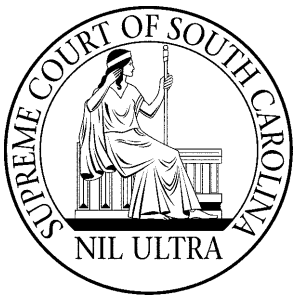

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 22
June 7, 2023
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Travis Latrell Lawrence, Petitioner.

Appellate Case No. 2021-001492

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Dorchester County
Maite Murphy, Circuit Court Judge

Opinion No. 28156
Heard February 8, 2023 – Filed June 7, 2023

AFFIRMED AS MODIFIED

Appellate Defenders Susan Barber Hackett and Jessica M. Saxon, both of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor David Michael Pascoe Jr., of Orangeburg, for Respondent.

CHIEF JUSTICE BEATTY: A jury convicted Travis Lawrence of attempted murder following a brawl at the home of a friend, Clayton Baxter. At trial, Lawrence argued that he acted in self-defense. To support this, he subpoenaed his co-defendant present at the scene, Terell Bennett. Bennett, however, invoked his Fifth Amendment right[1] while awaiting his own, separate trial. Bennett, like Lawrence, was indicted for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime.[2]

The trial court prevented Bennett's testimony, and the court of appeals upheld the trial court's decision. We conclude Bennett faced a hazard of incrimination and properly invoked his Fifth Amendment right.

I. FACTS & PROCEDURAL HISTORY

According to Baxter, on July 2, 2016, he was contacted by Bennett, who told Baxter he wanted to come over to "borrow some money." Baxter lived in Charleston County with a friend. Baxter and Bennett knew each other well, and treated each other as relatives. In fact, Bennett called Baxter "Unc," and Baxter called Bennett "Nephew." Baxter admitted that he had marijuana in the house and had smoked some that day.

Bennett arrived and called Baxter to ask if anyone was home and to let Baxter know he was outside. Baxter went to meet Bennett outside and noticed a set of legs walking behind Bennett. Bennett stepped to the right, and a man stood there, holding a revolver at Baxter. From prior interactions, Baxter recognized this man as Lawrence.

Lawrence ordered Baxter to give him money. Baxter kept cash in the home from his Social Security benefits. Baxter testified that he waited for the two to "make one mistake so [he could] capitalize on it." Baxter indicated that, inside the

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[1] Both the United States Constitution and the South Carolina Constitution contain this protection. U.S. Const. amend. V; S.C. Const. art. I, §12. We refer to both collectively as "the Fifth Amendment."

[2] Later after Lawrence's trial, Bennett pleaded guilty to attempted murder, and the State dismissed the other charges.

townhome, Lawrence "raised[3]" the gun down, and a struggle ensued among the three men. At this point, the gun accidentally fired into the ceiling. No one was injured, including the friend who lived with Baxter and was upstairs at the time. Amid the struggle, Lawrence went into the kitchen, and Baxter testified that Lawrence grabbed a knife and slashed him. Lawrence and Bennett allegedly robbed Baxter of seventy-five dollars and left with the weapons. Although Baxter was severely injured, he managed to call for help. Lawrence disputed Baxter's version of events through his self-defense claim at trial.

The State indicted Lawrence for armed robbery, attempted murder, and possession of a firearm.[4] During the State's case-in-chief, the trial court clarified that Lawrence was prepared to call the co-defendant, Bennett, as a witness. Bennett's counsel informed the court that Bennett would invoke his Fifth Amendment privilege.

After hearing arguments from both sides, the trial court decided to question Bennett *in camera*. The trial court excluded counsel for both Lawrence and the State; however, Bennett's counsel attended the hearing. Neither party objected to the procedure; in fact, Lawrence's counsel suggested that the court proceed with this hearing.

Bennett's *in camera* testimony tended to show that he and Lawrence traveled to Baxter's house that day to purchase marijuana. Bennett's version of events would establish that Baxter attacked Lawrence first. Presumably, and as Lawrence argues now on appeal, Lawrence would have used Bennett's testimony to show he acted in self-defense. The trial court was made aware of the nature of Bennett's testimony. In fact, Lawrence's counsel explained, in asking for the court to conduct the *in camera* examination, "[the State] know[s] that the alleged co-defendant has come in and told them this was an act of self-defense."

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[3] From the record, it appears Lawrence *lowered* the gun.

[4] Besides Baxter's identification, the State established the identities of Bennett and Lawrence by Bennett's gold Cadillac. Bennett and Lawrence used the gold Cadillac on the day of the incident, and Baxter testified that he knew Bennett drove that vehicle.

The trial court clarified the gravity of the situation during its *in camera* examination: "I just want to make sure I understand the full breadth of what you're saying *so I know whether or not you can invoke your right as far as implication*. You're putting yourself *at the scene of this alleged crime*; do you understand that?" Bennett's counsel argued that any questioning by the State would reveal incriminating information.

Later during the trial, the court made its ruling on the record regarding Bennett's testimony:

> His silence is certainly justified in this matter and it appears to be that if he were allowed to testify, that he would incriminate himself and any questions, even those specific single questions may not be overtly incriminating—but would be incriminating through any further confessional proof so the [c]ourt will allow him to invoke his right against self-incrimination and protect him from testifying in this matter.

The jury convicted Lawrence of attempted murder, but found him not guilty of armed robbery and possession of a firearm.[5] The trial court sentenced Lawrence to thirty years in prison.

The court of appeals affirmed Lawrence's conviction for attempted murder in *State v. Lawrence*, 435 S.C. 231, 865 S.E.2d 800 (Ct. App. 2021), without oral argument pursuant to Rule 215, SCACR. The court concluded the hazard of incrimination was openly apparent because Bennett was already being prosecuted as a co-defendant and "[a]lmost anything Bennett could utter about the incident would likely be used against him at his upcoming trial." *Id.* at 241, 865 S.E.2d at 805.

II. STANDARD OF REVIEW[6]

[5] At first, the jury was deadlocked, and the trial court instructed the jurors pursuant to *Allen v. United States*, 164 U.S. 492 (1896).

[6] Both parties urge this Court to follow several other cited jurisdictions and adopt a specific, abuse-of-discretion standard of review in cases involving the invocation of the Fifth Amendment. We do not find a persuasive basis to do so and conclude our broad, general standard sufficiently allows review of the trial court's ruling and handling of the *in camera* hearing.

"In criminal cases, this Court only reviews errors of law." *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013). "[T]his Court reviews questions of law de novo." *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014).

III. DISCUSSION

Lawrence argues that the hazards of self-incrimination from Bennett's testimony were not openly apparent because the purported crime, the purchase of marijuana, was never completed. Lawrence maintains that Bennett's testimony would show he and Lawrence acted in self-defense. Conversely, the State contends that the hazard of self-incrimination was openly apparent because Bennett was awaiting trial on indictments resulting from the same incident and there was "obvious potential" for any answers to be incriminating.

The court of appeals concluded the hazard of incrimination was openly apparent: "Almost anything Bennett could utter about the incident would likely be used against him at his upcoming trial." *Lawrence*, 435 S.C. at 241, 865 S.E.2d at 805. We agree.

Both the United States Constitution and the South Carolina Constitution provide that no person shall "be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; S.C. Const. art. I, § 12. While the South Carolina Constitution often provides more protection than the federal Constitution,[7] this Court has previously observed that "the analysis under [these] two provisions is identical." *Grosshuesch v. Cramer*, 377 S.C. 12, 23 n.2, 659 S.E.2d 112, 118 n.2 (2008). Additionally, the General Assembly has codified protections in criminal questioning, stating generally: "No person shall be required to answer any question tending to incriminate himself." S.C. Code Ann. § 19-11-80 (2014).

Before analyzing the merits of the Fifth Amendment invocation, we conclude the case law and the text of article I, section 12 support a conclusion that the South Carolina Constitution, in this instance, provides the same protections as the United States Constitution. Both provisions, substantively, share the same wording: "[No person shall] be compelled in any criminal case to be a witness against himself."

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[7] *See, e.g.*, *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001) ("This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.").

U.S. Const. amend. V; S.C. Const. art. I, § 12. Further, we previously have recognized the same conclusion. *Grosshuesch*, 377 S.C. at 23 n.2, 659 S.E.2d at 118 n.2.

Returning to the basis of a proper invocation, this Court has explained that the Fifth Amendment is "an assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding." *Grosshuesch*, 377 S.C. at 22, 659 S.E.2d at 117 (citing *Maness v. Meyers*, 419 U.S. 449, 461 (1975)). Further, the privilege extends not only beyond incriminating answers or information but also "to answers furnishing a link in the chain of evidence needed to prosecute an individual." *Id.* (citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951)).

The protections of the Fifth Amendment are not limitless: "[I]t is well-settled that an invocation of the privilege is confined to instances where a person has reasonable cause to apprehend danger from his answer." *Id.* (citing *Hoffman*, 341 U.S. at 486). Moreover, a trial court is limited to compel a person's testimony if it is "perfectly clear" the testimony will not result in criminal liability and the testimony "cannot possibly have [a] tendency to incriminate." *Hoffman*, 341 U.S. at 486, 488 (internal quotation marks omitted).

