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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2021-000822

THE STATE, ...RESPONDENT

v.

NATHANIEL DAVID ROWLAND, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err by denying Appellant's motion to suppress all evidence obtained as a product of the unlawful stop of Appellant's vehicle in violation of the Fourth Amendment where law enforcement did not have probable cause that a traffic violation had occurred nor reasonable suspicion that the occupants of the car were engaged in criminal activity before conducting the traffic stop?

2. Did the trial judge abuse his discretion by admitting expert testimony from the state's questioned document examiner that it was "probable" that the person who wrote an inscription on the back of an envelope found in Appellant's car was the same person whose handwriting appears on Appellant's personnel records obtained from Capital Waste Services and FedEx by way of respective search warrants since the evidence was inadmissible pursuant to Rule 702, SCRE, given that it could not assist the jury in understanding the evidence or determining a fact at issue, and where the evidence was not relevant pursuant to Rule 401, SCRE, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury under Rule 403, SCRE?

3. Did the trial judge abuse his discretion by admitting testimony from the state's expert DNA analyst concerning Appellant's inclusion in a mixture of DNA found on a multitool, which the state alleged was the "murder weapon" and cuttings from a wad of paper towels and a pair of pants in violation of Rule 702, SCRE, since the testimony could not assist the jury in understanding the evidence or determining a fact at issue, and where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury under Rule 403, SCRE, given that the expert admitted there was only weak support for Appellant's inclusion?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge abuse his discretion by denying Rowland's motion to suppress evidence obtained as a result of the stop of his car where the brief, investigatory stop was justified by an exigent circumstance: the officer who stopped him was aware that the victim was last seen getting into a black, newer model Impala consistent with Rowland's car twenty-four hours earlier and roughly a block away from where Rowland was stopped, she was still missing, her whereabouts were still unknown, and the circumstances surrounding her disappearance suggested that she had met with foul play. Also, the officer who made the brief investigatory stop had a reasonable suspicion that Rowland's Impala could be the car into which the victim had entered.

II. Did the trial judge abuse his discretion by allowing the State's questioned documents examiner to testify that it was "probable," or "a high degree of likelihood," that the person who wrote an inscription on the back of an envelope seized from Rowland's Impala (State's Ex. 56) was the same person whose handwriting appears on Rowland's personnel records obtained from Capital Waste Services and FedEx because (1) his testimony satisfied the threshold requirements for admissibility of expert testimony under

Rule 702, SCRE and *State v. Council*, (2) his testimony was relevant and probative of who wrote the information on the envelope, and (3) the probative value of his testimony was not substantially outweighed by its prejudicial effect under Rule 403, SCRE.

III. Did the trial judge abuse his discretion by allowing a SLED DNA analyst to testify that Rowland's DNA was present on a "multi-tool" used as the murder weapon (State's Ex. 295), as well as on a cutting from a wad of paper towels (see State's Ex. 328) and a cutting from a pair of his pants that were seized from the trash behind his girlfriend's apartment where the analyst's opinion as to these items was relevant because it was probative on the issue of the identity of the person who murdered Samantha Josephson, a fact that was clearly at issue, and the probative value of her testimony was not substantially outweighed by its prejudicial effect.

STATEMENT OF THE CASE

Appellant, Nathaniel David Rowland (Rowland), is confined in the South Carolina Department of Corrections (SCDC) as the result of his Richland County convictions and sentence arising from the kidnapping and murder of Samantha Josephson. The Richland County Grand Jury indicted him on April 16, 2019 for murder (2019-GS-40-2450), kidnapping (2019-GS-40-24503, and possession of a firearm during the commission of a violent crime (2019-GS-40-2528). ***R. 1532 -1537***.

The Honorable Clifton Newman held a pretrial hearing on July 16, 2021, at which Rowland was present and represented by counsel. Rowland then received a jury trial before Judge Newman on July 19-23, and 26-27, 2021. The jury convicted him of all three charges (***R. 1428- 1431***), and Judge Newman sentenced him to life without parole for murder and five years concurrent for the weapons offense. No sentence was imposed for kidnapping because Rowland was sentenced for murder. *See* S.C. Code Ann. § 16-3-910 (2021); ***R. 1442-43; R. 1532 -1537*** (sentencing sheets). Assistant Public Defenders Tracy E. Pinnock, Alicia D. Goode, and Robert W. Pillinger, of the Richland County Public Defender's Office, represented him in the trial court. Fifth Circuit Solicitor Byron E. Gipson, along with Deputy Solicitors Daniel R. Goldberg and April W. Sampson, and Assistant Solicitor Amanda Marie Gaston prosecuted the case.

Rowland timely served and filed his notice of appeal. He thereafter filed an Initial Brief of Appellant.

STATEMENT OF FACTS

Succinctly,[1] Rowland and these crimes are most accurately described by the phrase on

[1] Although this brief discusses the "avalanche of direct and circumstantial evidence" tending to prove that Rowland kidnapped and savagely murdered Samantha Josephson on March 29, 2019, Respondent would refer the Court to Deputy Solicitor Goldberg's eloquent and much more detailed review of the

State's Ex. 18, his bandana found in his Impala's trunk with the victim's blood on it: "Cold Blooded." (Because Samantha's DNA was on this bandana, a reasonable inference is that he was either wearing it or had it in the cabin of the Impala when he murdered her). The State's evidence was that on Thursday, March 28, 2019, Samantha Josephson was a twenty-one-year-old senior at the University of South Carolina, who planned to go to law school after her graduation in May. On the 28th, she and friends hung out at her Main St. apartment in the Hub, stopped by to visit another friend before walking to the Bird Dog, a bar on Harden Street in Five Points. The friends listened to music and socialized while at the bar. Eventually, Samantha left her group of friends and left the bar without her friends' knowledge. ***R. 288-89; 297; 309-15***.

Samantha missed her boyfriend, Greg Corbishley, who lived in Mt. Pleasant, and they spoke, texted, or "face timed" one another throughout the night of the 28th. She tried to convince him to come to Columbia, but he declined because she had planned to visit him on the weekend. They last spoke at 2:04 am. on the 29th. She told him that she had called for an Uber and that she was leaving the bar. ***R. 289-95***. Tragically, she missed her Uber ride[2] and mistakenly got into Rowland's newer model black Chevrolet Impala and entered what can truly be described as hell on earth. She was never to be seen or heard from again while alive. *See* ***R. 343-46; 495-99; 1295-1301; 1326-28;*** State's Ex. 3 (DVD of video surveillance of left side of parking lot for Bird Dog); State's Ex. 12 (DVD of video surveillance); State's Ex. 358 (Power Point presentation of edited video surveillance from various locations in the City of Columbia).

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prosecution's case in his closing argument. *See* ***R. 1350-82***.

[2] As depicted in State's Ex. 358, she originally mistook a gray or silver vehicle for her Uber ride and unsuccessfully tried to get into it. Rowland watched as this happened. *See also* ***R. 1326-38***. Marcus Williams, the Uber driver who was supposed to give Samantha a ride testified that he got a call to pick her up, but she did not answer when he called to let her know that he was coming. So, he circled the location two or three times. Pursuant to policy at the time, he had to cancel the ride after several minutes. ***R. 335-37***.

Both Greg and Samantha's roommate Teagan Berry[3] tracked her phone, through the Find My Friends app, as it went south and in the opposite direction from the Hub. Greg unsuccessfully tried to reach her by phone, but the call went to voicemail. He also unsuccessfully tried texting her and contacting her through Snapchat. Her phone stopped sharing her location around 2:30 or 2:40 am., which had never happened before. The last location shared was on Montgomery Ave., which is in the Rosewood area and near the residence of Rowland's sister. ***R. 295-98; 315; 950-51; 953***.

Because Samantha had not returned home on Friday morning, March 29th, Teagan called Samantha's employer and learned that she had not gone to work, which was uncharacteristic. Teagan was likewise unable to find any information about her from their roommates or calls to hospitals and the jail. Also, Teagan and Greg had gone to the area of Montgomery Ave. and S. Ott. Rd., which was the last known location for Samantha's phone, but there was no trace of her there. So, Teagan called the City of Columbia Police Department and reported Samantha missing. ***R. 300-302; 315-19***.

Around 1:30 or 2:00 pm. on March 29, 2019, turkey hunters Ander Lee and Edward Knowlton found Samantha's lifeless body in a very remote wooded section of New Zion, South Carolina, which is in Clarendon County.[4] While there are some residences in the general area, there was never random traffic through there. They telephoned Knowlton's father and got the number for Hendley Morris, Jr., because he worked for the Department of Natural Resources (DNR). They then waited at the scene until the arrival of law enforcement. ***R. 356-69; 372***.

Mr. Morris testified that he has worked for DNR for twenty-six years. Also, he lives in

[3] Teagan had been out with Samantha that night. ***R. 311-13***. She began tracking Samantha's phone after Greg contacted her. ***R. 315***.

