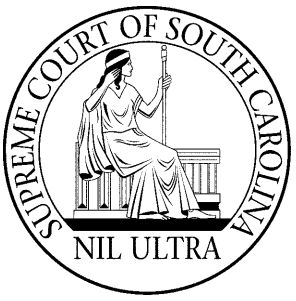

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 15
April 11, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

Ex Parte: Mickey Ray Carter, Jr. and Nila Collean Carter, Movants,

Of Whom Nila Collean Carter is Petitioner.

In Re:

John Roe and Mary Roe, Respondents,

v.

L.C. and X.C., minors under the age of seven years, Defendants.

Appellate Case No. 2017-000806

ORDER

The petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn. Any petition for rehearing regarding the substituted opinion must be actually received by this Court within five (5) days of the date of this order.

s/ John W. Kittredge A.C.J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ Doyet A. Early, III A.J.

Columbia, South Carolina
April 11, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex Parte: Mickey Ray Carter, Jr. and Nila Collean Carter, Movants,

Of Whom Nila Collean Carter is Petitioner.

In Re:

John Roe and Mary Roe, Respondents,

v.

L.C. and X.C., minors under the age of seven years, Defendants.

Appellate Case No. 2017-000806

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
Edgar H. Long, Jr., Family Court Judge

Opinion No. 27786
Heard January 31, 2018 – Filed March 21, 2018
Withdrawn, Substituted, and Refiled April 11, 2018

REVERSED AND REMANDED

A. Mattison Bogan, of Nelson Mullins Riley and Scarborough, LLP, of Columbia, for Petitioner.

K. Jay Anthony, of the Anthony Law Firm, PA, of Spartanburg, Emily McDaniel Barrett and Thomas P. Lowndes, Jr., both of Charleston, for Respondents.

PER CURIAM: In this adoption matter, Petitioner Nila Collean Carter sought to revoke her consent to the adoption of her two biological children. Throughout the resulting procedural morass, Petitioner was never provided an opportunity to be heard on the merits of her claim before the adoption was finalized. We issued a writ of certiorari to review the court of appeals' unpublished decision affirming the family court's denial of Petitioner's motion to set aside the final adoption decree pursuant to Rule 60(b), SCRCP. *Ex Parte Carter*, Op. No. 2017-UP-043 (S.C. Ct. App. filed Jan. 13, 2017). Because Petitioner's Rule 60(b) motion was timely filed and sufficiently alleged extrinsic fraud, we reverse and remand this matter to the family court for further proceedings.

I.

Petitioner and her ex-husband Mickey Ray Carter, Jr.[1] are the biological parents (collectively "the Carters") of two children—a daughter born in 2009 and a son born in 2011. The Carters were married in May 2010, and by early 2014, the couple was experiencing financial and marital stressors. Given the difficult circumstances facing the Carters and the unavailability of extended family support, the Carters began discussing private adoption as an alternative that they believed was preferable to the children being placed in foster care.

Petitioner reached out to attorney Emily McDaniel Barrett, who arranged the

[1] Although Mr. Carter participated in proceedings below, he did not join the petition for rehearing to the court of appeals and is not a party on certiorari to this Court.

adoption on behalf of both couples.[2] From the beginning, Petitioner insisted on taking an active part in the adoption process and explained that she wanted an open adoption because that was "the only way this won't destroy me. I need them to know how much I love them."

In April 2014, the Carters each signed a consent to adoption of their two children by Respondents John and Mary Roe ("Adoptive Couple"). Four days later, the adoption action was filed. Notably, the documents signed by the Carters included a provision waiving service and notice of the adoption action.

Eight days after the adoption action was filed, the Carters each executed a notarized document titled "Withdrawal of Parental Consent to Adoption" purporting to revoke consent on the basis of emotional duress. Thereafter, the Carters sought through many avenues to withdraw their consent.[3]

The South Carolina Adoption Act provides that:

> Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned, and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdraw consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of the final decree of adoption renders any consent or relinquishment irrevocable.