Here, we agree that the hazards of incrimination were openly apparent. Bennett was present at the scene with Lawrence and established he was there to purchase marijuana. At the time of Lawrence's trial, Bennett awaited his own trial from the same incident. We agree with the conclusion of the court of appeals that, "[a]lmost anything Bennett could utter about the incident would likely be used against him at his upcoming trial." *Lawrence*, 435 S.C. at 241, 865 S.E.2d at 805. While Bennett certainly could have given incriminating answers subject to the invocation of the Fifth Amendment right, *not all* questions could have elicited an incriminating response. However, it was patently clear that Lawrence was only interested in Bennett's conversation with an investigator about the circumstances of the crime.

Lawrence's counsel was not present for the *in camera* questioning of Bennett. Importantly, neither party argues—nor objected to—the procedure used in conducting the *in camera* hearing. *See, e.g.*, *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."). Regardless, we feel compelled to address those issues for future guidance.

At the outset, we emphasize the protections afforded by the *in camera* nature of the examination. *See State v. Hughes*, 328 S.C. 146, 150, 152, 493 S.E.2d 821, 823 (1997) ("It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation. . . . [Neither party] should be allowed to call witnesses who either side knows will invoke the Fifth Amendment in front of the jury and then be subject to inferences in a form not subject to cross-examination.").

Nevertheless, the trial court should observe two more procedural precautions: (1) unless the witness is the defendant in the case on trial, the trial court should not allow a "blanket" invocation of the Fifth Amendment, and (2) under normal circumstances, the trial court should allow counsel for both the witness and the party calling the witness to be present at the *in camera* examination.

First, while conducting an *in camera* hearing, the Fifth Amendment assertion should be made on a question-by-question basis. In concluding a witness could refuse to answer questions, the United States Supreme Court in *Hoffman* explained, "To sustain the privilege, it need only be evident from the implications of *the question*, in the setting in which it is asked, that a responsive answer to *the question* or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." 341 U.S. at 486–87 (emphasis added).

Reiterating that a witness himself must assert the privilege, this Court previously stated, "[I]n any case, it is well settled that a witness who is not also a defendant can invoke that privilege *only after the incriminating question* has been put." *State v. McGuire*, 272 S.C. 547, 550–51, 253 S.E.2d 103, 105 (1979) (holding, under the narrow circumstances of the case, the trial court erred in refusing to allow the cross-examination of a witness about previously admitted crimes) (emphasis added). Most recently, in *Grosshuesch*, we established there are, at least, two categories of incriminating *questions*. We identified the former as questions whose incriminating nature are facially evident. *Grosshuesch*, 377 S.C. at 23, 659 S.E.2d at 117–18. The latter are incriminating based on contextual proof. *Id.* at 23, 659 S.E.2d at 118. Our emphasis on the trial judge's duty to ascertain the incriminating nature of questions demonstrates the need to have an assertion of the Fifth Amendment privilege in response to individual questions.

Second, the trial court should have allowed the presence of counsel for both Bennett and Lawrence during the *in camera* hearing. Generally, "a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is

critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (concluding, in another context, that a criminal defendant did not establish his presence would have been useful or beneficial during a competency hearing). Certainly, questioning Bennett was a critical portion of Lawrence's trial because Bennett was the only other witness and would establish Lawrence's claim of self-defense. Therefore, Lawrence's counsel should have been present for Bennett's questioning and should have played an active role in asking the questions and proffering testimony for the trial court. However, all questions should have been reviewed by the trial judge before Bennett was allowed to answer. In this case, the trial court was well aware of the nature and context of the questions that Lawrence wanted Bennett to answer.

IV. CONCLUSION

We hold the court of appeals correctly concluded that Bennett faced a hazard of self-incrimination.

AFFIRMED AS MODIFIED.

KITTREDGE, FEW, JAMES, JJ., and Acting Justice Kaye G. Hearn, concur.

The Supreme Court of South Carolina

In the Matter of Jane M. Randall, Respondent

Appellate Case Nos. 2023-000664 and 2023-000665

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(a) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver to protect the interests of Respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre T. Lumpkin, Esquire, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Respondent's clients. Except as authorized by Rule 31(d)(5), RLDE, Rule 413, SCACR, Mr. Lumpkin may not practice law in any federal, state, or local court, including the entry of an appearance in a court of this State or of the United States. Mr. Lumpkin may make disbursements from and close Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Respondent, shall serve as an injunction to prevent Respondent from making withdrawals from the account(s)

and shall further serve as notice to the bank or other financial institution that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
May 31, 2023

The Supreme Court of South Carolina

In the Matter of Justin M. McGee, Respondent.

Appellate Case No. 2023-000843

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(a) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). Respondent filed a return opposing the petition.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
June 1, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Tammy Caison Moorer, Appellant.

Appellate Case No. 2018-001938

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5987
Heard December 9, 2021 – Filed June 7, 2023

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Lara Mary Caudy, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General David A. Spencer, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

HILL, A.J.: Tammy C. Moorer (Tammy) appeals her convictions for kidnapping and conspiracy to kidnap. She argues the trial court erred in (1) failing to grant her motion for a directed verdict; (2) admitting text messages that were sexually explicit and referenced drug use; (3) allowing an expert in forensic video analysis to testify

the Moorers' truck was the vehicle videotaped going to and from the area where Victim was last known to be; (4) excluding her alibi witnesses because she failed to comply with Rule 5(e)(1), SCRCrimP; and (5) excluding several defense witnesses because they violated the sequestration order. We affirm.

I. FACTS

Heather Elvis (Victim), a twenty-year-old woman from Myrtle Beach, disappeared on December 18, 2013. The last known phone call Victim made was to Tammy's husband, Sidney Moorer, a thirty-eight-year-old man with whom she had a months' long affair that had ended on November 2, 2013. The phone call was made at 3:41 a.m. from the area of the Peachtree Boat Landing on the Waccamaw River. Victim's unoccupied car was discovered at the Landing at 4:00 a.m. by an officer on routine patrol. The next day, when her car remained abandoned at the Landing, the police contacted Victim's father, and a search for Victim began. Victim has never been found.

Based on Victim's phone records, a search of her apartment, and statements from her coworkers and roommate, it became apparent Victim may have been pregnant with Sidney's child, and Sidney became the prime suspect in Victim's disappearance. On December 20, 2013, the police visited Sidney's home, roughly a five-minute drive from the Landing. Sidney lived there with Tammy and their three children. Tammy's mother, father, and sister lived next door. The police discovered the Moorers had a home surveillance system that Tammy advised did not work and a black Ford F-150 truck that Tammy told police could not be unlocked at the time. Police observed a bag of cement, a spent shotgun shell, and a bottle of cleaning fluid piled by the Moorers' parked camper. The day after this police visit, Sidney purchased a new home surveillance system.

Investigators began to believe Tammy was also involved in Victim's disappearance. Phone records and location data from the Moorers' two iPhones revealed a grim picture of a wife irate with her husband for having an affair with a much younger woman; who threatened Victim upon discovery of the affair; who desired to punish Sidney; who took control of Sidney's iPhone on November 2, 2013, when she discovered the affair; who sexted other men from Sidney's iPhone; who began accompanying Sidney on his shifts to complete maintenance work at restaurants around Myrtle Beach; and who began stalking Victim.

Cell phone data showed Tammy sent the following text message to Victim shortly after Tammy discovered the affair: "You want to call me right now and explain yourself? It would be wise thing to do. . . . Save yourself. I'm giving you one last chance to answer before we meet in person, only one. Hey, Sweetie, you ready to meet the Mrs., the kids want to meet you?" The State also presented several messages reflecting Tammy's anger at both Sidney and Victim for the affair, including a message to the Moorers' daughter that "[y]our dad is an evil, twisted freak and I am being punished for it" and a message from Tammy to her sister stating "that bitch is in hiding" in response to Tammy's sister's message that Victim was not at her place of work. Tammy's texts also stated that after the affair was uncovered, Sidney "had to stay chained to the bed until further notice while I live my life as a single woman." Another witness testified she saw Sidney restrained at home.

On the evening of December 17, 2013, six weeks after her affair with Sidney ended, Victim went on a date with a man her own age. During the date, Victim was happy and laughing. Her date dropped Victim off at her apartment after 1:00 a.m. on December 18, 2013. Meanwhile, Sidney and Tammy were, by their own admission, together. Location data from their iPhones indicated they were at Longbeard's Bar until 12:30 a.m. At around 1:15 a.m., Sidney purchased a pregnancy-test kit from Walmart. Sidney and Tammy then went to an area near a Kangaroo Express Gas Station. At 1:33 a.m., video from the Kangaroo Express showed Sidney leaving his truck and calling Victim for the first time since their affair ended—from a payphone at the Kangaroo Express. The call lasted four minutes and fifty seconds.

After receiving the payphone call, Victim called her roommate Brianna Warrelmann, who was out of town. Victim was upset and scared. Warrelmann calmed Victim down and told her not to call Sidney back or do anything rash. However, it appears Victim changed into her favorite outfit and—according to the location data from her cell phone—left her apartment at 2:31 a.m., arriving near Longbeard's Bar at 2:42 a.m. While in the vicinity of Longbeard's Bar, Victim called the Kangaroo Express payphone nine times. None of the calls were answered. Meanwhile, the cell phone evidence indicates Sidney and Tammy returned to their home.

