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**May 19 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Court of Appeals  
Appeal from Beaufort County  
Carmen T. Mullen, Circuit Court Judge

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Opinion No. 2021-UP-029 (S.C. Ct. App. filed Jan. 27, 2021)

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THE STATE,

RESPONDENT,

V.

TYRONE ANTHONY WALLACE, JR.

PETITIONER

APPELLATE CASE NO. 2021-000332

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REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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SUSAN B. HACKETT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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## ARGUMENT IN REPLY

The Court of Appeals erred in holding a member of the solicitor's office was qualified as an expert in historical cell site analysis where the solicitor's employee lacked the knowledge, skill, experience, training, or education necessary in order to render an opinion in the area.

At least twice, Respondent misrepresented to this Court that "Petitioner has not asserted a special or important reason pursuant to Rule 242, SCACR, that warrants the issuance of a writ." Ret. at 8; see also Ret. at 14. To the contrary, Petitioner specifically explained that "the specific issue of qualifications of an expert in the analysis of historical cell site location information is" a novel issue in South Carolina. Cert. at 9. While Respondent may not like the reasoning offered by Petitioner, Respondent's claim that "Petitioner has not asserted a special or important reason ... that warrants the issuance of a writ" is categorically false.

As this case involves the qualifications of a member of the solicitor's office in historical cell site analysis, Respondent attempted to "beef up" the employee's credentials. According to Respondent, the employee, Dylan Hightower, was hired as an investigator with the Fourteenth Circuit Solicitor's Office after his internship with SLED. Ret. at 9. However, Hightower did not say he was hired as an investigator; rather, he said he "ultimately obtained *a position* at the Fourteenth Circuit Solicitor's Office." See R. 11, ll. 2-7 (emphasis added). According to his resume, he began working with the Fourteenth Circuit Solicitor's Office as its Director of Intelligence Unit. R. 574. Thus, it appears the inception of Hightower's employment with the solicitor was as the Director of Intelligence.

Next, Respondent claimed the curriculum for the SLED Certified Intelligence Criminal Analyst course Hightower took immediately after being hired by the solicitor "included cellular analysis and cell phone forensics, cell phone analysis software and database use, and discussed

how to track an individual through their cell phone records.” Ret. at 9. Yet, Hightower’s testimony revealed the purpose of the course was to provide him with basic criminal intelligence analysis. R. 11, ll. 7-13. Specifically, the course included “any locating people, locating witnesses, using different types of software and/or databases to obtain information, reports, things of that nature; as well as basic knowledge of cell phone forensics, as well as cellular analyses.” R. 11, ll. 14-19. Hightower’s actual testimony is a far cry from Respondent’s supposed summary of the curriculum covered in the course. Hightower never said he was familiar with “cell phone analysis software database use” or “how to track an individual through their cell phone records” based on information learned in the course. Cf. Ret. at 9 with R. 11, ll. 14-19.

Contrary to Respondent’s claim that Hightower “was required to take annual online training courses on the technological changes in cellular devices pursuant to his employment contract,” Hightower remarked that because cell phone technology is ever-changing, “you have to take, you know, online training, any type of updates that the providers may offer.” Cf. Ret. at 10 with R. 15, ll. 20-23. Hightower *never* indicated he was *required* to take the classes. When asked how often he took a course or class related to this sort of information, he responded, “Generally, about once a year for the last seven years.” R. 15, ll. 8-11. Furthermore, he did not indicate that he *received* those “update” courses from the National Domestic Communications Assistance Center. Cert. at 10. Instead, he said that organization *offered* those types of training online. R. 15, ll. 23-25.