S.C. Code Ann. § 63-9-350 (2010).

The Carters were initially represented by counsel, who filed on their behalf a

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[2] Petitioner's brief indicates that she located Ms. Barrett through her website in the course of an internet search and that Petitioner believed Ms. Barrett represented both the Carters and the Roes.

[3] Once the Carters expressed an intent to challenge the validity of their consents, they were no longer permitted visitation with the children.

motion to intervene in the adoption action, along with supporting affidavits to contest the validity of the consents.[4] At the motion hearing before the family court, the Carters' counsel explained that the Carters faced difficult life circumstances and felt pressured to sign the consents. In support of his argument, counsel cited this Court's decision in *McCann v. Doe*, 377 S.C. 373, 660 S.E.2d 500 (2008), for the proposition that the confluence of several emotional stressors can render an otherwise validly executed consent to adoption involuntary and revocable.

Counsel for the Adoptive Couple opposed the motion, arguing that because adoption proceedings are private and confidential proceedings, the Carters' recourse was not as intervenors in the adoption action but through a separate action challenging the consents "outside the adoption itself." The family court agreed and denied the Carters' motion to intervene, stating "I don't believe procedurally that's the way that this should be handled." The family court expressly declined to reach the merits of whether the consents should be withdrawn. From this point forward, the Carters proceeded pro se.[5]

At the direction of the family court, a week later, the Carters filed a separate action, along with affidavits supporting their challenge to the validity of the consents, and requested that a hearing be scheduled before the final adoption hearing. Between August 2014 and April 2015, the Carters appeared and asked to be heard at *seven separate hearings* before six different family court judges, each of whom refused to address the merits of the Carters' claim based on perceived procedural abnormalities and gave the Carters inconsistent (and at times incorrect) instructions on the proper procedure through which the Carters should have pursued their claim.[6] In every instance, the Carters timely followed these

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[4] It appears the Carters' efforts to intervene were delayed due to confusion over the county in which the (sealed) adoption proceeding was pending; the Carters were residents of Horry County and the Adoptive Couple resided in Berkeley County, yet the adoption action was filed in Charleston County.

[5] The record reveals the Carters wished to proceed with the assistance of counsel but could not afford additional legal fees following the initial hearing.

[6] Family court judges assigned to hear this matter avoided hearing the Carters' case for a variety of reasons, including the claim of insufficient docket time requested, finding fault with the Carters for doing precisely what other family court judges told them to do, and perhaps the most troubling reason for not hearing the Carters'

instructions. Nevertheless, the Carters' claim was never evaluated on the merits.

Meanwhile, the Adoptive Couple, through counsel, requested a final adoption hearing. The Adoptive Couple's counsel gave no notice to the Carters. On December 15, 2014, a final hearing was held in the adoption case and a final order of adoption was issued on that date by a *seventh* family court judge who, according to the record before us, was unaware of the Carters' pending challenge to the consents. Although counsel for the Adoptive Couple was well aware of the Carters' separate pending challenge, the final adoption hearing transcript includes no reference to this. Rather, when the family court judge asked if there was anything else that needed to be placed on the record before the first witness was sworn, counsel for the Adoptive Couple never mentioned the Carters' pending action and stunningly responded "I think we're good, Your Honor." Conversely, it would be stunning to think a family court judge would have proceeded with the adoption had the judge been made aware of the separate pending action. However, allegedly without the benefit of this critical information, the family court entered an order approving the adoption.

Armed with the final adoption order, counsel for the Adoptive Couple filed a motion to dismiss the Carters' separate action challenging the validity of their consents. At the April 1, 2015 motion hearing, counsel for the Adoptive Couple "ask[ed] for this matter to be dismissed on the grounds that there's been an adoption granted and everything that has been filed in the [Carters'] Amended Petition . . . is a moot point right now, and if they have any issues to take up, it would be based on extrinsic fraud and they have not pled that." The court responded by reciting the last sentence of section 63-9-350—"The entry of the final decree of adoption renders any consent or relinquishment irrevocable."

