ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County

The Honorable Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

GENERAL T. LITTLE,

Appellant.

Appellate Case No. 2018-000561

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court err in failing to suppress evidence as fruit of the poisonous tree stemming from the illegal search of Dr. Little's vehicle parked in the driveway within the curtilage of his home?

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 shoes to one found at the crime scene?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether there was any evidence for the circuit court to find the initial search of appellant's vehicle was reasonable and justified by exigent circumstances.

II. Whether the circuit court abused its discretion in denying appellant's motion for a mistrial.

III. Whether the circuit court abused its discretion in admitting expert testimony on footwear examination.

STATEMENT OF THE CASE

In May 2016, a Charleston County Grand Jury indicted appellant, Dr. General T. Little, for the murder of Barbara Little. (R. 1255-1256). The solicitor called the case for trial on February 12, 2018, before the Honorable Thomas L. Hughston, Jr. After hearing several pre-trial motions, the court continued the case until March 19, 2018. (R. 268, l. 6-8). Assistant Solicitors Jessica Baldwin and Whit Sowards represented the State of South Carolina. (R. 308). Appellant was represented by attorneys Mason West, Ryan Schwartz, and Aimee Zmroczek. (R. 308). After a week-long trial, the jury convicted appellant for murder. (R. 1243, l. 17). Judge Hughston sentenced appellant to thirty years imprisonment. (R. 1252, l. 3). Appellant filed this timely appeal on March 27, 2018.

STATEMENT OF FACTS

The Investigation of Barbara Little's Murder

Barbara Little was appellant's ex-wife. She lived in Charleston with a grown daughter, Kim, whom she shared with appellant. (R. 442, l. 2-18). On September 22, 2015, appellant called Kim at 8:00 p.m. to see if she would meet him for dinner at The International House of Pancakes (IHOP) at 9:15 p.m. (R. 447, l. 14-15; 673, l. 10). Kim agreed and left the house at approximately 8:30 p.m. (R. 447, l. 25). As Kim walked out, Barbara locked the front glass door behind her. (R. 448, l. 10-11).

When Kim arrived at IHOP, she sat down and waited on appellant. (R. 449, l. 4-5). After waiting for some time, she called appellant, but he did not answer. (R. 449, l. 20-22). Kim called several more times, but appellant never answered his phone. (R. 449, l. 20-22). With no response from her father, Kim called her mother, but she did not answer either. (R. 449, l. 6-7, 23-25). As closing time approached the IHOP, Kim placed a to-go order. (R. 451, l. 9-12). Her receipt indicates she paid for the meal at 9:43 p.m. (R. 1309). After paying, Kim texted appellant that IHOP was closing at 10:00 p.m. (R. 452, l. 5-6). Appellant finally called Kim back and told her to meet him at a Waffle House instead. (R. 452, l. 8-12). Kim was confused why appellant wanted to go to Waffle House since she had already gotten him a to-go order, but she agreed to meet him there anyway. (R. 452, l. 20-25).

Kim then called her uncle, A.J. McConnell, and asked him to check on Barbara. A.J. lived a quarter of a mile from Barbara and Kim. (R. 340, l. 12-13). While speaking with Kim on his cell phone, A.J. went to the house and rang the front doorbell. (R. 342, l. 24-25). He did not try to open the front glass door because Barbara always kept it locked. (R. 343, l. 1-2). When he heard no response, A.J. checked a bedroom window, checked the garage, and checked the back

porch, but he could not find Barbara. (R. 343, l. 3-13). He returned to the front glass door and, surprisingly, was able to pull it open. (R. 343, l. 16-17). As he opened the glass door, A.J. felt something was wrong. (R. 343, l. 17-18). He looked down and saw a pink towel lying between the glass door and the main door. (R. 343, l. 20-21).

When he opened the main door, A.J. saw blood everywhere. (R. 343, l. 25). He followed a blood trail down the hall to the bathroom where he found Barbara's dead body. (R. 344, l. 1-5). A.J. immediately hung up the phone with Kim and called 911. (R. 344, l. 5-6). Kim called appellant to tell him she could not meet him at Waffle House because something was wrong with her mother. In response, appellant stated, "okay." (R. 453, l. 11).

Deputy Matthew Colbrun was dispatched to the scene around 10:00 p.m. (R. 542, l. 21). When he opened the front door, he immediately saw a pool of blood on the floor and blood on the walls. (R. 49, l. 23-25; 511, l. 14-15). There were also some towels and a blanket on the floor as if someone had tried to clean up the bloody mess. (R. 511, l. 23-25; 1307). As Deputy Colbrun walked through the house, he saw blood in the hallway, blood in the living room, and blood smears on the wall leading to the back. (R. 512, l. 2-7). He found Barbara's dead body on the bathroom floor. (R. 512, l. 13-14). Her head lay in a pool of blood, she was nude from the waist down, and one leg was propped on the edge of the bathroom tub. (R. 512, l. 17-19; 533, l. 17-23; 1310; 1311). Deputy Colbrun secured the scene for detectives. (R. 514, l. 2-4).

The lead detective arrived on scene around 10:30 p.m. (R. 661, l. 19). When he got there, he learned that appellant had already been contacted and had agreed to come to the scene. (R. 89, 16-18; 662, l. 1-4). The detectives found no evidence of a forced entry into the home, but the scene inside the house appeared "very chaotic." (R. 662, l. 8-16). By 11:20 p.m., appellant still had not come to the scene, even though he only lived five minutes away. (R. 89, l. 18-24;

542, l. 22). As such, detectives asked Deputy Colbrun to go to appellant's house to make contact with him. (R. 89, l. 21-24; 542 l. 21-22; 663, l. 1-3).

When Deputy Colbrun drove past appellant's house, he noticed that the front passenger window of appellant's Toyota Sequoia was rolled down. (R. 51, l. 11-12). The vehicle was also parked partially in the driveway, and partially in the mulch adjoining appellant's home. (R. 51, l. 15-16; 1311). Deputy Colbrun thought this was strange because there was plenty of room to park completely in the driveway. (R. 51, l. 23-24; 516, l. 16-17).

