. Tr. p. 2210.

Appellant admitted she heard a women's voice during a phone conversation Sydney had on

his cell phone. She claimed Sydney told Victim to leave him alone. Tr. p. 2234. Appellant claimed she did not learn Victim was missing until the next day when a detective called Sydney. Tr. p. 2237. On cross-examination, Appellant admitted she may have sent a text to her sister asking to take a picture of Victim at Tilted Kilt. Tr. p. 2245. Sydney showed Appellant a picture of Victim on Facebook. Tr. p. 2245. She claimed after some initial tension, she had a nice conversation with Victim the next day after discovering the affair. Tr. pp. 2246-47. In contrast, she admitted she called Victim a psycho-whore in a Facebook post after Victim went missing. Tr. pp. 2266. Appellant admitted she started tracing Sydney's phone. Tr. pp. 2248-49. Appellant admitted sexting a nineteen year-old man, Caleb, with Sydney's phone, and admits Sydney was present. Tr. pp. 2275-78. Appellant admitted she was looking up various moon phases on her phone. Tr. p. 2272. Appellant claimed again she was in an open marriage. Tr. p. 2287.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Jenkins, 412 S.C. 643, 650, 88 S.E.2d 906, 909 (2015). For the issue of directed verdict, the operative question is whether evidence exists sufficient for any reasonable juror to reach a guilty verdict. Jackson v. Virginia, 443 U.S. 307, 319 (1979). However a more detailed analysis of the standard is presented in the argument below. The second and third issues are evidentiary issues. The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). The abuse of discretion standard also governs the last two issues, briefed together, and really go to the discretion our reviewing courts provide to trial judges, who are best situated to make decisions regarding the conduct of trials. Gavin v. State, 473

So.2d 952, 955 (Miss. 1985) ("even if we wanted to be fact finders, our capacity for such is limited in that we have only a cold, printed record to review. The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire") (cited with approval, Clemmons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., dissenting)). "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

ARGUMENT

I. Because evidence shows Victim suddenly and unexpectedly disappeared after Appellant and her husband lured her to a remote boat landing near their house, the trial court did not err in denying the motion for directed verdict.

Appellant claims the trial court should have granted a directed verdict for both the kidnapping and the conspiracy to kidnap charges. However, the evidence established Appellant and Sydney lured Victim to a remote boat landing. The motive could not be clearer – Appellant despised Victim. Victim disappeared from this boat landing, and since her sudden and unexpected disappearance, has never been heard from again.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight and the evidence should be reviewed in the light most favorable to the State. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426

S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)). The United States Supreme Court noted the following:

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

Jackson, at 319) (emphasis in the original); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

"This objective test is founded upon reasonableness[;] [a]ccordingly, in ruling on a directed verdict motion [when] the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Pearson, 415 S.C. 463, 473, 783 S.E.2d 802, 807 (2016) (quoting State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016)).

Kidnapping requires proof of an unlawful act that may take the form of seizure, confinement, inveiglement, decoy, kidnapping, abduction, or carrying away another person without authority of law. State v. East, 353 S.C. 634, 578 S.E.2d 748 (Ct. App. 2003). Kidnapping is a continuous offense commencing when the victim is wrongly deprived of freedom and continuing until freedom is restored. State v. Tucker, 334 S.C. 1, 13, 512, S.E.2d 99, 105 (1999).

Corpus delicti

Moorer argues the State failed to prove the corpus delicti of kidnapping. When applied to a particular offense, corpus delicti means the specific crime has been committed. State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003). In the present case, Victim remained missing for many years, the remaining question is if her disappearance resulted from criminal agency. See State v. Williams, 321 S.C. 381, 384, 468 S.E.2d 656, 658 (1996) (In order for the State to establish corpus delicti of arson, it must provide evidence the burning was caused by some criminal agency); State v. Blocker, 205 S.C. 303, 306, 31 S.E.2d 908, 909 (1944) ("In other words, the corpus delicti includes not only the fact of burning, but it must also appear that the burning was by the willful act of some person, and not as a result of a natural or accidental cause . . . .").

In State v Hummell, 266 P.3d 269, 280-81 (Wash. Ct. App. 2012), the appellate court found sufficient evidence of corpus delicti for the charge of murder, although the alleged victim was never found, finding the logical conclusion from the evidence was she was deceased through criminal agency. The court noted the victim disappeared "suddenly and surprisingly" and was never heard from again. She missed a special birthday event for her daughter, she failed to complete a work assignment which was atypical for her, and she was close to her children and unlikely to abandon them. Evidence pointed to Hummell, the victim's husband, as the suspect, based on his behavior, including his theft of her pension and forging her signature after she disappeared, as well his motive related to their daughter recently reporting to the victim that Hummell molested her.

In State v. Owens, 291 S.C. 116, 118, 352 S.E.2d 474, 476 (1987), like the present case, the alleged kidnapping victim disappeared and was not found. The Supreme Court found corpus delicti was established because the victim remained missing at the time of trial, there were signs of a

struggle at the victim's home, and a ransom note was received.

Appellant cites Owens and argues the evidence is not as strong as in Owens. Of course, the facts and motives in the present case and Owens are divergent, but far more evidence establishes motive and a relationship between Victim and the Moorers. In Government of the Virgin Islands v. Harris, 938 F.2d 401, 415 (3d Cir. 1991), the Third Circuit Court of Appeals, after conducting a survey of missing body murder cases in other jurisdictions, found neither locating the body of the missing person nor the manner producing death need to be shown in order for a defendant to be found guilty of murder. "In general, our review has shown a wide range in the type of relationships between defendants and victims, in addition to the defendants' personal histories and motives and the extent of circumstantial evidence admitted into to trial to support the verdict." Id.; State v. Owens, 293 S.C. 161, 166-68, 359 S.E.2d 275, 277-78 (1987) *cert. denied*, 484 U.S. 982 (1987) ("Other courts considering 'no body' murder cases have allowed evidence of the victim's personal habits and relationships as circumstantial evidence from which an inference could be drawn that the victim's sudden disappearance was the result of death by a criminal act."); See State v. Weston, 367 S.C. 279, 293, 625 S.E.2d 641, 648-49 (2006) (even though State could not locate body "the state presented evidence that [victim] had an active social life, was active with friends, at bridge club, and regularly kept in touch with the apartment complex managers, her sister, and her friends. She was last seen . . . making a withdrawal from her bank account. She has not been seen nor heard from since. Under Owens, the state's presentation of the victim's habits, coupled with her mysterious disappearance, and the fact that she has not been seen nor heard from since August 1998, are sufficient to establish the corpus delicti of murder").

In the present case, there is sufficient evidence that Victim's disappearance was the result of

criminal agency. Victim was described by several employees at Titled Kilt as a reliable worker who did not miss scheduled shifts without notice. She left her belongings at her apartment. She always kept her phone with her and her phone was no longer functioning after she arrived, and subsequently disappeared from, Peachtree Landing in early morning hours of December 18. Her vehicle was abandoned and irregularly parked. From the landing, she made multiple calls to Sydney's phone. Earlier, she made multiple calls to the payphone Sydney used, indicating an urgency to speak with Sydney. She was distressed during her phone call with her roommate. This contrasts from the preceding evening when she enjoyed a romantic date that she was looking forward to the date the night before her disappearance – Brii testified before the date, Victim would not stop texting her about what she was going to wear. Tr. p. 1538. Victim's disappearance was therefore both sudden and surprising. Lastly, Sydney showed a picture of Victim after her disappearance became well known, and the picture appears to show her in distress. Demarino testified based on the picture, he did not expect Victim to be seen again. This evidence is therefore sufficient to establish that Victim's disappearance was the result of criminal agency and satisfies the requirement of establishing corpus delicti.

Venue

Appellant further claims the State failed to prove the crime occurred in Horry County, surmising the actual kidnapping occurred outside Horry County. "[A] criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Evans, 307 S.C. 477, 480, 415 S.E.2d 816, 818 (1992) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). "[V]enue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of

venue, though slight, is sufficient to establish jurisdiction." State v. Williams, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996) (finding although not conclusive, sufficient evidence established jurisdiction in Edgefield County although victims were last seen alive in Georgia, but the burned vehicle with the deceased victims was found in Edgefield County) . "Furthermore, where some acts material to the offense and requisite to its consummation occur in one county, and some in another, venue is proper in either county." Id. (citations omitted). In the instant case, Victim disappeared in a narrow time frame. Her last call is made at 3:41 a.m. Based on expert testimony, this call was made from Peachtree Landing. No trace of Victim has ever been found since then with the exception of a photograph of Victim on Sydney's phone which showed her in a distressed state. By shortly after 4:00 a.m., a patrolman found the abandoned car at the landing which is located in Horry County. Whether by abduction or inveigling, a reasonable juror could believe that the crime started in this time frame at the landing. Kidnapping is a continuous crime, and sufficient evidence establishes the crime began in Horry County. East, supra.

Identity

Appellant argues the State failed to meet its burden of proving identity. The State bears the burden of proving identity beyond a reasonable doubt. See Gibbs v. State, 403 S.C. 484, 744 S.E.2d 170 (2013). However, evidence in the light most favorable to the State was sufficient for the case to be decided by the jury. The prosecution offered significant evidence showing Appellant's motive to commit the crime because of Victim's affair with Appellant's husband and Victim's subsequent impregnation. Substantial evidence showed Appellant's animus towards Victim and her attempts to cover up her animus for Victim. She claimed to be in an open marriage and quickly got over discovering the affair, yet her reaction in the days following discovery of the affair, especially her

use of Sydney's phone for sexting young men two days before the kidnapping, contradict this claim. Further, she claimed surveillance cameras at their house were not functioning when other evidence indicates the cameras were fully functioning. The evasiveness is evidence of consciousness of guilt. State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.").

Appellant admitted to being with Sydney in the F-150 during the early morning hours on December 18. Cell phone data reflects Sydney and Appellant's phones moving in tandem through the early morning hours. Appellant was aware Sydney was purchasing a pregnancy test at Wal-Mart, and she was with him for the payphone call to Victim – forensic evidence established Appellant and Sydney's phones were in the proximity of the payphone at the time of the call. Sydney told the police he made the phone call. Victim drove out to the remote, isolated landing only minutes away from the Moorers' residence, calling Sydney's phone for the first time since November. There is no record of Victim visiting this landing before. According to Appellant, they were home by 3:10 a.m., so they were close to the landing that was only minutes away. Importantly, forensic evidence proved the Moorers' 2013 Ford F-150 went to this remote landing at the early morning hour where Victim waited.

Sydney and Appellant texted each other for the first time since the beginning of November at 4:30 a.m., a striking coincidence occurring only half an hour after Victim's disappearance. Appellant admitted being aware Victim was on the phone with Sydney during the 3:17 a.m. phone call. Suddenly, in the early morning hours within the hour of when Victim is going to disappear, Appellant allows Sydney his phone back for the first time in over a month, which a reasonable juror

might conclude enabled them to inveigle and abduct Victim. Moreover, even though evidence tends to show Sydney just received his phone back, perhaps only minutes ago, Appellant seems to trust Sydney to carry on a phone conversation with Victim, the reason Sydney lost his phone. Even more incriminating, Sydney keeps his phone afterwards, and contact resumes between the spouses' phones. A reasonable juror might conclude this is because Appellant knows Victim is no longer a threat to Appellant and her marriage.

In addition to identifying the Moorers' truck as the truck headed towards the landing and back in the two surveillance videos, he determined based on the cell phone tracking data provided by Edens that Victim's vehicle and the Moorers' truck were converging on the remote landing at the same time. Victim would disappear from this landing within half an hour. Tr. pp. 10001-02. Further evidence tying the Moorers' to the crime is evidence Sydney showed Demarino a picture of Victim after Victim's disappearance in which she appears to be in some kind of distress, further supporting Sydney's role, and therefore Victim's role, in the disappearance. Accordingly, sufficient evidence was presented for a reasonable juror to find Appellant guilty of kidnapping.

Conspiracy

Evidence also supports the trial court's denial of directed verdict on the conspiracy charge. A "conspiracy" is "a combination or agreement between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means." S.C. Code Ann. § 16-17-410. "The gravamen of conspiracy is an agreement or combination." State v. Stuckey, 347 S.C. 484, 502, 556 S.E.2d 403, 412 (Ct. App. 2001). "However, a formal agreement is not necessary to establish a conspiracy, as the conspiracy may be proven by circumstantial evidence and the conduct of the parties." Id. at 502-03, 556 S.E.2d at 412 (internal quotations and citations omitted). "What is

needed is proof they intended to act together for their shared mutual benefit within the scope of the conspiracy charged." Id., at 503, 556 S.E.2d at 412-13 (internal quotations, citations, and emphasis omitted).

Overt acts committed in furtherance of a conspiracy are not elements of the conspiracy, but are evidence of the existence of the conspiracy. State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 867-68 (1993). "Although the offense of conspiracy may be complete without proof of overt acts, such acts may nevertheless be shown, since from them an inference may be drawn as to the existence and object of the conspiracy. It sometimes happens that the conspiracy can be proved in no other way." State v. Condrey, 349 S.C. 184, 192, 562 S.E.2d 320, 323 (Ct. App. 2002) (internal quotations and citation omitted).

Appellant admitted being in the F-150 with Sydney during the early morning hours the night of the kidnapping . "[A] car passenger . . . will often be engaged in a common enterprise with driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." Wyoming v. Houghton, 526 U.S. 295, 304-05 (1999).