Petitioner, understandably frustrated that the adoption had been finalized before the separate action had been heard, informed the court that "we had a right to be notified of that final hearing and they didn't notify us of that final hearing and

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case was the hearing "should not have been scheduled on a Friday." Mr. Carter eventually abandoned his claim; we find it remarkable that Petitioner did not throw in the towel as well.

allow us to . . . appear in court to explain that."[7] The family court understood the Carters' position—"your argument [is that] you were . . . robbed of your opportunity to appear and contest the validity of your consent[s]." In this regard, the court agreed with counsel for the Adoptive Couple that the Carters only remaining recourse was to file a motion alleging extrinsic fraud. The court further informed the Carters that their challenge should have been "in connection with the adoption proceeding." The court then found fault with the Carters' filing of the separate action: "You see you don't file a new action trying to undermine or say that our consents are invalid. You can't do that because the law won't allow it, okay . . . that would be handled not by a separate action as you've done." As noted above, the Carters' filing of the separate action was directed by another family court judge who rejected the Carters' attempt to challenge their consents in connection with the adoption proceeding.

The Carters wasted no time in filing the motion suggested by the family court judge. Just six days after the April 1, 2015 hearing, the Carters filed a Rule 60, SCRCP motion in the adoption action, requesting relief from the final adoption order, alleging the consents were involuntary and the product of duress, coercion, and extrinsic fraud in that the Carters' attempts to be heard were systematically thwarted by the Adoptive Couple's attorneys.[8]

Three days later, a different family court judge summarily denied the Carters' Rule 60(b) motion on the ground that it was untimely. The Carters appealed, arguing the family court erred in denying their Rule 60 motion as untimely and that the validity of the adoption was compromised because the Carters' challenge to their consents was not resolved before the adoption was finalized.

The court of appeals affirmed the family court's denial of the Carters' Rule 60(b) motion. *Ex Parte Carter*, Op. No. 2017-UP-043 (S.C. Ct. App. filed Jan. 13,

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[7] It appears from Respondents' rehearing petition that the Carters were sent an email in the morning of December 15, 2014, advising them of the adoption hearing later that day.

[8] In response, counsel for the Adoptive Couple filed a motion, along with a supporting memorandum, and affidavits seeking a Rule to Show Cause for why the Carters should not be held in civil and criminal contempt for "proceed[ing] to file a series of motions in an attempt to disrupt the adoption."

2017). Thereafter, this Court issued a writ of certiorari to review the court of appeals' decision.

II.

Petitioner argues the court of appeals erred in finding her Rule 60(b) motion did not allege extrinsic fraud and that the family court erred in finding the motion was not timely filed. We agree.

A.

Once a final adoption decree is entered, a *validly* executed consent to adoption is irrevocable. S.C. Code Ann. § 63-9-350 (emphasis added). However, a court retains its authority to grant collateral relief from an adoption decree on the ground of extrinsic fraud. S.C. Code Ann. § 63-9-770(B) (2010). Extrinsic fraud "is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 718 (2000) (quoting *Hilton Head Center of S.C. v. Pub. Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

In their Rule 60(b) motion, the Carters alleged, "under 63-9-770 there was extrinsic fraud committed . . . by not allowing us the right to be heard on filing multiple motions of intent to contest consents and to attack the merits of the adoption with this Honorable Court." The motion further stated:

> Mickey and Nila Carter have tried repeatedly to withdraw[] consents which [were] illegally obtained and they informed . . . the Adoptive Couple[,] . . . in addition to this Honorable Court yet they have never been heard on this issue[,] and further, [counsel for the Adoptive Couple] and the Law firm she works for have continuously attempted to block our access to the Honorable Court so we may be heard on this matter.

