THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

Appeal from Richland County
Court of General Sessions
Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-001546

THE STATE,

Respondent,

v.

MIMI JOE MARSHALL,

Appellant

Return to the Petition for a Writ of Certiorari

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina, 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

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III. Did the court err in admitting the State's expert in blood stain pattern analysis given the foundation laid on his knowledge, skill, experience, training, and education?

STATEMENT OF THE CASE

Doris Marshall clocked out of her shift as a dining facility attendant at Fort Jackson at 10:15 PM on August 14, 2015. (R. p. 159, lines 9-13; R. p. 163, lines 10-33). Early that next morning, Doris' husband, Petitioner Mimi Joe Marshall, arrived at a relative's house to tell them he "messed up" while arguing with Auntie Doris, and that she tried to grab the gun and it went off. (R. p. 142, lines 5-8). Marshall had already left his brother a voicemail indicating the same. (R. p. 368, lines 1-9; R. p. 374, lines 4-22). Marshall showed his nephew a double barrel shotgun. (R. p. 143, line 23 – p. 144, line 7). Marshall's daughter-in-law went to Marshall and Doris' home. (R. p. 411, line 18 – p. 412, line 14). When she made entry to the house, "it was clear that [the victim] was dead." (R. p. 415, lines 7-11). "[S]he had a hole in her head." (R. p. 415, line 14).

The Richland County Sheriff's Department and EMS arrived on scene and EMS noted the following:

> EMS was able to visualize the patient from the front door of the home without entering. Noted brain matter on the floor. The patient was sitting on a couch to the right of the front door, leaning to her right with her head down. Noted injury to the head inconsistent with life, skull fragment on the back of the couch, noted brain matter. Blood splatter around the patient. The patient had no respiratory effort, no signs of life, noted coagulation of blood on and around the patient, lividity and notified dispatch of D.O.A.

(R. p. 150, lines 6-23). The victim "had been sitting on a sofa with her lunch bag beside her foot and had been shot in the face at close range with a shotgun. That's where she was killed instantly." (R. p. 557, lines 7-10).

Marshall surrendered to law enforcement about ten miles from his home. (R. p. 174, line 8 – p. 175, line 7). Officers noticed reddish brown spatters on Marshall's pants, socks and shoes.

(R. p. 358, lines 15-17). Officers also located a double barrel shotgun inside Marshall's vehicle. (R. p. 177, lines 10-21).

Marshall provided a statement to Sergeant Joe Clark about what happened to his wife:

> When she came home from work last night, I had my gun in the front room. I did this because the trailer park is an unstable place. She came at me. She grabbed the gun. It went up and it went off. I grabbed her. I had her head in my hands and I let her down on the chair. I knew she was dead then. I should have handled it a different way, the way I did not handle it, I should have killed myself.

(R. p. 566, lines 11-21).

Marshall told the Sergeant the gun had been in a living room closet, but the Sergeant knew there was no closet in the living room. (R. p. 566, line 25 – p. 567, line 4). Then Marshall said he shot her at the front door. (R. p. 567, line 5). Moments later, Marshall expounded:

> I told her when she came in the house that I had just called her job. She was a little late and I was worried about her. I had just had the car's front end alignment fixed with a new tire for her safety. She comes in with an attitude. I told her I was worried about her. She says, quote, you've got no reason to worry about me, unquote. She said it with an attitude. We were just talking at each other.
>
> . . .
>
> My gun was laying against the wall the whole time. When I decided to check out around my trailer with my shotgun, Doris was coming in the front door. We are right there at the same time. She comes in the door, that is when I told her I was worried about her. That is when the gun went off. She had touched the gun when it when off. She took the gun and threw it up.
>
> . . .
>
> She was standing on the side of the couch when the gun went off. I held her by the face and laid her on the couch.

(R. p. 567, line 21 – p. 570, line 3).

Marshall swiped his hand in front his face when asked what he meant by "threw [the gun] up." (R. p. 569, lines 4-7). The Sergeant asked, "So the barrel was obviously in her face?" (R. p.

569, lines 7-8). Marshall "pushed the gun away. And that's when he said it went off." (R. p. 569, lines 9-10).

