THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of General Sessions

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2018-000561
Lower Court Case No. 2016-GS-10-02883

The State .....Respondent,

v.

General T. Little.....Appellant.

FINAL BRIEF OF APPELLANT

Vordman Carlisle Traywick, III
SC Bar No. 102123
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com

Robert M. Dudek
Chief Appellate Defender
SC Bar No. 1767
COMMISSION ON INDIGENT DEFENSE
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Appellant General T. Little

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II. Did the circuit court err in denying Dr. Little's motion for a mistrial when the solicitor mentioned a ring during her closing argument that the court suppressed prior to trial?

III. Did the circuit court err in qualifying the State's witness as an expert in footwear impressions and admitting her prejudicial and unreliable testimony purporting to link the tread design of Dr. Little's shoe to one found at the crime scene?

STATEMENT OF THE CASE

This appeal arises out of an officer's unlawful intrusion into the curtilage of Appellant General T. Little's (Dr. Little)[1] home that set off a series of State action that infringed upon Dr. Little's constitutional rights and ultimately secured his murder conviction.

On September 22, 2015, Barbara Little was found dead in her home in Charleston, South Carolina. (R. pp. 341, 344). Barbara's brother, A.J. McConnell, discovered her body in the bathroom after her daughter, Kimberly Little-Armstrong, had asked him to check on her. (Id. at 342, 344). Barbara did not answer Kimberly's phone calls that evening. (Id. at 449). After discovering Barbara's body, McConnell called 911 and dispatchers notified law enforcement. (Id. at.344, 511). Investigators spoke with A.J. and Kimberly immediately upon arrival to Barbara's home. (Id. at 345, 514). An hour later, law enforcement was sent to the home of Barbara's ex-husband,[2] Dr. Little, to locate him. (Id. at 514). Dr. Little had not shown up for a dinner date at IHOP with his daughter, Kimberly, earlier that evening. (Id. at 449).

Dr. Little lived in an upper-middle-class neighborhood in West Ashley. (Id. at 547, 161). The house was a two-story colonial style with a front porch. See (R. p. 1264). Its driveway ran from the street up to the garage on the left side of the house. See (R. pp. 1265, 1286–87). Before the front threshold of the house was a sidewalk that fed into the driveway. See id. All vehicles were parked beyond the sidewalk in the back part of the driveway. See id. The driveway was wide enough to fit two vehicles, and Dr. Little's vehicle was on the righthand side. See id. Because the vehicle on the left was hugging the middle of the driveway, Dr. Little's vehicle was parked

[1] Dr. Little was employed as a medical doctor with the U.S. Department of Veterans Affairs in Beaufort, South Carolina, at the time. (R. p. 336).

[2] They had been divorced for almost twenty years and "didn't fight." (R. pp. 336, 485).

farther to the right. See id. His right rear tire rested in the mulch beside the driveway as a result. See id. The vehicle was less than a car's width from the side of the dwelling. See id.

Seeing a vehicle that he knew belonged to Dr. Little parked slightly off the driveway, Deputy Matthew Colburn of the Charleston County Sheriff's Department approached it. (R. p. 514). In doing so, Deputy Colburn traversed beyond the portion of the driveway feeding into the sidewalk where a visitor might pass to reach the front porch. See (R. pp. 1265, 1286–87 & 553). He then purportedly performed a safety sweep of all vehicles in the driveway using a flashlight. (Id. at 516, 555). Although he quickly ascertained from the driver's side window that no one was hiding in Dr. Little's vehicle, which was parked and not running, Deputy Colburn nevertheless approached it again after checking the other vehicles. (Id. at 551, 554 & 70). Specifically, Deputy Colburn walked around to the other side of Dr. Little's vehicle and discovered the front passenger window rolled down. (Id. at 516–17).

The timing of his discovery is inconsistent in the record. The search warrant affidavits indicate Deputy Colburn observed the window down during his sweep, (Id. at 1257, 1262), but he testified at trial he could see the window down from the street as he pulled up to the home on the evening in question. (Id. at 516). Deputy Colburn arrived after 11:00 P.M. that evening. Id. As noted above, the vehicles in the driveway were parked beyond the front threshold of the home. See (R. pp. 1265, 1286–87). No overhead lights were on inside the car. (Id. at 549).

During the subsequent search of Dr. Little's vehicle, Deputy Colburn noticed a brownish stain that appeared to be blood on the exterior of the open center console lid. (Id. at 517). Using his flashlight, Deputy Colburn further searched the vehicle and discovered towels that were similar to those found at Barbara's home. (Id.). While Deputy Colburn was snooping through his vehicle, Dr. Little walked out of the residence. (Id.). Deputy Colburn asked Dr. Little if he would

accompany him to the law enforcement center to speak with detectives, and Dr. Little obliged. (Id. at 557). Deputy Colburn conceded he had neither a warrant nor probable cause to search Dr. Little's property. (Id. at 548). According to Deputy Colburn, Dr. Little was not even a suspect at the time. (Id. at 543).

Deputy Colburn subsequently transported Dr. Little to the law enforcement center in the back of his vehicle. (Id. at 557). Upon arrival, Deputy Colburn turned Dr. Little over to Detective Dustin Turner, to whom he privately divulged his findings from the search of the vehicle. (Id. at 518). Detective Turner then proceeded to interrogate Dr. Little about Barbara's death. (Id. at 644). Meanwhile, Detective Will Muirhead received a call to meet Deputy Colburn back at Dr. Little's residence. (Id. at 663). Following his search of Dr. Little's vehicle, Detective Muirhead relayed his findings to Detective Jason Bowen. (Id. at 663–64). Detective Bowen was tasked with "constructing" a probable cause affidavit to present to a magistrate for purposes of obtaining a search warrant. (Id. at 664). In the interim, Detective Muirhead asked Dr. Little's wife, Carla Little, for permission to enter the home for a "walk-through." (Id. at 665).

Shortly thereafter, Detective Muirhead returned to the law enforcement center and took his turn interrogating Dr. Little. (Id. at 666). In all, Dr. Little was interrogated at the station for almost four hours by three different detectives before someone finally read him Miranda warnings.[3] (Id. at 206). During this time, detectives searched Dr. Little's person for scratches and any evidence of a struggle. (Id. at 649–50, 1075). Over his objection, detectives also required Dr. Little to remove his clothes and place them in an evidence bag. (Id. at 217, 225). Detectives had no search warrant for his clothing and never bothered to obtain one. (Id. at 226–27). In the back pocket of his pants, detectives discovered Dr. Little's wedding ring. (Id. at 203). While the ring tested

[3] See Miranda v. Arizona, 384 U.S. 436 (1966).

positive for blood, it was never matched to any known DNA. (Id.). After Dr. Little stripped down, Detective Turner gave him a ride home. (Id. at 645).

Detectives later executed the search warrants obtained pursuant to Deputy Colburn's unlawful search of Dr. Little's vehicle and seized various items, including the vehicle, from Dr. Little's home. (Id. at 669, 739). They also searched his phone and computer records. (Id. at 669, 386 & 903). Investigators were fixated on the fact that Dr. Little was behind in alimony payments and was served with a rule to show cause on the day of Barbara's death. (Id. at 652, 673). But this was nothing new. Dr. Little had been hailed into family court on numerous prior occasions to account for his delinquent alimony payments. (Id. at 647, 336). Although the State exaggerated the amount of alimony owed at trial, the amount at issue in the rule to show cause was approximately $17,000. (Id. at 509). As one witness noted, that is not kill people money. (Id. at 437). Nevertheless, detectives fingered Dr. Little as the primary suspect and pursued no other leads that supported a different theory of the case.

In May of 2016, a Charleston County grand jury indicted Dr. Little for murder. (Id. at 1255–56). The case was initially called for a jury trial in February of 2018. Prior to trial, the circuit court held a lengthy hearing on Dr. Little's motions to suppress based upon law enforcement's violations of his constitutional rights throughout the investigation as well as various other pre-trial issues. (Id. 5–246). The circuit court granted Dr. Little's motion to suppress his wedding ring, finding it was obtained in an illegal search following a Miranda violation. (Id. at 233–34). But the court denied Dr. Little's motion to suppress the blood evidence found in his vehicle and all related evidence. (Id. at 159–62). Following jury selection, the State turned over video evidence the defense had been requesting for months.[4] (Id. at 287). In lieu of declaring a

[4] See Brady v. Maryland, 373 U.S. 83 (1963); Rule 5(d)(2), SCCrimP. Although not relevant to the issues on appeal, the State's repeated delay in turning over evidence to the defense in this case was disturbing.

mistrial or excluding the evidence withheld by the State, the circuit court elected to continue the case to the next term of general sessions. (Id. at 289–90).

