No. WD84656

In the
Missouri Court of Appeals
Western District

STATE OF MISSOURI,

Respondent,

v.

JAMES ADDIE,

Appellant.

Appeal from Cole County Circuit Court
Nineteenth Judicial Circuit
The Honorable Jon E. Beetem, Judge

RESPONDENT'S BRIEF

ERIC S. SCHMITT
Attorney General

EVAN J. BUCHHEIM
Assistant Attorney General
Missouri Bar No. 35661

P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-8756
Fax: (573) 751-5391
evan.buchheim@ago.mo.gov

ATTORNEYS FOR RESPONDENT
STATE OF MISSOURI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF FACTS

Appellant (Defendant) appeals a Cole County Circuit Court conviction for first-degree murder and armed criminal action. Defendant raises one point on appeal: that the trial court erred in admitting opinion testimony regarding tire-track-impression evidence in violation of section 490.065, RSMo.

Defendant was charged in Monroe County Circuit Court with one count of first-degree murder and one count of armed criminal action (ACA) related to the April 27, 2018 shooting death of Molly Watson (Victim). (L.F. D2.) After a change of venue to Cole County, Defendant was tried by a jury in April 2021. (L.F. D1 pp. 6, 48–51.) The jury found Defendant guilty as charged. (L.F. D1 p. 52.) The court later imposed the statutorily required sentence of life imprisonment without probation or parole on the murder charge as well as a consecutive 10-year sentence for ACA.[1] (Tr. 919–20; L.F. D1 p. 54, D32.)

Defendant does not contest the sufficiency of the evidence to support the convictions. Viewed in the light most favorable to the verdicts,[2] the evidence at trial showed the following:

---

[1] The jury had recommended a 20-year sentence for ACA. (L.F. D p. 52.)

[2] *State v. Letica*, 356 S.W.3d 157, 161 (Mo. banc 2011).

Defendant and his wife had been continuously married for 23 years as of April 2018, and they lived together with their two children.[3] (Tr. 660–61.) Defendant worked for Department of Corrections at the Moberly Correctional Center, where he met Victim, who also worked there. (Tr. 586, 644–45, 672.)

In January 2018, Victim met with an event coordinator at a Columbia, Missouri hotel to plan her and Defendant's wedding to be held on April 29, 2018. (Tr. 533–36, 560.) The coordinator met with Victim and Defendant two or three times to plan the wedding. (Tr. 536.) The coordinator testified that while Victim was "outgoing" and "excited" about planning the wedding, Defendant was "very quiet" and "standoffish." (Tr. 538–39.) The coordinator had trouble scheduling the final meeting that was always held a week before the wedding because Defendant had reported that his ex-wife, whom he claimed at been in a car accident the previous Christmas, had just passed away and he was helping his children with arrangements.[4] (Tr. 562–64.)

---

[3] Defendant's son was away at college in April 2018, but his daughter, who was in high school still lived at home. (Tr. 646–47, 661.)

[4] An analysis of Victim's cellphone showed that she made several internet searches on April 26, 2018, looking for obituaries or death notices for Defendant's wife. (Tr. 745; State's Ex. 168.) Defendant's wife had neither been in a car accident in 2017, nor had she died in April 2018. (Tr. 655–56.) Defendant was in fact still married to his wife in April 2018. (Tr. 660–61.)

Defendant and Victim had previously booked a caterer for the wedding to serve approximately 70 guests, but just three days before the wedding, Victim told the coordinator that only 43 guests were expected; the coordinator testified that for the number of guests to drop so precipitously just before a wedding was "very unusual." (Tr. 564–66.)

On April 23, 2018, Defendant and Victim texted each other about formal-wear fittings. (Tr. 744–45; State's Ex. 169A.) On April 24, Defendant texted Victim that he still wanted to marry her. (State's Ex. 169B.)

On April 25, 2018, two days before Victim was murdered, Victim and Defendant appeared at the Randolph County Recorder's Office to apply for a marriage license. (Tr. 509–13; State's Exhibits 113, 114, 116.) Defendant reported on the form that this would be his fifth marriage and that his immediate previous marriage had ended in divorce in October 2017. (Tr. 523; State's Ex. 116.) Both Victim and Defendant signed the application, in which Defendant affirmed that he was "free to marry under the laws" of Missouri.[5]

They did not divorce until August 2018, (Tr. 678.), four months after Victim's murder.

[5] The recorder testified that there was no database to verify whether someone applying for a marriage license was currently married. (Tr. 524.)

(Tr. 524; State's Ex. 116.) Defendant had in fact not been divorced in October 2017, and he lived at home with his wife and family. (Tr. 655, 678.)

Around noon on April 27, 2018, several hours before Victim was murdered, Defendant sent Victim a text message saying that the funeral for his supposedly dead wife was "tomorrow." (Tr. 745–46.) Defendant then sent Victim another text message saying that his "nerves [were] shot" and that he was heading to the airport in St. Louis "to pick people up for the funeral." (Tr. 746.) The final message in this string, which Defendant sent at 12:54 p.m., told Victim "I think I'm going to see you tonight." (State's Ex. 169E.)