The court of appeals erred in finding the Carters' Rule 60(b) motion did not sufficiently allege extrinsic fraud. The Carters' motion expressly asserted

"extrinsic fraud" and specifically cited section 63-9-770, which is the statutory provision addressing the family court's authority to set aside an adoption decree on that basis. The motion further alleged the Carters were misguided and misled into signing the consents and waiving the right to notice of the proceedings and that their subsequent attempts to appear and be heard as to the validity of the consents were repeatedly thwarted by opposing counsel.

Moreover, at the heart of the extrinsic fraud claim is the Adoptive Couple's effort, through counsel, to push through the final adoption hearing knowing full well of the Carters' repeated requests to be heard on their pending separate action. Most troubling is counsel's alleged failure to be candid with the family court when asked if there was "anything else." These specific averments manifestly state a claim for extrinsic fraud. Thus, extrinsic fraud was sufficiently alleged in the Rule 60(b) motion, and the court of appeals erred in affirming the family court's dismissal on that basis. *See Hagy*, 339 S.C. at 431–32, 529 S.E.2d at 718 (holding allegations that fraudulent actions which induced a mother to sign a consent to adoption thereby waiving her right to notice and appearance in the adoption proceeding sufficiently alleged extrinsic fraud); *Greer v. McFadden*, 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed); *cf. Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart*, 827 N.W.2d 169, 172–74 (2013) (finding an attorney's failure to disclose to the family court the existence of separate pending actions that could potentially impact the family court's division of marital assets constituted extrinsic fraud). We turn now to the issue of whether the family court erred in finding the Carters' Rule 60(b) motion was untimely.

B.

Rule 60(b), SCRCP, provides that a party may be relieved from a final judgment on the basis of "fraud, misrepresentation, or other misconduct of an adverse party." A motion pursuant to Rule 60(b) "shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken."

The final adoption decree was entered December 15, 2014. At a hearing on April 1, 2015, the family court instructed the Carters to file the Rule 60(b) motion. The Carters did so on April 7, 2015. Because this period of time is both reasonable and

not more than one year after the entry of the final adoption decree, we find the family court abused its discretion in finding the Carters' Rule 60(b) motion was untimely. *See Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (where Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely). Because the Rule 60(b) motion was timely filed, Petitioner is entitled to an opportunity to be heard on the merits of her claim therein.

III.

In reversing, we have made plain our grave concern for the manner in which this matter was handled in the family court. We, however, emphasize that we express no opinion on the merits of Petitioner's claim that her consent was not validly obtained.

We reverse the court of appeals' decision and remand this matter to the family court[9] for a hearing on the merits of the Rule 60(b) motion. We direct the family court to appoint an attorney to represent Petitioner in the proceedings upon remand within ten (10) days of the date the remittitur is sent to the lower court. We further direct this matter to be heard within ninety (90) days of the date the remittitur is sent and that an order addressing the merits be issued by the family court within thirty (30) days of the date of the hearing.

REVERSED AND REMANDED.

KITTREDGE, Acting Chief Justice, HEARN, FEW, JAMES, JJ., and Acting Justice Doyet A. Early, concur.

[9] Given judicial department budgetary constraints, we direct the chief administrative family court judge to assign this matter to any available judge.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Paula Reed Rose, Appellant.

Appellate Case No. 2015-002445

Appeal From Greenville County
R. Lawton McIntosh, Circuit Court Judge

Opinion No. Op. 5551
Heard February 5, 2018 – Filed April 11, 2018

AFFIRMED

Appellate Defenders Taylor Davis Gilliam and John Harrison Strom, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Vann Henry Gunter, Jr., both of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, all for Respondent.

SHORT, J.: Paula Reed Rose appeals her convictions of third-degree arson, filing a false police report, burning personal property to defraud an insurer, and making a false insurance claim to obtain benefits for fire loss, for which the trial court sentenced her to a cumulative term of five years' home incarceration with five

years' probation. On appeal, Rose argues the trial court erred by (1) refusing to direct a verdict of acquittal on all charges when the State failed to present substantial circumstantial evidence of her guilt, (2) qualifying Investigator Benjamin Cannon as an expert in the origin and causes of fires, and (3) permitting the expert testimony of Investigator Charles Gonzalez regarding the use of his accelerant detection canine at the scene. We affirm.