After waiting at Longbeard's Bar for a while, Victim also returned home, where, at 3:16 and again at 3:17 a.m., she called Sidney's iPhone. The first call to Sidney's iPhone went to voicemail, but the second call lasted a little over four minutes. Location data from Victim's phone showed that after this call, Victim left her apartment and traveled to the Landing, a place where—according to an analysis of

her cellphone location data—she was not in the habit of going. While at the Landing, Victim called Sidney's iPhone four more times: at 3:38 a.m., 3:39 a.m., 3:40 a.m., and 3:41 a.m. All four calls went to voicemail. The 3:41 a.m. phone call was the last one made from Victim's phone, and to this date, there has been no further activity on Victim's phone. There was no activity on the Moorers' iPhones between 3:30 a.m. and 4:00 a.m. However, at 4:37 a.m., Tammy texted Sidney for the first time since November 2, 2013, and Sidney texted back.

Police officers discovered that two surveillance systems located along a road that goes to the Landing had captured images of a pickup truck driving between the Moorers' home and the Landing in the early morning hours of December 18, 2013. One was a home surveillance system located five minutes from the Landing, which showed a dark pickup truck heading towards the Landing at approximately 3:45 a.m. and then returning nine minutes later. The second was from a business' surveillance system located two or three minutes from the Landing, which showed a dark pickup truck going towards the Landing at 3:39 a.m. and returning from the Landing at 3:46 a.m. (The time stamps of the videos are not synchronized to each other, so there was a few minutes' variation between them). The State asked a forensic video analyst, Grant Fredericks, to assist them in identifying the truck from the videos. After conducting many tests, including a "headlight spread pattern analysis," Fredericks formed the opinion the truck in the video footage was the Moorers' Ford F-150.

A Horry County Grand Jury indicted Sidney and Tammy for kidnapping and conspiracy to kidnap Victim on or about December 18, 2013. They were tried separately.

Before his trial began, Sidney moved to exclude Fredericks' expert testimony, and Tammy joined in the motion. Tammy and Sidney presented their own expert, Bruce Koenig, to dispute the reliability of Fredericks' opinion that the truck in the footage belonged to the Moorers. The circuit court qualified Fredericks as an expert but stated that any objections to the scope of his opinion could be raised at trial.

At Tammy's trial, the State moved to exclude any alibi evidence from Tammy's children, sister, and mother because Tammy did not comply with the alibi defense notice procedures outlined in Rule 5(e)(1), SCRCrimP. The trial court granted the motion. The trial court also granted Tammy's motion to sequester the witnesses.

During the trial, the State presented evidence from police investigators; a cellphone

location data analyst; Victim's coworkers; Victim's roommate; the man with whom Victim went on her December 17, 2013 date; testimony indicating the Moorers' surveillance system was likely functional on the night of December 18, 2013; and over Tammy's objection, Fredericks' expert forensic video testimony. Also over Tammy's objection, the State presented the content of Tammy's sexually explicit text messages to a younger man, as well as messages mentioning her use of marijuana.

The State sought to paint the picture that, in the weeks before Victim's disappearance, Tammy was infuriated with Sidney for having an affair with Victim; did not respect Victim; was obsessed with Victim and the affair; sought revenge on Sidney; and, upon hearing the rumors that Victim was pregnant with Sidney's child, sought to dispose of Victim and her unborn child. The State's theory of the case was on the night of Victim's disappearance, Tammy had control over Sidney's iPhone and actions, and she and Sidney lured Victim to the Landing by asking Victim to take the pregnancy test they had purchased at Walmart. Police discovered an empty pregnancy test kit box at Victim's apartment. Tammy and Sidney destroyed their own incriminating surveillance camera footage from the night of the disappearance; and Tammy and Sidney had a "kidnapping kit" of cement and cleaning solution at the end of their driveway. The State noted Tammy returned Sidney's iPhone to his control for the first time in six weeks immediately after Victim disappeared. As a final piece of incriminating evidence, the State called Tammy's cousin Donald Demarino, who testified that, after Victim's disappearance, Sidney showed him a picture of Victim on a burner cell phone. Demarino explained that from the picture, it did not look like Victim could move or talk; he believed the picture was for Tammy; and based on the picture, he did not expect anyone to hear from Victim ever again. Demarino stated he did not tell anyone about the picture until he was imprisoned for an unrelated drug offense, but he did not receive anything in exchange for telling the State about the picture. Demarino admitted, however, he told his mother over the phone that this story was not true. He explained he did this to stop his mother from worrying.

After the State rested, Tammy moved for a directed verdict, arguing the State had not presented substantial circumstantial evidence to support the charges of kidnapping or conspiracy to kidnap. The trial court denied the motion.

Before the defense's case began, the trial court ruled that Tammy's children and mother had violated the trial court's sequestration order and excluded them from testifying.

During the defense's case, Tammy's sister testified Tammy texted her when Tammy and Sidney came home at 3:10 a.m. on December 18, 2013, and she then sent Tammy's children home when she saw the Moorers outside their door waiting for their children. Tammy testified she did not go to the Landing on December 18, 2013, and, to her knowledge, neither did the Moorers' Ford F-150. Tammy further testified she and Sidney were trying to conceive a child around the time of Victim's disappearance, and the pregnancy test purchased was for her. While in custody, Tammy received a positive pregnancy test at a local hospital on March 28, 2014, showing she was almost seven weeks pregnant (she later miscarried). Tammy testified she was not angry with Victim and had quickly forgiven her; she had an open relationship with Sidney; and she and Sidney purchased the new surveillance cameras because her family was the object of harassment after Victim's disappearance.

The jury found Tammy guilty of both kidnapping and conspiracy to kidnap. The trial court sentenced her to concurrent sentences of thirty years' imprisonment for each charge.

II. STANDARD OF REVIEW

In criminal cases, we review only for errors of law, and we are bound by the trial court's factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

III. DIRECTED VERDICT

Tammy argues the trial court erred in denying her motion for a directed verdict on her kidnapping and conspiracy to kidnap charges. Tammy asserts the State presented no direct or substantial circumstantial evidence Victim was kidnapped because there was no evidence of struggle at the Landing or in the Moorers' truck and the State's evidence raised only a mere suspicion she and Sidney were involved in Victim's disappearance. As to the conspiracy to kidnap charge, Tammy argues the State presented no evidence that she and Sidney conspired to kidnap Victim. We disagree.

The offense of kidnapping is defined by statute: "Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any

means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony . . . ." S.C. Code Ann. § 16-3-910 (2015). The act of inveigling or decoying alone can satisfy the unlawful act requirement of the kidnapping statute. *State v. East*, 353 S.C. 634, 637, 578 S.E.2d 748, 750 (Ct. App. 2003) ("South Carolina's kidnapping statute requires proof of an unlawful act taking *one* of several alternative forms, including . . . inveiglement[or] decoy . . . ." (emphasis added)). "Inveigling has [] been defined as 'enticing, cajoling, or tempting the victim, usually through some deceitful means such as false promises.'" *State v. Stokes*, 345 S.C. 368, 373 n.6, 548 S.E.2d 202, 204 n.6 (2001) (quoting *United States v. Macklin*, 671 F.2d 60, 66 (2d Cir. 1982)). "The definition of 'decoy' is 'to lure successfully.'" *Id*. (citation omitted). Kidnapping "commences when one is wrongfully deprived of freedom and continues until freedom is restored." *State v. Tucker*, 334 S.C. 1, 13, 512 S.E.2d 99, 105 (1999).

The offense of conspiracy to kidnap is also statutorily defined: "If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of Section 16-3-910 and any of such persons do any overt act towards carrying out such unlawful agreement, confederation, or conspiracy, each such person shall be guilty of a felony . . . ." S.C. Code Ann. § 16-3-920 (2015).

The trial court did not err in denying Tammy's motion for a directed verdict as the State presented substantial circumstantial evidence of her guilt. *See State v. Owens*, 291 S.C. 116, 118–19, 352 S.E.2d 474, 475–76 (1987) (corpus delicti may be proven by circumstantial evidence in kidnapping prosecution); *see also State v. Lewis*, 434 S.C. 158, 166, 863 S.E.2d 1, 5 (2021) ("[O]n appeal from the denial of a directed verdict, an appellate court views all facts in the light most favorable to the nonmoving party."); *id*. ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." (quoting *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006))); *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) ("If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury."). The State presented evidence Victim disappeared against her will, including: (1) Victim was a reliable worker, who typically notified her employer if she was going to miss work; (2) Victim did not take any of her belongings with her when she disappeared; (3) Victim has not used her phone—which her coworkers testified she kept with her at all times—since her disappearance; (4) Victim's car was left at the Landing; (5) shortly before her

disappearance, Victim called Warrelmann, and Warrelmann testified Victim seemed "hysterical" after talking to Sidney and Warrelmann told Victim to not do anything rash or call Sidney back.

The State also presented substantial circumstantial evidence the Moorers kidnapped Victim, including proof that: (1) Tammy sent Victim angry texts about the affair throughout the six weeks preceding Victim's disappearance; (2) Sidney called Victim's manager, and Tammy took over the call, demanding that the manager fire Victim because Victim was "spreading rumors she was pregnant" by Sidney; (3) Sidney went to Walmart a few hours before Victim disappeared to purchase a pregnancy test when Victim was showing symptoms of pregnancy; (4) Tammy controlled both her and Sidney's iPhones from November 2, 2013, when she discovered the affair, until the early morning hours of December 18, 2013, when Victim disappeared; (5) based on their iPhone location data, the Moorers' life pattern changed drastically after Tammy discovered the affair, and this change showed the Moorers' iPhones were increasingly located in the same vicinity as Victim—suggesting the Moorers were stalking Victim; (6) Tammy admitted she and Sidney were together in the early morning hours of December 18, 2013, when Sidney spoke to Victim from a payphone and later from his own iPhone; (7) Victim repeatedly called Sidney on the night of her disappearance, including at 3:41 a.m. when Victim's phone stopped reporting any data; (8) the Landing, which Victim's cell phone data showed she did not frequent, was only a short distance from the Moorers' home; (9) video surveillance from the morning of Victim's disappearance showed a dark truck going to and from the area of the Landing around the time of Victim's disappearance; (10) Fredericks, an expert in forensic video analysis, opined the truck seen in the surveillance videos was the Moorers' black Ford F-150; (11) there was evidence the SD card in the Moorers' truck had been removed, so no GPS data of the truck's movements was recorded during the time Victim disappeared; (12) someone with access to the Moorers' electronic devices ran a software program on November 13, 2013, and attempted to delete text messages, including threatening texts Tammy had sent to Victim; and (13) Sidney showed Demarino a picture of Victim after her disappearance depicting her unable to talk or move.

The State presented sufficient evidence that Sidney and Tammy conspired to kidnap Victim. Tammy and Sidney's iPhones' locations demonstrated they tracked Victim's whereabouts following Tammy's discovery of the affair. This and other evidence illustrated vividly that Sidney and Tammy were operating in tandem, focusing their joint attention on Victim before she vanished. Tammy controlled Sidney's iPhone

from November 2, 2013, until the very hour of Victim's disappearance, when Sidney began using it again. Tammy admitted that she and Sidney were together in their Ford F-150 in the early morning hours of December 18, 2013, including at the payphone where Sidney called Victim on the night of Victim's disappearance. Demarino testified the picture of Victim Sidney showed him was "for Tammy."

Conspiracy often can only be proven by circumstantial means, as the crime often lurks in dark caverns, far from the light of day. We conclude there was evidence of a common design and mutual tacit agreement between Tammy and Sidney that went well beyond mere association or suspicion. *See State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963). Given the timelines and conduct the evidence bore out, the Moorers' truck's path to the Landing was a fateful link in their long-laid plans, plans that required Sidney and Tammy's mutual cooperation. *See State v. Jeffcoat*, 279 S.C. 167, 170, 303 S.E.2d 855, 857 (1983).

Signs of struggle do not have to be present to prove the crime of kidnapping. In cases of inveigling or decoying, there may not be signs of struggle because the victim is tricked into going with his or her kidnapper willingly. *See Stokes*, 345 S.C. at 373, 548 S.E.2d at 204; McAninch et. al., *The Criminal Law of South Carolina* at 320 (6th ed. 2013) ("The act of kidnapping need not involve force. The victim could be inveigled or decoyed to her doom."). The State alleged the Moorers lured Victim to the Landing. Thus, the State did not have to prove the Moorers kidnapped Victim by force or prove there was a struggle. *See Ray v. State*, 330 S.C. 184, 188, 498 S.E.2d 640, 642 (1998) (kidnapping was proven when evidence showed the defendant inveigled victim into his truck under the pretense he was taking her to the hospital); *see also United States v. Hughes*, 716 F.2d 234, 239 (4th Cir. 1983) (providing the policy behind the kidnapping statute does not "justif[y] rewarding the kidnapper simply because he is ingenious enough to conceal his true motive from his victim until he is able to transport her" to another location). Accordingly, we affirm the trial court's denial of the directed verdict motion.

IV. ADMISSION OF TEXT MESSAGES AND OTHER PHONE DATA

The State presented messages from the Moorers' iPhones that referenced Tammy's use of marijuana. Tammy objected to these messages, arguing they amounted to character evidence barred by Rule 404, SCRE, and were unduly prejudicial under Rule 403, SCRE. The trial court admitted the messages, accepting the State's argument the messages demonstrated Tammy was not attempting to become

pregnant before Victim's disappearance, and therefore, the pregnancy test purchased by Sidney on the night of Victim's disappearance was not for Tammy.

The State also presented proof Tammy conducted internet searches for the term "Cougar Life" and sent a series of sexually explicit messages from Sidney's iPhone to a much younger man on December 16, 2013. Tammy objected, arguing this evidence violated Rule 403 and was improper character evidence. The State asserted the messages showed Tammy had control of Sidney's iPhone as late as the day before Victim's disappearance, and the trial court allowed the messages. However, when the State went into excessive detail about the messages including that the young man's mother had called to ask why Tammy was messaging her underage son, Tammy objected again. The trial court sustained this objection, noting the details dealt "more with character and ha[d] zero probative value."

The State claimed they introduced the messages to show Tammy had control of Sidney's phone, Tammy was punishing Sidney for the affair, and their marriage was not open and happy as Tammy claimed. Although the trial court chastised the State for the putting "salty materials that were pretty prejudicial that did get into the defendant's character" into evidence, it denied Tammy's motion for a mistrial.

Tammy argues the trial court abused its discretion in admitting the text messages that referenced marijuana use and were sexually explicit. *See State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006))); Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *State v. Faulkner*, 274 S.C. 619, 621, 266 S.E.2d 420, 421 (1980) ("While the State may not attack a criminal defendant's character unless he has placed it in issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation." (citations omitted)).

Although the messages referencing drug use constituted prior bad act evidence, they were relevant and logically pertinent to the State's attempt to discount Tammy's testimony that she and Sidney were trying to get pregnant at the time of Victim's disappearance and that Sidney went to Walmart to purchase a pregnancy test for her,

not Victim. *See Johnson v. State*, 433 S.C. 550, 860 S.E.2d 696, 699 (Ct. App. 2021) (stating in criminal cases, "the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: 'If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime'" (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923))); *see also State v. Perry*, 430 S.C. 24, 34, 842 S.E.2d 654, 659 (2020). The State's evidence showed Victim was possibly pregnant with Sidney's child at the time of her disappearance, and its theory of the case was that Tammy and Sidney lured Victim to the Landing in order to take a pregnancy test. Moreover, the State alleged Victim's possible pregnancy was also part of Tammy's motive to kill Victim, i.e., Tammy was already angry with Victim and Sidney for the affair, but her anger increased when she learned Victim may have been pregnant. While the State's presentation of Tammy's drug use was prejudicial, we find the prejudicial effect of these text messages did not substantially outweigh their probative value as to the State's theory of Tammy's motive.

Second, we find Tammy's internet searches for "Cougar Life" and her sexual text messages to a younger male were character evidence and, because the recipient may have been underage, prior bad act evidence. However, this evidence was relevant and logically pertinent to show Tammy's motive for kidnapping Victim, her anger at Sidney for the affair, her desire for revenge against Sidney, and to prove she had control over Sidney's phone, which was used to lure Victim to the Landing. Both Tammy's motive and identity as one of the kidnappers were material issues of fact in this case, and thus, the probative value of this evidence was high.

Even if the trial court erred in admitting these messages, we find the error harmless given Tammy's statements–during police interviews and her testimony–that she and Sidney had an open relationship. Tammy's trial testimony also included gratuitous and vulgar descriptions of sexual acts.

V. EXPERT WITNESS

The State called Grant Fredericks, who was qualified as an expert in video forensic analysis. Fredericks testified he used a process known as reverse projection analysis to form his opinion that the truck seen on the surveillance cameras on the road to the Landing between 3:35 a.m. and 3:45 a.m. on December 18 was in fact the Moorers' truck.

On appeal, Tammy does not quibble with Fredericks' qualifications or his methodology, but she claims the trial court erred in allowing Fredericks to testify to his identification of the Moorers' truck because the opinion was unreliable. The State claimed Tammy did not preserve this issue, but she did. We do, however, disagree with her argument that Fredericks' opinion lacked sufficient reliability.

Before admitting expert testimony, trial courts, as the gatekeepers of evidence, must ensure the proffered evidence is beyond the ordinary knowledge of the jury; the witness has the skill, training, education, and experience required of an expert in his field; and the testimony is reliable. *Watson v. Ford Motor Co*., 389 S.C. 434, 445–46, 699 S.E.2d 169, 174–75 (2010); Rule 702, SCRE. In South Carolina, a trial court minding the Rule 702 gate must assess not only (1) whether the expert's *method* is reliable (i.e., valid), but also (2) whether the *substance* of the expert's testimony is reliable. *See State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999) (trial court must determine whether underlying science is reliable); *Watson*, 389 S.C. at 446, 699 S.E.2d at 175 ("[T]he trial court must evaluate the substance of the testimony and determine whether it is reliable."). South Carolina has not adopted *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 594–95 (1993), by name, nor has it revised Rule 702, SCRE, to incorporate the *Daubert* framework. Nevertheless, our approach is "extraordinarily similar" to the federal test. Young, *How Do You Know What You Know?*, 15 S.C. Law. 28, 31 (2003); *see also State v. Phillips*, 430 S.C. 319, 343–44, 844 S.E.2d 651, 664 (2020) (Beatty, C.J., concurring).