The case was recalled for a jury trial on March 19–23, 2018. After jury selection and opening statements, the State presented a smattering of law enforcement and fact witnesses to discuss the crime scene, the searches of Dr. Little's vehicle and home, the subsequent investigation, cell tower records, the family court's rule to show cause, Dr. Little's interrogation, blood forensics, and Dr. Little's computer records. (Id. at 321–943). Additionally, the State proffered Dawn Claycomb, a crime scene agent with the South Carolina State Law Enforcement Division (SLED), to testify as an expert in footwear examination. (Id. at 960). Claycomb participated in the investigation into Barbara's death. (Id. at 968). Dr. Little challenged Claycomb's qualifications, as well as the substance of her testimony, but the circuit court permitted her to testify over his objection. (Id. at 944–55, 963). Claycomb testified that she found the "outsole design" from Dr. Little's shoe was "similar" to an impression taken from the scene, but she could not say it was the same shoe. (Id. at 976). A forensic pathologist from the Medical University of South Carolina also testified regarding her findings from Barbara's autopsy. (Id. at 1010–49).

After the State rested, Dr. Little moved for directed verdict. (Id. at 1061–64). The circuit court denied his motion and instructed the defense to call its first witness. (Id. at 1066, 1071). Dr. Little called three witnesses to the stand. Detective Matthew Downing, who questioned Dr. Little along with two other detectives at the station, testified that he did not observe any physical injuries on Dr. Little's body on the night in question. (Id. at 1074–75). He confirmed that Dr. Little was questioned for at least two or three hours, starting after midnight. (Id. at 1085, 1073). When asked

about Dr. Little's demeanor during this questioning, Detective Downing stated he was aware that Dr. Little had been up since 4:30 A.M.—for almost twenty-four hours. (Id. at 1085).

Next, Kimberly Mears, a fingerprint examiner with SLED, testified that she was given five latent fingerprint lifts from the crime scene and attempted to compare them with Barbara's and Dr. Little's fingerprints. (Id. at 1087, 1096–97). She determined four latent lifts were of "no value for comparison," and the fifth one—which was taken from the interior of the glass storm door at Barbara's home—did not match Dr. Little's fingerprints. (Id. at 1097). Finally, Deputy Robert Haslip testified regarding his recollection of events at the crime scene. (Id. at 1108–20). He further testified about the policies and procedures governing dashboard cameras and body cameras. (Id. at 1106). Following his testimony, the defense rested and renewed all prior motions. (Id. at 1135). They were denied, and the parties proceeded with closing arguments. (Id. at 1135, 1137–1224).

During its closing argument, the State heavily relied upon the blood discovered in Dr. Little's vehicle and the testimony of its footwear impressions expert. (Id. at 1138–39, 1144–45, 1147–48 & 1171–72). In essence, this was the only physical evidence purportedly linking Dr. Little to the scene of the crime. The State then referenced Dr. Little's wedding ring both verbally and via a PowerPoint slide published to the jury. (Id. at 1161). It sought to draw attention to the fact that Dr. Little, who was married to his second wife Carla, was not wearing a wedding ring during the relevant period in question. (Id.). As noted above, the circuit court suppressed the ring before trial because it was taken during an unlawful search that followed a violation of Dr. Little's Miranda rights. (Id. at 233–34).

Dr. Little immediately moved for a mistrial. (Id. at 1162). The circuit court denied his motion, instructing the State—outside the presence of the jury—to take down the slide and not mention the ring anymore. (Id. at 1163). But the damage was already done. The defense delivered

its closing argument, and the State briefly replied. (Id. at 1181–1218, 1219–24). After receiving instructions, the jury retired for deliberations. (Id. at 1225–37).

The jury struggled with this case. Four hours into deliberations, the jury asked for a copy of the charge. (Id. at 1240). When the circuit court asked the foreman to be more specific, the jurors instead decided to return to their room and resume deliberations. (Id. at 1240–41). Ultimately, after deliberating for a total of five hours, the jury returned a guilty verdict. (Id. at 1243). The circuit court denied all renewed motions and then sentenced Dr. Little to thirty years in prison. (Id. at 1243, 1247–52). This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Jenkins, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). Although "an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous," State v. Blakney, 410 S.C. 244, 249, 763 S.E.2d 622, 625 (Ct. App. 2014), the court "is free to decide questions of law with no particular deference to the circuit court," State v. Bailey, 416 S.C. 344, 347, 785 S.E.2d 622, 623 (Ct. App. 2016).

ARGUMENT

The Court should reverse and remand for a new trial because (1) the State's blood evidence was obtained following an illegal search and should have been suppressed as fruit of the poisonous tree, (2) the solicitor improperly referenced a ring during her closing argument that the circuit court had suppressed prior to trial and prejudiced Dr. Little, and (3) the State's purported footwear impressions expert was not qualified and her testimony was unreliable and prejudicial.

I. The circuit court erred in failing to suppress the evidence found in Dr. Little's vehicle and home because officers obtained it following an illegal search.

The State violated Dr. Little's rights under the Fourth Amendment to the U.S. Constitution by conducting a warrantless search of his vehicle parked in the driveway, which was within the curtilage of his home, and all evidence obtained in this illegal search should have been suppressed under the exclusionary rule as fruit of the poisonous tree.

When deciding "appeals from a motion to suppress based on Fourth Amendment grounds," the appellate court "reviews questions of law de novo." State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017) (quoting State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)). "As to a circuit court's findings of fact," the appellate court "must affirm 'if there is any evidence to support it,' and 'may reverse only for clear error.'" Id. at 268, 797 S.E.2d at 724 (quoting State v. Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012)). While the appellate court "applies a deferential standard of review" in Fourth Amendment cases, "this deference does not bar th[e] Court from conducting its own review of the record to determine whether the [circuit court]'s decision is supported by the evidence." State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

The Fourth Amendment, of course, guarantees the people's right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. "Private residences are places in which an individual normally expects privacy free of government intrusion not authorized by a warrant, and that expectation is one society recognizes as justifiable." State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009). "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Counts, 413 S.C. 153, 164, 776 S.E.2d 59, 65 (2015) (quoting State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001)); see also S.C. CONST. art. I, § 10 (asserting that "[t]he right of the people to be secure in their persons, houses,

papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated").

"By articulating a specific prohibition against 'unreasonable invasions of privacy,' the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution." State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007).

> The relationship between the two constitutions is significant because "[s]tate courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." Therefore, state courts can develop state law to provide their citizens with a second layer of constitutional rights. This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling. Thus, this Court can interpret the state protection against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution.

Counts, 413 S.C. at 164, 776 S.E.2d at 65 (alteration in original) (quoting Forrester, 343 S.C. at 643–44, 541 S.E.2d at 840).

Under both constitutions, "[w]arrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011); see also Herring, 387 S.C. at 209, 692 S.E.2d at 494 (holding "searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances"). "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." Kyllo v. United States, 533 U.S. 27, 31 (2001). And the Fourth Amendment extends this protection to "the curtilage of the home." Bash, 419 S.C. at 268, 797 S.E.2d at 723 (quoting Herring, 387 S.C. at 209, 692 S.E.2d at 494).

Our supreme court has held that "the Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy, or unless the government commits a common-law trespass for the purpose of obtaining information." State v. Robinson, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014) (citing Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); United States v. Jones, 565 U.S. 400, 404–05 (2012)). "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Robinson, 410 S.C. at 527, 765 S.E.2d at 568 (quoting Katz, 389 U.S. at 351). To that end, "mere visual observations from public thoroughfares do not constitute a search, and police officers need not 'shield their eyes' when passing by a home." Id. (emphasis added) (internal citation omitted) (quoting California v. Ciraolo, 476 U.S. 297, 213 (1986)). "But what [an individual] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." Katz, 389 U.S. at 351.