Concerning the merits of Petitioner’s issue on appeal, Respondent argued his “claim is *likely* meritless.” Ret. at 14 (emphasis added). However, the record on appeal and corresponding case law support the merits of Petitioner’s issue presented. Without any support

in the record, Respondent argued that Hightower's qualifications *matched* those of another man who had been previously qualified as an expert witness in the field. Ret. at 16. What the record actually disclosed is as follows:

Solicitor Jones: Okay. And one of the reasons that we're doing this pretrial, Your Honor, is that he has never been qualified before. I do know that, recently, I believe in *State v. Aneisha Young*, over in Jasper County, there was a SLED analyst qualified. *And I got his resume, and I compared it to Mr. Hightower's, and I have both.* And I would like to go through Mr. Hightower's qualifications to see if the Court would allow him to be qualified as an expert.

R. 7, ll. 1-9 (emphasis added). The solicitor never indicated Hightower's qualifications "matched" the qualifications of another person who was qualified in the field. A reading of the record indicates Hightower's resume did *not* "match" the other person, Eric Grabinski. During the proffer, defense counsel questioned Hightower about "wireless communications theory." R. 36, l. 7. Hightower responded that he was "unclear as to what that is," noting defense counsel was using Grabinski's resume, who "attended that class," when questioning him. R. 36, ll. 8-10. Hightower had never even been offered that class. R. 36, ll. 11-12. Further, Hightower had not attended Cellular Analysis Training School; whereas, Grabinski had. R. 36, ll. 13-17. Thus, the record demonstrates Hightower's qualifications did *not* "match" Grabinski's resume in at least two important ways.

Likewise, Respondent's attempt to compare Hightower to the witness found qualified as an expert in *State v. Franks*, 432 S.C. 58, 849 S.E.2d 580 (Ct. App. 2020) must fail. See Ret. at 16. Importantly, the witness in *Franks* was qualified as an expert in the use of GeoTime and other call records translation tools. *State v. Franks*, 432 S.C. 58, 76, 849 S.E.2d 580, 590 (Ct. App. 2020). Here, Hightower was qualified as an expert in historical cell site location analysis. Further, the expert witness in *Franks* had fifteen years' experience working with call records and cell phone technology. Id. Hightower's background simply failed to provide him with the knowledge, skill,

experience, training, or education\_to qualify him as an expert in historical cell site location analysis.

Finally, Respondent claimed “Petitioner cannot demonstrate prejudice in the admission of Hightower’s testimony in light of the record or that any alleged error affected the jury’s decision.” Cert. at 17. To the extent, Respondent argues the error was harmless, Respondent is attempting to shift the burden to Petitioner when the burden rests squarely on Respondent. See Chapman v. California, 386 U.S. 18 (1967) (requiring the state to prove an error is harmless beyond a reasonable doubt). If Respondent’s contention is that the error was not “reversible error,” which requires a showing of prejudice, Petitioner has satisfied his burden. See State v. Jolly, 304 S.C. 34, 37, 402 S.E.2d 895, 897 (Ct. App. 1991) (explaining “[a] defendant seeking reversal based on error in the admission of evidence has the burden of showing that the evidence was prejudicial”). While other alleged witnesses testified against Petitioner, it was the cell phone records that provided the *independent and virtually irrefutable* evidence against him. According to Hightower, Petitioner’s phone was using towers located near the site of the death around the time of death and his phone was using towers near where the body was found later. Unlike the testimony from supposed witnesses, the cell phone evidence was presented through a witness “imbued with the imprimatur of an expert witness,” heightening the prejudicial nature of the judge’s error. See State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). As such, the evidence prejudiced Petitioner.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and allow full briefing on this novel question of law.

*s/Susan B. Hackett*

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of May, 2021.

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APPELLATE CASE NO. 2021-000332

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CERTIFICATE OF SERVICE

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Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Reply to Return to Petition for Writ of Certiorari to the Court of Appeals in the above referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is juliannabattenfield@scag.gov; and Tyrone Anthony Wallace, #376861, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010; and the Court of Appeals, at 1220 Senate Street, Columbia, SC 29201 this 18th day of May, 2021.

*s/Susan B. Hackett*

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER