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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
In the SUPREME COURT**

**Appeal from Richland County
The Honorable R. Knox McMahon, Circuit Court Judge**

THE STATE,

RESPONDENT,

v.

JAMES HEYWARD,

PETITIONER.

Appellate Case No. 2021-000122

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PETITIONER’S QUESTIONS PRESENTED1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT

I. The Court of Appeals did not err in affirming the trial court’s admission of the New Jersey database fingerprint card as properly authenticated evidence.....6

II. The Court of Appeals correctly concluded that the trial court’s error in denying Petitioner’s motion to remove his ankle shackles during trial was harmless in light of the fact that there is no evidence demonstrating his ankle restraints were visible to the jury17

III. The Court of Appeals did not err in finding harmless error in the trial court’s decision to permit expert opinion testimony about the operational capabilities of the gun found at Petitioner’s residence21

IV. The Court of Appeals did not err in affirming the trial court’s allowance of Petitioner’s alias “Abdul Muslim” for use in the indictments and at trial.....25

V. The Court of Appeals did not err in its ruling that the autopsy photographs were properly admitted at trial30

CONCLUSION.....34

PROOF OF SERVICE

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Castillo v. Stainer</i> , 983 F.2d 145 (9th Cir. 1992).....	20
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004).....	12
<i>Deck v. Missouri</i> , 544 U.S. 622 (2005).....	18, 20, 21
<i>Deep Keel, LLC v. Atlantic Private Equity Group., LLC</i> , 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).....	13
<i>Duckett v. Godinez</i> , 67 F.3d 734 (9th Cir. 1995).....	19
<i>Illinois v. Allen</i> , 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).....	17
<i>Jones v. Meyer</i> , 899 F.2d 883 (9th Cir.).....	19
<i>Mayes v. Paxton</i> , (S.C. 1993) 313 S.C. 109, 437 S.E.2d 66.....	25
<i>Merneigh v. State</i> , 531 S.E.2d 152. (Ga. Ct. App. 2000).....	27
<i>People v. Rodriguez</i> , 224 Cal.Rptr.3d 295 (2017).....	16
<i>State v. Adams</i> , 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003).....	11
<i>State v. Anderson</i> , 386 S.C. 120, 687 S.E.2d 35 (2009).....	8, 12
<i>State v. Black</i> , 400 S.C. 10, 732 S.E.2d 880 (2012).....	17
<i>State v. Brawley</i> , 137 A.3d 757 (Ct. 2016).....	19
<i>State v. Brown</i> , 818 S.E.2d 735 (S.C. 2018).....	16
<i>State v. Carruth</i> , 166 S.W.3d 589 (Mo.Ct.App.2005).....	16
<i>State v. Chavis</i> , 412 S.C. 101, 771 S.E.2d 336 (2015).....	24
<i>State v. Colf</i> , 337 S.C. 622, 525 S.E.2d 246 (2000).....	32
<i>State v. Collins</i> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	31, 33
<i>State v. Commander</i> , 396 S.C. 254, 721 S.E.2d 413 (2011).....	17

<i>State v. Cope</i> , 405 S.C. 317, 748 S.E.2d 194 (2013).....	33
<i>State v. Day</i> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	29
<i>State v. Gray</i> , 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014).....	33
<i>State v. Green</i> , 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019).....	13
<i>State v. Hawes</i> , 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018).....	33
<i>State v. Heyward</i> , 432 S.C. 296, 852 S.E.2d 452 (Ct. App. 2020).....	2, 11
<i>State v. Jennings</i> , 394 S.C. 473, 716 S.E.2d 91 (2011).....	17
<i>State v. Johnson</i> , 422 S.C. 439, 812 S.E.2d 739 (Ct. App. 2018).....	18
<i>State v. Kelley</i> , 319 S.C. 173, 460 S.E.2d 368 (1995)	6
<i>State v. Kelsey</i> , 331 S.C. 50, 502 S.E.2d 63 (1998)	34
<i>State v. Lyles</i> , 379 S.C. 328, 665 S.E.2d 201 (Ct.App.2008).....	30
<i>State v. Martucci</i> , 380 S.C. 232, 669 S.E.2d 598 (Ct.App. 2008).....	34
<i>State v. McDonald</i> , 343 S.C. 319, 540 S.E.2d 464 (2000)	6
<i>State v. Monahan</i> , 480 A.2d 863 (1984).....	27
<i>State v. Nance</i> , 320 S.C. 501, 466 S.E.2d 349 (1996)	30, 33
<i>State v. Price</i> , 368 S.C. 494, 629 S.E.2d 363 (2006)	21
<i>State v. Rich</i> , 293 S.C. 172, 359 S.E.2d 281 (1987)	8, 11
<i>State v. Saltz</i> , 346 S.C. 114, 551 S.E.2d 240 (2001)	6
<i>State v. Torres</i> , 390 S.C. 618, 703 S.E.2d 226 (2010)	34
<i>State v. Tucker</i> , 320 S.C. 206, 464 S.E.2d 105 (1995)	17, 19
<i>State v. Webb</i> , 680 A.2d 147(1996).....	19
<i>State v. White</i> , 382 S.C. 265, 676 S.E.2d 684 (2009)	21
<i>State v. Williams</i> , 485 A.2d 570 (Ct. 1985).....	20

<i>Totaro v. Turner</i> , 273 S.C. 134, 254 S.E.2d 800 (1979).....	27
<i>U.S. v. Mayes</i> , 158 F.3d 1215 (11th Cir. 1998).....	20
<i>United States v. Clark</i> , 541 F.2d 1016 (4th Cir. 1976).....	27, 29
<i>United States v. Esposito</i> , 423 F.Supp. 908 (S.D.N.Y.1976).....	27
<i>United States v. Hassan</i> , 742 F.3d 104 (4th Cir.2014).....	13
<i>United States v. Thornton</i> , 209 Fed.Appx. 297 (4th Cir.2006).....	12
<i>Wilder v. State</i> , 388 S.C. 282, 696 S.E.2d 587 (2010).....	33

Statutes

S.C. Code Ann. § 16-23-410.....	22, 23
S.C. Code Ann. § 16-11-330(A).....	22, 23

Rules

Fed.R.Evid. 901(a)(3)	13
Rule 403, SCRE.....	22, 31
Rule 901	11, 12, 16
Rule 901 (a), SCRE.....	13, 14, 15
Rule 901 (b)(9).....	16
Rule 901(b)	16
Rule 901(b)(3), SCRE.....	10, 15, 16
Rule 901(b)(7).....	16
Rule 1006, SCRE.....	10
SCRE Rule 401	22

Other Authorities

29A Am. Jur. 2d Evidence § 1045 (2008)	13, 15
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PETITIONER'S QUESTIONS PRESENTED

- I. Did the Court of Appeals err in affirming the trial court's admission of a fingerprint card obtained from a New Jersey database and testimony based on the New Jersey fingerprint card where the New Jersey fingerprint card was not properly authenticated pursuant to this Court's clear precedent?
- II. Did the Court of Appeals wrongly conclude that the trial court's erroneous denial of Petitioner's request to remove his shackles during jury selection was harmless despite precedent of the Supreme Court of the United States recognizing that shackling is inherently prejudicial?
- III. Did the Court of Appeals wrongly conclude that the trial court's erroneous allowance of expert opinion testimony about the operational capabilities of the gun found at Appellant's residence was harmless?
- IV. Did the Court of Appeals err in affirming the trial court's allowance of Petitioner's alias "Abdul Muslim" for use in the indictments and at trial, inviting undue religious prejudice against Petitioner?
- V. Did the Court of Appeals err in affirming the trial court's admission of gruesome autopsy dissection photographs of the victim's internal head injuries?

STATEMENT OF THE CASE

In October of 2016, a Richland County Grand Jury indicted Petitioner, James Heyward, aka Abdul Muslim, for two counts of armed robbery, assault and battery in the first degree, burglary in the first degree, two counts of kidnapping, murder, pointing and presenting a firearm, and unlawful possession of a firearm. (App. p. 480-488). Petitioner proceeded to a jury trial on July 26, 2017, before the Honorable R. Knox McMahon. Petitioner was represented by Steve Krzyston, Esquire, Alicia Goode, Esquire, and Adam Ruffin, Esquire. (App. p. 1). Assistant Solicitors Luck Campbell, Joanna McDuffie, and Nicole Simpson, of the Fifth Circuit Solicitor's Office, represented the State. (App. p. 1).

The jury found Petitioner guilty as indicted. (App. p. 425, line 2 – p. 426, line 3). Judge McMahon sentenced Petitioner to consecutive terms of life imprisonment for murder and burglary. He then sentenced Petitioner to a concurrent term of thirty years for armed robbery, a consecutive term of thirty years for the kidnapping of the child, a consecutive term of ten years for assault and battery, two concurrent terms of five years for pointing and presenting a firearm, and unlawful possession of a firearm. (App. p. 427, line 3 – p. 428, line 10).

Petitioner filed a timely notice of appeal on July 11, 2017. Attorneys Tara C. Sullivan, Esquire and Chief Appellate Defender Robert M. Dudek filed his Final Brief of Appellant on February 21, 2019. The State filed its Final Brief of Respondent on February 21, 2019. Appellate counsel likewise filed its Final Reply Brief on behalf of Petitioner on February 21, 2019. The Court of Appeals heard oral argument on February 6, 2020.

The Court of Appeals found harmless error in two of Petitioner's questions presented, found no error in the remaining five questions presented, and affirmed Petitioner's convictions and sentencing in its October 14, 2020, Opinion: *State v. Heyward*, 432 S.C. 296, 852 S.E.2d 452 (Ct.

App. 2020), reh'g denied (Jan. 15, 2021). (App. p. 636-657). Appellate counsel filed a Petition for Writ of Certiorari on behalf of Petitioner on March 4, 2021. The State filed its Return on April 15, 2021. This Court granted certiorari to five of the presented issues. This Brief of Respondent now follows.

STATEMENT OF FACTS

On October 11, 2015, law enforcement responded to a 911 call which was believed to be a burglary in progress. Upon arrival at the property they found Alice Tollison (hereinafter “Victim”) strangled to death in her home and her eight-year-old granddaughter, Gwyn, (hereinafter “Granddaughter”) with her hands and feet still bound. (App. p. 132, line 13 – p. 139, line 5).

At trial, Granddaughter testified as to how the home invasion and murder took place. She testified she would attend church with Victim every Sunday when her mother dropped her off before work. (App. p. 144, line 16 – p. 145, line 8). After church on October 11th they were watching some television when someone knocked on the door. (App. p. 148, line 7 – 15). Victim left the room to open the door, which led to the carport. (App. p. 149, lines 5 - 18). After a few minutes, Granddaughter went into the kitchen to get her toys from the kitchen table. (App. p. 149, line 20 – p. 150, line 17). When she walked into the kitchen, she saw Petitioner carrying a duffel bag and Victim sitting at the kitchen table. Petitioner told Granddaughter to sit, and he then demanded money from Victim. (App. p. 150, line 18 – p. 151, line 9). Victim told Petitioner she did not have any money. Petitioner then removed a gun from his bag and set it on the table, rolled up his sleeve, and made Granddaughter watch as he strangled Victim. (App. p. 151, line 13 – p. 153, line 2). Granddaughter described the gun as gold and rusty, “and it had two spots for bullets,” which she later clarified as “two spots where it shoots out.” (App. p. 152, lines 3-14; p. 183, line 6 – 9).

After he killed Victim, Petitioner carried Granddaughter to a closet, told her to sit in there, and closed the door. (App. p. 153, lines 17-19). Petitioner told Granddaughter that Victim was sleeping, though she knew he was lying. (App. p. 153, line 23 – p. 154, line 7). Granddaughter heard Petitioner rummaging through rooms in the house before returning to the closet, moving her to another room, and then tying her hands and feet with telephone wire and a wire from the wall. (App. p. 154, line 17 – p. 156, line 13). Granddaughter testified she struggled to free herself for approximately thirty minutes before falling asleep. (App. p. 157, lines 1-15). When she awoke, Granddaughter was able to struggle her way into the kitchen and call 911. (App. p. 157, line 18-p. 159, line 21).

Granddaughter recalled the Assessment and Resource Center interview the day after the murder wherein she described the attacker. (App. p. 168, line 2 – p. 169, line 4). At that time investigators had already developed Petitioner as a suspect in the case based upon finding his fingerprints at the scene. (App. p. 27, lines 5-12). Development of the case continued by way of presenting a photographic lineup to Granddaughter for consideration. During that photographic lineup, Granddaughter selected the number 3 picture, which was Petitioner's photograph. (App. p. 377-378).

At the time of the murder, Petitioner was renting some rooms in the home of Mattie Canzater. (App. p. 321, line 3 – p. 323, line 20). Canzater knew Petitioner to also go by the names of Abdul and Rasheed. (App. p. 326, line 23 – p. 327, line 8). Days before the murder took place Victim had offered to loan Canzater some tables to use at an upcoming yard sale, so Canzater asked Petitioner to help her pick up the tables from Victim's house the Friday before the murder. (App. p. 326, lines 2-15). Canzater and Petitioner pulled into the carport to retrieve the tables, but neither went inside the house. (App. p. 328, line 16 – p. 329, line 5).

Canzater said the following day, Saturday, she and Petitioner had an argument about his use of her property and Petitioner told Canzater he would be moving out within a week. (App. p. 334, line 1 – p. 336, line 4). The next morning, Canzater went to church and when she arrived home, Petitioner was not in the house. Canzater testified that when Petitioner later returned to her home, he was carrying a large trash bag. (App. p. 336, line 5 – p. 338, line 25). Petitioner was also wearing clothes matching the description of the suspect. (App. p. 343, lines 2-23). When Canzater heard about Victim's murder she suspected Petitioner was the perpetrator and confronted him in her home. When Canzater asked Petitioner where he was at the time of the murder, he said he went for a walk to clear his head. Canzater noted that after their confrontation ended Petitioner shaved his head and face. (App. p. 344, line 9 – p. 347, line 13).

Police later found a Smith and Wesson .32 caliber revolver in a closet in Petitioner's rented room during a search of Canzater's home following his arrest on the Tuesday after the murder. (App. p. 355, line 13 – p. 358, line 15). Several days after Petitioner was arrested, he called his wife from jail, and his wife told him she reported a false tip to Crimestoppers to accuse someone else of the murder to divert attention away from Petitioner. (App. p. 418, line 6 – p. 419, line 21).

Crime scene investigators dusted the storm door and entry door to the kitchen from the carport for fingerprints and were able to collect latent prints from the interior side of the storm door, from the entry door on the alarm keypad, a water bottle from the kitchen table, a jewelry box, and other items in the home. (App. p. 193, line 16 – p. 194, line 14; p. 196, lines 6-13; p. 129, line 5 – p. 130, line 13). The victim's neck was swabbed for DNA, along with an abraded area of her chin. (App. p. 283, lines 12-17). The technician took the fingernail scrapings from the victim's hands. (App. p. 287, lines 5-14). Investigative efforts found a match for Petitioner's crime scene prints via the AFIS national database. (App. p. 221-222). DNA evidence consistent with

Petitioner's DNA was found under Victim's fingernails, from the swab on her neck, and from a swab of a draft stopper found around Victim's neck. (App. p. 388, line 13 – p. 390, line 2).

Victim had multiple injuries to her neck and chin area. The pathologist said the markings were consistent with more than just an arm around Victim's neck. (App. p. 293, lines 12-25). The fractures of the bones and the amount of hemorrhage "buried deep within the neck" indicated the use of force stronger than that of just a ligature. (App. p. 293, lines 21-25). Victim also had multiple injuries from blunt force trauma around her head. (App. p. 296, lines 11-22). The pathologist said these injuries were consistent with being struck several times or thrown against a wall or floor. (App. p. 307, line 1 – 308 line 8). Victim suffered fractures to the cartilage in her neck, as well as a fractured hyoid bone. (App. p. 306, lines 5-21). The cause of death was strangulation. (App. p. 311, line 1 – p. 313, lines 24).

ARGUMENT

- I. The Court of Appeals did not err in affirming the trial court's admission of the New Jersey database fingerprint card as properly authenticated evidence.**

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995).

How the Issue Was Presented at Trial

At the time of trial, the State had two sets of finger print cards obtained via its investigation of Victim's murder and in building its case for trial. As described in more detail below, the first set of Petitioner's fingerprints were obtained when the latent prints from the scene were submitted into the FBI's I-AFIS national database. The search produced only one potential match: Petitioner's fingerprint card which originated from New Jersey (hereinafter N.J./FBI card). The second set of prints were obtained after Petitioner was identified in a photographic lineup by Granddaughter, arrested, and then booked in Richland County (hereinafter "booking card"). Testimony and evidence as to those two cards, and the authentication of the N.J./FBI card demonstrates the following facts.

After Investigator Trisha Odom was qualified as an expert on latent print analysis, she explained the different types of fingerprints to the jury, how prints are left on varying surfaces, and the longevity of prints. (App. p. 202, lines 11 – p. 207, line 9). The State sought to introduce Odom's reports of her findings when the defense objected. (App. p. 207, line 10 – p. 208, line 10). The defense objected to the portions of the report finding a match between several prints in the house and Petitioner's because Petitioner's prints were obtained from the Automated Fingerprint Identification System ("AFIS"), submitted by the State of New Jersey pursuant to his incarceration there (the "N.J./FBI card"). (App. p. 208, line 18 – p. 209, line 19). The defense further argued the State should have compared Petitioner's Richland County booking prints to his AFIS card to verify its accuracy before the analysis was performed. (App. p. 209, line 20 – p. 210, line 10). The proper procedure, according to Petitioner, would require the State to call someone from New Jersey who

could explain how Petitioner's prints were uploaded into AFIS, how the prints are maintained in the New Jersey state database, and how that database is maintained. (App. p. 216, lines 20-25).

The State argued it had been careful not to tread into any area that would discuss Petitioner's arrests and incarceration in New Jersey, but would be happy to elicit testimony from Odom concerning how Petitioner would be entered into AFIS and matched to his FBI identification number already on file. (App. p. 212, line 14 – p. 214, line 6).

Citing the Supreme Court of South Carolina's language in *State v. Rich*, 293 S.C. 172, 359 S.E.2d 281 (1987) and *State v. Anderson*, 386 S.C. 120, 128-29, 131-32, 687 S.E.2d 35, 39-40, 41 (2009), the trial court found the print card was not hearsay and the State need not present a witness from New Jersey to authenticate it. (App. p. 217, line 13 – p. 219, line 6).

During the proffer of testimony, Odom explained that when she first examined the fingerprints from the scene on October 12, 2015, she relied on the fingerprint card generated from the AFIS database – the N.J./FBI card.. (App. p. 229, lines 1-6). Odom's first three reports were written on October 12. When Odom performed the remainder of the comparisons and issued her final report, she used the N.J./FBI card *and* the booking card from Petitioner's Richland County arrest. (App. p. 229, lines 10-14). Odom had no doubt the prints obtained from Petitioner on booking were the same as the N.J./FBI card prints obtained from the AFIS database. (App. p. 230, lines 1-7).

Following the proffer, the defense again argued the testimony about the prints was inadmissible because the prints analyzed on October 12 were not authenticated "because they can't provide the testimony that is required to authenticate the New Jersey print card that was acquired through the FBI database." (App. p. 238, lines 16-24). The defense argued the analysis performed

on October 16 comparing the crime scene prints to the fingerprint card obtained from Petitioner's booking was "not a sufficient basis for authentication." (App. p. 239, lines 2-6).

The State argued the testimony showed the analyst preliminarily ran the prints on October 12 and received a match on the FBI database. Petitioner was arrested and fingerprinted on October 13. Following his arrest, Odom then compared his prints based on the federal and local fingerprint cards. Odom also testified the card obtained from booking and the card she used to make the initial match contained the prints of the same person. (App. p. 239, lines 10-24).

The court clarified the facts with the following: Officers responded and processed the crime scene on October 11, and they continued processing on the 12th. The officers ultimately released that scene on the 12th. Different officers lift latent prints, some on the interior of the door, some on the jewelry canister, box, and various items. The latent prints were uploaded to the AFIS system, which is a national databank. The databank returned one match on the 12th: the N.J./FBI card for Petitioner. The analyst then made a comparison of the match, Exhibit 217, with the latent prints from the crime scene. Petitioner was not under arrest at this time, but he became a suspect. Later on the 12th, a detective showed the child a photographic lineup and the child selected Petitioner as the perpetrator of the crime. Investigators then obtained a warrant for Petitioner's arrest, and he was arrested on the 13th. Upon his arrest, Petitioner's prints were scanned into the local database via the LiveScan system at the detention center, thereby creating the "booking card" prints. Petitioner's booking card prints were then assigned a unique state identification number. (App. p. 241, line 20 – p. 244, line 15).

Petitioner said he would withdraw any objection to the portions of the report finalized on the 16th because the analysis was performed with the known standard from Richland County. (App.

p. 245, lines 1-4). Petitioner maintained an objection to the prints analyzed on the 12th (or based upon Exhibit 217). (App. p. 245, lines 11-13).

The trial court found the authentication of the N.J./FBI card was sufficient pursuant to prevailing common law. The court also found the fingerprint card sufficient for admission under Rule 901 (a), SCRE. (App. p. 246, line 19 – 247, line 18). The court elaborated with the following:

Here, you have the unique identifying FBI number in this case. You have an expert testifying that she compared a latent print from the crime scene on the 12th or however many she compared on the 12th to the known prints of James Heyward from -- I've said the FBI, New Jersey. I keep changing my terminology about that. I do that to make sure I'm tracking right.

So I would deny the motion as to lack of authentication in camera at this point. I will deny it as to 217, State's 217. And I note there is a gap. I take that into consideration. There is a gap because there's no comparison that I can actually track between the FBI prints on the 12th, if they were directly or not compared to the LiveScan.

(App. p. 248. lines 5-17). The court also found the reports (State's Exhibits 214 and 215) admissible pursuant to Rule 1006, SCRE. (App. p. 257, lines 5-25).

How the Court of Appeals Ruled

The Court of Appeals ruled that while the State failed to establish when and where the N.J./FBI Fingerprints were taken, they were ultimately authenticated properly under Rule 901(b)(3), SCRE. In so finding, the Court of Appeals noted that 901(b)(3) established authentication of the N.J./FBI Fingerprints by way of “[a c]omparison by the trier of fact or by expert witness with specimens which have been authenticated”. The authentication of the fingerprints from the booking card was not challenged on appeal, and although Investigator Odom did not conduct a minutia comparison between the prints of N.J./FBI card and the prints from booking card, she compared the two sets of fingerprints and noted that the prints were the same based upon their pattern analysis, and her testimony demonstrated that she had no doubt the same

person made the two sets of prints. *State v. Heyward*, 432 S.C. 296, 315-16, 852 S.E.2d 452, 461-62 (Ct. App. 2020).