Later that day, Defendant dropped off some decorations at the hotel where the wedding was to be held, and he made a $4,000 payment for nearly all of the remaining balance for the wedding and reception. (Tr. 572–73.) When asked if he was excited for the wedding, Defendant replied that "she," referring to Victim, was driving him crazy." (Tr. 573, 577.) The final email Victim sent to the coordinator showed a guest list that included Defendant's children.[6] (Tr. 574.)

---

[6] Defendant's daughter testified that she was unaware that Defendant was planning to marry Victim or that she was on a guest list to attend Defendant's wedding. (Tr. 656.)

Around 5:24 p.m. that day, a series of text messages were sent from one of Defendant's cellphones to the other cellphone Defendant used. (Tr. 746–47.) Defendant's purple-colored cell phone, which his wife did not know about and that he exclusively used to communicate with Victim, sent the following messages to Defendant's orange-colored cell phone, which Defendant used to communicate with his family:

- 5:40:45 PM: Have a meeting tonight at 8. Normal place
- 5:40:45 PM: You have to be there
- 5:50:33 PM: Bring those manuals
- 5:50:33 PM: Dont be a puss again
- 5:57:45 PM: Lets go man!

(Tr. 587, 668–70, 746–47; State's Ex. 169F.)

About an hour later, at around 7 p.m. on Friday, April 27, 2018, Defendant left the family residence in his maroon Mercury Sable to "meet a friend" and did not return home until 10 p.m.[7] (Tr. 646–48, 656, 664–66.)

[7] Defendant's daughter, a high-school student on the date in question, testified that Defendant "regularly" left home to visit friends, but his friends "rarely" came to Defendant's house. (Tr. 646–47.)

Defendant was dressed in blue jeans, a black jacket, and boots.[8] (Tr. 665.) Defendant's wife went to bed 30 minutes later, but his daughter stayed awake doing homework. (Tr. 646–49.)

A short while later, Defendant and Victim traded text messages between 8:06 p.m. and 8:22 p.m. (Tr. 747.) Victim texted Defendant at 8:26 p.m. that she "didn't feel like leaving." (Tr. 748.) Victim's phone showed that she received a call from Defendant also at 8:26 p.m. that lasted for 22 minutes. (Tr. 748.) Victim's cell phone showed that she was driving for 22 minutes from 8:32 p.m. until 8:54 p.m. (Tr. 748–49.)

On this same date (Friday, April 27, 2018), Glen McSparren was driving on a road in a remote area where Victim's body would later be found, when he came upon a car facing away from him and a car facing toward him near a low-water crossing. (Tr. 378–80, 385.) The car facing McSparren was driving toward him, and McSparren yelled out the window asking if someone was stuck. (Tr. 381.) The "older" white man driving the car, which was a dark, four-door, larger car, got out and stated, "I don't know where they are at, it is

---

[8] Defendant's wife testified that she never again saw the black jacket, which had belonged to her father, after that night despite her searching the house for it. (Tr. 665–66.) Defendant had told an officer that he had been wearing gym pants and camouflaged boots. (Tr. 605.)

going to be awhile." (Tr. 381–82.) The man then returned to the car and backed down toward the other vehicle. (Tr. 382.) McSparren backed up and went back the direction he had come. (Tr. 382.) McSparren returned to that same location later that night, and as he approached the low-water crossing, he saw only one of the two cars he had seen earlier. (Tr. 383.) McSparren called 911 after seeing Victim's body lying on the road in front of her car. (Tr. 378.)

The Monroe County Sheriff responded at 10:22 p.m. to a call of a deceased female on an "isolated" gravel road near a low-water crossing. (Tr. 355–56.) Victim's body was lying on the roadway; she was on her back and blood was on the ground. (Tr. 358, 410–11.) A "significant" amount of dirt was found on the backside of the body. (Tr. 411.) Blood was found in and near Victim's vehicle. (Tr. 413–15.) Victim died from a contact gunshot wound to the head. (Tr. 786–87, 789–90.) On the front passenger seat of Victim's car, documents pertaining to Victim and Defendant's upcoming wedding, including a marriage license containing their names, was found. (Tr. 415–16.)

After Defendant returned home at 10 p.m., he appeared "antsy." (Tr. 649, 651.) Defendant's daughter noticed that the washing machine was running, and she smelled bleach. (Tr. 649.) Defendant also bathed about that same

time. (Tr. 650.) Defendant's wife testified that a handgun that Defendant normally kept in a bedside table was never seen by her again. (Tr. 677.)

Victim's cellphone showed that she received several text messages from Defendant's cellphone beginning at 9:33 p.m. until 10:52 p.m., including one asking her to call him, but there was no response to any of these messages from Victim's cellphone. (Tr. 750–51.) Defendant also placed four calls from his cellphone to Victim's cellphone between 10:08 p.m. and 10:30 p.m. that each lasted only three to four seconds. (Tr. 751–52.) The data extracted from Victim's cellphone suggested that she had no plans to see anyone on April 27 other than Defendant. (Tr. 752.)

Inside Victim's purse were documents related to Victim and Defendant's upcoming wedding, including a formal-wear receipt bearing Defendant's name next to the word "groom" that listed a final-fitting date of April 27 and a "use" date of April 29. (Tr. 582; State's Ex. 120.) The purse also contained pictures of Defendant and of Defendant and Victim together. (Tr. 582–83; State's Ex. 121.)