Deputy Colbrun pulled past appellant's house and parked his patrol vehicle. (R. 53, l. 9-10). He walked up appellant's driveway to the rear driver's side of the Toyota Sequoia. (R. 53, l. 20; 54, l. 1-17; 72, l. 19-23). Deputy Colbrun looked inside the rear and front driver's side windows of the Toyota Sequoia before approaching other vehicles in the driveway. (R. 54, l. 14-17; 72, l. 19-23). One of those vehicles was parked directly in front of the Toyota Sequoia. (R. 54, l. 14-17; 1265). After he cleared that vehicle, he walked back towards the front of the Toyota Sequoia. (R. 54, l. 14-17; 72, l. 19-23). As he walked by the passenger side, he looked through the front passenger window, which was rolled down. Inside he saw a dark stain on the center console that appeared to be blood. (R. 54, l. 1-6). He also saw a burgundy towel on the passenger seat similar to the ones he saw at the crime scene. (R. 54, l. 1-9).

Deputy Colbrun later testified that he looked in the windows of the Toyota Sequoia for officer safety to ensure no one was inside. (R. 51, l. 1-2). He did not open a door, or even touch the car. (R. 53, l. 21-24). When he looked inside the front passenger window, he was approximately one foot away. (R. 81, l. 8). Deputy Colbrun had been on the property between ninety seconds and two minutes when he observed the stain and towel. (R. 72, l. 5-6).

As Deputy Colbrun was looking inside the window of the Toyota Sequoia, appellant came out of the front door of his house. (R. 517, l. 6-7). The two men met on the front porch, and appellant told Deputy Colbrun that he knew he was there in regards to Barbara's murder. (R. 85, l. 3; 517, l. 15-16). Appellant agreed to speak with detectives at the Sheriff's Department, and Deputy Colbrun drove him there in his patrol vehicle. (R. 518, l. 3-14). Deputy Colbrun later informed detectives about the apparent blood stain and towel in appellant's Toyota Sequoia. (R. 83, l. 13-14; 518, l. 14-23).

During appellant's interview at the Sheriff's Department, he came across as smug and arrogant. (R. 1083, l. 15-22). Towards the end of the interview, a detective collected appellant's clothing in order to preserve any evidentiary value it might have. (R. 220, l. 4-7). The detective found a wedding ring inside the back pocket of appellant's pants. (R. 203, l. 11). Analysis at SLED later revealed the presence of human blood on the ring, although there was not enough DNA on it to develop a profile. (R. 203, l. 11-15). Also found in appellant's clothes was a Wal-Mart receipt from earlier that evening for the purchase of rubbing alcohol and a burgundy towel. (R. 203, l. 5-8). Law enforcement did not arrest appellant that night. Instead, a detective drove him back to his house after the interview. (R. 645, l. 21-22).

While appellant was being interviewed that night, law enforcement executed search warrants on appellant's home and Toyota Sequoia. Inside the foyer of the home, officers found a Wal-Mart bag containing a pair of men's shoes. (R. 580, l. 17-19). Testing at SLED later revealed that Barbara Little's blood was on one of the shoes. (R. 989, l.18-19; 994, l. 13-14). The victim's blood was also found on the driver's door and passenger seat of appellant's Toyota Sequoia. (R. 989, l. 15-21; 994 l. 13-14). Detectives noticed that the compartment containing the tire iron and tire jack was empty. (R. 670, l. 12-14).

In appellant's bedroom, officers smelled bleach or cleaning solution, which they felt was unusual because the bathroom did not appear to be recently cleaned. (R. 665, l. 15-25; 790, l. 4-5). The shower also appeared moist. (R. 796, l. 15). On appellant's bedroom dresser, officers found a Rule to Show Cause in Family Court for failure to pay alimony to Barbara Little. (R. 580, l. 16-17). Appellant owed Barbara Little $68,115, with $17,750 past due from the most recent family court order. (R. 503, l. 18-21). Appellant had been served with the Rule to Show Cause earlier in the day. (R. 583, l. 19-21).

The FBI also analyzed appellant's cell phone records. According to geolocational data, on the day of Barbara's murder, appellant's cell phone was in Beaufort near his employment at the Naval Hospital from 8:00 a.m. to 5:24 p.m. (R. 380, l. 5-14). At 5:48 p.m., appellant left Beaufort and arrived at his residence in Charleston at 7:13 p.m. (R. 380, l. 17-21). From 7:37 to 10:28 p.m., appellant's phone was connecting to two towers that encompassed the area around both the crime scene and appellant's house. (R. 381, l. 1-7). Significantly, between 9:19 p.m. to 9:45 p.m., appellant received ten incoming calls, all of which went unanswered. (R. 382, l. 24; 383, l. 1).

Surveillance footage from a gas station captured appellant pulling up in his Toyota Sequoia at 10:35 p.m. (R. 679, l. 3). As noted above, by that time appellant had already told detectives that he was going to come down to the crime scene. (R. 661, l. 19-20; 662, l. 1-4). The surveillance reveals appellant entered the store, hailed an employee, and removed some type of white envelope from his pocket. (R. 680, l. 10-15). The employee shakes her head and appellant leaves. (R. 680, l. 18-25). He did not pump any gas. (R. 680, l. 25).

Law enforcement also searched appellant's cell phone, revealing several deleted text messages that he received earlier on the day of the murder. Although the texts had been deleted

from appellant's phone, law enforcement could recover them because they had not yet been overwritten. (R. 908, l. 18). Several minutes after being served with the Family Court Rule to Show Cause, appellant's new wife, Carla Washington, sent him following text: "I'm not giving her a nickel if she sues your estate." (R. 504, l. 20-21; 720, l. 3-4). Minutes later she texted "the only asset you have close to that amount is your mom's house." (R. 720, 4-5). She further stated, "I'm not giving her a nickel of the life insurance. She will never come before my kids. She's trying to give you a heart attack." (R. 720, l. 7-9).

In fact, law enforcement's investigation of appellant's finances confirmed he was heavily in debt. Although he earned around $200,000 a year as a physician with the Veteran's Administration, money left his bank account as soon it was deposited. (R. 430, l. 11-13; 646, l. 5-6). Appellant's tax liens were approximately $300,000, and he had seventy-one different debts that were over ninety days past due. (R. 647, l. 7-16). Even appellant's Toyota Sequoia was subject to a title loan through Title Max. (R. 647, l. 19-21).