Moreover, the Court of Appeals alternatively reasoned by footnote that even if the N.J./FBI card was not properly authenticated, such error was harmless for lack of prejudice to Petitioner in light of the competent and conclusive evidence of guilt presented at trial. *Id.*, 852 S.E.2d at 462 n.8 (citing *State v. Adams*, 354 S.C. 361, 381, 580 S.E.2d 785, 795 (Ct. App. 2003)). In further support of this finding the Court of Appeals noted that Investigator Odom testified to using *both* sets of prints to determine that Petitioner's fingerprints matched latent prints found at the crime scene; Granddaughter identified Petitioner as Victim's killer; DNA evidence obtained at the crime scene was a match to Petitioner; a gun matching Granddaughter's description of the assailant's gun was found in the home where Petitioner was living; evidence demonstrate that Petitioner's wife called in a false CrimeStopper tip to divert the attention of law enforcement; and witness Canzater testified that Petitioner had been outside of Victim's home on a prior visit with her, was wearing matching clothing to that of the suspect on the day of the murder, and shaved his head and face to change his appearance once confronted with the news of Victim's death. *Id.*

Analysis

The Court of Appeals rightfully affirmed the trial court's decision that the N.J./FBI card was properly authenticated. The record supports the Court of Appeals' finding of authentication under 901(b)(3), as well as its consideration of harmless error, and the record also supports authentication by multiple other methods as alternative sustaining grounds under Rule 901. The Court of Appeals' holding was proper and this Court should affirm its decision.

Prior to the adoption of SCRE 901, fingerprint authentication requirements were established by this Court's 1987 decision in *State v. Rich*. In *State v. Rich*, the Supreme Court of South Carolina definitively held that police fingerprint cards do not violate the prohibition against

hearsay given that they fall within the business records exception or the public records exception. *Rich*, 293 S.C. at 173, 359 S.E.2d at 281. The Fourth Circuit recognizes this principle and has held that fingerprint cards are not “testimonial” and, thus, do not violate the Confrontation Clause concerns espoused in *Crawford v. Washington*, 541 U.S. 36 (2004). See *United States v. Thornton*, 209 Fed.Appx. 297, 299 (4th Cir.2006) (concluding that fingerprint cards are not “testimonial,” and that the admission of such business or public records does not violate the rule in *Crawford*). Although the evidence may not violate the rule prohibiting the admission of hearsay, the evidence must be properly authenticated, nonetheless.

In *Anderson*, this Court expounded upon *Rich* and noted the impact of South Carolina adopting SCRE 901 which essentially created a *non-exhaustive* list of methods for authentication of evidence, and an assertion of the underlying requirement that there be “sufficient evidence to support a finding that the matter in question is what its proponent claims.” *Id.*, (quoting SCRE 901(a)). In application of Rule 901, this Court in *Anderson* found that the expert’s comparison of characteristics of latent fingerprints to the known prints, his conclusion that they matched, and his testimony as to the correctional facility that took the prints, the date they were taken, and the State I.D. number all collectively satisfied 901(b)(4). *State v. Anderson*, 386 S.C. 120, 129, 687 S.E.2d 35, 40 (2009). This Court *then* found the fact that prints of all arrested individuals in the state are taken, maintained by SLED, and digitally stored in AFIS was sufficient to constitute authentication under 901(b)(7) as a public report or record. Third, this Court found that 901(b)(9) had been satisfied because the evidence demonstrated when, where, and how the prints were taken and submitted to SLED, the process used, and the maintenance of the records in AFIS. Lastly, this Court noted that even if one of the enumerated subsections of 901 had not fit perfectly to the authentication evidence, authentication was established “generally” under 901(a) because the

State's expert matched the latent prints to the defendant's known prints, testified as to the method and technology used, and explained how fingerprints are taken, stored, and maintained. This Court ended its analysis by noting that requiring the state to provide the precise person who took the fingerprints in question to establish authenticity would constitute an unrealistic and/or insurmountable standard for the State. *Id.*, 687 S.E.2d at 39-41 (2009). In light of this Court's holding in *Anderson*, the authentication of the fingerprints was well founded.

Authentication under 901(b)(3)

As one of the many listed methods for authentication of evidence, South Carolina Rule of Evidence 901(b)(3) states: "*Comparison by Trier or Expert Witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated." The application of that rule must then follow the controlling law concerning authentication in general. Therein, a party offering evidence must meet "[t]he requirement of authentication ... as a condition precedent to admissibility." Rule 901(a), SCRE. "[T]he burden to authenticate ... is not high" and requires only that the proponent "offer[] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir.2014) (decided under Fed.R.Evid. 901(a)(3)); *see also* 29A Am. Jur. 2d Evidence § 1045 (2008) ("The authentication requirement does not demand that the proponent of ... evidence conclusively demonstrate [its] genuineness...."). "The authentication standard is not high, *Deep Keel, LLC v. Atlantic Private Equity Group., LLC*, 413 S.C. 58, 64–65, 773 S.E.2d 607, 610 (Ct. App. 2015), and a party need not rule out any possibility the evidence is not authentic. In the realm of authentication, the law, like science, is content with probabilities." *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019), reh'g denied (July 31, 2019), cert. granted (Jan. 16, 2020), aff'd as modified, 432 S.C. 97, 851 S.E.2d 440 (2020). "The underlying requirement [is]

that there be ‘sufficient evidence to support a finding that the matter in question is what its proponent claims.’” *Anderson*, 687 S.E.2d at 39 (citing Rule 901(a), SCRE).

The record evidence demonstrates that in conducting her comparative analysis Investigator Odom used both of the 10-print cards she had available and testified directly that in so doing there was no difference between the prints of the N.J./FBI card and the Booking card. (App., p. 229). Investigator Odom further offered testimony that patterns *for each finger* on the two cards are the same. (App., p. 229, lines 18-19). This is particularly strong evidence given that the latent print analysis only involved three of Petitioner’s ten fingers (his left ring finger, left middle finger, and left thumb)¹, and proves the level of comparison that took place beyond just the matched latent prints. Investigator Odom further testified that in terms of patterns, she did not see any difference between the two cards and that she had no doubt that the cards contained prints from the same individual. Investigator Odom also testified that in reprinting the booking card from the AFIS database for purposes of discovery production – *after sufficient time had passed for the Petitioner’s booking card prints to be received and processed by the FBI* – the FBI had accepted the prints and given the same unique FBI I.D. number to the booking prints that already existed on the N.J./FBI prints (FBI I.D. #220688PA3). (App., p. 228-231). Odom explained that no matter how many

¹ On October 12, 2015, Odom utilized the N.J./FBI card (the only card he had available at the time) to conduct her analysis and discovered four matching prints from the first batch of latent prints provided. Items L-1.1, L-1.2 matched Petitioner’s left ring finger and left middle finger, respectively. Items L-7.1 and L-8.1 matched Petitioner’s left thumb. (State’s Exhibit 214 and 215). On October 16, 2015, Odom testified that she then used both the N.J./FBI card and the “Booking” card to conduct his remaining analysis of the additional latent prints he received from the scene. In so doing, Odom’s analysis revealed two additional matching prints: L-10.1 matched Petitioner’s left thumb and L-12.1 matched Petitioner’s left ring finger. (State’s Exhibits 214 and 215). Investigator Odom’s matching analysis demonstrated multiple matches to the same two fingers on two separate occasions using both cards. Notwithstanding the fact that matching analysis was limited to three fingers total, Investigator Odom was still able to testify as to the pattern matching for all of the fingers from both the N.J./FBI card and the Booking card.

times an individual is arrested, when a newly accepted charge and fingerprints are incorporated by the FBI into its system that same FBI I.D. number remains with the individual it corresponds to, as opposed to a new number be given to each new criminal record entry for that person. Odom testified that for this to happen, the new fingerprints have to match the existing fingerprint records. (App., p. 223, lines 4-18). Collectively, this is sufficient evidence to satisfy the standard for authentication under 901(b)(3), such that an expert has compared an authenticated and unauthenticated specimen and concluded that they are a match.

Petitioner's argument attempts to attack the methodology in which comparison was performed – insisting that Investigator Odom's testimony is insufficient for authentication because she did not conduct a "one-to-one"/"minutia"/"ACE-V" analysis between the two cards. Yet, the 901(b)(3) standard does not necessitate specific methodology, nor do the general rules for authentication require the level of assurance that Petitioner is demanding. Quite the contrary, as the key inquiry for authentication is simply whether there is "sufficient evidence to support a finding that the matter in question is what its proponent claims." *Anderson*, 687 S.E.2d at 39 (citing Rule 901(a), SCRE). That standard has been characterized as "not high" and does not demand conclusive evidence of genuineness. *Hassan*, 742 F.3d 104, 133; 29A Am. Jur. 2d Evidence § 1045 (2008). Petitioner's argument on appeal is seeking to demand precisely the excessive level of scrutiny that courts have held is not necessary and is not the purpose of authentication.

The Court of Appeals was correct to authenticate the evidence, as it is satisfactory under Rule 901(b)(3). Moreover, the Court of Appeals' reasoning regarding the nature of the evidence and the question of harmless error was also correct. The Court of Appeals was correct to find that even if authentication had been in error, it would not be to the prejudice of Petitioner because latent prints from the scene were found to match Petitioner's prints using both of the available cards.

This fact guarantees that undisputed and authenticated evidence of fingerprint records matched the latent prints, placing Petitioner at the scene of the crime. *He cannot escape that factual conclusion,* nor demonstrate he is entitled to relief given the overwhelming evidence of guilt articulated by the Court of Appeals in this case. *Id.* at 468 n.8.

The holding that the N.J./FBI prints were properly authenticated under rule 901(b)(3) was proper and should be affirmed by this Court.^{2 3} The Court of Appeals was correct to find no abuse of discretion on the part of the trial court. Petitioner has failed to demonstrate any basis for which his conviction should be reversed.

² The ruling of the Court of Appeals can also be sustained on alternate sustaining grounds under Rule 901. Under Rule 901(b)(7) the public records example, provides for authentication by “[e]vidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.” Rule 901(b)(7), SCRE. As the Fourth Circuit held in *Thornton*, the fingerprint cards produced by various law enforcement agencies and maintained by the FBI are admissible as business records or as public records. *Thornton*, 209 F. App’x at 299. Here, Investigator Odom testified she obtained the fingerprint card from a national database maintained by the FBI, and that prints will not be uploaded and accepted by the FBI if they fail to meet their universal threshold standards for quality and comparison. (App. p. 223, lines 1-17; p. 227, lines 14-21; p. 225, lines 16-22.) Thus, Odom’s testimony on the standard procedures used by AFIS to keep the prints was sufficient for authentication. *See also State v. Carruth*, 166 S.W.3d 589, 591 (Mo.Ct.App.2005).

³ Further, Rule 901 (b)(9) provides for authentication by “[e]vidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.” This subsection was recently discussed in *State v. Brown*, 818 S.E.2d 735, 740 (S.C. 2018), to determine the authentication of GPS monitoring records. In *Brown*, this Court again acknowledged the low burden to authenticate records but required the State to make some minimal showing of the accuracy of the records. *Id.* at 741 (“We emphasize that ‘[n]o elaborate showing of the accuracy of the recorded data is required;’ however, the State must make some showing to authenticate the records.” (citing *People v. Rodriguez*, 224 Cal.Rptr.3d 295, 309 (2017))). In this case, Odom testified regarding when and where Heyward’s fingerprints were taken upon his arrest and detention, how the prints were submitted to AFIS, how the prints were submitted to SLED and her lab via the Livescan software, and how the accuracy of the prints maintained in AFIS was corroborated by the Livescan prints. Thus, in accordance with recent prevailing law in *Brown*, Odom’s testimony was sufficient to satisfy the authentication requirement under subsection Rule 901(b)(9).

II. The Court of Appeals correctly concluded that the trial court’s error in denying Petitioner’s motion to remove his ankle shackles during trial was harmless in light of the fact that there is no evidence demonstrating his ankle restraints were visible to the jury.

Standard of Review

“Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995) (citing *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970)). “The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *State v. Black*, 400 S.C. 10, 16–17, 732 S.E.2d 880, 884 (2012) (citing *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (citation omitted)). “To warrant reversal, an error must result in prejudice to the appealing party.” *Id.* (citing *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011)).

How the Issue Was Presented at Trial

Before jury selection began, Petitioner asked the court to remove the shackles from his feet, arguing the shackles could be seen from the portion of first two rows of the gallery directly behind Petitioner. (App. p. 7, lines 11-15.) Petitioner requested the removal for the duration of the jury selection. (App. p. 7, lines 16-17.) The trial court denied the motion without elaboration. (App. p. 7, line 23.)

How the Court of Appeals Ruled

The Court of Appeals ruled that the denial of Petitioner's request to remove his ankle shackles was harmless error. The Court of Appeals found this case to be similar to *Deck v. Missouri* in the sense that the trial court failed to set forth on the record any stated reason for why the request was denied, and the record otherwise lacks any indications of concern for security. *Id.*, 852 S.E.2d at 466. As such, the denial of the request constituted an abuse of discretion for failure to place a basis for the ruling on the record. However, the Court of Appeals correctly concluded that such error was harmless as there is no basis for prejudice against Petitioner. The Court of Appeals articulated that it could find no supporting Supreme Court or South Carolina authority directing that the heightened burden in *Deck* applies to circumstances where it is not obvious from the record that the shackles were observed. Instead, the Court of Appeals found *State v. Johnson* analogous here, and supported by other jurisdictions. *Id.*, (citing 422 S.C. 439, 446, 812 S.E.2d 739, 742, 745 (Ct. App. 2018)). Although Petitioner objected to his ankle shackles, and argued that potential jurors in a portion of the first two rows could potential see his shackles, nothing in the record indicates that any juror could or did see his shackles. Additionally, the Court of Appeals noted that the issue only existed during the jury selection process, and the leg shackles were removed during trial.

Analysis

The Court of Appeals exercised sound legal reasoning in finding only harmless error for the trial court's failure to exercise discretion in denying Petitioner's request to remove his ankle shackles. This Court should affirm.

As a general proposition, a criminal defendant has the right to appear in court free from physical restraints. "The law has long forbidden routine use of visible shackles during the guilt

phase; it permits a [s]tate to shackle a criminal defendant only in the presence of a special need.” *Deck v. Missouri*, 544 U.S. 622, 626 (2005). A defendant's appearance in shackles “may reverse the presumption of innocence by causing jury prejudice thereby denying him due process.” *Jones v. Meyer*, 899 F.2d 883, 884 (9th Cir.); see *Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir. 1995) (holding that because of the potential for prejudice, due process requires that shackles be used as a “last resort”). However, “the trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995).

The law grants the trial court discretion over the decision to remove a defendant’s shackles in court. However, absent factual-findings or an articulated basis for the decision, it cannot be gleaned from the record of this case that the trial court properly exercised such discretion. The Court of Appeals accurately acknowledged the court’s lack of reasoning within the record and correctly found error. However, the Court of Appeals was also correct in its review of the record facts and application of the law in finding that requisite prejudice did not arise from such error in this case.

“In order for a criminal defendant to enjoy the maximum benefit of the presumption of innocence, our courts should make every reasonable effort to present the defendant before the jury in a manner that does not suggest, expressly or impliedly, that he or she is a dangerous character whose guilt is a foregone conclusion.... The negative connotations of restraints, nevertheless, are without significance **unless the fact of the restraints comes to the attention of the jury.**” *State v. Brawley*, 137 A.3d 757, 760 (Ct. 2016), citing *State v. Webb*, 680 A.2d 147(1996) (emphasis added). It is the defendant's burden to show that the presence of shackles prejudiced him in some

way. *See U.S. v. Mayes*, 158 F.3d 1215, 1226-27 (11th Cir. 1998) (even if court abused its discretion in ordering defendants to wear leg irons during trial, defendants failed to demonstrate prejudice and were not denied fair trial); *Castillo v. Stainer*, 983 F.2d 145,147 (9th Cir. 1992) (error in restraining defendant harmless where restraint could not be seen by the jury); *State v. Williams*, 485 A.2d 570 (Ct. 1985) (“the record does not indicate ... [and] the defendant [does not] claim that any offer of proof was made as to whether the jurors could or did view the restraints when on the defendant”).

The only portion of the record discussing the issue of shackling is Petitioner’s claim that the portions of the first two rows of seating in the courthouse that were directly behind Petitioner’s seat could provide an angle in which *potential* jurors *might* see his ankle shackles. (App., p. 7, lines 11-22). The Court of Appeals noted this argument by counsel. However, it found that the record does not go any further to provide evidence supporting Petitioner’s claim. The record fails to demonstrate that 1) potential jurors actually saw the ankle shackles, 2) that any of the selected jurors for Petitioner’s trial were seated in that precise area of the courthouse, 3) that the selected jurors in any way learned of Petitioner’s shackles, and 4) that any juror was actually prejudiced as a result. The record actually demonstrates the opposite, noting that the shackles were removed for Petitioner’s trial.

As the Court of Appeals noted in its review of controlling authority, the heightened burden under *Deck* that relieves a defendant of the burden of proving actual prejudice only attaches to shackles or restraints “that will be seen by the jury. . .” and where the record demonstrates that the shackles were in fact visible. *Id.* at 467 (citing *Deck*, 544 U.S. at 635, 125 S.Ct. 2007). Such is not the case here.

By comparison, the Court of Appeals likened this case to its prior decision in *State v. Johnson*, wherein it upheld the denial of a motion for mistrial for lack of any evidence that a member of the jury had actually seen the shackled defendant when ushered by police officers into the courthouse. (App. p. 655). The Court of Appeals gave further support to its ruling by noting that other jurisdictions around the country have held similarly that the heightened *Deck* standard does not apply absent evidence that a juror actually observed the defendant in restraints. (App. p. 655, n. 12). Here the applicable law dictates that following an abuse of discretion by the trial court in denying his request, the Petitioner bears the burden of proving prejudice from nonvisible shackles, and the Court of Appeals correctly concluded that Petitioner had failed to satisfy that burden.

Petitioner cannot identify any evidence of error on the part of the Court of Appeals in reaching its conclusion. The ruling of the Court of Appeals should therefore be affirmed.

III. The Court of Appeals did not err in finding harmless error in the trial court's decision to permit expert opinion testimony about the operational capabilities of the gun found at Petitioner's residence.

Standard of Review

A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009)

How the Issue Was Presented at Trial

Before Investigator David Collins began his testimony, Petitioner objected to any testimony from the witness that the gun recovered from Petitioner's bedroom was, in fact, operational. Petitioner argued the evidence was not relevant to any element of any substantive offense charged and was "superfluous testimony in what looks to be a more than week-long trial."

(App. p. 362, line 9 – p. 363, line 5.) Petitioner **did not** argue at trial the testimony was unduly prejudicial and inadmissible pursuant to Rule 403, SCRE. (App. p. 362-366.)

The solicitor responded that the testimony was required to prove the firearm was an actual weapon as part of the pointing and presenting the firearm charge. The solicitor also argued the operational firearm was probative of malice, even though Petitioner did not use the weapon to murder Victim. (App. p. 363, lines 7-17.) The court read its intended charges on pointing and presenting a firearm, as well as armed robbery, and noted there was no testimony yet as to whether the “instrument” could cause death or great bodily harm, or whether it was capable of “expelling a projectile through explosion.” (App. p. 364, line 18 – p. 365, line 19.) The court found the testimony on the gun’s operation “an essential element of pointing and presenting.” The court based his ruling on SCRE Rule 401, saying “relevant evidence means evidence having any tendency to make the existence of any fact that is consummate to a determination of the action more probable or less probable than it would be without the evidence.” (App. p. 365, lines 20-25.) During his testimony, Collins told the jury his role was to determine whether the firearm functioned properly. (App. p. 370, lines 13-16.) The examiner said the gun was worn and the finish was in bad condition, but the weapon would function as a firearm. (App. p. 372, line 2- p. 373, line 10).

How the Court of Appeals Ruled

The Court of Appeals ruled that admission of testimony as to the operational capability of Petitioner’s gun was harmless error. The Court of Appeals concluded that based upon the rules of statutory construction and abiding legislative intent, it would produce an absurd result under S.C. Code of Laws § 16-23-410 and § 16-11-330(A) to require proof that a firearm is capable of propelling a projectile while also allowing an unloaded gun or “representation of a deadly weapon” to satisfy the respective statutory criteria. *Id.*, at 463. However, the Court of Appeals found the

error to be harmless for lack of prejudice against Petitioner in light of the overwhelming evidence of guilt admitted against Petitioner at trial. *Id.*

Analysis

The ruling of the Court of Appeals was proper. Petitioner failed to demonstrate prejudice resulting from inclusion of expert testimony as to the operational capability of the gun and thus the finding of harmless error was proper in light of the overwhelming evidence of guilt. The ruling of the Court of Appeals should be affirmed.

Two statutes are discussed in relation to the gun's operational capability testimony. First, §16-23-410 articulates that "[i]t is unlawful for a person to present or point at another person a loaded or unloaded firearm." S.C. Code Ann. § 16-23-410. Second, § 16-11-330(A) states that "[a] person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty . . ." S.C. Code Ann. § 16-11-330(A). Neither statute comments upon or requires proof of the operational capacity or functionality of the gun in dispute. As an unloaded firearm or representation of a deadly weapon can satisfy the statutory requirements for the charges, it would indeed be inane to suggest that a gun must be proven functional to satisfy the statute, and the trial court admitting such testimony under the arguments presented by the solicitor was in error. The Court of Appeals was correct to conclude that the statutory construction and legislative intent for these crimes do not require proof that they can function as a firearm. As such, the Court of Appeals properly held the admission of the evidence constituted an abuse of discretion by the trial court.

The Court of Appeals was also right to find harmless error from that abuse of discretion, given the overwhelming evidence of Petitioner's guilt admitted at trial. The evidence of guilt included: 1) Granddaughter's identification of Petitioner; 2) fingerprint matches from the crime scene; 3) DNA matches from both the crime scene and victim; 4) the unique character of the gun being identified by Granddaughter and found at Petitioner's residence; 5) evidence of clothes worn by Petitioner matching Granddaughter's description; 6) a prior and recent instance of Petitioner meeting victim outside her home; and 7) Petitioner changing his own appearance soon after the crime. In consideration of the circumstances of the particular case presented, Appellate courts will generally not set aside a conviction due to insubstantial errors that do not affect the result at trial. *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). Moreover, "no definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.

Indeed, the Court of Appeals was correct to find that evidence of the gun's functionality would not have impacted the jury in light of the overwhelming evidence of guilt against Petitioner in this case. Moreover, the relationship between the disputed testimony and the case as a whole is almost nonexistent. The nature of the evidence was mechanical in nature and discussed a weapon that was ultimately not used during Petitioner's violent acts. As the arguments from defense counsel at trial demonstrate, the evidence was at worst superfluous; the record lacks any demonstration of how the evidence might be prejudicial. The ruling of the Court of Appeals was soundly reached.

Petitioner has failed to demonstrate that the Court of Appeals' holding was reached in error. As such, this Court should affirm.

IV. The Court of Appeals did not err in affirming the trial court’s allowance of Petitioner’s alias “Abdul Muslim” for use in the indictments and at trial.

Standard of Review

Absent an abuse of discretion, a trial court's ruling on a motion to strike will not be reversed. *Mayer v. Paxton* (S.C. 1993) 313 S.C. 109, 437 S.E.2d 66.