Our state supreme court has set out four factors to be considered in determining the admissibility of novel scientific evidence: (1) publications and peer review; (2) prior application of the method to the type of evidence in the case; (3) quality control procedures utilized; and (4) consistency of the method with recognized scientific law and procedures. *State v. Jones*, 273 S.C. 723, 730–32, 259 S.E.2d 120, 124–25 (1979); *see also State v. Mealor*, 425 S.C. 625, 647–48, 825 S.E.2d 53, 65–66 (Ct. App. 2019). "The trial judge should apply the *Jones* factors to determine reliability." *Council*, 335 S.C. at 20, 515 S.E.2d at 518.

The substance of an expert's testimony is reliable if it adheres to the rigors of the method. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). As long as the trial court is satisfied the expert's testimony consists of a reliable method faithfully and reliably applied, the gate of admissibility should be opened. The correctness of the conclusion reached by an expert's faithful application of a reliable method (and

the credibility of the expert who reached it) is for the jury, for the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf. *See State v. Jones*, 423 S.C. 631, 639–40, 817 S.E.2d 268, 272 (2018) ("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.").

Fredericks testified that reverse projection is a form of photogrammetry, which is a process to conduct measurements by using the reflection of light to determine the shape, size, and distance of objects. He explained that, as used in this case, reverse projection photogrammetry "is the examination of reflective patterns off the vehicle and off the headlight spread pattern, that is the headlight projection onto the roadway." He stated he had used these methods and techniques for over thirty years and had tested them with his peers. He distinguished his technique from mere "eyeballing" video images for comparison, explaining that the method involves the technical science of analyzing the compression involved in the production of the video images. Fredericks elaborated that comparing video images by "eyeballing" can lead to error because the viewer does not have the experience to test the comparison by taking compression into account. The scientific process of evaluating compression enables him to determine whether the video accurately reproduces the image. Fredericks further testified that he follows the methodology "universally accepted" in the field of forensic identification for decades, known as "ACEVR: analyze, compare, evaluate, verify, and report."

Fredericks' testimony illustrated the verification and testing inherent in the method he employed. He stated that, although he is often consulted to identify a specific vehicle for a case, he can only do so less than ten percent of the time, mainly due to the low-quality resolution of the video evidence. He also related an episode that highlighted the testability and reliability of his method: he once opined that, after conducting the reverse projection analysis, the "questioned" vehicle was not the same model as the "known" vehicle, and it later transpired that he had not been furnished with the correct "questioned" vehicle. As to identifying a specific vehicle by headlight pattern spread analysis, Fredericks testified headlight spread pattern is one of the "very, very unique features of a vehicle," and has been the subject of numerous publications and testing. He noted he once tested sixty new vehicles of the same make and model and found all of their headlights reflected off the roadway in different ways.

In arriving at his opinion that the truck seen on the surveillance video riding to and from the Landing area between 3:35 and 3:46 a.m. on December 18, 2013, was the Moorers', Fredericks overlaid the images captured at that time on images captured by the cameras during a recreation using the Moorers' truck in February 2014, under similar light and other conditions. He concluded that the headlight pattern reflections off the roadway were identical in both videos. He then compared the reflective images from over a dozen other trucks, including some of the same make and model. None of them matched the headlight pattern seen on the December 18th video. Fredericks further reviewed images of some 3,910 trucks that the surveillance cameras had captured over several months and found none had the unique characteristics of the Moorers' truck.

Fredericks explained he had adhered to the "strict" methodology of ACEVR in reaching his opinion. He emphasized his opinion was not based exclusively on the headlight pattern analysis, but also on the analysis of the light reflections off various other parts of the truck and found the "reflections were identical and different from all of the other vehicles."

We conclude the trial court was well within its discretion in admitting Fredericks' identification testimony as a reliable expert opinion. Fredericks' expertise was based on his vast experience with forensic video analysis, as well as the facts that his report and conclusion in this case had been peer reviewed by another certified forensic video examiner and his headlight spread analysis was a peer reviewed technique. The reliability of the reverse projection methodology was demonstrated by Fredericks' own experience. The text of Rule 702 states expertise can be based on experience. *See also Kumho Tire Co.*, 526 U.S. at 156 (stating that "no one denies that an expert might draw a conclusion from a set of observations based on extensive and specialized experience").

The reliability of expertise is often proven by its success. *See, e.g.*, *State v. White*, 382 S.C. 265, 271, 676 S.E.2d 684, 687 (2009) (dog handler deemed reliable in part because of his record of some 750 tracks with the same dog). A leading commentator has stressed that when an expert's opinion is based on inferences derived from historical facts (and that—along with the technical knowledge of how forensic video analysis and light reflections work–is essentially all reverse projection analysis is), a judge should measure reliability as follows:

> [T]he judge should insist on a foundation demonstrating that the expert's technique "works"; that is, the methodology enables the expert to accurately make the determination as to which she proposes to testify. The foundation must include a showing of the results when the technique was used on prior occasions. Do the outcomes demonstrate a connection between facts *A* and *B*?

1 *McCormick on Evid*ence § 13 (8th ed.) (2020). Fredericks' testimony about his successful results did precisely that. Our supreme court has emphasized the importance of empirical verification to reliability. *See, e.g.*, *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015) ("[E]vidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies."). To sum up, we hold the trial court did not err in admitting Fredericks' opinion as it satisfied the *Jones* factors and met the reliability standard of Rule 702.

VI. EXCLUDING DEFENSE WITNESSES

Before the defense began its case, the State asserted Tammy's children and mother had violated the trial court's sequestration order by watching a live feed of the trial. After an evidentiary hearing, the trial court ruled Tammy's mother and children had willfully and knowingly violated the sequestration order and excluded their testimony. Tammy asked to proffer the witnesses, but the trial court refused. Tammy later objected to the exclusion of the witnesses on due-process grounds, asserting the suppression of her witnesses and their alibi testimony[1] prevented her

[1] As for the trial court's exclusion of alibi testimony from Tammy's mother, children, and sister after finding Tammy did not give adequate notice of an alibi defense to the State pursuant to Rule 5(e)(1), SCRCrimP, we find this exclusion was not prejudicial because: (1) Tammy's sister testified that she saw Tammy arrive at her home at 3:10 a.m.; (2) Tammy's mother and children were excluded from testifying for violating the sequestration order; and (3) the State did not need to prove Tammy was at the Landing when Victim disappeared to prove Tammy lured Victim to the Landing or conspired with Sidney to lure Victim to the Landing. *See, e.g.*, *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (stating "a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all").

from presenting a full defense.

Tammy asserts the trial court abused its discretion in excluding the testimony of her defense witnesses because it was an extreme and disproportionate remedy for the violation of sequestration order, especially, when it appeared the defense witnesses heard, at most, the testimony of two State witnesses on one morning of the trial. We disagree.

Whether the testimony of a witness who has violated the sequestration rule should be excluded depends upon the circumstances of the case and lies within the sound discretion of the trial court. *State v. Huckabee*, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010). "The purpose of the exclusion rule is . . . to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial; and if a witness violates the order he may be disciplined by the court." *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), *aff'd in part, vacated in part, rev'd in part on other grounds*, 431 S.C. 394, 848 S.E.2d 779 (2020).

A proffer allows us to evaluate to what extent the exclusion of the testimony was prejudicial. *State v. Cabbagestalk*, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984); *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 402–03 (1986). The trial court should have granted Tammy's proffer request, as that would have enhanced our review of the materiality of evidence, as well as the prejudicial effect of its exclusion. *State v. Jenkins*, 322 S.C. 360, 367, 474 S.E.2d 812, 816 (Ct. App. 1996) ("The reason for the rule requiring a proffer of excluded evidence is to enable the reviewing court to discern prejudice."). We do not need to reach the question of what prejudice Tammy experienced as a result of the exclusion of her witnesses because we believe the trial court was within its discretion to exclude their testimony.

Here as in *Washington*, the trial court conducted an evidentiary hearing and made a specific finding that the State's witness, Deputy Pike, was credible. Deputy Pike detailed she observed Tammy's children and mother watching a live stream of the trial in the sequestration room. During the hearing, one of Tammy's children admitted he was watching YouTube on his cell phone, which meant he had access to the internet. This is important because several days before, the trial court had been confronted with someone in the sequestration room live-streaming the trial. At that juncture, the trial court exercised its discretion not to impose sanctions. Defense counsel affirmed that defense counsel had "made it clear that no one who is

sequestered for the defense is allowed to have access to a device which could connect to the internet." In short, the sequestered witnesses were told what not to do and did it anyway, despite the first admonition. We find no error.