The day after Barbara's murder, appellant called his son Chris in an effort to reach Kim. (R. 433, l. 13-15). The two had not spoken since Barbara's murder. Appellant explained to Chris that "the cops think I did this to your mother. I need to talk to Kim to see what timeline she gave them." (R. 433, l. 22-24). Chris was shocked because appellant gave no condolences and expressed no emotion whatsoever. (R. 433, l. 24; 464, l. 3). Shortly thereafter, appellant called A.J. and asked him when he found Barbara's body. (R. 347, l. 1).

Additionally, a search of appellant's computer revealed a web browsing history that included internet searches for "forensic science blood detection," "forensic tests for blood," "false positives for blood," and "tests for the presence of blood." (R. 906, l. 1-8). The browsing

history occurred on the day following Barbara's murder. (R. 906, l. 7-8). Law enforcement ultimately arrested appellant on October 14, 2015. (R. 213, l. 24).

Appellant's Trial

Prior to trial, appellant moved to suppress the evidence seized pursuant to the search warrants on his home and Toyota Sequoia. Specifically, he argued that the evidence was the fruit of an illegal search: Deputy Colbrun's looking inside the Toyota Sequoia prior to making contact with appellant. (R. 149-154). The State argued that Deputy Colbrun's actions were reasonable both as a welfare check on appellant and for officer safety, citing State v. Herring, as favorable precedent. (R. 155, l. 14-25). The circuit court held that given the circumstances, Deputy Colbrun's actions were reasonable under both the United States and South Carolina Constitutions. (R. 159, l. 24-25; 60, l. 1). Furthermore, the court stated "as a footnote," the manner in which the car was parked with the window down was unusual. (R. 162, l. 1-3).

Appellant also moved to suppress the statements he gave during his interview and the evidence found in his clothes. As discussed above, near the end of the interview, detectives collected his clothes and found a wedding ring and Wal-Mart receipt for rubbing alcohol and a burgundy towel. Analysis at SLED revealed the presence of human blood on the ring, although there was not enough to develop a DNA profile. (R. 203, 11-15). The circuit court held the interview was admissible as a non-custodial interrogation that did not require *Miranda* warnings. (R. 215, l. 23-25; 216, l. 1-6). However, the circuit court suppressed the ring and receipt because they were not collected incident to arrest or with appellant's consent. (R. 232, l. 15-22; 233, l. 18-25).

During its case-in-chief, the State called fifteen witnesses. Near the end of the trial, the State offered expert testimony in footwear examination from SLED Agent Dawn Claycomb. (R.

946, l. 24-25; 947, l. 1-6). Before the agent testified to the jury, the State proffered testimony regarding her qualifications and the reliability of the field of footwear examination. (R. 946-955). The court also permitted *voir dire* in the jury's presence prior to qualifying her as an expert. (R. 961-963). After hearing arguments, the court overruled appellant's objections to her qualifications and the reliability of the subject matter. (R. 955, l. 11-13). Agent Claycomb testified that she compared a photograph of a bloody shoe print taken at the crime scene with inked impressions taken from the shoes found in appellant's house. (R. 969, l. 1-22). She found the two had corresponding tread designs, but could not match them because the photograph of the bloody shoe print had not been taken at precisely ninety degrees. (R. 975, l. 12-25; 976, l. 1-15).

As its final witness, the State called Dr. Ellen Reimer, the forensic pathologist who performed Barbara Little's autopsy. (R. 1013, l. 6). According to Dr. Reimer, Barbara Little died from blunt force trauma to her head. (R. 1013, l. 8). Dr. Reimer had never seen blunt force trauma of such magnitude in her career, which includes over 4,000 autopsies. (R. 1012, l. 10; 1014, l. 11-12). Barbara sustained multiple blunt force strikes to her head causing complex lacerations. (R. 1017, l. 10-15; 1018, l. 3-4; 1020, l. 1-15). The impacts to Barbara's head were so powerful that they caused a build-up of gaseous pressure underneath her cranium that ultimately tore through her scalp. (R. 1014, l. 7-9). Barbara also sustained injuries to her hands, consistent with her taking a defensive posture during the attack. (R. 1016, l. 10-11; 1021, l. 12-13). The force was so brutal that it actually ripped off a piece of Barbara's index finger. (R. 1016, l. 25; 1017, l. 1). Dr. Reimer further explained that she performs a sexual assault examination in every female autopsy. (R. 1033, l. 22-25). In this case, she took oral, vaginal, and rectal swabs, and found no evidence of any sexual trauma. (R. 1034, l. 4-5).

In closing, appellant argued that the State had not proven its case beyond a reasonable doubt. (R. 1184, l. 21-22). Although he acknowledged that the victim's blood on his shoes and in his car was "the elephant in the room," appellant argued the State had not shown how the blood got there. (R. 1183, l. 4-9). Specifically, appellant highlighted Kim's testimony that an unknown car pulled in to the driveway of Barbara's house, turned around, and drove away. (R. 1206, l. 16-19). Appellant also noted that when Kim arrived at the scene, she asked detectives to let her in the house because she knew who killed her mom. (R. 1204, l. 15-16). Appellant suggested in closing argument that Kim's violent ex-husband, who lives in Texas, could have come to the house looking for Kim and murdered Barbara instead. (R. 1205, l. 10-15; 1206, l. 9-19). Appellant argued that he could have come to the house after the murder, found Barbara's dead body, and panicked. (R. 1212, l. 13-25; 1213, l. 1-12).

The jury found appellant guilty of murder, and the circuit court sentenced him to thirty years in prison. (R. 1243 l. 17; 1252, l. 3).

STANDARD OF REVIEW

Fourth Amendment Search and Seizure

On appeals from a motion to suppress on Fourth Amendment grounds, appellate courts review questions of law de novo. State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 723-24 (2017). However, with respect to a circuit court's findings of facts, appellate courts, "must affirm 'if there is any evidence to support it,' and 'may reverse only for clear error.'" Id. The "clear error" standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005).