After identifying Victim and finding an online wedding registry showing that Victim and Defendant were to be married two days later on April 29, 2018, police went to Defendant's residence to make a "death notification." (Tr.

372.) Defendant's residence was approximately 30 minutes from where Victim was found. (Tr. 374.)

Police arrived at Defendant's residence at 2:45 a.m. on Saturday, April 28. (Tr. 585.) Defendant answered the door, and as he led the officer inside, a woman appeared and told the officer that she was Defendant's wife. (Tr. 585.) Defendant told the officer that the woman was indeed his wife and that he had been married to her for 22 years. (Tr. 586.) Defendant said that he knew Victim from working together at the Moberly prison, that he and Victim had been in a relationship for the past seven years, and that they were to be married on April 29. (Tr. 586.) When the officer asked Defendant why he was planning to get married the next day when he was already married, Defendant replied, "I got myself involved in something I shouldn't have." (Tr. 586.) Defendant admitted that his wife did not know about his affair with Victim. (Tr. 587.) Defendant then described the wedding planning that had occurred, which he said had been ongoing for over a year. (Tr. 587.)

Defendant produced his purple cell phone that he told the officer he used to communicate with Victim. (Tr. 587; State's Ex. 123.) Defendant's wife was unaware of the purple phone or that Defendant was using it to communicate

with Victim.[9] (Tr. 587–88, 669–70.) Defendant used the purple phone to show the officer a text he had sent to Victim several hours earlier at 8:24 p.m. on April 27. (Tr. 589; State's Ex. 124.) Defendant received a call from Victim on his purple phone at 8:30 p.m., and he talked to Victim for 22 minutes. (Tr. 590, 642.) Defendant later sent a text to Victim that stated "Night night sweetheart. I'll talk to you in the morning." (Tr. 590; State's Ex. 126.) Defendant's phone also showed a call placed to Victim's phone at 10:30 p.m. on April 27 that lasted just 33 seconds. (Tr. 590–91; State's Ex. 127.) Defendant began to sweat "profusely" while talking to the officer. (Tr. 607.)

Defendant told the officer that he left his residence at 7 p.m. on April 27 in his 2000 maroon Mercury Sable to visit a friend and that he returned home at 8:25 p.m. (Tr. 592, 595–99.) Defendant gave the officer consent to search the vehicle. (Tr. 595, 598.) The officer observed that the car had dust on both the inside and outside of it. (Tr. 598–602.) The officer also noticed that tire tracks he had earlier seen at the location where Victim's body was found were consistent with the tread he observed on Defendant's vehicle. (Tr. 602–03.)

---

[9] After Defendant's arrest, his wife gave police an orange cellphone that Defendant used to communicate with her. (Tr. 587–88, 591–92, 668–69; State's Ex. 128.)

Within hours after Victim's body was found, a sheriff's deputy driving to the crime scene discovered an apparently new and unworn white t-shirt lying in the middle of a county road a few miles from the crime scene. (Tr. 426–29, 447.) The t-shirt contained a partial outline of the Missouri state border with writing across the front saying "Skills USA." (Tr. 439–40; State's Ex. 59.) Blood stains were found on the shirt (Tr. 441.) DNA testing of those stains revealed a mixture of two individuals' DNA; the minor DNA component was inconclusive because of insufficient genetic information, but the major component belonged to Victim.[10] (Tr. 442–46.) The white t-shirt also contained particles of gunshot residue.[11] (Tr. 770–71.)

Defendant's daughter had previously made that t-shirt as part of a graphic-design class; she had "messed up" the alignment on three or four identical t-shirts. (Tr. 652–53; State's Exhibits 159, 161.) Defendant's

---

[10] The DNA analyst testified that the DNA profile extracted from the stains that matched Victim's DNA would have an "approximate frequency of 1 in 8.613 nonillions." (Tr. 445–46.)

[11] One particle of gunshot residue was also found in the interior of Defendant's vehicle. (Tr. 769–70.)

daughter had brought the misaligned shirts home, and Defendant took one to the garage to use as a rag.[12] (Tr. 653.)

Casts were made of tire tracks left in soft or moist clay dirt on an embankment near where Victim's body was found.[13] (Tr. 391–402.) Neither of the casts matched the victim's Ford Focus, which was next to Victim's body. (Tr. 409.)

Victim's cell phone was eventually located several miles from her body. (Tr. 476–80.) It contained a map that had been produced by an application on the phone; the map showed two points, the first was Victim's residence and the second was the place where Victim's body was found. (Tr. 468–470, 503, 749; State's Exhibits 170, 171, 172, 173.) Near where Victim's cellphone was found, police found an empty box of Thunderbolt .22 caliber ammunition. (Tr. 481–83.)

---

[12] Defendant's daughter positively identified both t-shirts—the one found in the road and the one found by officers at Defendant's residence—as having been made by her and brought home to the family residence. (Tr. 652–53, 656–57.)

[13] Defendant did not object to the admission of the photographs showing the tire casts, ((Tr. 392–93), and he does not challenge the process used to create the tire casts in this appeal.