Consequently, we also reject Tammy's claim that the exclusion of her witnesses infringed her right to present a complete defense, thereby violating her right to due process. *See California v. Trombetta,* 467 U.S. 479, 485 (1984) (finding the Due Process Clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); *see also State v. Lyles*, 379 S.C. 328, 342, 665 S.E.2d 201, 209 (Ct. App. 2008) (finding the right to present a defense is not unlimited).

Tammy's convictions for kidnapping and conspiracy to kidnap are therefore

AFFIRMED.

KONDUROS and HEWITT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Sidney Stclair Moorer, Appellant.

Appellate Case No. 2019-001636

Appeal From Horry County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5988
Heard April 13, 2022 – Filed June 7, 2023

AFFIRMED

Appellate Defender Taylor Davis Gilliam, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General David A. Spencer, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

HILL, A.J.: Sidney S. Moorer (Sidney) appeals his convictions for kidnapping and conspiracy to kidnap. Sidney argues the trial court erred in (1) transferring venue of his case back to Horry County; (2) denying his motion for directed verdict on both the kidnapping and conspiracy to kidnap charges; and (3) qualifying Grant Fredericks as an expert in forensic video analysis and allowing him to testify the

Moorers' truck was the vehicle videotaped going toward and away from the place from which the victim disappeared. We affirm.

I. BACKGROUND FACTS

From July 2013 until late October or early November 2013, Sidney, a thirty-eight-year-old man, had an affair with Heather Elvis (Victim), a nineteen-year-old woman. Sidney and Victim met at the Tilted Kilt, a restaurant at Broadway at the Beach in Myrtle Beach, where Victim worked as a hostess and Sidney did maintenance work. Victim and Sidney communicated with each other on their cell phones around 400 to 500 times a month until their relationship ended when Tammy Moorer (Tammy), Sidney's wife, found out about the affair. During the affair, Tammy's and Sidney's cell phone records showed they also regularly communicated, but from November 2, 2013, to December 18, 2013, communication between Tammy's and Sidney's cell phones stopped.

On the evening of December 17, 2013, Victim went on a first date with a man her age. During the date, Victim acted happy, and her date dropped Victim off at her apartment after 1:00 a.m. on December 18, 2013. Meanwhile, Sidney and Tammy were, by their own admission, together. Location data from their cell phones indicated they were in the area of Victim's apartment and the area of Longbeard's Bar, from 11:00 p.m. until 1:30 a.m. At 1:19 a.m., Sidney purchased a pregnancy test kit from Walmart. From Walmart, Sidney and Tammy traveled to a Kangaroo Express gas station and parked across the street. At 1:33 a.m., Sidney exited his truck and walked across the street to the gas station. At 1:35 a.m., he called Victim—for the first time since their affair ended six weeks before—from a payphone located outside the gas station. The call lasted four minutes and fifty seconds. Location data from Victim's phone showed she was in the area of her apartment when she received this call.

After receiving the payphone call, Victim called her roommate Brianna Warrelmann, who was out of town. Victim was upset and crying. Warrelmann calmed Victim down, told Victim not to meet with Sidney, and told Victim to go to sleep and they would talk in the morning. However, it appears Victim called the pay phone number two times from the area of her apartment, changed into her favorite outfit, and—according to the location data from her cell phone—left her apartment at 2:32 a.m. Victim called the payphone a third time while driving, and at 2:43 a.m., when she arrived in the same area that Sidney and Tammy had been just four hours earlier, she called the payphone another six times. None of the calls were answered.

Victim returned home, where, at 3:16 and 3:17 a.m., she called Sidney's cell phone twice. The first call to Sidney's cell phone went to voicemail, but the second call lasted a little over four minutes. Location data from Sidney's phone shows he was at or near his home when he spoke to Victim. Location data from Victim's phone showed after this call, Victim left her apartment and went to Peachtree Landing (the Landing), which is located about a five-minute drive from the Moorers' home. While at the Landing, Victim called Sidney's cell phone four more times—at 3:38 a.m., 3:39 a.m., 3:40 a.m., and 3:41 a.m. All four calls went to voicemail. The 3:41 a.m. phone call was the last one made from Victim's phone, and to this date, there has been no further activity on Victim's phone. At 4:37 a.m., Tammy texted Sidney for the first time since November 2, 2013.

Victim's car was discovered at the Landing at 4:00 a.m. on December 18, 2013, by an officer on routine patrol, who noted no signs of a struggle at the Landing and nothing appeared to be wrong with the car. On the evening of December 19, 2013, when her car was still abandoned at the Landing, the police contacted Victim's father, and a search for Victim began. Victim has never been found.

Based on Victim's phone records, a search of her apartment, and discussion with her coworkers and roommate, it became apparent Victim may have been pregnant with Sidney's child,[1] and Sidney became the prime suspect in Victim's disappearance. On December 20, 2013, the police visited the Moorers' home. Tammy gave the police consent to enter the home and property, where they discovered the Moorers had a home surveillance system; a black 2013 Ford F-150 Ford Platinum truck that Tammy told them could not be unlocked at the time; and a bag of cement, a spent shotgun shell, and a bottle of cleaning fluid piled by the Moorers' parked camper. The day after this police visit, Sidney purchased a new home surveillance system. Video from this new surveillance system showed Sidney, Tammy, Tammy's sister, and Tammy's sister's boyfriend cleaning, pressure washing, and vacuuming the Moorers' Ford F-150 on December 22, 2013, and then burning the rags used to clean the car. Later in February 2014, officers searched the Moorers' home and their Ford F-150, finding no evidence of Victim's disappearance.

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[1] Several of Victim's coworkers and Victim's roommate reported that after Victim and Sidney's relationship ended, Victim started to gain weight; believed she was pregnant; took a pregnancy test at work, receiving an error result; and discarded another pregnancy test box in the bathroom of her apartment that was found after her disappearance. The pregnancy test from this box was never found.

Investigators began looking into Sidney's life more closely and discovered Tammy may have also been involved in Victim's disappearance. Phone records and location data from the Moorers' two cell phones[2] and their computer revealed a grim picture of a wife who was irate with her husband for having an affair with a younger woman; who threatened Victim upon discovery of the affair[3]; who desired to punish Sidney by handcuffing him to the bed at night and having him get a tattoo of her name on his waistline; who took control of Sidney's cell phone on November 2, 2013, when she discovered the affair; who sexted other men from Sidney's cell phone; who drank excessively and smoked pot, even when she was allegedly pregnant or trying to become pregnant; and who went with her husband to work since discovering the affair.

In the course of their investigation, officers discovered two surveillance systems had captured an image of a pickup truck driving between the Moorers' home and the Landing in the early morning hours of December 18, 2013. One was a home surveillance system located five minutes from the Landing, which showed a dark color pickup truck heading towards the Landing at approximately 3:45 a.m. and then passing back about ten minutes later. The second was a business' surveillance system located two or three minutes from the Landing, which showed a dark pickup truck going towards the Landing at 3:39 a.m. and returning from the Landing at 3:46 a.m. The police asked a forensic video analysist, Grant Fredericks, to assist them in identifying the truck from these videos. After conducting many tests, including a "headlight spread pattern analysis," Fredericks formed the opinion the truck in the

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[2] The State's cell phone location data expert testified he tried to retrieve GPS data from Victim's and Sidney's Google history report. Victim's records supported the phone location data, but Sidney's data had been deleted and his account had been closed on December 25, 2013. Notably, Sidney's data and account was deleted after he spoke to a police officer on December 20, 2013, who asked Sidney if the police would discover he went to the Landing the night Victim disappeared by looking at his GPS records.

[3] On November 2, 2013, after Tammy discovered the affair, she called Victim's phone multiple times from her cell phone. Tammy also sent Victim several text messages from Sidney's cell phone, including "Who the f*** is this?" and "You want to call me right now and explain yourself? It would be wise thing to do. . . . Save yourself. I'm giving you one last chance to answer before we meet in person, only one. Hey, Sweetie, you ready to meet the Mrs., the kids want to meet you?" Victim's coworkers reported Victim was scared of Tammy.

video footage was the Moorers' Ford F-150.

A Horry County Grand Jury indicted Sidney and Tammy for kidnapping and conspiracy to kidnap Victim. Sidney and Tammy were tried separately. Sidney's first trial, held in 2016, ended in a mistrial. This appeal is from his 2019 retrial.

At Sidney's retrial, the State presented evidence from police investigators; a cellphone location data analyst; Victim's coworkers, who testified Victim was a dependable worker; Victim's roommate; the man with whom Victim went on her December 17, 2013 date; witness testimony indicating the Moorers' personal surveillance system was likely functional on the night of December 18, 2013; and expert testimony that the SD card in the Moorers' Ford F-150's GPS and navigational system was removed at 12:07 a.m. on December 18, 2013, and a warning about the SD card's removal would have played on the truck's GPS monitor. The trial court also qualified Fredericks as an expert witness in forensic video analysis. Fredericks testified the truck seen in the surveillance videos driving to and from Peachtree Landing close to the time Victim disappeared was the Moorers' Ford F-150.