[4] Mr. Lee had attended high school with Rowland and the two never had problems. ***R. 369***.

the general area of New Zion where Samantha's body was found. On March 29, 2019, he received a call from Knowlton's father, who asked if he was in the area. Mr. Morris said he was. Knowlton's father then told him that Knowlton and Lee thought that they had seen a body and asked him to ride out to the location to investigate. He drove to the remote area in question and called the Clarendon County Sheriff's Office after he saw the body. He remained there until members of the Sheriff's Office arrived, and he subsequently gave a statement to SLED. ***R. 375-82***.

Mr. Morris knows the Rowland family and testified that Rowland's parents "live across the highway from me." Although no roads lead directly to the location, their residence is roughly a mile "[s]traight through the woods" from where Samantha's body was found. ***R. 383-84***. He and Inv. Thomas Huckaby, with the Clarendon County Sherriff's Office,[5] indicated that there are only a few houses in this area and that it is mostly fields and woods. In twenty-six years with DNR, Mr. Morris had never stopped anyone that he did not know "or know their family that lived somewhere in the area." ***R. 384-85; 388; 402-03***.

At some point on the 29th, Greg and Teagan went to the Bird Dog and saw surveillance footage of Samantha getting into a black Impala, that neither one recognized. ***R. 302; 320-22***. By late that afternoon, all members of the City of Columbia Police Department received a BOLO for Samantha by email, with a photograph and information about her attached. A second BOLO was sent, which also included a photograph of the newer model, black Impala that she had gotten into that morning. Ofc. Jeffery Kraft, with the Columbia Police Department, was patrolling the Rosewood Drive and Five Points areas on the night of March 29th, and into the following

[5] Inv. Huckaby responded to the scene where Samantha's body was found on the 29th. He notified his chain of command to ask for SLED's assistance. SLED responded and processed the scene. Also, he identified the body as that of Samantha Josephson and he notified the Columbia Police Department that her body had been found. ***R. 391-400; 404; 595-618***.

morning. He did not see any black Impalas that matched the photograph in the BOLO on the 29th. *See* ***R. 328-330; 409-13***.

However, at 2:33 am on Saturday, the 30th, he was driving north on Harden Street, headed toward Five Points. When he approached the intersection of Harden and Blossom Streets, he got behind a newer model, black Chevy Impala, which got into the left turn lane to turn onto Blossom St. As the Impala was turning left onto Blossom, Ofc. Kraft activated his blue lights in order to initiate a traffic stop. The dash camera video[6] and Ofc. Kraft's testimony reflect that after Ofc. Kraft activated his blue lights, the driver of the Impala signaled another left turn onto Saluda Ave. and that, although he turned onto Saluda Ave., he was headed the wrong way and he came to a stop facing oncoming traffic. ***R. 413-16;*** State's Ex. 9 (DVD of dash camera and body camera video).

After the Impala stopped, Ofc. Kraft approached the car on the driver's side and spoke to the driver, who was subsequently identified as Nathaniel David Rowland. Rowland was wearing a hoodie and a bandana. Ofc. Kraft identified himself and asked Rowland for his driver's license, but Rowland said that he did not have it. As they were talking, Ofc. Kraft smelled marijuana. When asked who had been smoking it, Rowland admitted to smoking marijuana earlier. Ofc. Kraft then asked Rowland to step out of the car. Rowland got out of the Impala. Yet, as soon as Ofc. Kraft told him that he was stopped "because you match a suspect …," Rowland reached into his pockets and immediately "took off running" toward Waccamaw Ave., without waiting to hear what crime police thought the suspect had committed. ***R. 416-23; 430;*** State's Ex. 9.

Ofc. Kraft initially ordered Rowland to stop, but Rowland did not stop. Although Ofc. Kraft initially began pursuit, he soon returned to the Impala while other officers on the scene

[6] The video has a "one minute preset" and will display video from a minute before the blue lights are activated. ***R. 418***.

gave chase because there was an African American woman, Vaniesha Wilson, in the passenger seat of the car. When Ofc. Kraft began a search of the Impala, he found a "bunch of … little pieces of marijuana in the driver's side floorboard," as well as a "rose gold" color phone that was between the driver's seat and the center console, and a "set of keys with a pink key … ring on it." Also, officers saw "[l]arge quantities of blood, footprints on the window, cleaning supplies, [and] bleach." Because it was "obvious that something severe took place inside the car that needed to be processed by … our crime scene techs," the officers did not touch anything, but waited until the car could be searched pursuant to a search warrant. ***R. 424-30***.

Ofc. Justin Niscia responded to the stop of the Impala on Saluda Ave. that morning and arrested Rowland for failing to stop on the police command. Rowland claimed he felt sick, but EMS evaluated him and found nothing that was physically wrong with him. After his arrest, Ofc. Niscia seized two cell phones from him, as well as the two bandannas he was wearing (State's Ex. 11). ***R. 437-48; 450***. *See also* ***R. 454-65*** (testimony of Ofc. James Nunez).