During a search of Victim's residence, police discovered a wedding-reception seating chart, a wedding dress, and other wedding-related items. (Tr. 488–91.) Also found was a bag containing Victim's name that had an Apples vacations tag with the destination Cancun and a departure date of May 5, 2016.[14] (Tr. 492.) Numerous photographs of Defendant and ones showing Defendant and Victim together were found in Victim's residence; also found were other items suggesting a romantic relationship between Defendant and Victim, including cards in which Defendant expressed his love for Victim. (Tr. 494–501.)

While Defendant was in the Monroe County jail awaiting trial, he told two other inmates that he was there because he had put "someone face down in a ditch." (Tr. 695, 704, 706.)

A projectile recovered from Victim's body during the autopsy was from a small caliber (.22 to. 32 or .17) rifle or pistol. (Tr. 610–11.) During a search conducted three days after Victim's death, a .22 caliber rifle containing several rounds of ammunition was found in Defendant's residence. (Tr. 618–19.) Although a substantial amount of boxed or stored .22 caliber ammunition

---

[14] Defendant, who accompanied Victim on this trip, had told his family that he was going to Mexico with "some friends." (Tr. 655, 674.)

was found throughout Defendant's residence, it did not match the ammunition that was found in the rifle. (Tr. 621–22.) That ammunition was, however, consistent with Thunderbolt ammunition of the type that would have been in the empty ammunition box discovered near Victim's discarded cellphone. (Tr. 798–802.)

Also found in Defendant's house was a photo album marked "Discovery Cove Orlando" containing photographs of Defendant and Victim.[15] (Tr. 623.) Framed certificates on the wall at Defendant's residence showed that Defendant had been an "advanced scout sniper" in the Marines and was a "qualified expert" on the "Barrett M-82 sniper rifle." (Tr. 630–31; State's Exhibits 193, 194.) A white t-shirt that said "Skilled [sic] USA" on it that matched the t-shirt found on the road on the night of Victim's murder was also found in Defendant's residence. (Tr. 625–27; State's Exhibits 59, 159, 161.)

[15] Defendant had told his wife that he was going to Florida on a business trip for "sniper training." (Tr. 655, 672–73.) Defendant's wife found the photo album and other items belonging to Victim in a "loft" or attic over the garage. (Tr. 671–72.)

An examination of the cast tire-track impression obtained at the crime scene showed that the tire track was made by the rear passenger tire of Defendant's maroon Mercury Sable. (Tr. 818–22.)

Defendant rested without putting on any evidence. (Tr. 852.)

ARGUMENT

The trial court did not err, plainly or otherwise, in admitting the opinion testimony of James Crafton, a tire-impression analyst, under section 490.065.2, RSMo, because the record shows his testimony was the product of reliable principles and methods in that Crafton explicitly testified that there were peer-reviewed books or articles establishing "the scientific reliability of tire impressions or impression evidence."

Defendant's sole claim on appeal is that the trial court should have prevented the jury from hearing the opinion testimony of James Crafton, an impression expert, regarding tire-impression evidence because it was inadmissible under section 490.065.2, RSMo. Although Defendant's point relied on generally claims that the testimony "was not shown to be the product of reliable principles and methods," he specifically argues in the argument section of his brief that this testimony should have been excluded on the ground that "the only research study [Crafton] cited applied to footwear impressions, but there is no similar study for tire impressions." (Deft's Brief, pp. 12, 14.) This argument is without merit as it overlooks Crafton's explicit testimony at trial in which he stated that there were peer-

reviewed studies, articles, or books establishing "the scientific reliability of tire impressions or impression evidence." (Tr. 844–45.)

A. The record regarding this claim.

Defendant filed a pretrial motion in limine to exclude "evidence of a purported identification of a tire via a cast made from a tire track." (L.F. D8 p. 1.) The motion alleged that a Missouri Highway Patrol criminalist was provided a cast of a tire track and a tire from Defendant's vehicle and determined that Defendant's tire made the impression contained on the cast. (L.F. D8 p. 1.) The motion further alleged that there are no standards to evaluate the "quality and quantity" of the markings common to the cast and tire. (L.F. D8 p. 1.) The motion argued that admission of this evidence would violate section 490.065, RSMo, that the expert's opinion was entirely subjective, and that the expert's testimony was unreliable. (L.F. D8 p. 2.)

During a pretrial hearing on this motion, the criminalist who had compared the cast and tire, James Crafton, testified that he was employed at the Missouri State Highway Patrol crime laboratory in the firearm, tool marks, and impression section. (Tr. 57–58.) Among other duties, Crafton examined "impression evidence, such as footwear and tires," and "determine[d] if those particular footwear and tires made a particular impression." (Tr. 58.)

Crafton said that "impression examination" was a science that had been tested "through the scientific method" and that "[m]any articles have been published in scientific journals, peer review journals, and through the many peer reviewed articles it has been shown to be reliable and repeatable." (Tr. 61–62.) He also explained "the theory behind impression examination":

> The theory behind impression examination is that as a tire or a footwear is worn damage occurs to the barrier surface, that is the outsole of the shoe or the part of the tire that comes in to contact with the surface, and that damage can be either put onto a tire or taken from the tire, cuts, gouges, stone debris being impeded even into footwear and tires, and then through that damage what happens is, when a tire or footwear comes in to contact with a particular surface, an impression could be left behind on that surface; that impression can then be located, it can be collected, preserved and ultimately compared to a particular tire or footwear.