Denial of a Mistrial

"The decision to grant or deny a mistrial is within the sound discretion of the trial judge." State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). Declaring a mistrial "is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." Earley v. State, 418 S.E. 255, 267, 792 S.E.2d 226, 233 (2016). The circuit court's "decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Stanley, 365 S.C. at 33, 615 S.E.2d at 460.

Admission of Expert Testimony

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

ARGUMENT

I. The Circuit Court Properly Denied Appellant's Motion to Suppress Evidence Seized in Appellant's Car Because Exigent Circumstances Justified the Officer Approaching the Car to Look Through Its Windows.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The South Carolina constitution additionally prohibits "unreasonable invasions of privacy." S.C. Const. art I, § 10.[1] Pursuant to these dual constitutional provisions, warrantless searches and seizures inside a home are presumptively unreasonable. E.g. Kentucky v. King, 563 U.S. 452, 459 (2011); State v. Robinson, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014). This protection also extends to the curtilage of the home. Florida v. Jardines, 569 U.S. 1, 6 (2013); State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 723 (2017). As the United States Supreme Court recently explained, "[w]hen a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." Collins v. Virginia, 138 S.Ct. 1663, 1670 (2018).

But one recognized exception to the warrant requirement is the exigent circumstances doctrine. E.g. State v. Brown, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986); See also Collins, 138 S.Ct. at 1675 ("We leave for resolution on remand whether [the officer's] warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement."). Exigent circumstances

[1] Although in some limited situations the South Carolina constitution prohibits searches and seizures that would not otherwise violate the Fourth Amendment, see e.g. State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015), there appears to be no precedent recognizing enhanced state constitutional protection in a factual scenario similar to the case at bar. In fact, in State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007), the South Carolina Supreme Court rejected a claim that the state constitution created an additional layer of protection in a case involving a warrantless search of a car parked in the back yard of a private residence.

occur when there is "a compelling need for official action and no time to secure a warrant." State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004). For example, exigent circumstances arise "where there is a risk of danger to police or others inside or outside a dwelling." Id. (citing Minnesota v. Olson, 495 U.S. 91, 100 (1990)). A warrantless search based on exigent circumstances must be "limited in scope and duration in accordance with the exigent circumstances which required its presence." Robinson, 410 S.C. at 530, 765 S.E.2d at 570.

The circuit court correctly found that Deputy Colburn acted reasonably given not only the exigencies he faced on the night of the murder, but also the limited scope of the search. When Deputy Colbrun first arrived at the murder scene, he immediately saw a large pool of blood on the floor and blood on the walls. (R. 49, l. 23-25; 511, l. 14-15). In the foyer, there were towels and a blanket soaked in blood, apparently from an apparent attempt to clean up. (R. 511, l. 23-25; 1307). There was blood in the hallway, blood in the living room, and blood on the walls leading to the back of the residence. (R. 512, l. 2-7). In the bathroom, Deputy Colbrun saw the victim's dead body. Her head lay in a pool of blood, she was nude from the waist down, and one leg was propped on the edge of the bathroom tub. (R. 512, l. 17-19; 533, l. 17-23; 1310; 1311). Detectives quickly made contact with appellant, and he agreed to come to the scene. (R. 89, l. 16-18; 543, l. 10-11; 662, l. 1-4). After waiting almost an hour, detectives sent Deputy Colbrun to appellant's house to look for him. (R. 89, l. 16-24; 542, l. 21-22; 543, l. 1-11; 663, l. 1-3).

Furthermore, the scene at Appellant's house only enhanced Deputy Colbrun's legitimate safety concerns. As he drove by the house, Deputy Colbrun observed appellant's car parked partially in the driveway and partially in the mulch area adjoining the house. (R. 51, l. 15-16; 1265). The car's position was strange because there was plenty of room to park completely within the driveway. (R. 51, l. 23-24; 53, l. 17-18; 516, l. 16-17). Additionally, it was past

11:00 p.m., and the front passenger window was rolled down.[2] (R. 51, l. 11-12). At this point, Deputy Colbrun was justified in approaching the front door for the dual purposes of conducting a welfare check and asking appellant if he would be willing to speak with detectives about his ex-wife's murder. See State v. Counts, 413 S.C. 153, 174 n.7, 776 S.E. 2d 59, 71 n.7 (2015)(noting the distinction between the "knock and talk" investigative technique and a "welfare check.").

Given these circumstances, it was reasonable for Deputy Colbrun to look inside the car's windows before approaching the front door. The sheer amount of violence he observed at the murder scene, appellant's unexplained absence after agreeing to meet law enforcement at the scene, and the strange scene at appellant's house, made it reasonable for Deputy Colbrun to believe there was a risk of danger to police or others. Simply put, someone could have been inside the car either injured, dead, or waiting to ambush the police. It would be unreasonable to present law enforcement with the dilemma of either obtaining a search warrant to look inside the window or ignoring a potential threat.

The search was also narrowly tailored for Deputy Colbrun's safety. He did not open a door or even touch the car. (R. 53, l. 21-24). In fact, Deputy Colbrun stood approximately one foot away as he looked inside the front passenger window. (R. 81, l. 8). The entire episode—from initially walking on to the property to meeting appellant on the porch—lasted between ninety seconds and two minutes. (R. 72, l. 5-6). Furthermore, one can infer reasonableness from law enforcement's subsequent decision to obtain a search warrant for the car. E.g. State v. Johnson, 410 S.C. 10, 20, 763 S.E.2d 36, 42 (Ct. App. 2014)(noting "the reasonableness of the

[2] Appellant argues that Deputy Colbrun's testimony that he saw the window rolled down from the street "does not pass the smell test." (App. Brief 19). The State disagrees. The pictures reveal enough distance between the house and the car for someone on the street to see the window rolled down. (R. 1264-1265).

deputies' conduct can be inferred from their decision to obtain a search warrant before fully searching the room."); State v. Abdullah, 357 S.C. 344, 351 n. 3, 592 S.E. 2d 344, 348 n.3 (Ct. App. 2004)("The reasonableness of the officers' conduct may be further gleaned from the decision to secure a warrant to seize the contraband once the protective sweep was concluded and exigent circumstances unquestionably ceased to exist.").