A. The vehicle in Dr. Little's driveway was within the curtilage of his home.

The curtilage of a home is "the land immediately surrounding and associated with the home" and is "part of the home itself for Fourth Amendment purposes." Oliver v. United States, 466 U.S. 170, 180 (1984). "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." Ciraolo, 476 U.S. at 212–13. "While the boundaries of curtilage are generally 'clearly marked,' the 'conception defining the curtilage' is at any rate familiar enough that it is 'easily understood from our daily experience.'" Florida v. Jardines, 569 U.S. 1, 8 (2013) (quoting Oliver, 466 U.S. at 182 n.12).

The U.S. Supreme Court has outlined several factors a court may consider in determining whether an area constitutes curtilage:

> the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

United States v. Dunn, 480 U.S. 294, 301 (1987). But this is not a bright line test, and the Court has emphasized that "the primary focus is whether the area in question harbors those intimate activities associated with domestic life and the privacies of the home." Id. at 301 n.4. In other words, the above-cited "factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." Id. at 301; see also United States v. Jackson, 728 F.3d 367, 373–74 (4th Cir. 2013) (observing the U.S. Supreme Court "cautioned" for limited use of the Dunn factors).

Just this Term, the U.S. Supreme Court decided a case directly on point here and held that a "part of the driveway where [the defendant]'s motorcycle was parked and subsequently searched [was] curtilage" for purposes of the Fourth Amendment. Collins v. Virginia, 138 S. Ct. 1663, 1670 (2018). In reaching its 8–1 decision,[5] the Court found it was "of no significance that the motorcycle was parked just a 'short way up the driveway.'" Id. at 1673 n.3. As the Court noted, "[t]he driveway was private, not public property, and the motorcycle was parked in the portion of the driveway beyond where a neighbor would venture, in an area 'intimately linked to the home, . . . where privacy protections are most heightened.'" Id. (quoting Ciraolo, 476 U.S. at 213).

[5] Although Justice Thomas filed a concurring opinion, he wrote separately only to express his skepticism of the Court's authority to require the states to apply the exclusionary rule. Id. at 1675 (Thomas, J., concurring). Because he agreed the majority "correctly resolve[d] the Fourth Amendment question," however, he "join[ed] the Court's opinion." Id. (Thomas, J., concurring). Justice Alito wrote the lone dissent. Id. at 1680–83 (Alito, J., dissenting).

Likewise, our supreme court confronted a similar curtilage question in Bash. In that case, the court held "the evidence support[ed] the circuit court's factual finding that the grassy area in the backyard" in which officers encountered the defendant "was sufficiently tied to the home to be within the curtilage." Bash, 419 S.C. at 271, 797 S.E.2d at 725. The grassy area of the property included a grill and a shed, and it "was located only a few feet from a fence surrounding the home." Id. at 269, 797 S.E.2d at 724. A clothesline sat "[i]n the short distance between the fence and the grassy area." Id. Further, "a short dirt road that reaches only a few residences" ran "very close to the home and [came] to a dead end on the property where the home [sat]." Id.

Here, as in Collins, a review of the photographs reveals "the driveway runs alongside the front lawn and up a few yards past the front perimeter of the house." 138 S. Ct. at 1670; see (R. pp. 1265, 1286–87). Dr. Little's vehicle was parked in the portion of the driveway that sits beyond the front perimeter of his home. (R. pp. 1265, 1286–87). The vehicle was only a few feet from the side of the home. (Id.); cf. Bash, 419 S.C. at 269, 797 S.E.2d at 724 (noting the grassy area "was located only a few feet from a fence surrounding the house"). A garage sits immediately to the right of the area of the driveway in which he parked. (R. pp. 1265, 1286–87). The driveway was surrounded by grass and a large tree on the lefthand side, separating it from the neighbor's property. (Id.); cf. Bash, 419 S.C. at 269, 797 S.E.2d at 724 (observing the dirt road ran "very close to the home" and "[l]arge trees line[d] the side of the road between [a public road] and the home").

Directly in front of the vehicle parked next to Dr. Little's in the driveway is a basketball goal. (R. pp. 1265, 1286–87); cf. Bollini v. Bolden, No. 08-14608, 2010 WL 1494562, at *7 (E.D. Mich. Apr. 14, 2010) (holding a pole barn was within the curtilage of the home because, among other things, it was "located on the same driveway that is used to access the main home" and

"contain[ed] a basketball hoop, with an area of concrete just in front to facilitate play," and finding "[t]he physical layout of [the] property clearly indicate[d] that 'home life' extended to the pole barn"); see also Bash, 419 S.C. at 269, 797 S.E.2d at 724 (noting "[t]he use of a grill is an activity closely associated with the use of a home"). Further, this portion of the driveway is situated behind where the driveway abuts the sidewalk leading up to the front porch of Dr. Little's home. (R. pp. 1265, 1286–87). Dr. Little has mulch and bushes planted between the sidewalk and the house, distinguishing this area from the grassy front yard. (Id.). Additionally, the back of Dr. Little's car appears to be flush with the front porch of the home. (Id.).

In short, the area of the driveway in which Dr. Little parked his vehicle was curtilage. While curtilage determinations require a case-specific inquiry, a straightforward application of Collins and Bash compels this result. Dr. Little's vehicle was parked only a few feet from the side of the house where classic curtilage, such as a porch or side garden, would be found. See Bash, 419 S.C. at 268, 797 S.E.2d at 724. To reach Dr. Little's vehicle, the officer had to veer off the customary invited path to the front door of the home. And the fact that Dr. Little parked his vehicle in the driveway instead of the garage is of no consequence here. See Collins, 138 S. Ct. at 1673 n.3 (finding it was "of no significance that the motorcycle was parked just a 'short way up the driveway'"). Countless individuals park their vehicles outside the garage—whether it be for convenience, preferred temperature, or otherwise—and their reasonable expectation of privacy does not vanish when they choose to do so.

The Fourth Amendment's protections do not begin and end with the close of a retractable garage door. See id. at 1675 ("So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage."). Because the area of the driveway in which Deputy Colburn

searched Dr. Little's vehicle was within the curtilage of his home, it was entitled to heightened protection under both the Fourth Amendment and the South Carolina Constitution. With this question settled, the Court must next determine whether the search was unlawful. It was.

B. Officers illegally searched the vehicle and failed to prove an applicable exception to the warrant requirement.

"At its core, the Fourth Amendment 'stands [for] the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" Robinson, 410 S.C. at 526, 765 S.E.2d at 568 (alteration in original) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)). Therefore, "[a] law enforcement officer must have a warrant to enter a home for the purpose of conducting a search, unless an exception applies." Bash, 419 S.C. at 271, 797 S.E.2d at 725 (internal citations omitted). "[T]he Fourth Amendment extends the same protection to a home's curtilage." Robinson, 410 S.C. at 526–27, 765 S.E.2d at 568; see also Covey v. Assessor of Ohio Cty., 777 F.3d 186, 192 (4th Cir. 2015) (asserting that "[t]he Fourth Amendment protects homes and the 'land immediately surrounding and associated' with homes, known as curtilage" (quoting Oliver, 466 U.S. at 180)). And a reviewing court's "task, at a minimum, is to decide whether the action in question would have constituted a 'search' within the original meaning of the Fourth Amendment." Jones, 565 U.S. at 406 n.3.

"The ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible." Collins, 138 S. Ct. at 1675. "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. Such conduct thus is presumptively unreasonable absent a warrant." Id. at 1670 (internal citation omitted); see also Bash, 419 S.C. at 271–72, 797 S.E.2d at 725 ("When officers 'physically occup[y] private property for the purpose of obtaining

information,' a search has occurred." (quoting Jones, 565 U.S. at 404)). After all, "searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage." Collins, 138 S. Ct. at 1672.

Deputy Colburn physically intruded upon the curtilage of Dr. Little's home without a warrant for the objective purpose of obtaining information. Thus, he committed a common law trespass and his actions constituted a search within the meaning of the Fourth Amendment. Indeed, during the suppression hearing, the State conceded that a search occurred. (R. p. 156). The only question remaining, then, is whether he "was entitled to conduct the search or seizure under an exception to the Fourth Amendment's warrant requirement." Robinson, 410 S.C. at 530, 765 S.E.2d at 570. Some of "[t]hese exceptions 'include (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, and (6) consent.'" State v. Morris, 411 S.C. 571, 580, 769 S.E.2d 854, 859 (2015) (quoting State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981)).