Officers subsequently searched Rowland's Impala pursuant to a search warrant. Among other items of evidence,[7] they found State's Ex. 14, an eviction letter with Maria Howard's name and the address of her Mountainbrook Dr. condo on it. They also discovered that the child safety locks for the rear doors were on. So, it would have been impossible for anyone in the back seat to open the rear doors of the Impala. *See* ***R. 510-11; 547-48; 623-25; 664; 695***.

Maria Howard testified that she had met Rowland in a Five Points club in the past. Rowland described Five Points as "lit," meaning "a place to have a good time. They briefly dated, but they had lost contact until one day when he showed up at the Garner's Ferry Rd. McDonald's where she worked and gave her a ride to her condo. They eventually began a

[7] Much of the evidence they found is discussed, *infra*.

romantic relationship, and by March of 2019, they had a four-year-old daughter. ***R. 502-508***.

Maria wrote the eviction letter (State's Ex 14) because she was trying to evict her roommate at the time of the murder for not following Maria's rules. She left it in the glove box of Rowland's Impala. ***R. 510-511; 547-48***. Maria had to be at work at 7:00 am. Rowland was supposed to stay at Maria's on Thursday night March 28, 2019, but he left at some point and was not there when she awoke between 5:30 and 6:00 am. on the 29th. Although she called and texted him, he did not respond.[8] After the time she was supposed to be at McDonald's Rowland finally arrived. When she went to bed, he was wearing a Nike hoodie and dark pants, as well as red and black Nike slides, or flip-flops. He was wearing the same clothes on the 29th. ***R. 509; 511-18; 527; 548-49***.[9]

Maria was upset because she did not have her McDonald's work shirt. He was supposed to have washed it for her, but he did not immediately return it to her. She also asked for her work visor that she had left in the rear window of his car. He said that "it was out in the country" and that it had blood on it. When she asked why it had blood on it, he told her to "[m]ind my own business." Maria called McDonald's and said she would be late for work. Before Rowland took her there, he went to his nephew's house, which was off Rosewood Dr., to take his nephew to school.

He returned to her place ten minutes later. Although he gave Maria's shirt to her, it was wet, and he did not tell her why. Along their way to McDonald's, they stopped so that Rowland could get gas. Also, Maria saw dried blood throughout the car, and Rowland had put a sheet over the back of the driver's seat and the rear seat. Asked about the blood, Rowland again told her to mind her own business. She then went to work. ***R. 518-25***.

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[8] His phone did not work because he did not pay his bill. So, he had to use wi-fi to call or text. ***R. 542***.

[9] Additionally, "[h]e would wear … a toboggan, a skully, a black one, and a [do-rag]." ***R. 546***.

Before he left her, he said that he was going to clean his car, and that he would pick her up when she got off work. Maria gave him a key to her condo because he was sleepy. Because he did not return after Maria's shift ended, she got a ride home from a co-worker. Once home, she had to bang hard on the door before Rowland answered it. He was still wearing the same bloody clothes, and he "looked … [l]ike he [had] seen a ghost." She asked why he had not showered or changed clothes, but he did not respond. Maria went back outside once she had changed clothes and saw Rowland cleaning the car with bottles of bleach. There was a strong smell similar to chlorine. He let her drive the car to an ATM, but he accompanied her and continued cleaning with "some type of wipes" and wearing blue "surgical gloves" as she drove. He also was cleaning a multi-tool, State's Ex. 295.[10] When she asked where he got the wipes and why there was blood in the car, he again instructed her to mind her own business. ***R. 525-32; 543; 570-71***.

After Maria had withdrawn money, she went home to wait on the landlord. Because her mother had forgotten to pick up her daughter from daycare, Maria used the Impala to get their child, despite Rowland's objection that there was the blood in the car. Early on the morning of the 30th, two men that Maria did not know came to the condo, and Rowland went with them to Five Points. By that time, he had changed into a gray Puma sweatsuit. Also, before he left Maria saw a "rose-gold" color feminine iPhone in his Impala that "was in perfect condition." He said that he had found the phone, and that he was going to "get it flashed" for her, but she did not need it. He did not return to the condo on the 30th. ***R. 532-39***.

Maria feigned her daughter being ill that day, and Rowland's brother took them to a Doctor's Care. She later noticed blood on her daughter's shoes and put them in a closet. She finally understood what had happened when she saw a news story about Samantha's

[10] He had previously shown this to her. ***R. 532***. He put the used wipes in a grocery bag. ***R. 547***.

disappearance that included a photograph of the black Impala. She did not immediately come forward because she was scared. Yet, she later spoke to police twice and cooperated fully with the investigation. ***R. 539-44; 584***.