(Tr. 62.) Crafton also explained the difference between "class," "individual," and "subclass" characteristics:

> There are several different kinds of characteristics. There is class characteristics. There is individual characteristics, and there is subclass characteristics. Class characteristics are the general or measurable features on a footwear or a tire that is intended by the manufacturer. These are such things as the outsole design, the tread pattern, the number of ribs or grooves within a tire. It is the size of the footwear, like size 8, 9, those are particular class characteristics.
>
> Subclass characteristics are not intended by the manufacturer, and these are things such as if an air bubble is trapped in the making of an outsole of a shoe, that would be subclass characteristic, it can't be used for individual characterization.
>
> And then there is the individual characteristics. These are known as random accidental characteristics and these are in the form of wear

damage to the shoe, such as gouges, cuts, abrasions to the footwear or to the tire just through wear and tear of the tire or footwear.

(Tr. 62–63.) Crafton also explained the types of determinations or "conclusions" that can be drawn from an impression examination:

A. There are four different types of range of conclusions. There is identification. There is elimination. There is inconclusive and unsuitable. Would you like for me to describe those?

Q. Sure. What is an identification?

A. An identification is that, when the tire or footwear is the individual characteristics are in sufficient agreement to the impression itself. The individual characteristics or the sufficient agreement is based on all discernable class characteristics and also a pattern of individual characteristics. It is the detail of the individual characteristics, such as the shape, the location and orientation of those individual characteristics that make them useful for identification purposes and when those are viewed as a pattern, that is when they become significant for sufficient agreement. And sufficient agreement is met when the tire or the footwear is compared to an impression and it is consistent between impressions known to be made by the same footwear and same tire and it also exceeds by that which is known to be made by different tires.

Q. And what is an elimination?

A. An elimination is on the opposite side of the spectrum. It is when you have either a sufficient amount of class and/or individual characteristics that are in disagreement with each other you can eliminate the tire as or the footwear as being made or making that impression.

Q. I assume inconclusive is neither?

A. Yes. It is in between. You can have class characteristics in agreement but lacking individual characteristics where you cannot either eliminate it or identify it.

Q. And what was the fourth?

A. The fourth is unsuitable. That is when there is not enough detail, the quality and quantity of detail in the impression is lacking for any type of comparison to be made.

(Tr. 64–66.) Crafton also explained the process and equipment he uses when examining impressions. (Tr. 66–68.)

Crafton testified that the process and methods used for impression identification "are reasonably reliable" and used by "experts" in the field. (Tr. 69.) Crafton said the results were repeatable in that "another individual can repeat the process and they should come to the same conclusion with the data that has been gathered, and that is what occurs in these [peer-reviewed] articles within the field of impression identification." (Tr. 70.)

Crafton reported that a study of 840 footwear comparisons among 70 impression examiners showed "a false positive rate of 0.48 percent, a false negative rate of 15.6 percent, a correct positive predicted value of 98.8 percent, and a correct negative predicted value of 93.3 percent." (Tr. 71, 83.) Before Crafton was allowed to do casework on impression comparison, he had to achieve 100% on both competency and proficiency testing. (Tr. 74.) Crafton also took an annual proficiency test conducted by a third party, and Crafton had never failed a proficiency test. (Tr. 74–75.) Crafton had conducted impression examinations on 30 to 50 tires and had made an identification on

only two or three. (Tr. 75.) If an identification is made, another qualified examiner must independently conduct a comparison examination and draw their own conclusion. (Tr. 77–78.)

Crafton then explained the process he performed in comparing a cast impression to the two tires from Defendant's vehicle. (Tr. 78–79.) Crafton eliminated one of the tires as having made the cast impression, but identified the second tire as having made the cast impression. (Tr. 79–80.) Crafton made the positive identification after observing 11 different individual characteristics. (Tr. 81.)

During cross-examination at the pretrial hearing, Crafton was unable to identify an article "that discusses the reliability and…repeatability [of] impression examination of tires to tire casts the way that [he] conducted [his] matching in this case." (Tr. 82.) Crafton was also unable to identify an article reporting a known error rate for matching tire casts to tires. (Tr. 83.)

Crafton's analysis led him to the opinion that Defendant's tire made the impression shown in the cast within a degree of practical certainty:

> Q. And your conclusion, based on your own estimation of sufficient agreement, is that my client's tire is the only tire in the world that could have made that impression?
>
> A. That is not correct.
>
> Q. That is not correct?

A. That is not correct.

Q. Okay. Correct me, please.

A. It is—What you stated would be an absolute statement; that is, zero chance. What I am saying and what forensic science is saying, is that there is a practical degree of certainty that that tire made that impression. We don't do—deal with absolute. If I had to deal with absolute, I would have to compare every single tire in the world to that impression; so through all of the empirical studies conducted, I would have to rely on that for the practical certainty aspect.