FACTS

On the morning of July 27, 2012, Paula Rose called 911 to report a burglary. During the call, Rose stated three men were in her garage threatening her and demanding she open a gun safe. While on the phone with the 911 dispatcher, Rose heard a strange noise. She stepped out of her bedroom and realized a wicker couch on her back porch was on fire. The responding authorities found Rose outside worried about her pets who were still inside the home. Rose was covered in soot and wore jeans, a black shirt, and open-toed shoes. The firemen deduced there were two fires—one on the back porch and one on the front porch; however, the only active fire was in the rear of the home.

Shortly after the responders extinguished the fire, Investigator Randy Morgan arrived. The only potential traces of the alleged burglars were some footprints and disposed latex gloves[1] near the front and back porches. Investigator Morgan testified nothing was stolen from the property, but both of the gates and the garage were found open.

During Investigator Cannon's preliminary investigation, he found a red gas can on the front porch and a yellow gas can on the back porch. He noted "the aroma of gasoline on the front and prob[ably] kerosene or diesel-type on the back porch." Investigator Cannon subsequently called his colleague Investigator Gonzalez and his accelerant detection canine Misty to the scene. Misty alerted to multiple areas on the front and back porch.

[1] SLED analysts were unable to lift fingerprints from the gloves, and the DNA test results were inconclusive.

After taking Rose's statement, Investigator Morgan met with Investigators Cannon and Gonzalez to compare their findings. Based upon various oddities and inconsistencies, such as the location of the fires in relation to the alleged burglary; discrepancies between Rose's 911 call and victim statement; the superficial damage to the safe; the lack of stolen items; and Rose's calm, unaffected demeanor, all three investigators felt the case needed further investigation. Thereafter, they returned to the scene to further investigate the garage and interior of the home.

Describing the damage to the safe, Investigator Cannon testified there were "a dozen or so marks" on the "upper right hand corner" and a few marks around the dial. Investigator Cannon explained the paint appeared chipped but there was no substantial damage to the safe. Looking for an item potentially used by the assailants to attempt to gain entry to the safe, the investigators found a small hatchet sitting on a shelf in the garage that appeared to be undisturbed. The investigators noted the hatchet had paint chips on the blade. While examining Rose's bedroom, Misty alerted to a pair of slippers.

Before trial, Rose moved to exclude evidence of Misty's alerts and the testing results arising therefrom, arguing the use of a canine in this context was unreliable. Relying upon *Florida v. Jardines*,[2] the trial court ultimately denied Rose's motion, finding testimony regarding Misty's alerts would be admissible if the State established the proper foundation by showing the dog was properly certified through a recognized program. Rose renewed this objection at trial, and the trial court overruled the objection, later stating,

> [A]t the end of the hours of preliminary testimony we had yesterday I don't feel the need to have any further [argument]. I know what I'm gonna hear . . . my ruling will be . . . that as long as the appropriate foundation is laid on the admission of the testimony about the . . . dog then [it will] be allowed . . . .

At the close of the State's case, Rose moved for a directed verdict on all charges, arguing the State failed to present substantial circumstantial evidence of her guilt. Although the trial court noted its concern regarding the fraudulent insurance claim

[2] 569 U.S. 1 (2013).

charge, the court ultimately denied Rose's motion as to all indictments. The jury found Rose guilty of all charges as indicted, and the trial court sentenced her to five years' home incarceration with five years' probation. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). Thus, "this [c]ourt is limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Accordingly, "[t]his [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Id.*

LAW/ANALYSIS

I. Directed Verdict

Rose argues the trial court erred in denying her motion for a directed verdict as to all charges because the State failed to show substantial circumstantial evidence tending to prove her guilt. Rose asserts the evidence the State presented fails to rise above vague suspicion. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *Id.* "On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." *State v. Stanley*, 365 S.C. 24, 41, 615 S.E.2d 455, 464 (Ct. App. 2005). "If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury." *State v. Mollison*, 319 S.C. 41, 46, 459 S.E.2d 88, 91 (Ct. App. 1995). "Nevertheless, a[n appellate] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). "[T]he lens through which a[n appellate] court considers

circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *Id.* "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, th[is] court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id.* at 237, 781 S.E.2d at 354.