The Richland County Grand Jury indicted Marshall for murder and for possession of a firearm by a person convicted of a violent felony. (R. pp. 753-754). Attorneys Alicia Goode, Stephen Krzyston, and Lucas Hawks of the Fifth Circuit Public Defender's Office represented Appellant on the charges. (R. p. 1). Assistant Fifth Circuit Solicitors April Sampson, Sandra Moser, and Samuel McGlothin prosecuted the case. (R. p. 1). Marshall pled guilty to the firearms charge on October 30, 2017. (R. pp. 34-37). Beginning that same day, Marshall proceeded to trial on the murder charge. (R. pp. 39-40).

The forensic evidence presented at trial did not support Marshall's statements to law enforcement. (R. p. 567, lines 5-10). The forensic pathologist determined that the victim sustained a large, fatal gunshot wound to "the right front of her face, kind of centered around the area of the right eye" which exited through the top of the skull. (R. p. 453, lines 6-10). The pathologist identified stippling on the left side of the victim's face and the absence of soot, leading her to estimate that the barrel of the gun was between twelve and 30 inches from the victim when the shot was fired. (R. p. 456, line 1 – p. 457, line 13; R. p. 458, lines 9-18; R. p. 461, lines 13-23). The victim sustained no other remarkable injuries. (R. p. 462, lines 2-9).

Investigator Timothy Lee processed and photographed the scene at the Marshall's home. (R. p. 188, lines 14-19; R. p. 208, lines 1-10). Lee documented small birdshot pellets and "gelatized blood" pooled on the center of the living room sofa where the victim was located. (R. p. 212, lines 9-20; R. p. 213, lines 20-23; *see* State's Exhibit 25). Lee photographed biological matter on and around the sofa. (R. p. 270, line 7 – p. 271, line 13). Lee testified that his photographs depicting differing concentrations of blood at the scene and their loction in relation

to the victim. (R. p. 231, lines 5-24; R. p. 233, lines 2-11; R. p. 255, lines 17-19). Lee also testified that the location of a piece of shotgun wadding on the sofa indicated "that the shot occurred within the parameter" of where they found the victim. (R. p. 218, lines 10-21).

Lieutenant Stan Richards testified about the bloodletting evidence in the capacity of an expert in blood stain pattern analysis. (R. p. 484, lines 21-24; R. p. 486, lines 13-18). Richards attended the scene. He identified the victim "slumped over on the sofa nearest the door" into the front of the mobile home and observed blood on the sofa cushions, extending up the sofa back, on the window shades, on the ceiling, and wrapping around the end of the sofa to the windows and blinds on the short side of the room. (R. p. 487, lines 13-25). He witnessed brain matter "at the doorway on the floor" unaccompanied by "major blood." (R. p. 488, lines 1-4). Richards identified the numerous stains, small and large, as "individual stains of an overall pattern called impact spatter" which occurs as a result of a high velocity impact. (R. p. 488, lines 18-24). Richards described the degree to which each specific area of the crime scene denoted blood stains. (Tr. p. 488, lines 10-15; Tr. p. 490, lines 11-18; Trp. P. 498, lines 10-25; Tr. p. 499, line 17 – p. 502, line 10; *see* State's Exhibits 22, 25, 84, 85, and 95). Richards testified he "saw no indication of any major bloodletting" at the front door. (R. p. 495, lines 5-6; *see* State's Exhibit 95; R. p. 515, lines 2-9).

Richards also attached significance to the lack of bloodletting in the area the victim would have been sitting when the impact occurred. (R. p. 506, line 22 – p. 507, line 15). He called the area without blood the void in which the victim sat during the impact. (R. p. 514, line 22 – p. 515, line 1). And, because blood on the victim's leg was soaked into the area rather than dripping downward, Richards testified that the victim was sitting during the duration of the bloodletting event. (R. p. 514, lines 12-21). Richards also testified that in order for the portion of

the victim's scalp to land on the back of the sofa where it was found, the victim had to be on the sofa in the sitting position. (R. p. 515, lines 11-17).

Marshall countered the State's forensic evidence with the privately hired Christopher Robinson, who testified as an expert in crime scene reconstruction, and blood spatter and firearms analysis. (R. p. 617, lines 5-9). Robinson opined "the shot occurred from a distance of approximately three to four inches or less" from the victim's face, with gas pressure from the chamber causing the expansive injury to the skull. (R. p. 620, lines 16-25; R. p. 622, lines 21-25; R. p. 624, line 22 – p. 625, line 5). Based on the pattern of blood dispersion, he described the shot as an "upward shot through the head." (R. p. 621, lines 20-25). He testified, "reportedly, she's standing at the end of the couch when the shot occurs, driving her over onto the couch" as Marshall was "going out the door." (R. p. 625, lines 8-11). He clarified that Marshall's statement to law enforcement informed his assessment of the parties' positioning. (R. p. 640, line 14 – p. 641, line 6).