Q. So when you say within a degree of certainty, what degree is that?

A. It is practical certainty.

Q. Could you define that for us?

A. Within practice, as opposed to theoretical.

Q. Correct me if I'm wrong, your report said that you confirmed that the tire made the impression?

A. Yes.

Q. So that means this tire made this impression, is that what you intend to testify to at trial?

A. It is my opinion that that tire made that impression.

(Tr. 91–92.)

Crafton testified on redirect that footwear impressions and tire impressions belong to the same scientific field and that the process for examining footwear impressions and tire impressions are similar so much so

that studies regarding footwear impressions could be applied to the examination of tire impressions. (Tr. 93–94.)

The trial court ruled that Crafton's testimony and opinion "meets the standards of 490.065.2…and that he would be allowed to testify." (Tr. 98; L.F. D1 p. 42.) The court later reminded counsel that "all rulings on motions in limine are interlocutory…." (Tr. 106.)

Defense counsel attacked the anticipated testimony from Crafton during opening statements as having "no scientific standards":

> …and you'll hear testimony about how these tires are evaluated, how obstensibly [sic] being matched with a plaster cast taken in the field. But what you will also hear is that there is no science for this. There are criminalists who get training and looking at two things next to each other and saying, ahhaa, in my opinion these things are a match and it is their opinion that it matters. There are no scientific standards. There is no data. There is nothing to consider this scientific evidence.

(Tr. 351–52.)

Crafton provided similar testimony during trial. He testified that he had training in impression evidence, such as "when a tire or a foot would make contact with a surface and has left a re-producible impression on that particular surface." (Tr. 793.) Crafton then described the process used to make a tire cast. (Tr. 806–07.) He also explained the process that is used in making an impression determination, including a determination of class and individual characteristics. (Tr. 805–10.) Crafton also testified that the

"process of evaluating" tire impressions was "relied upon by experts" in the field:

> Q. …The process of evaluating tire casts compared to tires and going through the process you just described, individual characteristics, is that process relied upon by experts in your field?
>
> A. Yes, it is.
>
> Q. Has that process been peer reviewed?
>
> A. Yes.
>
> Q. Has it been scientifically studied?
>
> A. Yes, it has.
>
> Q. And validated?
>
> A. Yes.
>
> Q. Do you find it otherwise reasonably reliable?
>
> A. Yes, I do.
>
> Q. Did you rely on it in this case?
>
> A. Yes.

(Tr. 810.). Crafton also stated that the results obtained in the highway patrol lab on impression evidence were peer reviewed by another qualified expert. (Tr. 811.)

Defendant's counsel objected to Crafton's opinion testimony on the ground that there "aren't reliable methods and principles to be applied here" and that "there is no amount of data sufficient to apply to those methods." (Tr.

811–12.) After counsel told the court that he wanted to rely on the pretrial objections, the court overruled the objection and granted a continuing objection to Crafton's tire-track testimony. (Tr. 812.)

Crafton testified that he looked at two cast tire impressions and excluded one from identification. (Tr. 812–13.) As to the other tire-cast impression, Crafton testified about the comparison he made from the cast to the actual tire on Defendant's vehicle—not just a photographs of that tire—and opined that the tire-cast impression was made by the front passenger tire of Defendant's 2000 Mercury Sable.[16] (Tr. 817–22, 824–25; State's Exhibits 188, 189, 190, 191.)

During defense counsel's cross-examination, Crafton testified that the method he used is relied on by practitioners in the field, that it was scientifically validated, and that there were scientific articles about this method. (Tr. 828.) When asked to identify a peer-reviewed article about tire impression analysis, Crafton could not name a specific article "off the top of [his] head, but he confirmed to counsel that he had previously sent such articles to counsel after counsel had requested them:

---

[16] The cast impression was of a tire track found at the crime scene. (Tr. 391–402.)

Q. Okay. So can you, can you name a single peer review journal article discussing the method of taking a tire, such as you did here, comparing it to a cast, such that was taken here, and being able to specifically identify that that tire made the imprint from which that cast was drawn?

A. There, there are several peer review books—

Q. Sir, you testified that there were peer reviewed articles and my question is, can you name one?

A. I cannot name off the top of my head sitting here, no.

Q. And a few weeks ago I asked you to send me articles that you had referenced in the past, correct?

A. Yes.

Q. Okay. And you did send me articles, and I appreciate that, and they were about shoe prints and shoe impressions, correct?

A. That is correct.

Q. Have you found any on tire impressions since?

A. Yes, I have.

(Tr. 828–29.) Counsel did not follow-up this colloquy with any questions about the articles Crafton had found. (Tr. 829.) Instead, counsel cross-examined Crafton about the accuracy of his analysis. (Tr. 829–39.)

On redirect, Crafton confirmed that he was aware of peer-reviewed articles on both footwear impressions, which falls under the impression "umbrella," and tire-track impressions:

Q. Did I hear you explain to [Defendant's Counsel] that you had provided him some articles on the subject of footwear impression?

A. Yes, that's correct.

Q. Is footwear impression similar to tire track impression?

A. It falls under the umbrella of impressions. You've got footwear impressions, tire track impressions. They are consistent in how you do your examinations and how the outsole of the footwear wears compared to the individual characteristics, the comparisons are very similar to each other.

Q. So when in your field is it appropriate to apply that study of the footwear impressions to tire impressions as well?

A. You could apply it to one or the other, yes.

Q. And did I hear correctly that after you had provided [Defendant's Counsel] articles you had found some articles specifically on tire impressions?