Appellant argues that exigent circumstances did not exist because the rolled down window and position of the car in the driveway would not give Deputy Colbrun a good faith belief he or anyone else was in danger. (App. Brief 24). But this argument ignores the context in which Deputy Colbrun was responding: a brutal, fresh homicide investigation in which appellant had failed to show for an agreed meeting with detectives. Deputy Colbrun was walking in to the unknown when he approached Appellant's house. One individual had already been brutally murdered, so the potential danger to the police and others was not some abstract idea. Although appellant claims that there was no reason to believe anyone was hiding in the car (App. Brief 24), the officer on the ground assuming that risk disagreed, noting "honestly sir, you do not know." (R. 550, l. 13). Law enforcement officers never know the danger around the next corner, and on this particular night, those dangers were even more real. Deputy Colbrun had just seen them.

As such, Deputy Colbrun's actions mirror those taken by law enforcement in State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (S.C. 2009). In Herring, the defendant shot and killed the manager of a night club around midnight before fleeing in a black SUV. After police obtained the license plate number from witnesses, an officer went to the defendant's house shortly after 2:00 a.m. The officer observed a light on in the garage and peeked inside the garage window to see if the defendant was there. The officer did not see anyone, but confirmed that the black SUV

was inside the garage. The defendant subsequently claimed the officer's look inside the garage window constituted an illegal search.

Our Supreme Court disagreed, noting that "an action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action.'" Id. at 210, 692 S.E.2d at 494 (quoting Scott v. United States, 436 U.S. 128, 138 (1978). The court found that it "was objectively reasonable for [the officer] to take precautions to protect his own safety, and the safety of the officers around him, by looking into the garage to see if the suspect was there." Id. at 211, 692 S.E.2d at 495. The court also noted that the officer's "minimal intrusion" was reasonable in light of the exigent circumstances he faced.

There are several key similarities between Herring and this case. First, both involved fresh homicide investigations with rapidly developing situations. In Herring, the police arrived at the defendant's house within two hours of the initial shooting, whereas in this case the police arrived at Appellant's house approximately an hour and twenty minutes after first being dispatched to the murder scene. (R. 65, l. 21-22; 542, l. 21-24). Second, both cases involved malicious levels of violence. Herring involved a shooting death in a parking lot, and this case involved a gruesome crime scene with a half-naked victim and a home covered in blood. Third, both involved the narrowly tailored action of looking inside a window located on the curtilage of the home.

Fourth, law enforcement in both cases had an obligation to approach a home with little time to act. In Herring, the police were trying to locate a suspect of a murder committed in public. In this case, law enforcement had two reasons to locate appellant: to interview him and to conduct a welfare check. After waiting nearly an hour for appellant to arrive at the crime

scene as he had agreed, law enforcement needed to ensure he was safe. Appellant lived only five minutes away. (R. 89, l. 23-24). Law enforcement could reasonably suspect his absence meant he was intentionally avoiding law enforcement or something had happened to him.

Appellant believes Herring is inapplicable because the defendant in that case was considered a "suspect" that was "armed and dangerous." In contrast, Deputy Colbrun testified that he did not consider appellant a "suspect" and had no reason to believe he was "armed and dangerous." (App. Brief 25-26). This argument is misplaced. Deputy Colbrun's subjective understanding of appellant's status in the investigation—whatever that would even mean—is not the relevant inquiry. The relevant inquiry is the objective reasonableness of his actions in light of the dangers posed. Here, it would be reasonable for Deputy Colbrun to understand that: (1) someone was acting with malice that night, and (2) approaching appellant's house carried a real risk of coming face to face with that person. Regardless of whether Deputy Colbrun believed appellant was a suspect, he was entering a dangerous situation.

Appellant also argues that even if exigent circumstances existed when Deputy Colbrun first approached the Toyota Sequoia, those exigent circumstances ended after he cleared the other two cars and began walking back toward the front of Toyota Seqouia. At that point, appellant claims, Deputy Colbrun could rule out the presence of anyone in that car. However, the circuit court received plenty of evidence to rule otherwise. See State v. Wright, 391 S.C. 436, 442, 763 S.E.2d 324, 326 (2011)("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Deputy Colbrun testified that he was unable to see the passenger side floorboard area when he initially passed by the car. (R. 554, l. 14). Given the hour and the brevity of the initial pass by of the vehicle, the circuit court could reasonably rely on this testimony. In order to ensure no one was

either slumped down with an injury, or hiding from the police, Deputy Colbrun needed to take the additional step of looking in the front passenger window. Moreover, he would have also passed by the front passenger window in order to check the back passenger area of the SUV.

Accordingly, the circuit court received sufficient evidence to rule that Deputy Colbrun acted reasonably and in accordance with the United States and South Carolina Constitutions.

II. The Circuit Court Properly Denied Appellant's Motion for a Mistrial Because the Solicitor's Allegedly Improper Argument Simply Referenced Facts Already Admitted Into Evidence and Resulted in No Prejudice.

The circuit court has wide discretion in handling the propriety of the solicitor's closing argument to the jury, and ordinarily those rulings will not be disturbed on appeal. E.g. State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 240 (Ct. App. 1999). The State's closing argument must be confined to evidence contained in the record, and any reasonable inferences drawn therefrom. Id. The solicitor has the right not only to argue the State's version of the facts, but also to comment on the weight the jury should give those facts. Id. at 319, 240. Furthermore, failure to confine arguments to evidence contained in the record does not automatically warrant a mistrial. State v. Huggins, 325 S.C. 103, 107, 481 S.E. 2d 114, 116 (1997). A new trial will be granted only when the solicitor's "comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. On appeal, the defendant bears the burden of showing an improper comment deprived him of a fair trial. E.g. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). The circuit court's "decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005).

The circuit court properly denied appellant's motion for a mistrial because the solicitor confined her argument to facts contained in the record and reasonable inferences therefrom. As

discussed above, during appellant's interview at the Sherriff's Department, a detective collected appellant's clothing in order to preserve any evidentiary value it might have. That detective subsequently found a ring in the back pocket of appellant's pants. Testing at SLED revealed the presence of blood on the ring, although there was not enough DNA on it to develop a profile. (R. 203, l. 4-15). During pre-trial hearings, the circuit court ruled that appellant's statements during the interview were admissible, but the search of his clothes was inadmissible because it was not incident to arrest or consensual. (R. 232, l. 15-22; 233, l. 18-25).