In South Carolina, a person is guilty of third-degree arson if she "wilfully and maliciously . . . sets fire to, burns, or causes a burning which results in damage to a building or structure." S.C. Code Ann. § 16-11-110(C) (Supp. 2017). Section 16-11-130 of the South Carolina Code (2015) provides:

> Any person who . . . wilfully and with intent to injure or defraud an insurer sets fire to or burns or causes to be burned or . . . aids, counsels, or procures the burning of any . . . personal property of any kind, whether the property of himself or of another, which is at the time insured by any person against loss or damage by fire is guilty of a felony . . . .

Additionally, a person is guilty of a felony if she:

> wilfully and knowingly *presents or causes to be presented* a false or fraudulent claim, *or any proof in support of such claim*, for the payment of a fire loss . . . upon any contract of insurance or certificate of insurance which includes benefits for such a loss, or prepares, makes, *or subscribes to a false or fraudulent account*, certificate, affidavit, or proof of loss, or other documents or writing, with intent that such documents may be presented or used in support of such claim . . . .

S.C. Code Ann. § 16-11-125 (2015) (emphasis added).

Subsection 16-17-722(A) of the South Carolina Code (2015) provides that "[i]t is unlawful for a person to knowingly file a false police report."

In the case at bar, Rose called 911, alleging three men in her garage were threatening her and seeking entry to her gun safe. During the call, Rose informed the dispatcher she heard a "crackling" noise and subsequently realized a wicker couch on her back porch was on fire. When Benjamin Temple, a good samaritan, stopped to inspect the voluminous smoke he saw from the road, Rose never mentioned the burglary or cause of the fire. In fact, when Temple asked if anyone else was inside the home, Rose replied only her dog remained inside. Further, the investigating authorities were unable to find the three men, and nothing was stolen from the property. Additionally, Investigators Cannon, Morgan, and Gonzalez found the damage to the gun safe to be superficial with most of the shallow marks on the upper right side rather than near the dial. The investigators testified they found the hatchet likely used to make the markings on a shelf that seemed undisturbed. At trial, trace evidence expert Megan Fletcher testified the paint chips found on the hatchet and safe either originated from the same item or an item containing the "same physical and chemical characteristics."

In addition to the fire debris on the front and back porches, Misty also alerted to a pair of Rose's slippers in the bedroom, which were not the shoes Rose wore during the fire. Fletcher testified the slippers tested positive for ignitable liquids. Additionally, Fireman Brandon Barwick testified that in September after the fire at her home, Rose came to the Wade Hampton Fire Department in search of burn records for her property. According to Barwick, Rose stated she wanted the records to provide an explanation for why Misty alerted to her slippers. She explained she previously burned leaves on her property while wearing them. However, Fletcher testified ignitable liquids vaporize quickly, so the products found on the tested items would last "less than a few days," and, according to the Forestry Commission's records, the last controlled burn on the Rose property occurred on May 29 – a couple of months before the fire.

Fletcher further testified samples from the jeans and shirt Rose wore during the fire also tested positive for ignitable liquids. Fletcher testified that "for [her] to be able to determine that a[n] ignitable liquid was found, . . . a liquid would have had to have been deposited on [the collected] items." Fletcher explained the ignitable liquids would have to be in liquid form to be deposited onto an item. Fletcher clarified "ignitable liquids are not found in smoke from a fire scene," and therefore, an ignitable liquid cannot be deposited onto an item, such as clothing, in a gaseous state. Finally, although the State Farm insurance policy only listed Homer as the

named insured, Nicholas Gregory, the assigned State Farm representative, testified Rose participated in the claim process, including providing information about how the fire occurred. *See* § 16-11-125 ("Any person who wilfully and knowingly presents *or causes to be presented* a false or fraudulent claim, *or any proof in support of such claim*, for the payment of a fire loss . . . upon any contract of insurance or certificate of insurance which includes benefits for such a loss . . . *or subscribes to a false or fraudulent account* . . . used in support of such claim, is guilty of a felony." (emphasis added)).