Appellant is with Sydney when he calls Victim from a payphone. She accompanies Sydney to purchase a pregnancy test and a cigar at Wal-Mart, and is aware he is purchasing it. A reasonable juror could believe that pregnancy test was for Victim, who is believed to have been pregnant. Appellant is present when Victim calls Sydney. Evidence demonstrates Appellant controlled the phone since November. Yet Appellant returns Sydney his phone just in time for Sydney to execute the process which results in Victim being abducted or inveigled from the remote boat landing only minutes from their house. Appellant's earlier research on phases of the moon, and her presence in and around where Victim's phone is located in the days beforehand provides evidence a scheme was

in the works in the days leading to Victim's disappearance. Her overt acts show she is in agreement with or ordering this abduction. Therefore, there is sufficient evidence of an agreement between Appellant and Sydney to carry out Victim's kidnapping. The trial court did not err in denying the motion for directed verdict.

II. The trial court did not err in allowing the prosecution to present evidence relevant to show Appellant's state of mind concerning her husband's affair, to demonstrate her control over the cell phone utilized in abducting Victim, and to counter her assertion that her husband bought a pregnancy test for Appellant, *rather than Victim*, because Appellant thought she was pregnant or trying to get pregnant.

Appellant alleges the trial court erred in admitting evidence that she used marijuana, visited "Cougar Life" websites on her phone, and sent sexually oriented texts on Sydney's phone. While this evidence may have incidentally reflected on Appellant's character, the evidence was admissible because it was relevant: (1) to establish her control over Sydney's phone which was used in the kidnapping , (2) to establish that two days before Victim's disappearance, she still bore a grudge over the affair between Sydney and Victim, and (3) to refute her assertions she thought she was pregnant or trying to get pregnant as an alternative innocent explanation to the inculpatory inference that she and Sydney were purchasing the pregnancy test for Victim.

Under Rule 403, SCRE, relevant evidence may still be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice." "Probative" means tending to prove or disprove. State v. Gray, 408 S.C. 601, 609-10, 759 S.E.2d 160, 165 (Ct. App. 2014) (citing Black's Law Dictionary 1323 (9th ed. 2009)). "'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id. at 610, 759 S.E.2d at 165.

The probative value of evidence must, of course, be weighed against the danger of unfair prejudice. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (citation omitted).

"A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." Id. at 534, 763 S.E.2d at 28 (citation omitted). "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." Id. (citation omitted); see also State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.") *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Although legal in some jurisdictions and gaining acceptance in segments of mainstream society, marijuana use is still illegal in South Carolina. However, whatever danger of unfair prejudice might stem from the marijuana references at trial, evidence of marijuana use is probative because it is evidence tending to refute the assertion Appellant thought she was pregnant or trying to become pregnant since expectant mothers would refrain from using alcohol or marijuana. When evidence is "logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime." State v. Lyle, 125 S.C. 406, 118 S.E. 803, 807 (1923).

At trial, a text was published in which Appellant discussed there was a blunt of marijuana in

the Moorers' truck while on vacation. Additionally, Garlitz testified the weekend before Victim went missing, she smoked a marijuana joint with Appellant. In the instant case, evidence Appellant used or was exposed to the open air use of marijuana, along with use of alcohol, is pertinent to a material fact in issue – whether or not Appellant was trying to become pregnant or thought she was pregnant at the time Victim disappeared. This is pertinent because Appellant offered evidence she thought she was pregnant and trying to get pregnant as an innocent explanation for why she and Sydney were purchasing a pregnancy test within hours of Victim's disappearance, as noted by the trial court. See Tr. pp. 1371-72. Appellant claimed she was trying to become pregnant during the trip to California, she missed her period, and thought she was pregnant at times. Tr. p. 2117.

Appellant also argues evidence she used her phone for internet searches entitled "Cougar Life," and she sent sexually explicit texts on Sydney's phone was improper character evidence. The prosecutor explained why testimony about the sexually explicit messages was probative:

> The first argument, without a doubt, it to show just two days before [the kidnapping] she's got his phone – there is no doubt there is a strong connection between the fact that she's using his phone to text another man. It shows, A, that she's in control of the phone and, B, it shows basically she's punishing him for having this affair with a 20 year-old. It's look, now I got somebody that is 19, too, and I'm going to rub your nose in it.
>
> It certainly doesn't show this blissful marriage on the heels of two nights later buying a pregnancy test. It shows at this point that, A, she hates him. I mean, the fact that she's using his phone to send these messages shows where that marriage is at that time, and it does not reflect we're taking pregnancy tests because we're back together and things are so wonderful and I'm trying to have a baby. It says, I hate you. I'm using your phone to absolutely punish you for what you have done to me. This affair has come out with [Victim] and now I'm going to rub it in your face that I'm messing around with some 19 year-old.
>
> So I think it absolutely goes to what is going on two days before this girl goes missing, and the relationship between him and her. And it shows – they're charged with conspiracy. It shows that

> the two of them are so thick in it together that he's okay letting her use his phone to message another man about how much she wants this other man.

Tr. p. 1419, line 10 – p. 1420, line 14.

The prosecutor further explains: "It is to show she's got control of it, to show that she's the dominated [sic] in the relationship and to show that she's absolutely punishing him for what he did. This is retaliation. It is now I got to get you back for what you did to me." Tr. p. 1420, lines 17-22.

"While the State may not attack a criminal defendant's character unless he has placed it in issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation." State v. Faulkner, 274 S.C. 619, 621, 266 S.E.2d 420, 421 (1980).

For instance, in State v. Griffin, 277 S.C. 193, 197, 285 S.E.2d 631, 633 (1981), the defendant claimed he killed the victim because the victim was having an illicit affair with the defendant's wife. The Supreme Court found evidence the defendant engaged in an adulterous affair admissible because it constituted evidence of a lack of affection for his wife that in turn refuted a potentially malice-free motive for killing his wife.

First, testimony about text searches on Appellant's phone for "Cougar Life" is designed to show Appellant was retaliating at Sydney for his affair with a much younger woman and counter the assertion she was over the affair as she claimed. It also supports the State's theory identifying Appellant, not Sydney, as the sender of texts to a younger man. Further, prejudice from this testimony is limited since Appellant claimed at various times, even at trial, to be in an open relationship.

Appellant also complains the sexually suggestive texts sent from Sydney's phone were

improper character evidence. The texts are sexually graphic. However, the texts sent from the confiscated phone were relevant to show Appellant's control over the phone. The content of the texts shows the recipients are male. Texts from Sydney's phone such as "you are making my pussy wet" and "I want to feel it inside of me" are perhaps the most graphic of the texts introduced, but also the most probative because the content of the messages suggests the texts are from a female – Appellant – instead of Sydney, even though the phone was previously Sydney's phone. This shows she was being vindictive towards Sydney on December 16 by using his phone to exchange sexually oriented texts with a young man roughly Victim's age. This counters her assertion on cross-examination that they were merely sharing phones. See Tr. p. 2264, lines 3-6.