The State failed to articulate any of these exceptions during the suppression hearing. Rather, the State contended Deputy Colburn conducted "a de minimis search" of the vehicle "solely out of concern for his safety." (R. p. 156). In a suppression hearing, the State bears the burden of proving an exception applies. Robinson, 410 S.C. at 530, 765 S.E.2d at 570. "The State also bears the burden to show that the warrantless entry was limited in scope and duration in accordance with the exigent circumstances [that] required its presence." Id. To the extent the State argues (1) the evidence was in plain view, or (2) exigent circumstances warranted the intrusion into Dr. Little's curtilage and his vehicle, neither exception applies.

1. The plain view doctrine is inapplicable.

Although the State never argued the plain view doctrine at the suppression hearing, this justification was offered in one of the search warrant affidavits. (R. p. 1262). To the extent the State relies upon it, the plain view doctrine is inapplicable.

"Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999). "Hence, the two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Wright, 391 S.C. at 443, 706 S.E.2d at 327.

Here, the initial intrusion was unlawful and Deputy Colburn was not rightfully in a position to view the objects the State introduced over Dr. Little's objection at trial. See Beckham, 334 S.C. at 317, 513 S.E.2d at 613; Wright, 391 S.C. at 443, 706 S.E.2d at 327. In analyzing this first factor, a review of South Carolina's "knock and talk" jurisprudence is necessary.

Our supreme court "has found that 'police ha[ve] the investigative authority to approach the front door of [a] home . . . to investigate [an] anonymous tip.'" Counts, 413 S.C. at 166, 776 S.E.2d at 66 (first and second alterations in original) (quoting Wright, 391 S.C. at 445, 706 S.E.2d at 328). "[A] police officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'" Jardines, 133 S. Ct. at 1416 (quoting Kentucky v. King, 131 S. Ct. 1849, 1862 (2011)). To be sure, "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers[,] and peddlers of all kinds." Breard v. Alexandria, 341 U.S. 622, 626 (1951). And "[c]omplying with the terms of that invitation does not require fine-grained legal knowledge; it is

generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." Bash, 419 S.C. at 275, 797 S.E.2d at 727 (quoting Jardines, 133 S. Ct. at 1415).

Although "the 'knock and talk' technique is not per se violative of the Fourth Amendment or the parallel provision in the South Carolina Constitution," Counts, 413 S.C. at 161, 776 S.E.2d at 63, it is not without its limits. Indeed, the "implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Jardines, 133 S. Ct. at 1415. In other words, this traditional invitation to visitors does not give officers license to go snooping around anywhere on the premises. See id. As the U.S. Supreme Court has observed, "the background social norms that invite a visitor to the front door do not invite him there to conduct a search." Id. at 1416.

Here, as in Jardines, Deputy Colburn's "behavior objectively reveals a purpose to conduct a search, which is not what anyone would think he had license to do." 133 S. Ct. at 1417. As the Jardines Court noted, "[t]o find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking for permission, would inspire most of us to—well, call the police." Id. at 1416. Similarly, observing a perfect stranger prowling around one's vehicle with a flashlight, late at night, without permission, and mere feet from the home would inspire anyone to call the police.

"The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose." Id. Deputy Colburn's implied invitation to approach the front door did not extend to the back area of Dr. Little's driveway, nor did it extend to the vehicles parked there. After all, "[t]he ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to

obtain information not otherwise accessible." Collins, 138 S. Ct. at 1675. Deputy Colburn's path to the front door would never include walking to the far side of a vehicle located where Dr. Little was parked in the driveway. Because Deputy Colburn was not entitled to be in the area of the driveway in which he was lurking during the search of Dr. Little's vehicle, he does not enjoy the protections of the plain view doctrine. See Wright, 391 S.C. at 443, 706 S.E.2d at 327.

Further, Deputy Colburn did not see blood from the street or any other public area. Cf. Robinson, 410 S.C. at 527, 765 S.E.2d at 568 (asserting that "mere visual observations from public thoroughfares do not constitute a search, and police officers need not 'shield their eyes' when passing by a home" (internal citation omitted) (quoting Ciraolo, 476 U.S. at 213)). Rather, he claimed to see a window down in plain view from that lawful vantage point. A window down is not suspicious. The State, however, struggled to get its story straight even on this point. The first search warrant affidavit never mentioned a window being down and noted only that the evidence "was observed in plain view through the window." (R. p. 1262). In the next affidavit, officers swore that "[w]hile performing a security sweep of the vehicle he observed the front passenger window rolled down and the middle console lid was up." (R. p. 1257 (emphasis added)). Yet at trial, Deputy Colburn testified he somehow observed the window down from the street as he was approaching the home in his vehicle. (Id. at 516). Frankly, this does not pass the smell test.

The pictures in the record show Dr. Little's vehicle parked past the front threshold of the home, and most of the passenger side was blocked by the side of the home. See (R. pp. 1265, 1286–87). Deputy Colburn testified he wears reading glasses at night so he can "read license plates." (Id. at 563). He arrived at the home after 11:00 P.M. on the night in question. (Id. at 516). It was dark. Deputy Colburn's recollection of the timing and manner in which he discovered the window down simply finds no support in the record. It was not only inconsistent with the search

warrant affidavits, but also would have been physically impossible based upon the pictures showing the position of the vehicle.

Although credibility determinations are largely left to the discretion of the circuit court, this Court is not required to turn a blind eye to the evidence. See State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) (asserting that "[c]redibility findings are treated as factual findings, and . . . appellate inquiry is limited to reviewing whether" these "findings are supported by any evidence in the record"). Respectfully, the testimony upon which the circuit court relied to make its ruling was not supported by any evidence.

Irrespective of the window, Deputy Colburn only saw the blood evidence "in plain view," with the aid of his flashlight, during the subsequent unlawful search of the vehicle while he was intruding upon the curtilage of the home. He testified as follows on this point:

> COLBURN: Yes, sir. I believe I walked up the driveway to the left side of the vehicle.
>
> THE COURT: That's the driver's side?
>
> COLBURN: Correct. Initial clearing of that vehicle with a flashlight looking inside the windows to make sure there were no persons or anything inside the vehicle. Moved on to the other vehicles that were there, and then came back around to the passenger side of the silver SUV.
>
> THE COURT: And that's when you noticed the dark stuff on the console and the towel?
>
> COLBURN: Yes, sir.

(R. pp. 72–73). Deputy Colburn confirmed he was "[m]aybe a foot" from the vehicle during the initial clearing. (Id. at 81).

To the extent it was even necessary, Deputy Colburn had already cleared the vehicles to ensure officer safety before he engaged in the subsequent search. Although no exigent

circumstances existed in the first instance, see Part I.B.2, infra, any purported exigencies had certainly vanished at this point during the two-minute search of the vehicles in the driveway. When Deputy Colburn walked around to the passenger side of the vehicle with his flashlight, he was unquestionably "conducting a search to obtain information not otherwise accessible." Collins, 138 S. Ct. at 1675. No exception to the warrant requirement justified this prolonged intrusion onto Dr. Little's property, much less the curtilage of his home. See U.S. CONST. amend. IV; S.C. CONST. art. I, § 10.

Turning to the second requirement, "the incriminating nature of the evidence" was not even "immediately apparent to the seizing authorities." Wright, 391 S.C. at 443, 706 S.E.2d at 327. As the search warrant affidavits and testimony at the suppression hearing indicate, Deputy Colburn only observed what appeared to be a brownish stain on the open center console lid. (R. p. 517). It was not "immediately apparent" that this evidence was blood. To that end, both affidavits swore that he saw what "appeared to be blood." (Id. at 1262, 1257). At trial, Deputy Colburn confirmed he "did not immediately recognize it as blood." (Id. at 556). Nevertheless, Deputy Colburn continued his unlawful search and found towels similar to those found at the scene of the crime in the floorboard of the passenger seat of Dr. Little's vehicle. The towels were not in plain view. Deputy Colburn only saw them while he was in between the house and the vehicle performing an illegal search after 11:00 P.M. with a flashlight. Therefore, the State failed to prove the second element of the plain view doctrine necessary to invoke its protections from an otherwise unlawful warrantless search. See Wright, 391 S.C. at 443, 706 S.E.2d at 327.

Because Deputy Colburn deviated from the norms established for the knock and talk procedure and entered the curtilage of Dr. Little's home, the initial intrusion was unlawful and he was not rightfully in a position to view the objects in Dr. Little's vehicle. Nor was the

incriminating nature of these objects immediately apparent. Thus, the plain view doctrine is inapplicable and did not excuse Deputy Colburn's failure to obtain a warrant prior to the search.