How the Issue Was Presented at Trial

On June 5, 2017, before the Honorable Judge R. Knox McMahon, Petitioner moved to strike his alias, Abdul Muslim, from his multiple indictments, including murder, kidnapping, assault and battery, armed robbery, pointing and presenting, and another weapons charge. (R. pp. 429-431.) Citing federal law, Petitioner argued there was no “factual nexus” between the alias charged in the indictment and the allegations made against him. (App. p. 432, line 2 – p. 435, line 11.) Counsel for Petitioner then explained to the trial court how Petitioner was developed as a suspect. (App. p. 435, lines 4 – 25.) A latent fingerprint resulted in a hit for James Heyward, and a records check on Petitioner found his alias and multiple prior convictions in New Jersey. The defense argued, however, that the State was aware of Petitioner’s name when he was developed as a suspect and only later found information about his many aliases, but those aliases had nothing to do with the State’s focus on this suspect. (App. p. 436, line 1 – p. 438, line 19.)

Petitioner then argued that results from a 2011 Gallup poll, which studied perceptions in the years 2004 and 2006, suggested a societal negative perception of Muslims, which would in turn prejudice Petitioner. (App. p. 440, line 5 - p. 442, line 3.) Petitioner asked the court to either amend the indictment and strike the alias or order the State to refrain from mentioning the alias during the trial. (App. p. 442, lines 6-14.)

In response, the solicitor explained that the DNA found from the victim’s fingernail scrapings produced the Combined DNA Index System (“CODIS”) hit to Petitioner, who had given

the name Abdul Muslim when he was arrested for eluding police and failure to stop in New Jersey. When he was processed into the detention system for that arrest, his DNA was taken and deemed the profile for Abdul Muslim. The solicitor said the DNA match did not report any associated names, such as name James Heyward, only Abdul Muslim. (App. p. 443, lines 1-21.)

The State agreed to amend the indictment to remove the alias if the defense did not intend to challenge the DNA results. The State also pointed out the indictment did not include Petitioner's *eight other aliases* because they were not relevant to his culpability, but the DNA match, and its connection to the defendant, was critical to the State's case. (App. p. 443, line 23 – p. 444, line 10.)

The trial court summarized its understanding of the facts as follows: The DNA profile from the victim's fingernails resulted in a match to Abdul Muslim. The fingerprint card for Abdul Muslim was then matched to James Heyward. (App. p. 445, lines 2-17.) The solicitor then again offered to amend the indictment if Petitioner agreed he was not challenging the DNA evidence. (App. p. 445, lines 20-22.)

The court ruled that any potential prejudice could be addressed and cured in voir dire. (App. p. 448, line 22 – p. 449, line 3.) The court went on to explain that the introduction of the alias at trial should be examined under the rules of evidence, particularly Rules 401, 402, and 403, to fully weigh the probative value against its potential prejudicial impact. The court explained that the DNA hit to Abdul Muslim, even if Petitioner was already developed as a suspect, could have been exculpatory or inculpatory to Petitioner. The court found that the investigation linking the identity of Petitioner to the Abdul Muslim alias was relevant to the State's burden to prove the elements of the crimes charged. (App. p. 449, line 18 – p. 450, line 25.)

How the Court of Appeals Ruled

The Court of Appeals ruled that the pretrial motion to strike Petitioner's alias was properly denied because the State established at trial that it intended "to introduce evidence of an alias and [that] the use of that alias [was] necessary to identify [Heyward] in connection with the acts charged in the indictment." *Id.*, at 464 (citing *United States v. Clark*, 541 F.2d 1016, 1018 (4th Cir. 1976)). In satisfying this standard, the State indicated that the DNA sample taken from Victim's fingernails linked to the CODIS record for Abudul Muslim, and "James Heyward" was not associated with the CODIS hit. Moreover, the information on Abdul Muslin found through CODIS included fingerprints that matched Petitioner's fingerprints. Based on that evidence, the Court of Appeals found no error in the trial court denying the motion to strike Petitioner's alias from the indictments. *Id.*

Analysis

The inclusion of an alias in an indictment is not inherently prejudicial; it does not automatically conjure the image of a hardened criminal. *See United States v. Esposito*, 423 F.Supp. 908, 911 (S.D.N.Y.1976). Rather, the inclusion of an alias is relevant and permissible when it is necessary to identify the defendant in connection with the acts charged in the indictment.⁴ *E.g. United States v. Clark*, 541 F.2d 1016, 1018 (4th Cir.1976); *State v. Monahan*, 480 A.2d 863, 867 (1984). Further, where the accused is known by different names, it is lawful for the indictment to identify the accused by all such names as alias dicta. *Merneigh v. State*, 531 S.E.2d 152, 158. (Ga. Ct. App. 2000). Moreover, it is well settled that a motion to strike is addressed to the sound discretion of the trial court. *Totaro v. Turner*, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979). There is no error on the part of the Court of Appeals in applying this law and affirming the trial

⁴ Additionally, indictments are not evidence.

court's decision to deny the motion to strike any reference to Appellant's alias, Abdul Muslim. Petitioner's alias was key to the case and Petitioner can not demonstrate prejudice stemming from the alias. (App. p. 648-650).

On appeal, Petitioner argues the inclusion of his alias, Abdul Muslim, in the reading of the indictments to the jury unfairly prejudiced him because the particular alias injects an assumed bias against non-Christian religions. (Brief of Petitioner, at 16.) Appellant argues that the existence of the FBI number should have been sufficient for the State, and that – counter to his underlying argument of using the name in the presence of the jury at all – the State did not produce enough evidence to attribute the name “Abdul Muslim” to Petitioner. (Brief of Respondent, p. 15). Petitioner's arguments deem Ms. Canzater knowing Petitioner as “Abdul” to be insufficient because she did not also mention the last name “Muslim”, and such arguments seem to suggest that the alias is somehow unestablished by the matching forensic records.⁵ Appellant's argument then proceeds to expound upon this already dubious theory by citing to completely unresponsive case law where error was found on the basis of the prosecution referring to the September 11th attacks and calling the defendant a “domestic terrorist”. (Brief of Petitioner, at 16). The legitimacy of the argument is strained even further by Petitioner suggesting that testimony from witnesses as to their connection to Victim through church somehow pitted the religious faith of the Victim against that of Petitioner. Such arguments are spurious conjectures and the record does not support any implication that the solicitor made any improper comment regarding Petitioner's religion in the opening or closing arguments, sought to introduce any other improper evidence related to Petitioner's religion, or asked any improper questions of any witnesses. Petitioner's sole allegation

⁵ Petitioner here has essentially claimed error by the State for both not mentioning the Abdul Muslim alias enough, and for mentioning the alias too much.

of religious bias stems from a completely unfounded presumption of bigotry connected solely to reference of his alias, Abdul Muslim, in the indictments read by the trial court and later mentioned during the testimony of the DNA database administrator.

Such arguments are without merit and the Court of Appeals correctly relied upon *United States v. Clark*, 541 F.2d 1016, 1018 (4th Cir. 1976) in reviewing the trial court's decision to permit the Abdul Muslim alias. The 4th Circuit in *Clark* noted that an improperly admitted alias can be addressed "if the prosecution either fails to offer proof relating to the alias[,] or the alias, although proven, holds no relationship to the acts charged, a motion to strike may be renewed, the alias stricken and an appropriate instruction given to the jury." *Id.* While such a remedy is available *where necessary*, the Court of Appeals found that the trial court was correct to deny the motion to strike. In the case at hand Appellant's alias was pertinent to the DNA evidence, as Abdul Muslim was the name under which the DNA evidence was identified in the CODIS system. Failure by the state to explain that connection could lead to confusion of the jury during deliberations. That same CODIS system information linked Abdul Muslim to the matching fingerprints belonging to James Heyward. Moreover, in the facts presented by lay witnesses, Canzater testified that she knew Petitioner to go by the name Abdul, thereby reinforcing the connection between the alias and the crimes. (App. p. 434-435; p. 326-327). See *State v. Day*, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000) (noting that evidence such as a nickname is not prejudicial "when used to prove something at issue in a trial, such as the identification of the defendant.").

In light of the evidence connecting the alias to Petitioner's crimes, the Court of Appeals correctly concluded that the State had satisfied the need for introduction of the Abdul Muslim alias. Petitioner's argument appears to be based entirely upon speculation and not actual prejudice.