The jury convicted Marshall of the murder. (R. p. 729, lines 1-6). Judge Hood sentenced Marshall to life, and to a concurrent five years on the weapons charge to which he had earlier pled. (R. p. 740, lines 9-15).

Marshall served notice of appeal on November 9, 2017. (Supp. R. pp. 1-2). After briefing and without oral argument, the Court of Appeals affirmed Marshall's convictions and sentence in an unpublished, per curiam opinion. *State v. Marshall*, Op. No. 2020-UP-241 (Ct. App. Aug. 12, 2020). Marshall filed a petition for rehearing, which the Court of Appeals denied on October 28, 2020.

ARGUMENT

I. No evidence was presented at trial from which the jury could infer Marshall was engaged in a lawful act not amounting to a felony or was otherwise lawfully armed, and the request to charge involuntary manslaughter was properly declined.

The Court of Appeals affirmed the trial court's refusal to charge involuntary manslaughter because, "while Appellant stated he was holding the shotgun because of a vague belief the trailer park was an 'unstable place,' there is absolutely no evidence that Appellant believed he was in imminent danger of losing his life or sustaining serious bodily injury." *State v. Marshall*, Op. No. 2020-UP-241 at 8. "Further, when viewed in the light most favorable to Appellant, there is evidence Appellant was pointing or presenting the shotgun at Victim . . . which precludes an involuntary manslaughter charge. *Id.* at 8-9. Given the record, the Court of Appeals did not err in its conclusion, which expressly considered record evidence most favorable to Marshall. Certiorari should be denied.

Marshall posits he should have received a jury instruction on involuntary manslaughter in addition to accident because Marshall told law enforcement that the trailer park in which he lived was an "unstable place," and that the shooting occurred as a result of his "decid[ing] to check out around [his trailer] with [his] shotgun" at the same time that the victim "was coming in the front door." (R. p. 566, line 6 – p. 570, line 3). "The law to be charged must be determined from the evidence presented at trial." *State v. Brayboy*, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010). When the jury could infer from the evidence presented at trial that the defendant committed a lesser offense, the trial court must charge the lesser included offense to the jury. *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010). In determining the propriety of the involuntary manslaughter instruction, "the pivotal issue is whether Appellant was engaged in a lawful activity at the time of the killing." *State v. Burriss*, 334 S.C. 256, 265, 513 S.E.2d 104,

109 (1999); *id.* at 265 n.11; 513 S.E.2d at 109 n.11. "Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); S.C. Code Ann. § 16-3-60.

Like the Court of Appeals, the trial court found no evidence to support Marshall's argument that he lawfully armed himself in self-defense. (R. p. 654, lines 21-23; R. p. 655, line 22 – p. 657, line 3). Marshall's prior felony conviction made it unlawful for him to have the firearm in the first place.[1] S.C. Code Ann. § 16-23-500(B). The trial court properly noted Marshall's prior conviction was not in and of itself sufficient to bar the requested instruction. (R. p. 656, line 6 – p. 657, line 20). However, a defendant who may not lawfully possess a gun may only otherwise lawfully arm himself in self-defense if the elements of self-defense are met at the time the gun is discharged. *State v. Burriss*, 334 S.C. at 262, 513 S.E.2d at 108; *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). Yet Marshall was not lawfully armed in self-defense at the time of the shooting.[2] In the light most favorable to him, Marshall's statement

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[1] Before trial began, Marshall pled guilty to unlawful possession of a firearm by a person convicted of a violent felony. (R. pp. 34-37).

[2] For self-defense, the defendant must establish each of the following: (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in, or was actually in, imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, that a reasonably prudent man of ordinary firmness and courage would have believed the same; but if he actually was in imminent danger that the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life, and, finally; (4) he had no other probable means of avoiding the danger than to act as he did in this particular instance. *State v. Goodson*, *supra* at 280, 440 S.E.2d at 372.

yields no information supportive of any element of self-defense. (R. pp. 742-45).

In short, Marshall identified no imminent threat either in the trailer park or in his own living room that he could lawfully meet with deadly force or from which he could not retreat. His statement gives no indication that some contemporaneous altercation caused him to pick up the shotgun and "go check" on things in the trailer park, which he only vaguely characterized as "unstable." (R. p. 566, line 11 – p. 572, line 9). The statement asserts only that Marshall's wife "came at [him]" when she arrived inside the home and "took the gun and threw it up." (R. p. 566, line 16 – p. 569, line 17). Marshall did not describe his interaction with the victim as anything more than them "talking at each other." (R. p. 568, lines 1-14). He did not state that she tried to turn the gun, a full-barreled shotgun, on him. (*See* R. p. 618, lines 19-20). Marshall, who said he armed himself "to check out around [his] trailer," had probable means of avoiding any purported danger: he could have set the gun down when he began talking with his wife. (R. p. 566, line 11 – p. 572, line 9). Marshall's statement gives no indication that he faced any imminent threat of loss or life or of serious bodily injury, and thus wholly fails to support a conclusion that he or the reasonable man had cause to act self-defense. Marshall's case is not one where "a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." *State v. Crosby*, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003) (citing *State v. Burriss*, 334 S.C. at 262, 513 S.E.2d at 108).

Also like the Court of Appeals, the trial court properly denied the request to charge because Marshall's statement indicated that he pointed the firearm at the victim, constituting the felony of pointing and presenting. (R. p. 650, lines 24-25; R. p. 651, line 23 – p. 653, line 16). "It is unlawful for a person to present or point at another person a loaded or unloaded firearm. Where the evidence at trial leads to the inference that the defendant was pointing or presenting a

firearm at the time of the shooting, involuntary manslaughter cannot be charged." *State v. Reese*, 370 S.C. at 36, 633 S.E.2d at 901; S.C. Code Ann. § 16-23-410 (the felony charge of pointing and presenting a loaded or unloaded firearm at another person); *see also State v. Cabrera-Pena*, 361 S.C. 372, 381, 605 S.E.2d 522, 526-27 (2004) (concluding the defendant was not entitled to a jury charge under either definition of involuntary manslaughter because the defendant's use of a firearm to intimidate the victim constituted the felony of pointing or presenting a firearm and because he was not lawfully entitled to arm himself in self-defense at the time).

According to his own statement, Marshall was standing at the front door holding the shotgun when the victim arrived. (R. pp. 742-45). He indicates that their meeting at the door was unintentional and that they immediately began "talking at each other," culminating in the discharge of the shotgun. (R. p. 566, line 11 – p. 568, line 14). Marshall's description of events leaves no room for an interpretation other than one in which Marshall was pointing and presenting a loaded firearm at the victim when she entered their residence: ". . . Doris was coming in the front door. We are right there at the same time. . . . That is when the gun went off. She had touched the gun when it went off. She took the gun and threw it up." (R. p. 568, line 23 – p. 569, line 3).

By any calculation, Marshall was not lawfully armed at the time of the shooting. Accordingly, the Court of Appeals was correct to affirm the trial court's refusal to instruct the jury on the lesser included offense of involuntary manslaughter.

II. Investigator Timothy Lee was duly qualified to testify as an expert in crime scene processing, and the court did not err in permitting Lee to testify that blood stains he observed and documented at the crime scene indicated that the victim's injury occurred in the same area as the bloodletting.

The Court of Appeals found Investigator Timothy Lee, an expert in crime scene processing, did not "exceed the scope of his expertise by testifying blood stains on certain areas of the sofa indicated Victim's injury occurred on the sofa." *State v. Marshall*, Op. No. 2020-UP-241 at 9-11. Relying upon *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 480 (2001), Marshall argues that Lee impermissibly exceeded the bounds of his area of expertise when he testified that there was a bloodletting event associated with the location of the victim's body on the sofa. The Court of Appeals, however, correctly found the "trial court was within its discretion to admit Lee's testimony because it met all the factors discussed in *Council*, *Jones*, and *White.*[3] Lee's testimony was consistent with his qualifications and the area of his expertise." *Id.* Certiorari should be denied, as Lee was permitted to testify about his own crime scene observations and was permitted to offer his opinion insofar as it informed his documentation of crime scene evidence.

Marshall initially requested an *in camera* hearing "to determine the reliability of any expert opinion" Lee may offer in accord with Marshall's reading of Rule 702, SCRE, *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979), and *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009). (R. p. 185, lines 7-17). The procedure for admitting scientific evidence under Rule 702, SCRE, requires the trial court make a predicating finding that "the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." *State v. Council*, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518 (1999); *State v. White*, 382 S.C. at 270, 676 S.E.2d at 686.

[3] *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999); *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979); *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009).