2. No exigent circumstances justified the unlawful intrusion.

"[A] warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling." State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004) (citing Minnesota v. Olson, 495 U.S. 91, 100 (1990)). "In such circumstances, a protective sweep of the premises may be permitted." Counts, 413 S.C. at 163, 776 S.E.2d at 65 (quoting Abdullah, 357 S.C. at 351, 592 S.E.2d at 348). "A 'protective sweep' is a quick and limited search of the premises incident to an arrest and conducted to protect the safety of police officers or others." Maryland v. Buie, 494 U.S. 325, 327 (1990) (emphasis added).

"The exigent circumstances doctrine is an exception to the Fourth Amendment's protection against searches conducted without prior approval by a judge or magistrate." State v. Brown, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986). "Exigent circumstances—such as imminent destruction of evidence, the potential for a suspect to flee, or a risk of danger to police or others—may justify a warrantless entry, but absent hot pursuit, there must be at least probable cause to believe the exigent circumstances were present." State v. Dobbins, 420 S.C. 583, 592, 803 S.E.2d 876, 880 (Ct. App. 2017). Further, the doctrine only applies when, "from an objective standard, a compelling need for official action and no time to secure a warrant exists." Abdullah, 357 S.C. at 351, 592 S.E.2d at 348.

This is not a hot pursuit case. Deputy Colburn, then, must have had "probable cause to believe the exigent circumstances were present." Dobbins, 420 S.C. at 592, 803 S.E.2d at 880. "The principal components of a determination of . . . probable cause will be the events which

occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to . . . probable cause." Ornelas v. United States, 517 U.S. 690, 696 (1996). "Therefore, determining whether an officer has probable cause to conduct a warrantless search depends on the totality of the circumstances." Morris, 411 S.C. at 581, 769 S.E.2d at 859.

In the context of a sweep, "there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." Buie, 494 U.S. at 334 (emphasis added); see also id. at 332 (noting "a limited patdown for weapons" is authorized "where a reasonably prudent officer would be warranted in the belief, based on 'specific and articulable facts,' and not on a mere 'inchoate and unparticularized suspicion or hunch'" (quoting Terry v. Ohio, 392 U.S. 1, 21, 27 (1968))).

As a preliminary matter, the State finds no solace in this exception to the warrant requirement because the alleged protective sweep of the premises was not conducted "incident to an arrest." Id. The State rightly conceded the protective sweep doctrine was inapplicable during the suppression hearing. (R. p. 156). While Dr. Little accompanied Deputy Colburn to the law enforcement center, where he was later subjected to custodial interrogation for four hours, Dr. Little was never placed under arrest on September 22, 2015. See (R. p. 663). What is more, his property was never an "arrest scene" on the night in question. Because the search did not occur incident to arrest, Deputy Colburn was not justified in intruding upon Dr. Little's privacy in this manner. See Buie, 494 U.S. at 327.

Even when putting aside the "incident to an arrest" requirement, no exigent circumstances justified a security sweep. Indeed, as noted above, Deputy Colburn testified Dr. Little was not a

suspect at the time. (R. p. 543). Thus, a sweep was not conducted "to prevent a suspect from fleeing." Abdullah, 357 S.C. at 351, 592 S.E.2d at 348. Nor did anything pose "a risk of danger to the police or others inside or outside the home." Id. Deputy Colburn notably testified he had no reason to believe Dr. Little was hiding. (R. p. 550). Seeing a vehicle's passenger side window down and its right rear tire parked slightly off the driveway could not have given an officer a good faith belief Dr. Little or any other person posed a danger to those on his premises.[6] See Buie, 494 U.S. at 332 (asserting that an officers search must be "based on 'specific and articulable facts,' and not on a mere 'inchoate and unparticularized suspicion or hunch'" (quoting Terry, 392 U.S. at 21, 27)). Moreover, it strains credibility to think Deputy Colburn could not have seen the floorboard of the passenger side with the aid of his flashlight from the driver's side window during the initial search of the vehicles, as he testified, or that someone could have even fit into such an area to hide. See (R. p. 554).

With all due respect, no "ordinarily prudent and cautious person, under the circumstances, [would] believe" a search was justified to protect the safety of officers or others. Deputy Colburn testified he had backup on the scene, and Dr. Little was not a suspect. (R. pp. 513, 543). He was only sent to Dr. Little's home "to locate" or "make contact" with him."[7] (Id. at 1262, 1257 & 515). Whatever that means, it does not translate into an unabridged right to search areas of the property beyond those available to any other stranger. See Jardines, 133 S. Ct. at 1415. Neither the initial

[6] The photographs in the record, see (R. pp. 1265, 1286–87 & 553), plainly refute the State's claim that the vehicle was "parked half in the driveway and half into a grassy area." (Id. at 514). Only the right rear tire was off the driveway. And Dr. Little did not have "plenty of room to park in the driveway," (id. at 516), given the position of the car on the left.

[7] The testimony in the record reveals Kimberly had already been in contact with her father for some time before officers visited his home. In fact, a detective asked Kimberly to call Dr. Little—in the detective's presence—to come to Barbara's home. (R. pp. 454, 464). And she was instructed "to stay on the phone with him." (Id. at 464). Thus, Deputy Colburn hardly could have been concerned for Dr. Little's safety. Cf. (R. p. 155) (noting it could have been a "welfare check").

search of the three vehicles nor the follow up on the passenger side of Dr. Little's vehicle was justified. Deputy Colburn conceded he had no probable cause, (R. p. 548), and the Court should take him at his word. A review of the record reveals that "nothing occurred at the residence to create an exigency to justify a warrantless search." Herring, 387 S.C. at 218, 692 S.E.2d at 499 (Kittredge, J., concurring).

While the State emphasized its belief that this was a "de minimis search," the State never articulated any exigent circumstances that required the officer's presence in the first instance. Pre- (R. p. 156). As the circuit court noted, although Deputy Colburn saw "the car parked in the manner that it was parked and with the passenger window down," he "[d]idn't go into any great detail why that attracted his attention." (Id. at 160–61). The circuit court nevertheless found it was "unusual to have a car parked like that with the window down at that time," noting the incidence of car break-ins in what was "certainly an upper middle-class neighborhood." (Id. at 161–62). But the State never argued about vehicle theft crimes, and the circuit court erred in asserting this as a basis for its ruling because it finds no factual support in the record. See Tindall, 388 S.C. at 521, 698 S.E.2d at 205 (asserting that an appellate court's deferential standard of review "does not bar th[e] Court from conducting its own review of the record to determine whether the [circuit court]'s decision is supported by the evidence"). Regardless, a window down is not objectively suspicious.

At the suppression hearing, the State heavily relied upon the Herring case. (R. pp. 155–56). Herring, however, is inapposite for two critical reasons. First, in Herring, "officers were looking for a suspected murderer whom they knew was likely to be armed with a deadly weapon." 387 S.C. at 211, 692 S.E.2d at 495. Indeed, prior to arriving at the suspect's residence at 2:00 A.M., officers had "responded to a shooting at Chastity's nightclub at which the manager of the club was shot and killed," "watched the video which showed the suspect as he entered and departed

from the nightclub," and were "given a description of Herring's black SUV." Id. at 209, 692 S.E.2d at 494. Thus, under these exigent circumstances, our supreme court found that the "minimal intrusion" of peeking into "the garage window to see if the suspect was there" was "objectively reasonable" and did not violate the Fourth Amendment.[8] Id. at 209, 211, 692 S.E.2d at 494, 495 (emphasis added). By contrast, Dr. Little was not a suspect at the time of the unlawful search, and officers testified they had no reason to believe he was armed and dangerous. (R. pp. 543, 547).

Second, and more importantly, the officer's "peek into the garage yielded no evidence against Herring" because "[p]olice already had knowledge of the make, model, and license plate number of the vehicle the suspect drove." Id. at 211, 692 S.E.2d at 495. Because the officer's "observation of the vehicle in the garage yielded no evidence which further inculpated Herring," the court found "the de minimis intrusion to secure the officers' safety did not necessitate suppression." Id. In other words, no harm, no foul.