Later at trial, the solicitor asked the detective if appellant was wearing any jewelry during the interview, to which he responded, "not that I can recall." Appellant did not object to this question or the detective's response. (R. 645, l. 19). Testimony at trial also revealed that appellant was married to a woman named Carla Washington at the time of the murder. (R. 420, l. 7; 489, l. 1). Officers further testified that during execution of the search warrant, appellant's bathroom smelled like bleach even though the bathroom did not appear to be recently cleaned. (R. 665, l. 15-19). During closing arguments, the solicitor stated, "I asked [the detective] if the defendant was wearing any jewelry at all and he said no, he didn't really remember that. Well, we know he was together with Carla at the time and yet Detective Turner--" at which point appellant objected and moved for a mistrial. (R. 1161, l. 13-16). A slide on the solicitor's demonstrative power point presentation read "no jewelry, no ring." (R. 1162, l. 15-16).

Therefore, the facts contained in the record were: (1) appellant was not wearing jewelry, (2) appellant was married to Carla Washington, and (3) appellant's bathroom smelled like bleach but had not been recently cleaned. Once could reasonably draw the inference that appellant was cleaning up after the murder and had removed his ring when law enforcement arrived at his house. The solicitor could rightfully make that argument because it was confined to reasonable

inferences from evidence contained in the record. As the solicitor noted to the circuit court, she did not reference collecting a ring, blood on a ring, or appellant's clothing. (R. 1162, l. 11-14).

As such, this case is unlike the situation in State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997), which appellant cites in his brief. (App. Brief 32-33). In Huggins, the State asked the defendant on cross-examination if she offered someone $4,000 to murder the victim. Id. at 106, 481 S.E. 2d at 116. Apparently, the defendant's brother had previously reported that information to law enforcement, but the State failed to elicit that fact at trial. Naturally, the defendant denied making the offer. Our Supreme Court held that the State's question did not amount to putting the fact into evidence, so the State could not refer to it during closing argument. In contrast, the solicitor in this case referenced testimony already received into evidence without objection, which the circuit court noted. (R. 1162, l. 17-25).

Therefore, this case is more analogous to State v. New, 338 S.C. 313, 525 S.E.2d 237 (Ct. App. 1999). In New, the State offered testimony from a cooperating co-defendant who was already serving prison time for his role in the crime. Id. at 316, 525 S.E.2d at 238. The case boiled down to the credibility of that co-defendant. Id. at 319, 525 S.E.2d at 240. During closing arguments, the State argued that the cooperating co-defendant had nothing to gain from testifying because he would be considered a "rat" in prison. Id. at 318, 525 S.E.2d at 239. The defendant argued that the State's reference to being a "rat" fell outside the scope of evidence presented at trial. Id. This Court disagreed, holding that the comment was a reasonable inference from the evidence in the record. Id. This case is similar in that the solicitor's comments dealt with a reasonable inference from evidence received into the record.

Not only did the solicitor limit her argument to evidence contained in the record, but appellant has also suffered no prejudice. People commonly fidget with, or remove their wedding

ring for a variety of daily tasks, such as working out or washing their hands after doing yard work. If appellant literally had the victim's blood on his hands, he would likely need to remove his ring to wash the blood off. Therefore, the solicitor's argument was not an underhanded attempt to cast appellant as an unfaithful husband, as he suggests. (App. Brief 33). It went to the heart of the State's case: connecting the victim's blood to appellant.

The State's case against appellant was overwhelming. See e.g. Simmons v. State, 331 S.C. 333, 338, 503 S.E. 2d 164, 165 ("On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including ... whether there is overwhelming evidence of the defendant's guilt."). Law enforcement found the victim's blood on the driver's door of appellant's car, the passenger seat of his car, and on his shoes. (R. 989, l. 14-21; 994, l. 12-13). At the time of the murder, appellant was not answering phone calls from his daughter, even though he had just arranged to meet her for dinner. (R. 449, l. 20-22). He avoided law enforcement for over an hour, and his house still smelled like bleach when it was searched later that night. (R. 665, l. 15-19; 790, l. 4-5). Appellant also had a motive to kill his ex-wife, after being served that day with a Rule to Show Cause for failure to pay over $68,000 in alimony. (R. 583, l. 9-21).

For these reasons, the circuit court did not abuse its discretion in denying appellant's motion for a mistrial.

III. The Circuit Court Properly Admitted Expert Testimony Regarding Footwear Examination Because the Witness Was Qualified and the Testimony Was Reliable.

The admission of expert testimony "is a matter within the trial court's sound discretion and the determination will not be reversed on appeal absent an abuse of discretion." State v.

Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018). The trial court must consider: (1) whether the evidence will assist the trier of fact; (2) whether the expert has acquired the requisite knowledge and skill to qualify as an expert in the field; and (3) whether the substance of the testimony is reliable. Id. A witness "is competent as an expert when he or she has acquired knowledge, skill, or experience so that he or she is better able than the jury to form an opinion on the subject matter." State v. Robinson, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012). Challenges to "the amount or quality of education or experience go to the weight of the expert's testimony and not its admissibility. Id.

A. The SLED Agent Was Qualified to Give Expert Testimony in Footwear Examination.

The circuit court properly qualified the State's expert witness because she had sufficient training and experience to testify as an expert in footwear examination. As explained to the circuit court, she initially received between eight months and a year of basic crime scene training, which involved recovery, collection, enhancement, and preservation of footwear evidence. (R. 947, l. 17-20). After that, she completed three years of footwear specific training, consisting of research, written examinations, and supervised casework. (R. 947, l. 21-24). At the end of those three years, she passed a competency test. (R. 948, l. 1-3). She has also received training with an internationally recognized expert in the field and completed a class with the International Association of Identification. (R. 959, l. 8-18). In addition to her training, she served as the lead agent on fifteen to twenty cases of footwear examination. (R. 958, l. 2-3). Every year she must pass a proficiency exam to continue working in footwear examination. (R. 962, l. 15).