Petitioner has failed to identify any error by the Court of Appeals in affirming the trial court's decision to permit the alias at trial. The Court of Appeals ruling should be affirmed.

V. The Court of Appeals did not err in its ruling that the autopsy photographs were properly admitted at trial.

Standard of Review

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *Id.* “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct.App.2008) (internal quotation marks omitted).

How the Issue Was Presented at Trial

In a pre-trial motion before Judge McMahon on June 22, 2017, the defense objected to several matters. (R. pp. 454-458.) Concerning particular autopsy photographs, Petitioner argued Exhibits 4, 5, 6, 7, 9, 16, 17, and 18 were all cumulative. (App. p. 466, line 18 – p. 467, line 24.) Petitioner objected to State’s Exhibits 14 and 15 as irrelevant and “gruesome.” (App. p. 467, lines 2-9.) The State asked the trial judge to defer ruling on the admissibility until the State’s pathologist testified because the doctor had identified those photographs as necessary for her to explain the scope of the victim’s injuries. (App. p. 468, lines 1-9.) The solicitor also said the photograph of the Victim’s face corroborated the testimony of the victim’s grandchild, who would testify she saw her grandmother killed and described the color of her face after the strangulation. (App. p. 468, lines 10-20.) The State also agreed to withdraw Exhibits 17 and 18. (App. p. 471, lines 3-9.) The court reserved its ruling pending the testimony of the witnesses. (App. p. 472, line 5 – p. 473, line 9.)

Later at trial, Dr. Amy Durso, the State's pathologist, testified about the injuries she found on Victim's body. Dr. Durso described finding multiple blunt force injuries to the Victim's head on four different planes of the skull. (App. p. 296, lines 11-22.) Dr. Durso testified some of the injuries would not be visible to an external inspection because they would be covered with the victim's hair, but the injuries would be visible if the scalp was reflected. (App. p. 296, line 23 – p. 297, line 3.) The State asked Dr. Durso if photographs of the reflected scalp would assist her testimony and she indicated affirmatively. The State then moved to enter State's Exhibits 14 and 15 into evidence. (App. p. 297, lines 4-12.) Petitioner objected pursuant to Rule 403, SCRE. (App. p. 297, lines 11-13.) Petitioner argued because the injuries to the head were not the cause of death, the photographs should be excluded as irrelevant and unduly prejudicial. (App. p. 298, lines 1-10.)

During a proffer of testimony, Dr. Durso explained the photographs demonstrated Victim suffered more than just a strangulation—there was a struggle, and Victim's head was struck on multiple different areas. (App. p. 298, line 21 – p. 299, line 1.) Dr. Durso said the injuries contributed to the cause of death and the photographs were demonstrative of those injuries because “it's easiest with a picture.” (App. p. 299, lines 2-11.) The doctor then used the photographs to demonstrate where the injuries occurred on Victim's head. (App. p. 300, lines 2-11.)

The trial court cited to *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014), and found the probative value of the photographs outweighed the prejudicial impact. The court found the photographs probative of malice because the exhibits indicated a violent struggle occurred at the time of Victim's death. Accordingly, the court denied Petitioner's objections and admitted Exhibits 14 and 15 into evidence. (App. p. 301, line 11 – p. 305, line 5.)

How the Court of Appeals Ruled

The Court of Appeals ruled that the trial court properly evaluated the probative value of the disputed photographs as it pertained to the question of malice. The Court of Appeals noted that Dr. Durso testified that Victim's head injuries demonstrated that a struggle occurred and that she suffered a violent death. Her testimony further indicated that Victim's injuries show she was struck on multiple planes of her head, as opposed to just one terminal fall. Such evidence indicated that she suffered more than just strangulation. With this evidence and testimony in mind, the Court of Appeals agreed with the trial court that the photographs were important toward establishing malice, and corroborated the expert testimony of Dr. Durso. *Id.*, at 465. Moreover, Dr. Durso testified that the photographs in question would be necessary to assist her in explaining to the jury the injuries that Victim suffered to the head, thereby increasing the photographs' probative value. Additionally, the Court of Appeals noted that the disputed photographs were not unduly prejudicial to Petitioner. *Id.* As such, they were properly admitted during trial.

Analysis

The Court of Appeals was correct in finding no error on the part of the trial court for the admission of victim's autopsy photographs. The autopsy photos demonstrated a violent crime prior to strangulation so as to constitute probative evidence of malice, the evidence assisted the expert in explaining the nature of Victim's injuries, and the photographs corroborated the testimony of the expert that indicated Victim was not only strangled, but suffered multiple blows to head prior to death. There was no error on the part of the Court of Appeals and this Court should affirm the Court of Appeals' decision.

“The [a]dmission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion.” *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d

246, 247 - 248 (2000). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law,” *State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013), or when the ruling lacks factual support in the record, *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010). The Court of Appeals correctly noted that relevancy, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and that a trial court’s ruling on the comparative prejudice and probative value from such photographs should only be disturbed in exceptional circumstances. *Id.*, at 465 (citing *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996); *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)). The Court of Appeals likewise properly cited to authority that supported the admission of autopsy photographs for the purposes of supporting the element of malice as well as the corroboration of the medical examiner’s testimony. *Id.*, at 465 (citing *State v. Hawes*, 423 S.C. 118, 130–31, 813 S.E.2d 513, 519–20 (Ct. App. 2018); *State v. Gray*, 408 S.C. 601, 612-16, 759 S.E.2d 160, 166-68 (Ct. App. 2014)). The case at hand established admissibility of the photos for both the element of malice and to corroborate the testimony of Dr. Durso at trial.

The Court of Appeals’ reasoning and legal basis for affirming the trial court’s decision was well-founded and proper. The brutality of Victim’s murder was shocking. The photographs offered captured the violence inflicted upon her and the various types of wounds she suffered at the hands of Petitioner, some of which would not be visible to the jury absent autopsy photographs. There was an eyewitness to the crime, the eight year old granddaughter of the victim, who described watching Petitioner strangle her grandmother at the kitchen table. However, the girl was also locked in a closet for a significant period of time. The State theorized Petitioner used his arm to choke Victim and then later returned to “finish her off” with the draft-stopper that was found wrapped around her neck. (App. p. 422, lines 14-22.) Petitioner argues the photographs were not

needed because the girl provided eyewitness testimony to the murder. The gap in the testimony from Granddaughter is precisely the reason the photographs, in conjunction with the testimony of the pathologist, were significant. Dr. Durso testified the trauma to the head was a contributing factor to the cause of death. She also testified the wounds would not be visible externally because the victim's hair would obscure the injuries. (App. p. 296, line 23 – p. 297, line 3.) The photographs corroborated this testimony. Consequently, there were distinct and necessary reasons to submit the photographs. See *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010) (“If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”) (quoting *Nance*, 320 S.C. at 508, 466 S.E.2d at 353); *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct.App. 2008) (“Admitting photographs which serve to corroborate testimony is not an abuse of discretion.”). See also *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim's body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim's mouth).

The State argued Petitioner's actions showed a total disregard for human life, proving the required element of malice in the murder of Victim. (App. p. 423, lines 9-19.) The proof of malice was reflected by the Victim's own body. The State was entitled to make its case, despite the gruesome nature of the photographs, because the pictures were the easiest, and most demonstrative manner to communicate that evidence to the jury. The Court of Appeals correctly concluded that such a basis for admission is in harmony with existing case law and found that these photos corroborated the medical findings provided by Dr. Durso. As such, the Court of Appeals was

correct to find no abuse of discretion on the part of the trial court in admitting the contested photographs. This Court should affirm the decision of the Court of Appeals.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that certiorari be denied in this matter.

Respectfully submitted,

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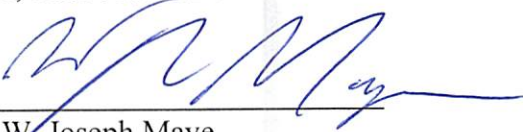
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