The opposite is true here. Deputy Colburn did not merely confirm that Dr. Little's vehicle was parked in the driveway—he ascertained that from the street. Instead, Deputy Colburn performed an intrusive search of Dr. Little's vehicle with a flashlight, and Detective Muirhead later followed up with another unlawful search to confirm his findings, all without a warrant. (R. pp. 554, 663–64). As a result of these unlawful searches, the State obtained physical evidence that did inculpate Dr. Little and link him to the scene of the crime. This was not a de minimis intrusion. Accordingly, the State finds no refuge in Herring.

[8] But see id. at 218–19, 692 S.E.2d at 499 (Kittredge, J., concurring) ("disagree[ing] that, from an objective standard, exigent circumstances existed upon the arrival of law enforcement at Herring's residence two hours after the shooting of John Johnson at Chastity's strip club" and stating that the peek into the garage was "an unwarranted trespass and warrantless search" but finding this search yielded no evidence).

Because Deputy Colburn had no probable cause to believe exigent circumstances were present to justify a warrantless search of the vehicle, the unlawful search was unreasonable and violated Dr. Little's rights under the Fourth Amendment and the South Carolina Constitution.

C. All evidence obtained as a result of the unlawful search is fruit of the poisonous tree.

The purpose of the exclusionary rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217 (1960). In Elkins, the U.S. Supreme Court reiterated the sound justifications behind the rule:

> In a government of laws, . . . existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes . . . to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

364 U.S. at 223 (quoting Olmstead v. United States, 277 U.S. 438, 468 (1928) (Brandeis, J., dissenting), overruled in part by Katz, 389 U.S. at 347).

"Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible." Adams, 409 S.C. at 648, 763 S.E.2d at 345 (quoting United States v. Najjar, 300 F.3d 466, 477 (4th Cir. 2002)). "The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion." Wong Sun v. United States, 371 U.S. 471, 485 (1963). Indeed, "[t]he exclusionary prohibition extends as well to the indirect as the direct products of such invasions." Id. at 484.

"However, not all evidence conceivably derived from an illegal search need be suppressed if it is somehow attenuated enough from the violation to dissipate the taint." Adams, 409 S.C. at 648, 763 S.E.2d at 345 (quoting Najjar, 300 F.3d at 477). In determining "whether the derivative evidence has been purged of the taint of the unlawful search," the court may "consider several factors, including: (1) the amount of time between the illegal action and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct." Id. (quoting United States v. Gaines, 668 F.3d 170, 173 (4th Cir. 2012)).

Applying these factors to the instant case, suppression is required. Very little time passed between Deputy Colburn's illegal search, Detective Muirhead's illegal search confirming the findings, and the first search warrant affidavit sworn out on the vehicle. (R. pp. 663–64). Detective Bowen expressly relied upon the observations from the illegal search to "construct" the search warrant affidavit. (Id. at 664, 1262, 1257). And no intervening circumstances cured the taint. In fact, the only significant event that happened in between the illegal searches and the seizure of this evidence was another violation of Dr. Little's constitutional rights when he was subjected to custodial interrogation for four hours without receiving Miranda warnings and was then forced to remove his clothing. The purpose and flagrancy of officers' misconduct in this case is troublesome. Deputy Colburn failed to articulate any plausible exigent circumstances that would justify a reasonably prudent officer to objectively believe he was entitled to trespass and perform the illegal search, and he searched the cars for the purpose of obtaining evidence to which he was not otherwise entitled.

Here, the search warrant was tainted by the initial unlawful search of the vehicle. The first warrant affidavit provided the following:

> On September 22, 2015, Charleston County Deputies responded to [Barbara's residence], in reference to a deceased person. Prior to

deputies response, the deceased's family was unable to contact her. Family members went to the residence and found the door to be unsecured. They entered the residence and observed bloody towels. The deceased was located in several rooms in the victim's residence. The deceased's ex-husband, General Little, did not show for a dinner meeting with their daughter on 9/22/2015. Deputies responded to Mr. Little's home, after locating the deceased, to locate him. While approaching Mr. Little's home Deputies observed a towel similar to towels from the deceased's residence in a vehicle at Mr. Little's. the towel was observed in plain view through the vehicle window. Deputies also observed, in plain view, what appeared to be blood in the same vehicle. It is believed items recovered in the execution of this search warrant will further the investigation of the death.

(R. p. 1262). A subsequent warrant affidavit swore as follows:

Facts to establish the aforesaid are that on September 22, 2015 the Charleston County Sheriff's Office responded to [] at or around 2200 hrs in reference to Barbara Little being found dead in her residence. Preliminary investigation indicated that Barbara Little is a victim of an apparent murder and suffered severe head trauma. The deceased was located by her brother after a phone call from the deceased's daughter, Kimberly Armstrong, prompting him to do a welfare check.

Armstrong advised detectives that at or around 2030 hrs her father, General Little, contacted her and asked to meet her for dinner. General Little never showed up to the agreed upon spot. Armstrong contacted her father and he asked her to meet at another restaurant, which he never came to either. Armstrong attempted to call her father several times but received no answer.

In an effort to locate G. Little FTI Colburn went to his listed residence . . . and observed G. Little's Toyota Sequoia bearing South Carolina license plate, EDA 806, parked halfway in the driveway and halfway off. While performing a security sweep of the vehicle he observed the front passenger window rolled down and the middle console lid was up. While looking at the lid FTI Colburn observed a brownish stain on the console that appeared to be blood.

It is the affiant's belief that the items sought may be used to compare against known standards already in existence and may provide further insight into G. Little's movements prior to, during and after the incident. All evidence will be compared against evidence already obtained.

(R. p. 1257).

Deputies later gathered evidence pursuant to these warrants within Dr. Little's vehicle and inside the home. As explained above, though, officers had no legal justification to "view" the towel or the spot that "appeared to be blood."[9] See id. All blood evidence used against Dr. Little at trial was obtained as a direct result of the unlawful invasion into Dr. Little's curtilage and subsequent illegal search of his vehicle. See Wong Sun, 371 U.S. at 485. The evidence is not indirectly linked to the illegal search—it is the very product of it. The towel, coupled with the "brownish stain" that "appeared to be blood," was the central feature of the search warrant affidavit presented to the magistrate. Both items were discovered during the illegal search. But investigators never even tested the brown stain for DNA or to confirm if it was blood. (R. pp. 556, 175). Absent the towel discovered during the illegal search, the State would not have obtained a warrant for Dr. Little's vehicle and discovered the additional blood evidence found there. Therefore, the evidence ultimately discovered was not "attenuated enough from the violation to dissipate the taint." Adams, 409 S.C. at 648, 763 S.E.2d at 345 (quoting Najjar, 300 F.3d at 477).

Although an additional warrant was later sworn out, this was insufficient to cure the taint from the illegal search. See id. (quoting Najjar, 300 F.3d at 477). In fact, the second warrant affidavit still relied upon the findings of the same illegal search of the vehicle. (R. p. 1257). The only difference offered was the justification for the search. Using this vague warrant they secured based upon the initial unlawful search of the vehicle, officers searched the home and found shoes with blood on them. (Id. at 666–67). Detective Muirhead did not discover the shoes during his walk-through of the home to which Dr. Little's wife consented. (Id.). Rather, the shoes were found as a direct result of the warrant obtained pursuant to the unlawful search of Dr. Little's

[9] Interestingly, the affiant made no mention of the towel in the second search warrant affidavit.

vehicle. (Id.). Consequently, the circuit court erred in failing to suppress all evidence found in the vehicle—as well as all derivative evidence in the home as outlined in the search warrant returns, see (R. pp. 1258–61)—because the evidence was not "purged of the taint of the unlawful search." See Adams, 409 S.C. at 648, 763 S.E.2d at 345 (quoting Gaines, 668 F.3d at 173).

Accordingly, the Court should reverse and remand for a new trial with instructions to suppress the unlawfully obtained blood evidence from the vehicle, the towel, the bloody shoes found in the home, and any and all evidence obtained pursuant to these two search warrants.

II. The circuit court erred in denying Dr. Little's motion for a mistrial when the State improperly referenced the suppressed ring during its closing argument.