How prejudicial are the texts? When Appellant testified, she claimed Victim and Sydney were only having oral sex and made the heated clarification, "[H]e was eating vagina yes." Tr. p. 2261, lines 6-11. Because Appellant offered the same course language from the witness stand, the danger of unfair prejudice was minimal at best.

More importantly, the texts establish her complete control over the phone because she is sending sexually explicit texts to another man on Sydney's phone. However, suddenly in the early morning hours a mere two days later, Sydney has his phone back for the first time in weeks and just in time to have the last phone conversation Victim ever had. Victim would disappear within the hour of that conversation. Sydney has his phone back thereafter, there are no more sexually explicit texts to other men. It is as if Appellant knows Sydney would not hear from Victim ever again.

This testimony is probative of Appellant's animus towards Sydney, and likewise Victim, for carrying on the affair. Therefore, the texts are evidence tending to establish motive and intent. Further, it is evidence of her involvement and an agreement to commit kidnapping because she

relinquishes the phone in time to enable Sydney to carry out the kidnapping scheme in which Victim was induced to travel to a remote landing near the Moorers' house. Finally, the phone Appellant controlled and used for sending explicit texts to other men is being used by Sydney again. The restoration of his phone privileges coincides within hours, if not minutes, of Victim's unexpected disappearance. A reasonable juror could believe that is because Appellant no longer felt her marriage was threatened by Victim, Victim was no longer an obstacle to Appellant.

Therefore, the sexually explicit nature of the text messages was probative to proving the crimes and the probative value outweighed the limited danger of unfair prejudice. Further, it is illogical to believe that a jury would fail to understand the gravity of its judgment and allow reference to marijuana use or quotidian evidence of libido to affect its ability to reach a fair and impartial verdict in a kidnapping case where the victim's fate remains unknown. "The erroneous admission of character evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record." State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 555 (2001). Further, any error was harmless in light of the overwhelming evidence of guilt. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990).

III. The trial court did not err in allowing the expert witness in photogrammetry and reverse projection to express his opinion that the suspected vehicle in the surveillance footage was the Moorers' vehicle because the methodology was sound, peer-reviewed, and demonstrated in a detailed exhibit. Further, the issue is not preserved for review.

Appellant complains the trial court erred in allowing Grant Fredericks to offer his opinion identifying the Moorers' F-150 as the vehicle in the surveillance footage from the early morning hours on December 18. The trial court never made a final ruling on the testimony because Appellant never objected before the jury. Therefore, the issue is not preserved. Further, Fredericks was

qualified to offer the opinion tendered to the jury.

How the issue arose

A hearing was held on April 18, 2016, before the Honorable Dennis R. Markley on Sydney Moorer's motion in limine in which Sydney Moorer's attorney ultimately agreed Grant Fredericks was qualified to testify but took issue with part of Fredericks' conclusion. Appellant's attorney moved to join in Sydney Moorer's motion, but did not otherwise participate in the hearing.

Grant Fredericks testified he has performed forensic video analysis for over thirty-two years. Fredericks is a former officer with the Vancouver, British Columbia, police department and headed their forensic video unit. Since 1994, Fredericks has been a trainer and lead instructor for the Law Enforcement and Emergency Services Video Association (LEVA), teaching throughout the United States, Canada, United Kingdom, and Asia. Fredericks is a contract instructor at the FBI National Academy in Quantico. Fredericks is a certified forensic video analyst and member of the International Association for Identification (IAI). Fredericks has testified regularly since 1994 and testified over 150 times in the last 10-12 years in courts in the United States, Canada, United Kingdom, New Zealand, and the Cayman Islands. April 2016 transcript (M. Tr.) pp. 10-11.

As a lead instructor for LEVA – the preeminent organization for training forensic video analysts – Fredericks personally instructed between two and three thousand video analysts. His coursework includes teaching principles of reverse projection photogrammetry used by video analysts. M. Tr. p. 11-12. Fredericks estimated a fifty/fifty split between times he has been hired by criminal defendants and prosecutors, and also testifies in civil cases. Fredericks published in various industry publications and co-authored a best practices for standards and guidelines in the use of compression in digital video environments. Fredericks also participated in co-authoring Best

Practices and Standards for the Law Enforcement and Emergency Services Video Association for its members. His work on the best-practices publications was peer-reviewed. M. Tr. pp. 14-16.

Fredericks explained certification as a forensic video analyst requires 188 hours of coursework. Recertification is required every three years. The final part of the certification process involves submitting and defending a case report in front a committee of peers. M. Tr. p. 17. A number of people from state, local, and federal agencies and the rest of the world are certified in forensic video analysis. M. Tr. pp. 20-21.

Fredericks explained forensic video analysis encompasses a number of subdisciplines. Photographic video comparison is a significant part of forensic video analysis. Reverse projection photogrammetry is also a subdiscipline. Other subdisciplines include macroblock analysis, speed estimation, and color correction. Fredericks has utilized reverse projection since 1984, which often goes hand-in-hand with photographic video comparison. Photographic video comparison constitues a primary area of his work since around 1997-98. M. Tr. pp. 22-23. Fredericks won the Vollmer award, which is an IAI award for excellence in forensic techniques. Tr. p. 28.

Fredericks described reverse projection as "the process of overlaying contemporary images of a scene with historic images of a scene in order to make observations . . . or obtain measurements." M. Tr. p. 31, line 25 – p. 32, line 11. Sydney's counsel asked Fredericks whether reverse projection was different than headlight spread pattern analysis and Fredericks answered:

> No, it's exactly the same. It's – headlight spread pattern analysis is just the examination of the reflection of light off of the object. In this case, it's – we're just looking at one feature of reverse projection. So, the vehicle is – reflects light back into the camera. The forward facing illumination of the light pattern from the headlights, fog lamps, whatever it is, reflect light to the camera. That's just one feature. . . . [I]f I were examining dents, then I would describe a depth comparison. If I were examining mud spatter . . . on the side of

> the vehicle, I would describe mud spatter. It's all part of reverse projection, photographic video comparison. In this case, there was an illumination of light in front of the car that could be contrast[ed] and compared, so I described that as headlight spread pattern because it's compartmentalizing all of the features of reverse projection and photographic comparison.

M. Tr. p. 33, line 12 – p. 34, line 2. Fredericks noted thousands of different types of headlights exist that distribute different beams. Even consecutive model years of the same make will distribute different beams because the headlight component changes. "So it's part of the process, okay, that people in my industry consider very importantly in doing comparison work." M. Tr. p. 36, lines 2-20. Fredericks noted a large number of publications analyze changing headlight spread pattern from vehicle to vehicle, including the Highway Transportation Safety Authority Administration. M. Tr. pp. 36-37. Kineticorp published a peer-reviewed magazine in the traffic accident reconstruction field that discusses changes in headlight spread pattern and the measurement of that change. M. Tr. p. 38, lines 11-18. Fredericks has provided expert testimony on the comparison of headlight spread pattern analysis at least half a dozen times. M. Tr. p. 39, lines 22-24.

At this juncture, Judge Dennis found the topic was beyond the ordinary knowledge of jurors, and Fredericks was qualified by his training, background, and experience to offer an opinion, leaving the remaining issue of the breadth of Frederick's opinion that would be allowed. M. Tr. p. 41, lines 7-19.

Fredericks explained some of the methodology in examining the surveillance video:

> I went back to the scene. I employed images from the original camera, recorded through the original digital video recording system, under the same lighting conditions, the same environmental conditions. And then I used a forensic tool that's commonly used in my field to overlay the images to compare and contrast to the light. I also conducted a number of tests on reflective areas of the vehicle by covering over those areas and uncovering them so I could properly

> identify where reflection was coming from. . . . [F]or instance, a tool box in the vehicle, place the tool box, remove the tool box, study the reflection differences. I also used over a dozen other vehicles of different makes and models but similar in appearance and vehicles of the same class, both in manufacturer and make to compare the reflections. . . .

M. Tr. p. 43, lines 9-23.

Fredericks conducted an analysis to determine the class and characteristics of the questioned vehicle. He explained the process involved calibrating the camera perspective with the historic camera perspective, under similar lighting conditions and similar environmental conditions. The vehicles being tested were placed into the known position of the historic vehicle for purposes of reverse projection. The process involved moving vehicles inch by inch for precise placement. M. Tr. pp. 45-46.

The known truck – the Moorers' truck – was a Ford F-150 Limited. Fredericks tested twelve other king-cab type trucks of varying makes and models for the purpose of comparing and contrasting from the questioned vehicle. Based on the brightness or luminance, some colors were eliminated, and Fredericks determined the questioned vehicle was dark in color. Fredericks also determined, through comparison and contrast, that the questioned vehicle was a four-door truck with a tool box. Additionally, using photographic video comparison and reverse projection, including analysis of the headlight spread pattern, Frederick determined the questioned vehicle had HID headlights. Fredericks agreed with the prosecutor he used the same technique or science to compare the headlights as he did to determine the questioned vehicle had a toolbox and was a four-door vehicle. He used this science to determine the class and characteristics of the questioned truck and made his determination it was the Moorers' vehicle through the totality of his analysis and not just the headlight spread. M. Tr. pp. 47-52.

Fredericks utilizes the ACE-VR methodology, which stands for analyze, compare, evaluate, verify, and report. It has been the standard in the field for decades. M. Tr. p. 54. Fredericks explained headlight analysis is just one component of reverse projection and photographic video comparison. Other examples include an analysis of a vehicle's bumper, mud spatter analysis, and analysis of bumper stickers. M. Tr. p. 58, lines 5-20.

Fredericks explained the quality control procedures he utilized included the use of multiple kinds of vehicles for analysis, having his work peer reviewed, and following the methodology Fredericks is trained in, which is the ACE-VR methodology. M. Tr. p. 63, lines 17-22. Fredericks' report was peer reviewed by George Reis, who is a certified forensic video examiner with the International Association for Identification. Reis has worked in the forensic video field since the 1990s. Fredericks testified Reis is one of the leading instructors in his field in the world. Fredericks'detailed report was roughly fifty to sixty pages in text, detailing each step, plus had hundreds of images for comparison. So the entire process was capable of being peer-reviewed. Reis sent correspondence to Fredericks in the form of an e-mail summarizing his peer-review of Frederick's report and indicating he agreed with the methodology and the results. Reis found the headlight pattern analysis was an appropriate analysis. M. Tr. pp. 64-67; State's Exhibit No. 7.

Specifically, Reis advised:

> I have reviewed your report of June 4, 2015 on "State vs Sydney Moorer and Tammy Moorer." The report is very thorough and written in a manner that explains your methodology, the foundations for headlight spread pattern comparison as a part of vehicle comparison, and the justification for your conclusion. The concept of any forensic comparison – from natural objects such as fingerprints and footprints to manmade objects from bullets, tires and tool marks are all based on these same criteria. I agree with your methodology and find your illustrations show the similarities and differences from different vehicles quite well. It does appear that some of the frames

> show quite a bit of resolution for this type of comparison. The premise of the uniqueness of headlight spread patterns is well stated and illustrated.

State's Exhibit No. 7.

Fredericks' conclusion was the questioned vehicle in the video surveillance taken on 814 and at D&S Siteworks was the Moorers' vehicle. M. Tr. p. 75. He advised he has provided this opinion in other cases and been allowed to testify to that in all the cases where that was the opinion he had to render. M. Tr. pp. 78-79.

The defense called their expert witness, Bruce Koenig, who admitted when he was with the FBI, they did video comparisons matching questioned vehicles to known vehicles through reverse projection and photographic video comparison, and it has been done for a long time. M. Tr. p. 105, lines 15-25. Koenig attested Fredericks does excellent work. M. Tr. p. 108, lines 10-17. For the most part, Koenig did not have any issues with how Fredericks' report was done. He felt Fredericks did a thorough job in the rear projection analysis and his comparisons. M. Tr. p. 108, lines 18-24. Koenig agreed with Fredericks' conclusion as to the class of vehicle for the questioned vehicle. Koenig only disagreed that a conclusion could be made that the known vehicle could be an absolute match with the questioned vehicle, arguing the position that each vehicle has a unique headlight spread pattern has not been adequately tested. M. Tr. pp. 109-10.

At the conclusion of the hearing, Sydney's counsel indicated he did not object to Fredericks' qualifications or his conclusions as to the class of vehicle for the questioned vehicle. However, Sydney's counsel objected to the conclusion that no two vehicles projected the same headlight pattern. M. Tr. pp. 126-28.

Responding to the Moorers' argument that Fredericks should not be allowed to say each

vehicle has a unique headlight spread pattern, Judge Dennis noted: "He's saying in his experience, and . . . that to me is the distinction here. He's testifying from his personal experience in analyzing, he's never encountered that." M. Tr. p. 129, lines 15-24. Judge Dennis ruled:

> At the time of trial, we will have heard his testimony in full and then from the standpoint, if the solicitor asks that question, we can excuse the jury and we can go into it and have further hearing concerning Mr. Fredericks testimony in that vein. But from the standpoint of his testifying to the methodology, it's clearly – and I find nothing either from anybody's testimony, nothing that I've done on my independent research that says this is not a recognized standard for identification and he's gone through it methodically.

M. Tr. p. 130, lines 5-14. Judge Dennis noted there were aspects of the testimony presenting issues of fact for a jury, but from of the standpoint of being qualified to testify, Judge Dennis found Fredericks was qualified. M. Tr. p. 130, lines 14-24. Judge Dennis further cautioned while he was inclined to allow the full extent of Fredericks' opinion, the scope of the opinion still needed to be addressed at the time of trial. M. Tr. p. 130, line 24 – p. 131, line 7. So certainly Judge Dennis' ruling was not final, even for Sydney Moorer's trial.

The issue is not preserved

At Appellant's trial, Fredericks testified about his qualifications and explained his field of expertise during the State's voir dire before the jury. When the State moved to qualify Fredericks as an expert witness, defense counsel agreed "he has the qualifications to examine the video" and agreed Fredericks was qualified to testify to the make and model of the vehicle, but defense counsel explained to the trial court, "What we object to is him being qualified as an expert to say that he can look at a video – he can look at a video or two videos very brief in time and then come back and say that is a specific truck and it doesn't match any other F-150 in the world. . . . It's like a DNA print or something like that." Tr. p. 943, lines 2-22.

The trial court ruled Fredericks was an expert in the field of video forensic analysis. The trial court further advised defense counsel:

> Now, when he goes to render an opinion, if you think it exceeds his scope of expertise, raise you objection then and I'll make a decision as to whether or not it exceeds -- . . . . I don't know what his testimony will be. So I'm not going to limit his testimony at this point in time. It is just like any other witness, if he starts to exceed the scope of this expertise, raise your objection and I'll make a decision at that time.

Tr. p. 943, line 24 – p. 944, line 8. **Defense counsel agreed with the procedure**: "[A]nd when we think he is getting beyond it, we'll submit the objection." Tr. p. 944, lines 9-14.

Although Appellant now argues on appeal that Fredericks went beyond the scope of his expertise, defense counsel never interposed the prospective objection to Fredericks' testimony, indicating his fears that Fredericks would go too far in his opinion never occurred. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). In the instant case, the trial court made clear it was not ready to rule on the objection and advised defense counsel to interpose an objection at the appropriate time. Defense counsel never interposed a further objection, so the issue now raised on appeal was not ruled upon by the trial court.

Rule 702/standard of review

Under Rule 702, SCRE:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Before admitting expert testimony, the trial judge must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education to render an opinion; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011).

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). An expert witness may state an opinion based on facts not within his first-hand knowledge, and may base his opinion on information, whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field. Rule 703, SCRE; Dawkins v. Fields, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003).

Massachusetts observed an FBI affidavit was submitted in that case advising photogrammetry has been in existence for over a century as a process for determining distances and heights from known points of reference. Commonwealth v. Caruso, 4 N.E.3d 1283, 1289 (Mass. Ct. App. 2014). In United States v. Quinn, 18 F.3d 1461, 1464-65 (9th Cir. 1994), the Ninth Circuit Court of Appeals found the district court did not err in allowing an expert in photogrammetry to testify to the approximate height of the bank robber shown on surveillance video without holding a Daubert hearing. The Court of Appeals found no error and observed the district court "concluded that the process used by [the expert] was nothing more than a series of computer assisted calculations that did not involve any novel or questionable scientific techniques." Id. at 1465.

In United States v. Wells, 879 F.3d 900, 933 (9th Cir. 2018), an expert in Honda vehicles was allowed to testify he was 70 percent certain a vehicle depicted in a blurry vehicle was a Honda CR-V after his initial analysis determined a CR-V was one of three possible models depicted in the video and photogrammetric analysis eliminated the other two Honda models.

The Texas Court of Appeals found no error in allowing Fredericks to testify as an expert in video analysis. Stevenson v. State, 304 S.W.3d 603 (Tx. Ct. App. 2010). The appellate court noted that even though the jury could see for themselves the sequence of events on videotape, Fredericks helped clarify what they were seeing on a poor quality black and white video, especially in regards to a comparison of the individuals' height. Id. at 623.

In an unpublished opinion by the North Dakota District Court, United States v. Rodriguez, 2006 WL 8438025, the district court addressed a challenge to the video analyst's methods of reverse projection measurement. The expert staged three poles of varying height, videotaped the placement of the poles, and overlay an image of the perpetrator shown in the original video overtop the videos with the three poles to determine the perpetrator was approximately 5'6" tall. The district court found the expert testimony admissible, noting, "Even to the lay person, this methodology is logical." Id. at 2.

In the present case, Fredericks methodology is logical, even to a lay person, and is capable of close review and scrutiny by other experts, the jury, and even for this Court, as the process has been painstakingly preserved in State's Exhibit No. 41.

Challenge to uniqueness of headlight spread patterns

Appellant argues the trial court erred in allowing Fredericks to testify that vehicles produce unique headlight spread patterns that make them uniquely identifiable, and opining that the Moorers'

F-150 was the vehicle in the surveillance videos to the exclusion of all other vehicles.

During voir dire at trial, Appellant's defense counsel questioned whether vehicles are uniquely identifiable from their headlight spread and Fredericks explained, "Yes. Headlight spread analysis is a very specific unique characteristic of a vehicle. There has been lots of publications and testing, and that is one of the very, very unique features of a vehicle." Tr. p. 936, lines 5-9.

Fredericks further expounded:

> Well, the reasons that headlights are different provides an opportunity for comparisons. So the National Highway Transportation Board looks at a number of different features that cause headlights from a vehicle [of] the same make, model, and year to be different. Dirt and debris on the headlight, a breach of the lens compartment that causes condensation will refract the lights differently. Bulbs begin to wear out, and depending on the number of bulbs in the light, it will have an impact on the diffusion of the light across the roadway. If a bulb comes out just even a fraction of a distance, it will refract within the lens compartment and then project a light differently on the roadway. They do this study because they are trying to minimize glare [for] on-coming traffic. . . . .

Tr. p. 936, line 14 – p. 937, line 3.

Fredericks explained further,

> [T]he older a vehicle is, the more likely the headlights will be adjusted and be off because they may hit a pot hole, they may hit a speed bump, and that will cause some changes in the headlight. **So it's very rare to find headlights from the same make, model and year that will overlay each other.**

Tr. p. 937, line 21 – p. 938, line 2. Fredericks discussed a test performed on a few dozen Crown Victoria vehicles purchased at the same time by a police agency that showed even though the vehicles were all brand new and were identical models, none of them had the same headlight spread pattern. Tr. p. 938, lines 2-9. Fredericks referred to this study again during cross-examination, "[W]e did an examination of a number of vehicles right off the assembly line, [and] all their

headlights were different." Tr. p. 1027, lines 2-4.

Fredericks later explained he did not base his opinion solely on headlight spread analysis, but explained, "The headlight spread pattern is most easily and uniquely identifiable and can be demonstrated I think more visually than other features, so that is what I focused on" Tr. p. 1006, line 7 – p. 1007, line 6. During cross-examination, defense counsel asked Fredericks whether headlight spread pattern analysis is a science by itself. Fredericks answered, "Headlight spread analysis is defined by the International Association for Identification. It is a scientific examination process within photographic video comparison." Tr. p. 1010, lines 4-9; see Tr. p. 1020, line 23 – p. 1021, line 9 ("[I]n the International Association for Identification it is trained, taught, and used, and so it is part of forensic video analysis."); see M. Tr. pp. 56-57 (noting terms used in the headlight analysis are defined by the IAI).