In camera, Lee provided the following list of qualifications: 22 years' experience with the Sheriff's Department; 10 years' experience in the crime scene unit; attendance at over 500 hours of courses ranging from basic photography, fingerprinting, crime scene processing, blood pattern analysis, reconstruction, and DNA analysis; a two-year, ten-phase in-house training course on crime scene processing; advanced courses put on by private individuals on specific skills such as photography; annual in-house recertification in blood pattern analysis and fingerprinting; and certification as a crime scene investigator through the International Association of Identification requiring, *inter alia*, about 85 hours in course study. (R. p. 188, line 16 – p. 193, line 18). Lee testified he was able to opine on: "my processing of the scene, on what we do as a crime scene investigator, the importance of a crime scene investigator to collect and preserve[ ] evidence to be able to present to a jury. The blood patterns that I saw there, I can give me opinion on some of that." (R. p. 193, line 21 – p. 196, line 1). He better summarized: "My job is to present and collect evidence, and that's important to the scene." (R. p. 194, lines 16-18).

Recognizing that Lee had undertaken "over 500 hours of classes on exactly how to" process a crime scene, the trial court correctly qualified him as an expert in crime scene processing. (R. p. 197, line 21 – p. 198, line 18). Marshall agreed to Lee's qualification as an expert in crime scene processing so long as Lee's testimony did not reach beyond that scope. (R. p. 198, lines 11-14; Tr. p. 204, lines 1-8).

When the jury returned, Lee described the steps he took upon responding to the scene and beginning to photograph it, as well as what protocols dictated his efforts. (R. p. 205, line 12 – p. 209, line 25). It was clear from the outset of his testimony that he arrived at the scene and began to process it *while the victim was still on the scene*: "I observed on the couch to my right a female victim that was on the couch. She had sustained a large trauma to the side of her head. I

began photographing inside of the property." (R. p. 208, lines 1-10). Lee testified that he photographed blood stains at the incident location to record "that something had happened [t]here." (R. p. 210, lines 1-18). He testified that his role was to document the bloodletting—which was essential, highly visible evidence at this particular crime scene. (R. p. 210, line 15 – p. 217, line 21; State's Exhibits 15 through 39). He "wanted to show that the scene had a lot of stains . . . ." (R. p. 215, lines 8-16) He also photographed the location of the victim and shotgun pellets and wadding in her vicinity. (R. p. 213, lines 4-23; R. p. 218, lines 3-12). Lee testified he continued photographing after the body had been removed. (R. p. 213, lines 7-18).

Lee was addressing the importance of a photo he took of the victim on the couch, explaining that the photograph showed limited blood staining on one side of the sofa versus the other, and that it gave law enforcement "an indication that a bloodletting occurred within –" when Marshall objected. (R. p. 220, lines 6-16). Marshall argued this testimony fell outside Lee's scope of expertise as a crime scene processor because it opined "where a bloodletting event occurred." (R. p. 220, line 24 – p. 221, line 4). The court conducted another *in camera* examination of Lee in response to Marshall's objection. (R. p. 222, line 17 – p. 227, line 4). Lee explained that the location of blood on the scene "gives [him] an idea to look for evidence within this area. . . ." (R. p. 222, line 17 – p. 223, line 7). The court asked Lee: "How does your training and your course work help you process through what you just told me?" (R. p. 223, lines 8-12). Lee answered *in camera*:

> We've had blood stain analysis, we've had reconstruction courses and they help us to analyze the area to look for evidence. So my training that I've received through the years, through my experience on crime scenes, whether it's a suicide scene, and accidental scene or, you know, a robbery where we have shootings impacts projectiles, things like that give us an area to start our looking for other evidence. So based on my experience, based on my training, that gives me a location to begin.

(R. p. 223, lines 16-24).

Lee went on to opine *in camera* that the victim was shot on the sofa, based upon:

> the way the stains were radiating out from that location, where the shot wadding was located, where the skull and the brains are located, and just based on the spatter area, she couldn't have been standing.[4] She couldn't have been walking around. The void behind the body when we moved the body out, if she was standing, there would surely be blood back there as well and there wasn't. There was a voided area. . . .
>
> We've gone through testing. We've had actual instructi[ion] come in [during training], and they show us if you have a puddle of blood right here and you have a post here and a post here and you hit the blood with a hammer and the blood sprays out like this and then you remove those posts, you're going to have a void. So there are things that we look for.
>
> Along with the coroner, we can tell if the body has been moved around when we start to move the body because we can't move the body without the coroner's assistance. So when we did move the body and placed her on the floor, there was that voided area . . . on the back of the sofa.