The State's closing "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Van Dohlen v. State, 360 S.C. 598, 609–10, 602 S.E.2d 738, 744 (2004). Further, the State "may not vouch for the credibility of a State's witness based on . . . other information outside the record." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). As our supreme court has recognized, "[v]ouching for a witness based on outside material conveys the impression to the jury that the [State] has evidence not presented to the jury but known by the prosecution which supports conviction." Id.; see also Tappeiner v. State, 416 S.C. 239, 251–52, 785 S.E.2d 471, 477 (2016) (finding the State's comments that "misrepresented the evidence adduced at trial" during closing argument "were clearly improper and objectionable").

On appeal, review of the State's "closing argument is based upon the standard of whether [its] comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Van Dohlen, 360 S.C. at 609, 602 S.E.2d at 744; see also U.S. CONST. amends. V & XIV; S.C. CONST. art. I, § 3. "[T]he appellate court will view the alleged impropriety of the [State]'s argument in the context of the entire record, including whether the [circuit court]'s

instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

Dr. Little moved for a mistrial after the State improperly referenced the suppressed ring during its closing argument. (R. p. 1162). Admittedly, our courts have recognized that "[t]he granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way." State v. Bantan, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010). "The decision to grant or deny a motion for a mistrial is a matter within a [circuit] court's sound discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). "[T]o receive a mistrial, the defendant must show error and resulting prejudice." Id. at 13, 515 S.E.2d at 514.

An appellate court's ruling "must hinge on whether there was a manifest necessity for declaring a mistrial." State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999). The court must also consider whether a "mistrial was dictated by . . . the ends of public justice," which is "defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). "Whether a mistrial is manifestly necessary is a fact specific inquiry." Bantan, 387 S.C. at 417, 692 S.E.2d at 203. "The [circuit] court should exhaust other methods to cure possible prejudice before aborting a trial." Id. at 417, 692 S.E.2d at 203–04. To that end, "[a]n instruction to disregard the objectionable evidence is usually deemed to cure the error in its admission." Id.

In State v. Huggins, our supreme court reversed the defendant's murder and criminal conspiracy convictions and remanded for a new trial based upon the State's discussion of matters outside the record during closing arguments. 325 S.C. 103, 107–08, 481 S.E.2d 114, 116 (1997).

Reiterating that closing "[a]rguments must be confined to evidence in the record," the supreme court held the circuit court should have granted a mistrial because the State's reference to matters not in evidence during closing argument was "fundamentally unfair." Id. at 107, 108, 481 S.E.2d at 116, 117.

So too here. The State, well aware of the circuit court's pre-trial ruling, nevertheless sought to test the limits and reference the wedding ring anyway. See id. (holding that closing "[a]rguments must be confined to evidence in the record"). And the justifications offered for its ability to sneak in this evidence during closing argument are manifestly without merit. Although Detective Turner did testify in passing that Dr. Little was not wearing any jewelry, that is of no moment here. His testimony was buried in the middle of a week-long trial and did not specifically center on the ring. (R. p. 645). The State's closing argument and PowerPoint slide, on the other hand, did focus on the ring and were some of the last things the jury heard and saw prior to deliberations. (Id. at 1161–62). This was fundamentally unfair and prejudicial. See id. (holding the State's reference to matters not in evidence during closing was "fundamentally unfair" and required a mistrial).

Nor was the reference to the ring minor or insignificant. A ring is very symbolic. See generally Elizabeth S. Scott, Social Norms and the Legal Regulation of Marriage, 86 VA. L. REV. 1901, 1917 (2000) ("By exchanging wedding rings and ceremonial promises, the couple bind themselves to one another in a way that signals both the seriousness of their intentions to undertake the many obligations of marriage and their nonavailability for other intimate relations."). The State took advantage of that fact, asserting that "we know [Dr. Little] was together with Carla," his second wife, "and yet Detective Turner" did not "really remember him wearing" any jewelry. (R. p. 1161). And the ring was specifically listed on the PowerPoint slide. (Id. at 1162).

By mentioning the ring, the State "convey[ed] the impression to the jury" it had "evidence not presented to the jury but known by the prosecution which supports conviction." Matthews, 350 S.C. at 276, 565 S.E.2d at 768. The State further implied some improper motive behind Dr. Little not wearing his wedding ring. This was highly prejudicial because the jury could have attached great significance to him not wearing a wedding ring and, for example, thought he was hiding it. The fundamental unfairness of the State's inappropriate reference to the ring during closing argument is underscored by the fact that the circuit court had already suppressed the ring because the State violated Dr. Little's constitutional rights to obtain it in the first instance. Referencing the suppressed ring only added insult to injury, creating two layers of a constitutional violation. In short, this fundamental unfairness amounted to a due process violation and, therefore, the circuit court should have ordered a mistrial.

Although the circuit court must "exhaust other methods to cure possible prejudice" to alleviate the need for a mistrial, that did not occur here. The court, for instance, did not give a curative instruction. Cf. Bantan, 387 S.C. at 417, 692 S.E.2d at 203–04 (asserting that "[a]n instruction to disregard the objectionable evidence is usually deemed to cure the error in its admission"). Rather, the court only instructed the State—outside the jury's presence—to take down the PowerPoint slide that referenced the ring and stated, "don't mention that anymore." (R. pp. 1162–63). This was insufficient to cure the taint of the State bringing up a symbolic piece of evidence that was excluded from the record due to the State's illegal investigative tactics.

The Court should reverse and remand for a new trial based upon the State's deliberate reference to evidence outside the record. The ring was suppressed prior to trial due to the unconstitutional means by which it was obtained, and the State only doubled down on the constitutional violation by bringing it up anyway. This violated Dr. Little's due process rights.

III. The circuit court erred in admitting testimony from the State's purported footwear examination expert.

A circuit court's decision on whether to exclude evidence "will not be reversed on appeal absent an abuse of discretion." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (quoting State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

A party may present expert testimony to the factfinder if "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Rule 702, SCRE. An expert witness, however, must be "qualified as an expert by knowledge, skill, experience, training, or education." Id. In Watson v. Ford Motor Co., our supreme court laid out a three-prong test a circuit court must consider before allowing the jury to hear expert testimony:

> First, the [circuit] court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the [circuit] court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the [circuit] court must evaluate the substance of the testimony and determine whether it is reliable.

389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). As the court observed,

> Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.

Id. at 445–46, 699 S.E.2d at 175. Accordingly, "expert testimony receives additional scrutiny relative to other evidentiary decisions." Id. And the circuit court must serve "as the gatekeeper" in deciding "whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence." Id. at 445, 699 S.E.2d at 174.

A. The State's witness was not qualified to offer expert testimony.

At the outset, the State's witness did not possess the requisite qualifications to testify as an expert in footwear impressions.

"In determining a witness's qualifications as an expert, the [circuit] court should not have a solitary focus, but rather, should make in inquiry broad in scope. The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject." Watson, 389 S.C. at 447, 699 S.E.2d at 176 (internal citation omitted). A police "officer's opinion [that] goes to the heart of the case is not harmless." State v. Ellis, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001). Indeed, our supreme court has held that a reversal is mandated when a solicitor exploits "the [circuit] court's imprimatur of [an officer] as an 'expert' . . . to the prejudice of" the defendant. Id.

Dawn Claycomb, the State's purported footwear examination expert, graduated from Williamsburg University with a BS in forensic science and began her career as a uniform patrol for the Richland County Sheriff's Department. (R. p. 958). Claycomb testified she has only been working as an agent in the SLED crime scene department for five years. (Id. at 957). Crime scene investigations are her primary responsibility, and that was all she did for the first two years at SLED. (Id.). In August of 2014, Claycomb began basic footwear training and footwear has since become what she characterized as an "extra duty." (Id.). In other words, it is not her main focus.

As part of her training, Claycomb worked under a qualified footwear examiner for three years performing supervised casework. (Id. at 959). She also attended a training session with Dwane Hilderbrand, who she indicated was an internationally renowned footwear examiner. (Id.). Additionally, Claycomb attended a week-long International Association of Identification (IAI) conference. (Id.). She is not a member of this organization—or any other organization for that matter—and has never received IAI certification. (Id. at 962). To conduct footwear examinations, however, Claycomb was required to complete a competency test. (Id. at 959).

Since completing her apprenticeship, Claycomb has had only fifteen to twenty instances of "actual casework." (Id. at 958). When asked if her work is peer reviewed, Claycomb responded that she sends reports to another qualified examiner for review. (Id. at 960). Most of the time, Claycomb sends her reports to the person under whom she performed supervised casework. (Id. at 961). Claycomb has appeared in court eleven times over the course of her career. (Id. at 960). Each time, she testified regarding the broader topic of crime scene. (Id.). She was qualified as a crime scene expert only once in court. (Id. at 961). Claycomb has never published any articles on footwear impressions. (Id. at 963).