The State sought to paint the picture that in the weeks before Victim's disappearance, Tammy was infuriated with Sidney for having an affair with Victim; Sidney's phone was under Tammy's control; Tammy sought revenge on Sidney for the affair by sending sexual messages to other men on Sidney's phone; and upon hearing rumors that Victim was pregnant with Sidney's child, Sidney and Tammy sought to dispose of Victim and her unborn child to prevent Victim from forever having a hold on Sidney and ruining their family. The State's theory was that, on the night of Victim's disappearance, Tammy had control over Sidney's cell phone and actions, and together they sought to lure Victim to an unsafe and remote location by asking Victim to take the pregnancy test they had purchased at Walmart. The State contended the Moorers tried to destroy incriminating evidence by purchasing a new surveillance system and removing the one they had the night of the disappearance, deleting Sidney's Google GPS data and account, and removing the SD card from their Ford F-150's navigational system. The State also claimed the Moorers tried to avoid detection by using a payphone to call Victim and tried to avoid video evidence by not parking in the gas station parking lot by the payphone. The State noted Tammy returned Sidney's cell phone to his control for the first time in six weeks shortly after Victim disappeared.

As a final piece of incriminating evidence, the State offered testimony from Tammy's cousin Donald Demarino, who stated that after Victim's disappearance,

Sidney showed him a picture of Victim on a mobile phone. Demarino explained the picture showed Victim was not "under her own free will," and based on the picture, he did not expect anyone to hear from Victim ever again. Demarino stated he did not tell anyone about the picture until he was imprisoned for an unrelated offense, but he stated he did not receive anything in exchange for telling the State about the picture. Demarino admitted, however, he told his mother that this story was not true. He explained he did this to stop his mother from worrying.

After the State rested, Sidney moved for a directed verdict, arguing the State had not presented substantial circumstantial evidence to support the charges of kidnapping or conspiracy to kidnap. The trial court denied the motion.

During the defense's case, Sidney called Bruce Koenig as an expert witness in forensic analysis. Koenig testified there was no way to scientifically prove the vehicle in the surveillance videos was the Moorers' truck because the picture contained "nothing unique" and he saw more "differences than similarities" between the vehicle in the video and the Moorers' truck. However, Koenig agreed, based on Fredericks' work, the vehicle in the surveillance videos was likely a Ford F-150.

Tammy's sister, who lived next door to the Moorers, also testified for the defense, stating Tammy texted her when Tammy and Sidney came home at 3:10 a.m. on December 18, 2013; she then sent the Moorers' children home; and she saw the Moorers outside their door waiting for their children. Tammy's sister also testified she and her boyfriend gave Sidney his Christmas present, a car washing kit, on December 22, 2013, because the weather was nice and they wanted to wash their own car. She testified Sidney and Tammy also washed their car that day, and she noted the Moorers always burned trash. After the defense rested, Sidney renewed his motion for a directed verdict, which the trial court denied.

The jury found Sidney guilty of both kidnapping and conspiracy to kidnap. The trial court imposed concurrent sentences of thirty years' imprisonment for each charge. This appeal followed.

II. STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only. This Court is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (internal citations omitted).

III. DISCUSSION

1. Venue

After the 2016 mistrial, Sidney moved to change venue in his case from Horry County. The trial court granted this motion, changing the venue to Georgetown County because Sidney could not receive a fair and impartial trial in Horry County due to the massive pre-trial publicity and social media exposure. In particular, the trial court noted a number of possible jurors had posted on their social media that they "knew how to get around the Judge by just saying that [they] can be unbiased."

Three years later, in May 2019, the State requested the venue be returned to Horry County, noting since the 2016 order changing venue, two juries had been empaneled for this case in Horry County (one in August 2017 for Sidney's charge of obstruction of justice related to the facts of this case and one in October 2018 for Tammy's trial on these charges); social media saturation had died down; and a fair and impartial jury could be empaneled in Horry County. The trial court granted the State's venue motion and transferred venue back to Horry County.

Sidney argues the trial court erred in transferring venue back to Horry County because "social media saturation" regarding Victim's disappearance "pervaded" Horry County and jurors had shown "their ability and willingness to bypass impartiality determinations at trial." Sidney also asserts the venue should have been changed because Victim's aunt was the Horry County Clerk of Court, and "her last name and familial status created the appearance of a conflict." We disagree.

Sidney moved to transfer venue on the first day of his retrial. The trial court noted that out of the 300 hundred members of the jury venire, 173 indicated they had no knowledge of the case on their juror questionnaires. The trial court said these statistics confirmed its decision to change venue back to Horry County but ruled Sidney's motion would continue until a jury was empaneled.

During the ensuing *voir dire* process, several venire members noted they had heard about the case. Almost all of these potential jurors were excused because they said they believed Sidney was guilty or they could not be impartial based on what they knew. However, three that said they could be impartial despite what they had heard about the case were allowed to remain. Two members of the venire who knew Victim's sister were allowed to remain because they stated they would be impartial.

One other member who knew Victim's sister was excused because of her relationship with Victim's sister. One venire member who knew Sidney was excused; one who was close friends with a police officer who was a witness in the case was excused; one who had mutual friends with Victim was excused; one who knew Victim was excused; and one whose husband was friends with Victim was excused. After *voir dire* was completed, the petit jury was selected, including three alternates. None of the seated jurors or alternate jurors had stated they knew about the case or knew a witness in the case. No motions were made by either party regarding the selection process.

After jury selection, Sidney brought up the motion he had filed to excuse the jury and continue trial based on the inherent conflict of interest in holding the case in Horry County where Victim's aunt was the clerk of court. Sidney noted the clerk was Victim's aunt and the clerk acted as an "extension of the court." The trial court denied this motion, noting while the clerk was "very much involved with this proceeding, as she should be, she's in charge of the courthouse," it had asked the clerk to let her assistants be the ones in the courtroom handling the case. The trial court did note, however, that the clerk's name, Renee Elvis, was on the juror summons.

We find the trial court did not abuse its discretion in denying Sidney's motions to change venue from Horry County. *See State v. Evins*, 373 S.C. 404, 412, 645 S.E.2d 904, 908 (2007) ("A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion."). First, as to Sidney's argument regarding the pre-trial publicity and social media saturation of this case, the trial court carefully examined the jury pool as to their knowledge of the case and their ability to be impartial, excusing every juror who stated they could not be impartial based on their knowledge of the case or knowing a witness in the case. *Id*. ("When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate *voir dire* examination of the jurors, his decision will not be disturbed absent extraordinary circumstances."); *id*. ("When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial."); *see also Irvin v. Dowd*, 366 U.S. 717, 722–23 (1961) ("It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity,

and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court."); *State v. Avery*, 374 S.C. 524, 531–33, 649 S.E.2d 102, 105–06 (Ct. App. 2007) (finding the trial court did not abuse its discretion in denying defendant's motion for a change of venue based on pretrial publicity because the trial court "individually examined these venirepersons; the court inquired as to each venireperson's (1) exposure to the case, (2) formation of opinions about the case, and (3) ability to set aside those opinions in order to determine with impartiality whether the defendant was guilty beyond a reasonable doubt," excusing the two venirepersons who had knowledge of the case, had formed an opinion in the case, and could not set their opinion aside and be impartial).

Additionally, Sidney cannot prove any actual prejudice from pretrial publicity because none of the members of the venire with knowledge of the case or who knew any of the witnesses in the case were seated on the petit jury. *See Evins*, 373 S.C. at 413, 645 S.E.2d at 908 ("It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity."); *id.* at 412–13, 645 S.E.2d at 908 (finding defendant did not prove he suffered any prejudice from the denial of his motion to change venue based on pre-trial publicity even where seven of the twelve seated jurors "had some knowledge of the case" because (1) "the trial court and defense counsel conducted a thorough *voir dire* of the jury pool," (2) all of the jury pool members who had knowledge of defendant or his pending charge in another murder stated they could "put that knowledge aside," and (3) the defense did not use all of its peremptory challenges); *State v. Caldwell*, 300 S.C. 494, 502, 388 S.E.2d 816, 821–22 (1990) (finding trial court did not abuse its discretion in denying defendant's motion for a change of venue where "eleven of the seated jurors and two of the alternate jurors were aware of media coverage of the crime," because "those jurors expressed to the trial judge no doubt or reservation of their ability to impartially serve as a juror and to decide the matter solely on the evidence presented," and thus, the defendant did not prove prejudice or extraordinary circumstances warranting a change of venue), *overruled on other grounds by State v. Evans*, 371 S.C. 27, 30, 637 S.E.2d 313, 315 (2006); *State v. Stanko*, 402 S.C. 252, 277–79, 741 S.E.2d 708, 721–22 (2013) (finding the trial court did not abuse its discretion in denying defendant's motion to change venue where "seven of the twelve jurors seated had

some knowledge of the case," but defendant did not prove prejudice or "present even one juror who stated he or she could not ignore exposure to pretrial publicity prior to serving as a juror"), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

Second, the trial court was well within its discretion to not change venue due to Victim's aunt being the Horry County Clerk of Court. Sidney did not demonstrate he was prejudiced by Victim's aunt's position as the clerk of court. Sidney did not allege Victim's aunt had acted improperly as the clerk of court in this case; he only challenged the appearance of impropriety.