(R. p. 226, line 3 – p. 227, line 4).

The court found that Lee's coursework certified him to testify about the location of the body as he had presented during his *in camera* testimony. (R. p. 228, lines 21-25). The court did not alter or re-specify Lee's expert qualifications beyond that as an expert in crime scene processing. (R. p. 231, lines 1-19).

When the jury returned for the second time, Lee testified the blood gave him "an indication of where an injury may have occurred." (R. p. 231, lines 5-16). "It shows [him] where an area where the injury let the most blood out. There was a bloodletting right there. That is where I think that I need to concentrate my searching for to look for any additional evidence." (R. p. 231, lines 20-24). Lee testified over Marshall's continued objection that, based upon his

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[4] Lee may have testified *in camera* that the decedent "couldn't have been standing," but offered no such opinion before the jury. (R. p. 226, lines 6-7; R. p. 233, lines 9-25).

training, varying concentrations of blood at the scene focused him on where to look for evidence to document. (R. p. 233, line 2 – p. 236, line 17).

As found by the Court of Appeals, Lee's testimony permissibly included an explanation of "how his training let him to photograph certain areas and collect evidence." *State v. Marshall*, Op. No. 2020-UP-241 at 11. An expert in crime scene processing may testify about items and substances observed, recorded, and recovered from the scene. *Ellis*, 345 S.C. at 177, 547 S.E.2d at 491; *see also State v. Andrews*, 424 S.C. 304, 318, 818 S.E.2d 227, 235 (2018). Because Lee began to work the scene with the victim present and continued to photograph it after the body was removed by the Coroner's Office, Lee's testimony fell within that of a duly qualified crime scene processor. Lee's testimony discussed how the details he observed at the crime scene caused him to examine and photograph evidence in a certain area in the room. Here, the crime scene processor saw the body in relation to the blood and had to decide, based on his training, what to document and where to look for evidence. His testimony was admissible for that purpose. [5]

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[5] Even if wrongly admitted by the trial judge, Lee's testimony constitutes harmless error, as the targeted testimony is merely cumulative to other properly admitted testimony. *State v. Page*, 378 S.C. 476, 484, 663 S.E.2d 357, 360-61 (Ct. App. 2008); *State v. McLeod*, 362 S.C. 73, 84-85, 606 S.E.2d 215, 221 (Ct. App. 2004). Here, any opinion given by Lee was duplicative of that of Investigator Stan Richards, the duly qualified and properly admitted blood stain pattern analyst. (R. pp. 485, line 5 – p. 516, line 2). Harmless error is especially applicable here, where the two experts testified they worked a single crime scene in tandem. (R. p. 250, lines 2-20; R. p. 486, lines 13-18; R. p. 502, lines 20-25). Moreover, the portion of Lee's testimony Marshall identifies as being outside the scope of Lee's expertise in crime scene processing is also cumulative to Lee's earlier testimony about processing the shotgun wadding found on the sofa at the crime scene. Lee testified without objection that the location of the wadding on the sofa told him "that the shot occurred within the parameter of where the body was at." (R. p. 218, lines 13-21). Marshall was also permitted to impeach the quality of Lee's investigation during voir dire, cross-examination, re-cross examination, and through the presentation of his own expert in blood spatter analysis. (R. p. 201, line 17 – p. 204, line 5; R. p. 243, line 15 – p. 267, line 24; R. p. 271, line 25 – p. 272, line 25; R. p. 617, lines 5-9; R. p. 621, lines 20-25; R. p. 625, lines 8-11).

III. Investigator Stan Richards exhibited knowledge, skill, experience, training, and education in blood stain pattern analysis, and the court did not err in qualifying him as an expert in that field.

The Court of Appeals also correctly determined that the trial court did not err in admitting Investigator Stan Richards as an expert in blood stain pattern analysis. *State v. Marshall*, Op. No. 2020-UP-241 at 11. As the Court of Appeals noted, the trial court received testimony Richards had "been to class upon class upon class on this issue." *Id.* Thereafter, the trial court ruled Richards "more than qualified as an expert in blood stain pattern analysis," finding:

> He is certified. There are no issues with his qualifications. There are no issues with the science in this case. Whether or not they did roadmapping or not is an issue that goes to weight and not admissibility. This evidence is clearly admissible. He is clearly qualified. He will clearly assist a trier of fact. He clearly employed the methodology that he's been trained in for the majority of his adult life. And just because they decided not to do roadmapping doesn't mean the entire thing is flawed from an admissibility standpoint, period. I mean, it's just not an issue. All that testimony is completely and totally admissible.