Viewing the evidence in the light most favorable to the State, we find a jury could reasonably deduce Rose fabricated the burglary and caused the fires for the purposes of receiving insurance benefits. *See Stanley*, 365 S.C. at 41, 615 S.E.2d at 464 ("On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State."). Accordingly, the trial court properly refused to direct a verdict in Rose's favor. *See Bennett*, 415 S.C. at 237, 781 S.E.2d at 354 ("[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, th[is] court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."); *Mollison*, 319 S.C. at 46, 459 S.E.2d at 91 ("If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury.").

II. Expert Qualification

Rose argues the trial court abused its discretion in allowing Investigator Cannon to testify as an expert in arson cause and origin. Specifically, Rose maintains the State failed to demonstrate that, at the time of the fire, Investigator Cannon possessed the requisite knowledge, skill, experience, training, or education to allow for his opinion testimony. Rose additionally contends Investigator Cannon's expert testimony was unreliable because he failed to comply with the National Fire Protection Association's guidelines during his investigation of the fires. We disagree.

"The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). "An abuse of discretion

occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony." *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012). "There is no exact requirement concerning how knowledge or skill must be acquired." *State v. Henry*, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1997). Further, "[t]here is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury." *Id.* at 273, 495 S.E.2d at 466. "Once a witness is qualified as an expert, continued objections to the amount or quality of the expert's knowledge, skill, experience, training, or education go to weight of the expert's testimony, not its admissibility." *Martin*, 391 S.C. at 513, 706 S.E.2d at 42.

We find the trial court properly qualified Investigator Cannon as an expert in arson cause and origin. Although Investigator Cannon possessed less than a year's worth of experience in the arson field at the time of the Rose investigation, the trial court properly accounted in its analysis the breadth of Investigator Cannon's experience and training possessed at the time of trial. At the time of his qualification, Investigator Cannon testified he had previously investigated between eighty and eighty-five arson cases, including cases similar to the Rose investigation, and had previously been qualified as an arson expert in the Thirteenth Circuit. In regards to his education and training, Investigator Cannon testified he had attended a two-week, eighty-hour class at the National Fire Academy in Maryland that was specifically designed for learning the origin and causes of fires and also included a fire pattern certification course. Investigator Cannon testified he also attended "a basic fire investigation course" at the Criminal Justice Academy and had taken 130 hours of "online certified fire investigative classes." Additionally, Investigator Cannon testified he takes approximately forty hours of continuing education

classes per year. *See Henry*, 329 S.C. at 274, 495 S.E.2d at 467 ("There is no exact requirement concerning how knowledge or skill must be acquired."). Accordingly, the State sufficiently demonstrated Investigator Cannon possessed the requisite experience and training to testify as an expert in arson origin and causes.

Further, Rose's claim that Investigator Cannon's expert testimony was unreliable because he failed to comply with the National Fire Protection Association's guidelines is unavailing. Rose never raised this issue to the trial court prior to its qualification of Investigator Cannon; therefore, Rose failed to preserve this issue for appellate review and any objections subsequent to Investigator Cannon's qualification went to the accorded weight of his testimony. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."); *see also Martin*, 391 S.C. at 513, 706 S.E.2d at 42 ("Once a witness is qualified as an expert, continued objections to the amount or quality of the expert's knowledge, skill, experience, training, or education go to weight of the expert's testimony, not its admissibility.").

Based on the foregoing, the trial court did not abuse its discretion in qualifying Investigator Cannon as an expert in arson cause and origin. *See id.* ("The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."); *Henry*, 329 S.C. at 273, 495 S.E.2d at 466 ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury . . . .").