The trial court acted prudently to prevent the appearance of any impropriety by asking Victim's aunt to let one of her assistant clerks handle the case, asking Victim's aunt to not be in the courtroom for the trial, and not mentioning the clerk's name to the jury. Victim's aunt was not present for the jury selection, she had no hand in the *voir dire* process or selecting the jury, and the only time her name was said or provided to the jury pool was on the jury summons. *But see State v. Sullivan*, 39 S.C. 400, 17 S.E. 865, 867–68 (1893) (finding the circuit court did not abuse its discretion in changing the venue of a trial from Greenville County when the defendant was charged with murdering the half-brother of the Greenville sheriff, who "had acted as a member of the board of jury commissioners for that county, and by which board such panel of petit jurors had been selected, and also . . . had summoned, or caused to be summoned, every one of such petit jurors for attendance upon the court at that term"). Sidney failed to demonstrate that any of the jurors noted Victim's aunt's name on the juror summons or that they believed or knew that Victim and her aunt were related. Therefore, we find the trial court did not err in denying Sidney's motion to change venue.

2. Directed Verdict

Sidney argues the trial court erred in denying his motion for a directed verdict because there was no direct or substantial circumstantial evidence that he kidnapped or conspired with Tammy to kidnap Victim. We disagree.

While the State did not present any direct evidence of Sidney's guilt, it did present substantial circumstantial evidence. *See State v. Zeigler*, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005) ("The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling."); *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004) ("In

reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight."); *id*. at 633–34, 591 S.E.2d at 605 ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury.").

The State presented evidence indicating Victim disappeared against her will. The State also presented evidence Sidney kidnapped Victim, including evidence indicating: (1) Sidney had motive to kidnap and harm Victim—to appease Tammy's anger about the affair and to avoid any negative consequences of Victim's possible pregnancy; (2) Sidney went to Walmart hours before Victim disappeared to purchase a pregnancy test when Victim was showing symptoms of pregnancy; (3) Tammy was in control of both her and Sidney's cell phones from November 2, 2013, when she discovered the affair, until the early morning hours of December 18, 2013, when Victim disappeared; (4) based on their cell phone location data, the Moorers' life pattern changed drastically after Tammy discovered the affair and this change showed the Moorers' phones were increasingly located in the same vicinity as each other; (5) Sidney admitted he spoke to Victim from a payphone and later from his own cell phone the morning she disappeared; (6) Victim spoke to Warrelmann about the phone call with Sidney, and Warrelman said she told Victim not to meet with Sidney, but Victim soon left her apartment and repeatedly called the payphone number and Sidney's number after this conversation with Warrelmann; (7) Victim repeatedly called Sidney on the morning of her disappearance, including just moments before 3:41 a.m. when Victim's phone stopped reporting any data; (8) the Landing, an area that Victim's cell phone data showed she did not frequent, was only a short distance from the Moorers' home; (9) video surveillance from the morning of Victim's disappearance showed a black truck going to and from the area of the Landing around the time of Victim's disappearance; (10) Fredericks, an expert in forensic video analysis, opined the truck seen in the surveillance videos was the Moorers' black Ford F-150; (11) Sidney showed Demarino a picture of Victim after her disappearance depicting her restrained; and (12) Sidney acted to remove any possible incriminating evidence by removing the Moorers' old surveillance system and purchasing a new one; removing the SD card from the Moorers' Ford F-150's navigational system at 12:07 a.m. on December 18, 2013, three hours before Victim disappeared; deleting his Google GPS data; pressure washing and vacuuming the Moorers' Ford F-150 two days after Tammy would not consent to letting police officers look inside the truck; and burning the rags used to wash their truck.

Finally, as to Sidney's argument there were no signs of struggle at the Landing or in the Moorers' truck, we note evidence of a struggle is not required to prove a kidnapping occurred, and in cases of inveigling or decoying, there would not be signs of struggle because the victim is tricked into going with their kidnapper willingly. *See Stokes*, 345 S.C. at 373, 548 S.E.2d at 204 ("[T]he fact that [a victim] was 'inveigled' or 'decoyed' into going [somewhere with the defendant] negates, in legal contemplation, the voluntariness of her participation." (internal footnotes omitted)); *State v. East*, 353 S.C. 634, 637, 578 S.E.2d 748, 750 (Ct. App. 2003) ("South Carolina's kidnapping statute requires proof of an unlawful act taking *one* of several alternative forms, including . . . inveiglement[or] decoy . . . ." (emphasis added)). The State alleged the Moorers lured Victim to the Landing by having Sidney contact Victim and asking her to meet for the purpose of taking a pregnancy test to determine if she was pregnant with Sidney's child. Thus, the State did not have to prove the Moorers kidnapped Victim by force or prove there was a struggle. *See Ray v. State*, 330 S.C. 184, 188, 498 S.E.2d 640, 642 (1998) (kidnapping was proven when evidence showed the defendant inveigled victim into his truck under the pretense he was taking her to the hospital); *see also United States v. Hughes*, 716 F.2d 234, 239 (4th Cir. 1983) ("nothing in the policy of the . . . kidnapping statute justifies rewarding the kidnapper simply because he is ingenious enough to conceal his true motive from his victim until he is able to transport her . . . [to another location]."). Accordingly, because the State presented substantial circumstantial evidence Sidney kidnapped Victim, we affirm the trial court's denial of Sidney's directed verdict motion as to the kidnapping charge.

The State also presented sufficient evidence that Sidney and Tammy conspired to kidnap Victim. Tammy's and Sidney's iPhones' locations demonstrated they tracked Victim's whereabouts following Tammy's discovery of the affair. This and other evidence illustrated vividly that Sidney and Tammy were operating in tandem, focusing their joint attention on Victim before she vanished. Tammy controlled Sidney's iPhone from November 2, 2013, until the very hour of Victim's disappearance, when Sidney began using it again. Sidney admitted that he and Tammy were together in their Ford F-150 in the early morning hours of December 18, 2013, including at the payphone where Sidney called Victim on the night of Victim's disappearance and when the SD card was removed from the Moorers' truck's navigational system. Tammy also helped Sidney clean the Moorers' Ford F-150 truck and would not consent to allowing police officers into the truck. Accordingly, we affirm the trial court's denial of Sidney's directed verdict motion as to the conspiracy to kidnap charge.

Conspiracy often can only be proven by circumstantial means, as the crime often lurks in dark caverns, far from the light of day. We conclude there was evidence of a common design and mutual tacit agreement between Tammy and Sidney that went well beyond mere association or suspicion. *See State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963). Given the timelines and conduct the evidence bore out, the Moorers' truck's path to the Landing was a fateful link in their long-laid plans, plans that required Sidney and Tammy's mutual cooperation. *State v. Jeffcoat*, 279 S.C. 167, 170, 303 S.E.2d 855, 857 (1983).

3. Expert Testimony

Sidney argues the trial court erred in qualifying Fredericks as an expert in forensic video analysis and allowing him to testify as to his conclusion that the Moorers' truck was the one in the surveillance videos to the exclusion of "all other vehicles based on headlight pattern" because the conclusion was refuted by Koenig and was unreliable.

This issue is unpreserved for our review. At no time during the pre-trial hearing on the admissibility of Frederick's testimony or the trial did Sidney object to Frederick's qualifications as an expert in forensic video analysis. Instead, at the pre-trial hearing and at trial, Sidney made it clear that he did not object to Frederick's qualifications as an expert or his ability to conclude that the vehicle in the surveillance videos was a Ford F-150. Sidney's only objections at the pre-trial hearing and at trial pertained to whether Fredericks could conclude that the vehicle seen in the surveillance videos was the Moorers' Ford F-150 to the exclusion of all others based on headlight spread pattern analysis. Specifically, at trial, Sidney objected to (1) Frederick's ability to conclude the vehicle seen in the surveillance videos was the Moorers' truck as being outside the scope of Fredericks' expertise and (2) Fredericks' stating his opinion before testifying as to his methodology and how he reached his determination. The trial court sustained both objections. As to the first objection, the trial court explained at this point, the State could only ask Fredericks if he made a determination, not if he made a "match." As to the second objection, the trial court stated Fredericks had to explain whether his opinion resulted from the reliable application of his methodology before giving his opinion. After explaining the method and how he made his determination in depth, Fredericks opined the Moorers' truck was the suspect vehicle in the surveillance videos. Sidney made no further objections when Fredericks discussed his methodology or when Fredericks testified

as to his opinion that the vehicle seen in the surveillance videos was the Moorers' truck. Therefore, we find Sidney did not make a timely objection to this conclusion and did not ask the trial court to rule on the specific issues of whether Fredericks' conclusion was outside of the scope of his expertise or was unreliable even after Fredericks extensively testified as to his methodology. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented and with sufficient specificity to inform the circuit court judge of the point being urged by the objector." (internal citations omitted)); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Therefore, based on preservation, we affirm the admission of Fredericks' expert opinion testimony.

IV. CONCLUSION

Accordingly, we affirm (1) the trial court's denial of the motion to change venue, (2) the trial court's denial of Sidney's motion for a directed verdict as to his kidnapping and conspiracy to kidnap charges, and (3) the admission of Fredericks' expert opinion testimony.

AFFIRMED.

GEATHERS, J., and LOCKEMY, A.J., concur.