This training puts the SLED agent in a better position than the jury to determine whether the shoe print found at the scene matched the shoes law enforcement seized from Appellant's

house. See e.g. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997)("To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.") As such, the circuit court did not abuse its discretion in qualifying her as an expert. Appellant's challenges to the agent's qualifications go to the weight of her testimony, not its admissibility. See e.g. White, 382 S.C. at 273-274, 676 S.E.2d at 688.

Appellant argues that qualifying the SLED agent as an expert is akin to having a first-year associate provide expert testimony on legal malpractice. (App. Brief 37). The analogy is ill-suited to this case. The type and amount of training necessary to provide expert testimony depends on the subject matter. For example, the training needed to become an expert in brain surgery varies from the training needed to run a blood hound, or compare shoe prints. Equating the two is comparing apples to oranges.

This is not a legal malpractice case. Comparing the SLED agent's training to a first-year associate confuses the issue because the law involves both art and science that is inherently different from comparing shoe prints. The relevant issue is whether the agent's training and experience made her more qualified than the jury to compare the shoe print with the shoes recovered from Appellant's house. Although outside the realm of lay knowledge, it is not rocket science. Accordingly, the circuit court did not abuse its discretion in finding that she met that threshold.

B. Footwear Examination is an Uncontroversial and Reliable Discipline.

Appellant also argues that the circuit court abused its discretion in admitting the SLED agent's expert testimony because it was unreliable. (App. Brief 38). In reaching this conclusion,

he applies the factors articulated in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). In Council, our Supreme Court identified four relevant factors in assessing reliability in a case involving mitochondrial DNA analysis. Id. at 18-20, 515 S.E.2d at 516-518. However, since then the court has recognized that "the foundational reliability requirement for expert testimony does not lend itself to a one-size-fits all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific testimony." White, 382 S.C. at 274, 676 S.E.2d at 688. More recently, the court noted that although both scientific and nonscientific expert testimony require a finding of reliability, "there is no formulaic approach for determining the reliability of nonscientific testimony." Jones, 423 S.C. at 638-639, 817 S.E.2d at 272. Therefore, as a nonscientific, technical field, there is no "formula" for assessing the reliability of footwear examination. See Id.

Without a formulaic approach, a good starting point for assessing reliability is analyzing how other jurisdictions have handled the issue. As the circuit court likely understood, footwear examination is not controversial. Although appellant describes the field as "sketchy and undeveloped" (App. Brief 41), courts across the country have held this type of expert testimony is reliable.[3] For example, in United States v. Ford, the Third Circuit Court of Appeals noted that "[c]ourts have admitted shoeprint identification evidence for a long time." Ford, 481 F.3d 215, 218 n. 4. It upheld the district court's finding that "there was general acceptance of shoeprint analysis in both the federal courts and the forensic community, the theory has been subject to

[3] See United States v. Ford, 481 F.3d 215 (3d Cir. 2007); United States v. Allen, 390 F.3d 944 (7th Cir. 2004); State v. Gay, 145 A.3d 1066 (N.H. 2016); Berks v. State, 427 S.W.3d 98 (Ark. Ct. App. 2013); Jennings v. State, 123 So. 3d 1101 (Fla. 2013); Rodriguez v. State, 30 A.3d 764 (Del. 2011); Castellon v. State, 302 S.W.3d 568 (Tex. Ct. App. 2009); State v. Reid, 91 S.W.3d 247 (Tenn. 2002); West v. State, 755 N.E.2d 173 (Ind. 2001).

peer review and publication, the potential error rate is known, and there are standards and techniques commonly employed in the analysis." Ford, 481 F.3d at 218.

Similarly, the Texas Court of Appeals in Castellon v. State noted, "the field of expertise in shoe print comparison is not complex. Nor is the degree of scientific expertise required high, particularly when the discipline is compared with, for example, DNA profiling. Indeed, Texas courts have long admitted lay and expert testimony on shoe print comparison." Castellon, 302 S.W.3d 568, 572 (citations omitted). Because this type of expert testimony had been recognized as admissible for decades, a complete "gatekeeper" hearing was not even required in that case. Id. at 573. As the court explained, "it is unnecessary for trial courts to reinvent the scientific wheel in every trial." Id.

Given the uncontroversial nature of this type of expert testimony, the circuit court did not abuse its discretion in finding it reliable. As explained at trial, the SLED agent applied techniques she learned during her three years of training at a statewide law enforcement agency. (R. 947, l. 17-25). SLED did not reinvent the wheel of footwear examination, or employ techniques made up from whole cloth. Instead, in addition to its own training program, SLED sent this agent to train with an internationally recognized expert in the field and with the International Association of Identification. (R. 959, l. 8-18). In other words, the agent applied techniques used not only throughout South Carolina, but also throughout the greater law enforcement community. As such, the sources of her methodology are inherently open to challenge and refinement from law enforcement, defense attorneys, or general skeptics. This was not a case of a keystone cop making something up as she went along and calling it an expert opinion.

Furthermore, the SLED agent explained that every case requires a peer review by another qualified examiner to assess her work. (R. 948, l. 5-7). The peer review serves as an additional quality control mechanism to ensure the agent has not missed anything. (R. 960, l. 7-13). Peer review of casework carries even greater importance in this particular field. As explained by the court in Ford, the reliability of fields like footwear examination "rests upon the experience and observational powers of their practitioners." Ford 481 F.3d at 218, n. 5. Because a second practitioner performed a peer review on this case, the agent's testimony was based not on one individual's experience and observational powers, but two. As such, the peer review enhanced the reliability of her testimony.

The agent's testimony also revealed other quality control methods employed on this case. For example, she explained that photographs of prints taken at a crime scene must be taken at precisely ninety degrees from the ground, preferably with a tripod. (R. 968, l. 9-12). Deviations as small as a millimeter can affect the examination. (R. 968, l. 16-17). In this case, because the photograph of the print was not taken at precisely ninety degrees, the agent's testimony was limited. She could only determine that the shoe print at the crime scene had a corresponding tread design with the shoes taken from appellant's house, but could not elaborate further. (R. 975, l. 12-14). Although the deviation from the ninety degree standard limited the scope of the agent's opinion, it enhanced the reliability of her testimony by illustrating the quality control protocols she uses.