III. Admissibility of Accelerant Detection Canine Evidence

Rose argues the trial court abused its discretion in allowing Investigator Gonzalez's expert testimony concerning the use of his accelerant detection canine Misty at the scene. Specifically, Rose challenges the testimony detailing Misty's alert to Rose's slippers and the forensic testing results arising therefrom. Rose contends the trial court erred in allowing this testimony because the State failed to establish that (1) the use of an accelerant detection canine was reliable and (2) Investigator Gonzalez

possessed the requisite knowledge, training, and skill to properly handle an accelerant detection canine and assess its alerts. We disagree.

Preliminarily, the State contends Rose failed to properly preserve this issue for appellate review. However, we find Rose's pretrial motion *in limine* and subsequent objections at trial sufficiently safeguarded the issue for our review.

"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). Although our appellate courts have not yet addressed the admissibility of canine detection evidence in the context of arson investigations, we find our jurisprudence concerning the admissibility of dog tracking evidence instructive. In *White*, our supreme court held all "[n]on[-]scientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." 382 S.C. at 273, 676 S.E.2d at 688. However, "[t]here is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence." *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015). "The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony." Tapp, 398 S.C. at 388, 728 S.E.2d at 474-75.

Investigator Gonzalez testified he and Misty had worked on 142 fire scenes together prior to trial. Regarding the extent of his training and education, Investigator Gonzalez testified he had worked in law enforcement for twenty-one years and had been a part of Greenville County's arson unit since 2005. Investigator Gonzalez testified he received specialized training through the National Fire Academy in Maryland and held numerous certifications in the field of arson investigation. Regarding Misty's qualifications as an investigative canine, Investigator Gonzalez testified he began "training with her from the beginnin[g] of the imprint [on ignitable liquids] to the end [of] certification." Investigator Gonzalez testified that in January 2011, he and Misty took a six-week accelerant detection training course in Alabama where she was exposed to "a minimum of sixteen different ignitable liquids." While Misty learned to search for and detect various accelerants, Investigator Gonzalez testified he "learned how to know when she is alerting on ignitable liquids and when she isn't alerting . . . and how to

handle her in workin[g] in fire scenes." After completing the course in Alabama, Investigator Gonzalez testified he took Misty to Austin, Texas where they engaged in "actual fire scene training" with the State Fire Marshall's Office. After becoming additionally certified in Texas, Investigator Gonzalez testified he brought Misty back to South Carolina. Since the original certifications in 2011, Investigator Gonzalez testified he and Misty have both re-certified "every year in the Fall." He explained Misty "certifies each year with the . . . North American Police Work Dog Association," which is a recognized organization for certification of police canines. Investigator Gonzalez clarified that both "the canine and the handler" re-certify each year. Investigator Gonzalez explained that for Misty to receive her certification, she can neither miss nor falsely alert to any of the tested ignitable liquids. According to Investigator Gonzalez, Misty has not failed any certification process since receiving her original certification in March 2011. He further testified Misty had never falsely alerted in any case.

Pursuant to the framework established in *White*, we find the State sufficiently demonstrated (1) Investigator Gonzalez possessed the requisite knowledge, training, and skill under Rule 702, SCRE, to qualify as an expert in "the handling of accelerant detection canines" and (2) Misty's alerts were reliable. *See White*, 382 S.C. at 273, 676 S.E.2d at 688 ("Non[-]scientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter.").

Regarding Rose's challenge to Misty's reliability based on potential crime scene contamination, we find evidence in the record supports the trial court's admission of Misty's alerts. *See Banda*, 371 S.C. at 251, 639 S.E.2d at 39 ("[A]n appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous."); *id.* ("The same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases.").

Accordingly, the trial court did not abuse its discretion in allowing Investigator Gonzalez's expert testimony concerning Misty's alerts at the scene and the subsequent forensic test results arising therefrom. *See White*, 382 S.C. at 269, 676 S.E.2d at 686 ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.").

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

THOMAS and HILL, JJ., concur.