A. Yes, I have.

Q. And what do those articles discuss?

A. They discuss very similar studies that have been conducted with footwear impressions, such as repeatability of the individual characteristics. I can't really recall from the top of my memory, but there is quite a few different articles specifically geared towards tire impressions.

Q. Are those peer reviewed articles?

A. Yes.

Q. And do they validate the science of tire impression?

A. They help to establish the scientific reliability of tire impressions or impression evidence.

(Tr. 844–45.)

Defendant's motion for new trial argued that Crafton should not have been allowed to testify about "tire imprint evidence" because "there exist no reliable principles or methods that can be applied to claim expertise in matching a particular tire to a cast made of an imprint in the field." (L.F. D27 p. 1.) The motion further argued that consequently "there can be no sufficient facts or data to which scientific principles or methods may be applied" and that this violated section 490.065, RSMo." (L.F. D27 p. 1.)

B. Standard of review.

Defendant's foundational objection to Crafton's testimony asserted on appeal is not preserved for appellate review because it was not specifically asserted at trial. In the motion in limine Defendant simply asserted that Crafton's testimony was unreliable and not based on scientific principles. Defendant relied on that same objection at trial. On appeal, however, Defendant specifically objects on the ground that the theory or technique of tire-impression comparison had not been subjected to peer review and publication.

Because this specific foundational objection was not made at trial, it is not preserved for review. "The general rule with respect to preservation of error is that an objection stating the grounds must be made at trial, the *same*

objection must be set out in the motion for new trial and must be carried forward in the appellate brief to preserve it." *State v. Chambers*, 234 S.W.3d 501, 512 (Mo. App. E.D. 2007) (quoting *State v. Petty*, 967 S.W.2d 127, 140 (Mo. App. E.D. 1998)). *See also State v. Reynolds*, 456 S.W.3d 101, 104 (Mo. App. W.D. 2015). "Claims of inadequate foundation will not be considered for the first time on appeal." *State v. Honsinger*, 386 S.W.3d 827, 829 (Mo. App. S.D. 2012) The basis for this principle "is that if an objection had been made at trial that there was an improper foundation the witness could have been questioned further in order to establish the proper foundation." *Honsinger*, 386 S.W.3d at 829. "[A]n objection or motion to strike is untimely if it comes too late to give opposing counsel an opportunity to correct any deficiencies in the questions or lay an appropriate foundation for the witness's opinion." *State v. Jackson*, 186 S.W.3d 873, 883 (Mo. App. W.D. 2006) (refusing plain-error review of a claim that no foundation was laid). "Any other rule would encourage 'sandbagging.'" *Id. See also Washington by Washington v. Barnes Hosp.*, 897 S.W.2d 611, 616 (Mo. banc 1995) (holding that a foundational objection to expert testimony "is untimely if it comes too late to give opposing counsel an opportunity to correct any deficiencies in the questions or lay an appropriate foundation for the witness's opinion" and that to hold otherwise would only encourage "sandbagging").

Because the specific claim raised on appeal is not preserved for appellate review, it is subject only to plain-error review. "An unpreserved claim of error can be reviewed only for plain error, which requires a finding of manifest injustice or

a miscarriage of justice resulting from the trial court's error." *State v. Celis-Garcia*, 344 S.W.3d 150, 154 (Mo. banc 2011); *see also* Rule 30.20 ("[P]lain errors affecting substantial rights may be considered in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted therefrom."). "The plain language of Rule 30.20 demonstrates that not every allegation of plain error is entitled to review." *State v. Nathan*, 404 S.W.3d 253, 269 (Mo. banc 2013). "Rule 30.20 is no panacea for unpreserved error, and does not justify review of all such complaints, but is used sparingly and limited to error that is evident, obvious, and clear." *State v. Phillips*, 319 S.W.3d 471, 476 (Mo. App. S.D. 2010) (quoting *State v. Smith*, 293 S.W.3d 149, 151 (Mo. App. S.D. 2009)). "[N]ot all prejudicial error—that is, reversible error—can be deemed plain error." *Id.* "A defendant assumes the burden of proof to demonstrate plain error." *State v. Steger*, 209 S.W.3d 11, 17 (Mo. App. E.D. 2006). *See also State v. Schallon*, 341 S.W.3d 795, 799 (Mo. App. E.D. 2011) ("It is a defendant's burden to demonstrate manifest injustice or a miscarriage of justice.").

If this claim of error is preserved, it is reviewed for an abuse of discretion. "The decision regarding whether to admit or exclude an expert's testimony is generally within the trial court's sound discretion." *State v. Bailey*, 597 S.W.3d 436, 444 (Mo. App. E.D. 2020). An appellate court "will not reverse the trial court's decision in this regard absent an abuse of discretion." *Id.* "An abuse of discretion occurs when the court's ruling is clearly against the logic of the circumstances then before the trial court and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful deliberate consideration." *State v. Mills*, 623 S.W.3d 717, 730 (Mo. App. E.D. 2021). "An inquiry about admissible evidence is to be flexible, and no single factor is necessarily dispositive of the reliability of a particular expert's testimony." *Id.* at 731.