(R. p. 443, lines 1-15).

Marshall's argument to the contrary does not address Richards' expert qualification, but rather baldly asserts that he should not have been admitted as an expert witness because the methodology he employed at this crime scene was unreliable.[6] (R. p. 199, lines 11-14). "To be

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However, the photographic evidence introduced at trial fails, to the untrained eye, to corroborate in any way the course of events testified to by Marshall's blood spatter analyst and Marshall's statement to law enforcement. (State's Exhibits 15-29, 84-85, 95).

[6] Any contention that Richards' (or Lee's) testimony should have been excluded as unduly prejudicial under Rule 403, SCRE remains unpreserved as no prejudice argument appears in the record of expert qualification. *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge"); *State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996) (contemporaneous objection rule). A party cannot argue one ground below and another on appeal. *State v. Benton*, 338 S.C. 151, 157, 526 S.E.2d 228, 231 (2000).

clear, the reliability of a witness' testimony is not a pre-requisite to determining whether or not the witness is an expert." *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012). "The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness' expert status will be determined *prior* to determining the reliability of the testimony." *Id.* To that end, as the Court of Appeals determined, "the opponent may still challenge the amount or quality of the qualifications. It is in this latter context that the trial court properly concludes that 'defects in the amount and quality of education or experience go to the weight to be accorded the expert's testimony and not its admissibility.'" *State v. White*, 382 S.C. at 273-74, 676 S.E.2d at 688 (quoting *State v. Myers*, 301 S.C. 251, 256, 391 S.E.2d 551, 554 (1990)).

The court's ruling comported with Rule 702, SCRE, and the additional factors that must be considered before admitting an expert to testify. *In limine*, Marshall posited that because Richards did not utilize the protocol of "roadmapping" at the scene, that the methodology employed in this case (as opposed to the general field of blood spatter analysis) held defects rendering the entirety of Richards' proffered expert testimony inadmissible.[7] (R. p. 440, line 17 – p. 442, line 25; R. pp. 441, line 25 – p. 442, line 1 ("I didn't say [the metholodogy] was improper. It just wasn't complied with.")). Respondent submits that such an argument stretches to the soul of the definition of the oft-utilized phrase "it goes to weight, not admissibility." *State v. Myers*, 301 S.C. 251, 256, 391 S.E.2d 551, 554 (1990) (finding witness should have been qualified as expert in blood spatter pattern analysis). "With respect to qualifications, a witness may satisfy the Rule 702 threshold yet the opponent may still challenge the amount or quality of

[7] Marshall later appeared to concede to Richards' admission as an expert when he asserted, "Judge, we don't have any objection to [his] qualification, but would object to the witness on the prior record." (R. p. 484, lines 14-20).

the qualifications. . . ." *State v. White*, 382 S.C. at 273–74, 676 S.E.2d at 688.

Our courts have designated blood spatter analysis as a sample of scientific evidence. *State v. Whaley*, 305 S.C. at 142, 406 S.E.2d at 371. In admitting scientific evidence, South Carolina applies, with additional guiding factors, a more liberal standard than that widely established in *Frye v. United States*, 293 F.1013 (D.C. Cir. 1923). *State v. Council*, 335 S.C. at 19, 515 S.E.2d at 517. "[T]he standard for admitting scientific evidence in South Carolina [is] 'the degree to which the trier of fact must accept, on faith, scientific hypotheses not capable of proof or disproof in court and not even generally accepted outside the courtroom.'" *Id.* (quoting *State v. Jones*, 273 S.C. at 731, 259 S.E.2d at 124). It is with this standard in mind that the specific *Jones* factors must be considered, along with the remaining requirements of Rule 702, SCRE, in determining the admissibility of scientific evidence. *State v. Council* at 20, 515 S.E.2d at 518.