Nevertheless, appellant argues that this case is similar to the testimony found unreliable in the Jones[4] case, but there are enormous differences between the two. In Jones I, the State

[4] State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001)(Jones I) and State v. Jones, 383 S.C. 535, 681 S.E.2d 580 (2009)(Jones II).

introduced expert testimony in the field of "barefoot insole impression." Essentially, this field involves comparing inked impressions of a suspect's feet, photos of a suspect's known insole, and a standing cast of a suspect's foot, with impressions of an unknown shoe insole. Jones I, 343 S.C. at 572, 541 S.E.2d at 818. The leading researcher in the field testified for the State, but acknowledged that he was still collecting data to determine what standards are relevant for points of comparison. Id. at 573, 541 S.E.2d at 819. He also testified that much of the earlier work in the field had been discredited. Id. Moreover, the officer that analyzed the insoles testified that neither he, nor anyone else in the agency, had ever done this type of test before. In fact, there was no written protocol in place at the time he conducted the test. Id. 574, 541 S.E.2d at 819. As such, the court held the testimony was unreliable and remanded the case for a new trial.

In Jones II, the State again offered barefoot insole impression evidence, but there had been no additional research developments to validate the field. Jones II, 383 S.C. at 550, 681 S.E.2d at 588. The officer also conducted no additional tests after the first trial. Id. at 553-54, 681 S.E.2d at 589. The court further noted that a publication from one of the State's experts revealed "[t]he consensus among experienced examiners is that identifications are rare because the random individual characteristics necessary for an identification are rarely encountered." Id. at 556-57, 681 S.E.2d at 591. Thus, the court assessed that peer reviewers found the technique unreliable. Id. Also noteworthy to the court, both SLED and the FBI stopped conducting barefoot insole analysis. Id.

This case differs from Jones in several important respects. First, the forensic and legal communities generally accept shoe print comparison as an uncontroversial technique. See Ford, 481 F.3d at 218. In contrast, SLED and the FBI have discontinued barefoot insole impression examinations. Jones II, 383 S.C. at 557, 681 S.E.2d at 591. Second, the officer in Jones had

never previously conducted a barefoot insole examination, or received any formal training in the field. In fact, the agency did not even have a training program or written protocol for testing in this area. In this case, the SLED agent had previously conducted between fifteen to twenty examinations and had over three years of training both in house and with outside agencies. Third, the State's expert in Jones published a work that cast doubt on the reliability of barefoot insole impressions. Id. at 556, 681 S.E.2d at 591. No such doubt exists with the shoe print comparisons involved in this case.

A better case for comparison involves a prosecution for criminal sexual conduct, with a defendant whose last name, coincidentally, is also Jones. In State v. Jones, 423 S.C. 631, 817 S.E.2d 268, (2018), the State offered expert testimony to explain the delayed disclosure of child sexual abuse victims and the behavior of non-offending caregivers. The victims in the case did not immediately disclose the abuse, and their mother failed to report it to law enforcement. The defendant argued that the trial court failed in its duty to ensure reliability because the expert witness could not identify academic studies supporting her opinions, or whether those studies had been peer reviewed. The Supreme Court disagreed, noting:

> We find Jones's argument conflates reliability with perfection. There is always a possibility that an expert witness's opinions are incorrect. However, whether to accept the expert's opinions or not is a matter for the jury to decide. Trial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence. Here, [the expert] met the threshold reliability requirement when she testified her methods were published in professional articles and trade publications, subject to peer review, and uniformly accepted and relied upon by other professionals in the field.

Jones, 423 S.C. 639-640, 817 S.E.2d at 272.

The case at bar also involves an expert using techniques generally relied upon by professionals in the field and subject to peer review. As discussed above, the circuit court

received extensive testimony to ensure its reliability. As such, the circuit court did not abuse its discretion in allowing the jury to consider the evidence.

C. Even Assuming the Circuit Court Abused Its Discretion in Admitting Expert Testimony on Footwear Examination, the Error is Harmless.

A trial court's error is harmless when "it appears beyond a reasonable doubt that the error did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012)(quoting State v. Charping, 313 S.C. 147, 437 S.E.2d 88 (1993). "Whether an error is harmless depends on the particular facts of each case and upon a host of factors including:

> The importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002)(quoting Delaware v. Van Arsdall, 475 U.S. 673 (1986).

Even assuming that the circuit court abused its discretion in admitting expert testimony on footwear examination, this error would be harmless. The SLED agent testified that the shoe print at the crime scene had a corresponding tread design with the shoe seized from appellant's house. (R. 975, l. 12-14). The circuit court permitted a full cross-examination in which the agent conceded she could not match the appellant's shoes to the print at the crime scene. (R. 978, l. 23-25). Rather, she could only "say the overall tread design is similar." (R. 703, l. 18-19).

Therefore, the agent's testimony is cumulative to other evidence that actually connected appellant's shoes to the crime scene. As discussed above, law enforcement found the victim's blood on the same pair of shoes. (R. 994, l. 12-14). Law enforcement also discovered the

victim's blood on the driver's door and passenger's seat of appellant's car. (R. 994, l. 12-14). In light of this testimony, any error would be harmless.

As such, this case is similar to the situation in State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012). In Tapp, the State presented testimony of an expert in crime scene analysis and victimology, who gave an opinion on how and why a murder occurred. At the time of the trial, the law instructed that reliability of nonscientific expert testimony was exclusively a jury determination. The Supreme Court held that although the circuit court should have vetted the testimony for reliability, the error was harmless. The court explained that in light of a DNA test connecting the defendant to the crime scene and the defendant's confession to cellmates, the expert testimony on crime scene analysis was harmless. Id. at 391, 728 S.E.2d at 476.

The same reasoning applies here. In light of the State's other evidence, particularly the victim's blood found on the same pair of shoes, testimony on footwear examination was cumulative. Any error in its admission would be harmless.

CONCLUSION

Law enforcement acted reasonably and with measured restraint in responding to this violent, chaotic murder scene. The law requires that appellant receive a fair trial, and he did. For the reasons discussed above, it is respectfully submitted that the appeal be dismissed.

Respectfully submitted,

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May 31, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
The Honorable Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

GENERAL T. LITTLE

Appellant.

CERTIFICATE OF COMPLIANCE

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

This 31st day of May, 2019.

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