Another of defense counsel's cross-examination questions allowed Fredericks to explain the distinguishability of headlight spreads between vehicles:

> You are making my point. These vehicles, for various reasons, headlights are different. They can be adjusted and moved. My observation was that once the vehicle was seized and in control of the police and then driveby was done, there was no distinguishable difference.[1]
>
> Once the police did their examination of the vehicle, removed the headlights, I could no longer do that examination. That is why we did all the other ones, and I relied on the police movement. So your point is my point, that there are many, many variables that go into making headlights distinguishable, and over time they change more and more.
>
> So it was fortunate that within a short period of time the police had access to the vehicle and they did their tests, because that is what I relied on.

1 After law enforcement conducted the drive-by test in January 2014, they later removed and reinstalled the headlights during a search. Tr. p. 1015, lines 2-8.

Tr. p. 1014, lines 7-22.

In the instant case, the trial court did not err in allowing Fredericks to opine the Moorers' vehicle matched the vehicle in the videos as he demonstrated during voir dire that his methodology was sound. Additionally, his report was peer-reviewed with particularized approbation from the peer about the headlight spread analysis.

Importantly, the similarities and differences in the headlight spread between the tested vehicles and the questioned vehicle was on full display within Fredericks report, State's Exhibit 41. The testimony, method, and results, were readily understandable for the jury so it could give Fredericks' testimony whatever weight they felt appropriate. See generally State v. Morgan, 326 S.C. 503, 485 S.E.2d 112 (Ct. App. 1997) (noting standard for admissibility of scientific expert evidence is designed to prevent jurors from being misled by an aura of infallibility surrounding unproven scientific methods) *overruled on other grounds by* State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009); see generally State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979) (admissibility of scientific evidence depends on whether the experts relied on scientifically and professionally established techniques); State v. Whaley, 305 S.C. 138, 406 S.E.2d 369 (1991) (not all expert testimony is subject to a Jones challenge). The question of whether the questioned vehicle was a one-of-a-kind of match with the Moorers' vehicle was a quintessential example of a question for the jury. Accordingly, the trial court did not abuse its discretion in allowing the testimony even if counsel had objected to the testimony.

Demonstrating the soundness of the testimony is a comparison to the facts found in Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010). In that case, the Supreme Court found a witness qualified as an expert failed to meet the reliability requirements of Rule 702 to testify as to

causation by a cruise control design and also offer an alternative design for the cruise control system. The Supreme Court observed it was questionable whether the witness was qualified and further: (1) he never tested his theory, (2) it was never peer reviewed, (3) he never published his theory, and (4) while noting general acceptance of a scientific principle in the community was not required for admissibility, the Supreme Court noted that the expert's theory was rejected in the community. Id. at 451-52, 699 S.E.2d at 178.

In contrast, in the present case, even the defendants' expert agreed Fredericks was highly qualified and his methodology was sound, the work in this case was peer reviewed, and Fredericks had tested his theory on the uniqueness of headlights spreads through experience but also specifically in analyzing dozens of identical make vehicles fresh off the assembly line. Additionally, Fredericks referenced publications supporting his theories on the uniqueness of headlight spreads. Accordingly, the trial court did not err in allowing Fredericks to testify to his opinion that the Moorers' vehicle was the vehicle in the surveillance videos.

Further, any error was harmless. If restricting the opinion as suggested by Sydney Moorer's attorney at the pretrial hearing, the opinion evidence still established a 2013 F-150 of the same make and specifications at the Moorer's truck, including HID headlights and a toolbox, travelled towards the landing in time to meet and abduct Victim. In tandem with phone records, tower tracking records, the Moorers' admissions, and the records of the Moorers' movements, this provides ample evidence of their guilt. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (Error is harmless when it could not reasonably have affected the result of the trial).

IV & V: The trial court did not err in disqualifying alleged alibi witnesses from testifying because the witnesses violated the trial court's sequestration order. Further, the trial court did not err in finding Appellant violated the notice requirement for Rule 5,

SCRCrimP because Appellant did not timely provide with the rule's requirements (Appellant's issues IV & V).

Appellant complains the trial court erred in excluding Appellant's alleged alibi witnesses. This issue is mooted by those witnesses' willful violation of the sequestration order. However, defense counsel admitted failing to follow the Rule 5, SCRCrimP procedure, so the trial court did not err. Appellant also complains the trial court erred in disallowing the same witnesses from testifying based on a violation of the sequestration order. However, the violation was willful and the trial court did not abuse its discretion.

How the issue concerning the alibi notice arose

Prior to trial, the State made a motion to disqualify several alibi witnesses. The State noted in 2014, it moved under Rule 5 for the defense to provide notice of the intent to provide alibi witnesses. Exactly ten days prior to trial, on September 28, 2018, defense counsel provided notice for the first time that it intended to call two alibi witnesses, Nikki and the youngest child, but failed to provide their addresses. Seven days prior to trial, defense counsel provided a PO Box instead of a physical address for these witnesses and named two more witnesses, Alice Caison and Christian Moorer. See Courts Exhibit No. 2. The State noted it was prejudiced by the violation because the purpose of the rule is to provide the prosecution ample time to interview the witnesses. Defense counsel's explanation was that the ten-day deadline just crept up on him and claimed the timeframe he was provided was September 17 to December 20, 2013. Tr. pp. 13-14. However, the prosecutor advised the trial court that the time frame in the reciprocal Rule 5 motion was December 17 to December 20, 2013. Tr. p. 17, lines 8-13. Defense counsel admitted he did not provide the contact information until seven days prior to trial and the trial court granted the State's motion since defense counsel did not comply with the rules. Tr. p. 20, lines 7-23.

The prosecution brought up the issue again after it rested its case and the trial court reiterated that the witness would not be allowed to present any alibi testimony because defense counsel did not provide sufficient notice. Tr. pp. 1791-94.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (citing State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981)). In the instant case, the trial court did not abuse its discretion because defense counsel, despite having been provided reciprocal discovery in 2014, waited until the eleventh hour in 2018 to serve the notice of potential alibi witnesses and then failed to meet the straightforward requirements for such notice under Rule 5, SCRCrimP. Defense counsel certainly was aware that the children and Appellant's mother could provide alibi testimony much sooner than ten days before trial and should have provided adequate notice, including the required contact information, much sooner. Subsequently, the defense announced it removed Appellant's eight year-old son from the witness list and would not be calling him as a witness. Tr. p. 173, lines 4-10. Christian was away at college at the time of trial. The rest of the family moved to Florida. Tr. pp. 2122-23. Counsel's rule violation prejudiced the State.

Further, Appellant testified the children, except for Christian, were asleep, and Ashley did not claim to see Appellant after she sent the children home at 3:10 a.m. Appellant did not claim to see her mother than night. Therefore, Appellant was not prejudiced by the alleged error. In any event, that issue was rendered moot by the blatant violation of the trial court's sequestration order.

How the issue concerning the violation of the sequester order arose

The trial court issued a sequestration order allowing only the solicitor's investigator to remain in the court room. Tr. pp. 125-27. When defense counsel prepared to call Appellant's oldest

son, Christian Moorer, as a witness, the prosecution made the trial court aware of a problem with the sequester of witnesses. The prosecutor explained:

> We have been in contact with the Sheriff's Department. They have informed us that every time they went to the room that they are being sequestered in, pursuant to your order, they were already stepping out of the room as they approached that room every time so as it appeared to them of keeping the Sheriff's Office from coming in that room. They knew when the Sheriff's Office was coming to that room.

Tr. p. 1796, lines 14-22.

The trial court decided to take evidence on the matter and the State called Jade Pike to the stand. Tr. p. 1800. Pike explained what happened:

> I was escorting [Appellant] out of the courtroom. The witnesses were sequestered in one of our siderooms. When she opened the door, the children were in there, Ms. Polly was in there, her mother, and they had a laptop computer sitting on top of the table in the middle, and it had the live stream on it. I confiscated – I took the computer out of the room and gave it to the gentleman that was also in there, Richard McGowan, that claimed it was his computer, had him put the computer up, told them that they knew they weren't allowed to be watching it, **because we already had spoken to them about it**, and then went back like 20 minutes later, and they still had their cell phones.

Tr. p. 1801, lines 12-24. The violations Pike testified about occurred on Monday, during the second week of trial. Tr. p. 1802, lines 3-5.

Christian Moorer was called by defense counsel in response to the motion. Christian testified he did not know he could not have his cell phone and claimed he did not watch any live-stream of the trial. He claimed he was watching You Tube and "Achievement Hunter," and listening with his ear buds. Tr. pp. 1811-12. Christian confirmed McGowan came in the room where the four witnesses were sequestered and had a lap top. Tr. pp. 1812-13. He testified, "I know [McGowan]

was using [the laptop]. He was showing some kind of evidence pertaining to the case. I don't know what it was exactly. It was just something he was showing us – or trying to show us." Tr. p. 1813, lines 4-7. Christian later claimed McGowan was not showing his computer to anybody, contradicting what he previously said. Tr. p. 1815. Christian claimed he did not see any livestream. Tr. p. 1816. On cross-examination, Christian claimed the prosecutor misunderstood and McGowan was showing evidence from an old case from about ten years ago. Tr. p. 1818. When the prosecutor asked Christian about Deputy Pike's testimony that she saw them watching a live stream of the trial, Christian coyly asserted, "She may have seen someone else." Tr. p. 1820, lines 3-4.

The trial court found, "All right. I think there was a violation of the sequestration order. I'm going to suppress any testimony from Christian Moorer, Nikki Moorer, [youngest child], [and] Polly Caison." Tr. p. 1821, lines 8-11. The trial court also disqualified the testimony of another witness who had been present in the courtroom, which is not challenged on appeal. Tr. p. 1821, lines 12-19. Defense counsel asked for clarification on the trial court's factual findings on the sequestration order, and the trial court explained "I find the officer's testimony was credible, that she walked in on Monday and she saw them watching this live stream." Tr. p. 1823, lines 2-4; see also p. 1825, lines 4-7. Once the discussion concluded, the trial court expressed its understanding that, "I have just cut maybe five possible witnesses. Are you ready to go forward with your defense, or do you need time to regroup." Tr. p. 1826, lines 22-25.

There were issues with the sequestration order during the prior week of trial. The trial court referenced it as follows: "[L]ast week when it came up is the first time I ever dealt with it, and I think we had it worked out, and then I hear it has happened again this week." Tr. p. 1824, lines 6-9. Later, the prosecutor put on the record that a device was confiscated earlier in the week when the

family member/witnesses were watching the livestream and the family members/witnesses changed their location to another room for "the sole purpose of continuing to watch" the live stream. The trial court indicated no clarification was needed because it agreed with the prosecution. Tr. p. 2283-84.

The decision to sequester witnesses is left to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion. State v. Tisdale, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000). The purpose of the exclusion rule is to prevent the possibility that one witness will shape his testimony to match another witness's testimony. State v. Huckabee, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010). If a witness violates the order, he may be disciplined by the court. Id. The question of whether to exclude testimony by the offending witness depends upon the particular circumstances and "lies within the sound discretion of the trial court." Id. (quoting United States v. Leggett, 326 F.2d 613, 613–14 (4th Cir.1964)).

In the instant case, an officer advised the trial court that he saw all the witnesses watching a livestream of the trial. This was not the first time they had problems with these witnesses. The attorneys also referenced a prior issue with the family members not following the sequester order. The trial court found the officer credible and therefore, the violation of the order is willful. In all likelihood, the family members were hoping to conform their testimony to evidence being presented to the jury in an effort to help Appellant. Therefore, the trial court acted within its discretion and did not err in disqualifying the witnesses from testifying. See also State v. Stewart, 283 S.C. 104, 110, 320 S.E.2d 447, 450 (1984) ("It would do well for defense counsel to remember that the people of the State as well as the defendant are entitled to a fair trial.").

CONCLUSION

For all of the foregoing reasons, the judgment and convictions of the lower court should be affirmed.

Respectfully submitted,

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June 25, 2020

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TAMMY CAISON MOORER,

Appellant.

Case No. 2018-001938

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email at the address listed in AIS and by having a copy delivered to:

Lara M. Caudy, Esquire
SC Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 25th day of June, 2020.

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Caroline Collins

From: Caroline Collins
Sent: Thursday, June 25, 2020 3:36 PM
To: 'lcaudy@sccid.sc.gov'
Cc: 'Matthews, Lindsey'; David Spencer; William Blitch
Subject: The State v. Tammy Caison Moorer (2018-001938)
Attachments: MOORER Tammy - Cover Letter - IBOR, DOM, and Motion to Exceed Page Limits - 2018-001938 (02311889xD2C78).PDF; MOORER Tammy - Initial Brief of Respondent and Designation of Matter - 2018-001938 (02311890xD2C78).PDF; MOORER Tammy - Motion to Relax Rule 208(b)(5), SCACR and Exceed Page Limits - 2018-001938 (02311894xD2C78).PDF

Follow Up Flag: Worldox

Good Afternoon Ms. Caudy,

Attached please find copies of the Initial Brief of Respondent, Designation of Matter, and the Motion to Relax Rule 208(b)(5), SCACR and Exceed Page Limits in The State v. Tammy Caison Moorer (2018-001938), along with their cover letter. These documents will be submitted to the Court of Appeals through the AIS system. As written in the proof of service, in addition to this email a hard copy of these documents will be deposited in the mail.

If you will, please reply to confirm receipt of this email.

Thank you!

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