The court aptly admitted Richards as an expert in blood stain pattern analysis. *See State v. Myers*, *supra* at 256, 391 S.E.2d at 554 (holding the trial court "applied the rules concerning the qualifying of an expert" in blood spatter "too stringently"). The State proffered testimony relevant to the exhaustive list of factors *Council* requires the court to consider before admitting expert testimony: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." 335 S.C. at 19, 515 S.E.2d at 517. The State also proffered testimony relevant to the broader series of findings the court must make under Rule 702, SCRE: (1) "the evidence will assist the trier of fact," (2) "the expert witness is qualified," and (3) "the underlying science is reliable." *State v. Council*, 335 S.C. at 20-21, 515 S.E.2d at 518.

Richards' proffered testimony demonstrated that he had been working with the Richland County Sheriff's Department Crime Scene Unit since late 2000 and began training in blood patterns in 2001. (R. p. 428, line 7 – p. 429, line 3). Richards testified he was a certified crime scene investigator and certified blood stain pattern examiner with the International Association for Identification. (R. p. 429, lines 10-13). He explained the training and testing it took to achieve blood stain pattern certification as well as the recertification process which is required on a five-year rotation. (R. p. 429, line 16 – p. 430, line 4).

Richards then explained what constitutes the science of blood stain patterns: "how it is put into flight, how it lands, the patterns that generate behind it" in conjunction with the size of the stain and discrete patterns among stains. (R. p. 430, lines 5-15). He described the taxonomy and physics involved in blood stain pattern analysis. (R. p 430, line 15 – p. 431, line 2). He testified that there are "about seven steps in the methodology" but that the main step is to decipher what taxonomy applies to the stain "because it gives you an objective look at the patterns that's already been described for you so you know what you're looking at." (R. p. 431, lines 2-7). He testified the science has been peer reviewed. (R. p. 431, lines 10-12). He testified the techniques and methodology he uses in his analysis comply with national standards even though the precise names for the taxonomies of stains may differ across regions. (R. p. 431, lines 13-19).

Richards then testified about his work at the scene in this case, further demonstrating how his training informed the steps he takes in the field. (R. p. 431, line 24 – p. 438, line 8). On *in camera* cross-examination, Richards testified that he is the author of the current blood spatter protocol for the Richland County crime lab. (R. p. 439, lines 7-15). He testified that he did not undertake the process called roadmapping at this crime scene because he determined it was "not

necessary" due to their only being one identifiable pattern at the scene. (R. p. 439, line 16 – p. 440, line 12).

The record establishes that the State laid the foundation for Richards' personal training and experience in the field, as well as factors informing a decision on the reliability of the science of blood stain pattern analysis, including that it was peer reviewed, that there were standard protocols in place for conducting the scientific analysis, and that the manner in which the analysis was conducted was standard across the country. (R. p. 428, line 7 – p. 440, line 12). This foundation covered all areas required for the court's determination regarding the admissibility of an expert witness. *State v. Council*, 335 S.C. at 19-21, 515 S.E.2d at 517-18; Rule 702, SCRE. The proffer also demonstrated that the evidence would assist the trier of fact. *See* Rules 401 and 702, SCRE. There was a large amount of blood at the scene, and the location, size, and type of the blood stain in this case were relevant to the jury's determination of facts of consequence. Further, our Supreme Court has recognized in at least one other case that the presentation of blood stain pattern analysis requires the admission of expert testimony and is a science recognized in other jurisdictions. *State v. Myers*, *supra* at 258 n.1, 391 S.E.2d at 555 n.1 ("Depriving the jury of expert testimony regarding the bloodspatters clearly hampered its ability to evaluate the facts before it in this case."); *compare*, 9 A.L.R.5th 369 ("Admissibility, in criminal prosecution, of expert opinion evidence as to 'blood splatter' interpretation") (Originally published in 1993); *contra State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001) (pre-*White* case finding witness should not have been admitted as expert on barefoot sole impressions and deeming that field unreliable where there were no known standards appropriate for comparison).

Thereafter, Marshall was provided an opportunity to cross-examine Richards regarding

reported weaknesses in the protocols followed and the analysis conducted in this case. (R. p. 517, line 10 – p. 530, line 24; R. p. 533, lines 5-8). The jury was instructed to give any expert testimony only the weight it saw fit. (*E.g.* R. p. 484, line 21 – p. 485, line 3). Otherwise, Richards' proffer provided ample indicia that the practice of blood stain pattern analysis is a reliable and technical area of study upon which he was personally qualified to opine at trial, and the Court of Appeals was correct to affirm the trial court's qualification of Richards. Certiorari is not warranted.

CONCLUSION

For all of the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

Caroline Scrantom, S.C. Bar No. 101357
Attorney for Respondent

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

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Columbia, South Carolina