To accept Claycomb's qualifications would be the equivalent of allowing a first-year associate to testify as an expert in a legal malpractice case. An associate would have trained for three years in law school, presumably working under the tutelage of various law firms during that time, and taken the bar exam to be able to practice in South Carolina. That associate would then join a specific practice group and attend various CLEs to further his or her education on the subject. Some of those CLEs undoubtedly would be taught by reputable members of the profession. And, over the course of that first year of practice, he or should would have encountered at least fifteen

to twenty cases. Even if each case centered on legal malpractice, one would be strained to find any court in the country that would allow a first-year associate to testify as an expert on the subject.

The present situation is virtually indistinguishable. Prior to this trial, Claycomb had never testified as an expert in footwear impressions—and for good reason. While she may be a very competent crime scene agent, a review of Claycomb's qualifications reveals she is not qualified to testify as a footwear examination expert, and the circuit court erred in qualifying her as such. See Watson, 389 S.C. at 446, 699 S.E.2d at 175 (asserting that, "while the expert need not be a specialist in the field, the [circuit] court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter"); id. at 445, 699 S.E.2d at 174 (asserting that the circuit court must serve "as the gatekeeper" in deciding "whether the evidence submitted by a party is admissible").

Further, the circuit court's error cannot be harmless because Dr. Little was necessarily prejudiced by Claycomb, a SLED agent, being imbued with the imprimatur of an expert. See Ellis, 345 S.C. at 178, 547 S.E.2d at 491. As an expert, she confusingly testified that Dr. Little's shoes were very similar to the prints found at the murder scene and, thus, linked Dr. Little to the crime. See id. (holding a police "officer's opinion [that] goes to the heart of the case is not harmless"). Accordingly, the Court should reverse and remand for a new trial.

B. The footwear impressions testimony was unreliable and prejudicial.

Even if Claycomb was qualified to testify as an expert in footwear examination, her purported scientific testimony was unreliable as a matter of law.[10]

"The test for reliability of for expert testimony does not lend itself to a one-size-fits-all approach." Watson, 389 S.C. at 450 n.3, 699 S.E.2d at 177 n.3. For many years, "the standard for

[10] As noted above, Dr. Little's shoes were unlawfully obtained and should have been suppressed as fruit of the poisonous tree. Without the shoes, Claycomb's entire testimony should have been excluded as well.

admitting scientific evidence in South Carolina was '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.'" Council, 335 S.C. at 19, 515 S.E.2d at 517 (quoting State v. Jones, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979)).

In Council, our supreme court provided some additional guidance. The court held that, when "considering the admissibility of scientific evidence under the Jones standard," an appellate court generally looks at the following factors: "(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." Id. Scientific evidence, of course, "is also subject to attack for relevancy and prejudice." Id. at 19–20, 515 S.E.2d at 517.

Applying these factors to the instant case, the circuit court should have excluded Claycomb's footwear impressions testimony. While Claycomb indicated her report was confirmed via peer review, (R. p. 960), she named no publications citing with approval the technique she employed. She merely confirmed she "read articles." (Id. at 963). Claycomb testified she had fifteen to twenty cases involving footwear impressions, (id. at 958), but she never indicated whether the same method was employed each time. And although Claycomb testified in detail about the chain of custody for the DVD containing the digital photographs, (id. at 970), she failed to indicate what quality control measures were employed to ensure the photography department accurately enlarged photographs used to compare impressions. Nor did she indicate the consistency of this method with recognized scientific laws and procedures.

The basic premise of footwear impressions evidence is that "[w]hen a shoe comes in contact with the ground, or clothing, a door, a counter, anything like that," it "makes an impression

of the outsole of the bottom of the shoe." (Id. at 965). If an officer cannot "collect the actual item," she "can photograph it and that actual unknown impression can be compared to the shoe" belonging to a suspect. (Id.). Here, the impressions left at the crime scene were photographed. Claycomb then "create[d] an inked impression" from Dr. Little's shoe and compared it to the unknown impression left at the scene to determine any similarities among them. (Id. at 966). She sent the photographs to the photography department so they could be "made to size." (Id. at 969).

When collecting an unknown impression from a crime scene, the photographs "have to be taken ninety degrees" to the impression, meaning the camera must be parallel to the surface. Photographs must also contain a scale for a point of reference. (Id. at 967). When a photo is not taken at ninety degrees or does not contain a scale, this can change the examiner's perspective and render him or her unable to fully make a comparison. (Id. at 967–68). Indeed, it can be very hard to compare footwear impressions. (Id. at 968). "Even a small millimeter could change things." (Id.). Claycomb indicated it is "helpful sometimes having the actual shoes." (Id. at 970).

In sum, Claycomb created an ink impression from a shoe, placed it onto a clear transparency, and then had another department enlarge and print a photograph of the unknown footprint to compare footwear impressions. Following this process, Claycomb found in her report a "corresponding tread design," but due to the quality of the photographs, she was unable to "conduct a further examination." (Id. at 950). Although she found the "outsole design [was] similar," she could not say it was the same shoe. (Id. at 976). Claycomb could not even say whether this was a left or right shoe. (Id. at 979). She also could not determine the shoe size. (Id. at 983).

This is not reliable scientific testimony, and the circuit court erred in permitting the State to publish this prejudicial and confusing testimony to the jury. See Rule 403, SCRE (providing

"evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury"). In her final testimony on redirect, Claycomb confirmed that the outsole impression from the pictures she received from the crime scene was "similar to the shoes that [she] received from the defendant's house." (R. p. 985). The State connected the dots during closing, posing the following question to the jury: "What are the odds that it is somebody else's shoe?" (Id. at 1171–72). Irrespective of the use of "similar" versus "the same," Claycomb's testimony was introduced solely for the purpose of linking Dr. Little to the scene of the crime. In light of the basic questions she was unable to answer regarding the impressions, her opinion was unreliable as a matter of law. The highly prejudicial nature of her testimony substantially outweighed whatever probative value this "scientific" evidence offered. See Rule 403, SCRE. The fact that the State cloaked a SLED agent with the title of an expert only compounded upon the prejudice Dr. Little experienced from the admission of this unreliable and misleading testimony. See Ellis, 345 S.C. at 178, 547 S.E.2d at 491.

In 2001, our supreme court rejected the State's effort to present testimony from a "barefoot insole impressions" expert, holding this type of evidence was inadmissible because it was not scientifically reliable. State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001) (Jones I). The case was retried and reversed again based upon the circuit court's admission of unreliable barefoot insole impression evidence. State v. Jones, 383 S.C. 535, 557–58, 681 S.E.2d 580, 592 (2009) (Jones II). Interestingly, in that case, the court rejected the publications and testimony of William Bodziak—the very individual under whom Claycomb trained—as unreliable. See id.; (R. p. 952).

Although the present case involves "outsole impressions" and tread design, the same analysis applies. Here, as in Jones I, the circuit court "erred in permitting expert testimony

purporting to demonstrate that '[footwear outsole] impression' testing revealed" Dr. Little's shoe "to be consistent with the impression" found at the crime scene. 343 S.C. at 574, 541 S.E.2d at 819. The science behind outsole footwear impressions is sketchy and undeveloped, and the State failed to prove it was reliable. Dr. Little experienced significant prejudice by the introduction of Claycomb's misleading testimony because—semantics aside—she directly linked him to the scene of the crime. The circuit court's "admission of this evidence mandates reversal of" Dr. Little's murder conviction. Id.

CONCLUSION

"While the [State] should prosecute vigorously, [its] duty is not to convict but to see justice done." Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (quoting State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007)). The State disregarded Dr. Little's constitutional rights from the outset of the investigation all the way through trial. That is not justice. "In law, the ends do not justify the means." Adams, 409 S.C. at 654, 763 S.E.2d at 348. Accordingly, the Court should reverse and remand for a new trial.

(Signature page to follow)

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: _____

Vordman Carlisle Traywick, III
SC Bar No. 102123
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ltraywick@robinsongray.com

COMMISSION ON INDIGENT DEFENSE

Robert M. Dudek
Chief Appellate Defender
SC Bar No. 1767
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Appellant General T. Little

Columbia, South Carolina

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