C. The opinion testimony regarding tire-impression evidence was admissible under section 490.065.2, RSMo.

The statute pertaining to the admission of expert testimony in criminal cases provides:

> 2. In all actions except those to which subsection 1 of this section applies:
>
> (1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case

Section 490.065.2, RSMo Supp. 2017. Because the language of this statute mirrors Federal Rules of Evidence 702 and 703, Missouri courts have held that *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993), and its progeny, which are cases construing those federal rules, "remain relevant and useful" in construing section 490.065. *State v. Marshall*, 596 S.W.3d 156, 159 (Mo. App. W.D. 2020). The *Daubert* factors used to assess the reliability of scientific testimony include:

> (1) whether the expert's technique or theory can be or has been tested; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied and the existence and maintenance of standards and controls; and (4) whether the technique or theory has been generally accepted in the scientific community.

Id. at 160.

The "trial court's role as gatekeeper [for expert testimony] is not intended to serve as a replacement for the adversary system: 'Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.'" *State ex rel. Gardner v. Wright*, 562 S.W.3d

311, 317 (Mo. App. E.D. 2018) (quoting *Daubert*, 509 U.S. at 595); *see also* *Marshall*, 596 S.W.3d at 162.

In arguing that Crafton's testimony was inadmissible, Defendant's argument relies on only one of the *Daubert* factors: "whether the technique or theory has been subject to peer review and publication." (Deft's Brief, p. 14.) But both the United States Supreme Court and Missouri courts have held that while the *Daubert* factors may be instructive, they are not "controlling":

> Although § 490.065.2 is patterned after Federal Rule of Evidence 702, and the Supreme Court of the United States interpreted Rule 702 in *Daubert*, this Court has held that "the *Daubert* factors themselves are not controlling" in applying § 490.065.2. [citation omitted]. The Advisory Committee Note to the 2000 amendment of Federal Rule of Evidence 702 makes clear that the Rule does not mandate that all expert testimony satisfy the *Daubert* factors[.]

Marshall, 596 S.W.3d at 160 (quoting *State v. Suttles*, 581 S.W.3d 137, 147 (Mo. App. E.D. 2019)) (quotation omitted).

In any event, Defendant's argument, which relies solely on testimony Crafton gave during the pretrial hearing on the motion in limine, overlooks the testimony Crafton gave at trial in which he explicitly stated that tire-impression analysis had been subject to peer-reviewed studies and had been

the subject of publications.[17] Defendant's claim on appeal is thus without merit. The record shows that Crafton's testimony was admissible under section 490.065.2.

Moreover, because "[s]ection 490.065.2 adopts the Federal Rules of Evidence word-for-word, …federal precedent construing those rules is strong persuasive authority for how we should view admissibility under our statute." *Wright*, 562 S.W.3d at 317. At least one federal court construing Federal Rule of Evidence 702 and *Daubert* has held that tire-impression opinion testimony is admissible. *See United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001) (holding that expert testimony comparing tire imprints found near the crime scene to the tires on a vehicle the defendant had borrowed was admissible under Fed. R. of Evidence 702 and *Daubert*).

Finally, courts in other jurisdictions have upheld the admissibility of expert opinion testimony on tire-track-impression evidence. *See Rodriguez v. State*, 30 A.3d 764 (Del. 2011) (applying the standard outlined in *Daubert* in holding that a latent-fingerprint analyst who had also trained and studied in

---

[17] Defendant's specific complaint about the admissibility of Crafton's testimony advanced in this appeal appears not to have been specifically raised at trial.

the area of analyzing footwear and tire-track impressions could give expert testimony comparing castings found at crime scenes to the defendant's boots and bike tires); *Anderson v. State*, 220 So.3d 1133, 1143–44 (Fla. 2017) (holding that counsel was not ineffective for failing to object to testimony from a tire-impression expert because that witness was qualified to render an opinion based on specialized knowledge, training, and extensive experience); *Hodges v. State*, 856 So.2d 875, 917–18 (Ala. App. 2001) (holding that it was not error to permit expert testimony on whether tire tracks on the victim's body matched tires on a particular vehicle and noting that jurors could make their own comparison from the evidence).

The trial court did not err, plainly or otherwise, in allowing Crafton's opinion testimony on the tire-impression evidence in this case.

CONCLUSION

This circuit court committed no reversible error, and its judgment of conviction and sentence should be affirmed.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/ Evan J. Buchheim
EVAN J. BUCHHEIM
Assistant Attorney General
Missouri Bar No. 35661

P. O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-8756
Fax: (573) 751-5391
evan.buchheim@ago.mo.gov

ATTORNEYS FOR RESPONDENT
STATE OF MISSOURI

CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and this Court's Rule 41 and contains 7,575 words, excluding the cover, certification, and appendix, if any, as determined by Microsoft Word 2016 software, and that pursuant to Rule 103.08, the brief was served upon all other parties through the electronic filing system.

/s/ Evan J. Buchheim
EVAN J. BUCHHEIM
Assistant Attorney General
Missouri Bar No. 35661

P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-8756
Fax (573) 751-5391
evan.buchheim@ago.mo.gov

ATTORNEYS FOR RESPONDENT
STATE OF MISSOURI