Another former girlfriend, Destiny Cuttino, testified that Rowland took her to Five Points. She also testified that they had visited with his sister, who lived in the Rosewood area, and they went to his parent's residence in New Zion. Destiny had given Rowland an Alcatel cell phone, so they could contact each other. Rowland kept it after relationship ended. ***R.949-54; 956***.

Oshamar Williams testified that he owns Cellular City, a store on Monticello Road, where he fixes and repairs cell phones, computers, and game consoles. Mr. Williams identified Rowland, who was wearing "a hoodie and … a … skull cap," as the man who tried to sell Samantha's iPhone 7 Plus to him on the morning of March 30, 2019. He was driving his black Impala. The phone did not have a SIM tray. So, Mr. Williams plugged the phone into the computer and saw its serial number. There was no indication it had been lost or stolen. Also, there was a photograph of a Caucasian female on it. Because the men negotiated but could not agree on a price, Rowland took the phone and left. The transaction and video of the black Impala were captured on the store's surveillance video cameras. ***R. 706-27;*** State's Ex. 302.

A great deal of forensic evidence circumstantially proved Rowland guilty of kidnapping and murdering Samantha:

- A forensic analysis of GPS coordinates of Samantha's iPhone reflected that at 1:58 am. on the 29th, her phone was in the Five Points area. Around 2:10 or 2:12 am., it began to move out of Five Points and into the Rosewood Dr. area. ***R.* 898-99**;
- The last GPS signal is around 2:33 am., and the phone was in the area of S. Ott. Rd. (Again, this is near the home of Rowland's sister). Either the phone's battery died, or the power was turned off at that time. It next comes back on at 8:46 am, and it is in the downtown area. ***R. 900-01***;

- Forensic analysis of Maria Howard's ZTE (android) phone corroborated her testimony that she sent text messages to Rowland early in the morning of March 30th. ***R. 902-07***;

- The iPhone seized from Rowland could not be unlocked because it was passcode protected. ***R. 909***;

- Some information was gleaned from the Alcatel cell phone that Destiny Cuttino had given Rowland, which was also passcode protected. That phone was working, and keypad activity was initiated at 2:58 am. on the 29th. It was rebooted at 3:20 am. ***R. 909-16***;

- Expert testimony of cell site location information for the victim's iPhone and Rowland's phone reflected that Rowland's phone was using a tower within range of Maria Howard's condo from 8:19 pm on March 28th until 1:33 am. On the 29th, it then began using towers headed in the direction of Five Points. Finally, it began using towers in the range of the Bird Dog bar and continued using a Five Points tower until 2:06 am. Meanwhile, Samantha's phone was using towers in the area of the Bird Dog. ***R. 962-63; 993-94; 1007-09***;

- Rowland's phone then began using towers headed east of Five Points. It continued using Columbia towers until 3:20 am. The phone eventually used towers outside of the City of Columbia. By 3:55 am., it was using a tower in the vicinity of Sumter. It uses a tower east of Sumter at 4:10 am. By 4:26 am, it was using a tower in the vicinity of where Samantha's body was found. Another tower south of that location was used at 4:41 am. ***R. 994-1001***;

- A web search for trending porn videos on the website SpankBang was made at 4:46 am. ***R***. ***916-17***. he was so aroused by what he had done that he watched porn after disposing of Samantha's body;

- The phone thereafter heads back west and towards Sumter. Between 5:12 and 5:45 am.,[11] it is in the area of Sumter. At 6:00 and 6:16 am., it uses towers near Shaw Air Force Base. The phone finally begins using towers east of Columbia between 6:21 and 7:08 am. And continues using Columbia towers that morning. Between 8:52 and 10:22 am, it is in the area of Maria's residence. ***R. 1001-06***;

- State's Ex. 358, the Power Point presentation of edited video surveillance from various locations in the City of Columbia on March 29, 2019, depicts Rowland's Impala being driven to Five Points beginning at roughly 1:48 am. It then depicts the Impala driving around the Five Points area for roughly fifteen minutes, making four U turns, driving

[11] At 5:47 am., two unsuccessful attempts were made to use Samantha's credit card on Broad St. in Sumter by a person who did not have the correct PIN. This person is wearing a leather jacket similar to the leather jacket found in Rowland's Impala. He is also wearing slides and gloves similar to gloves found at Maria's condo, and drawstrings from a Nike hoodie, like Rowland wore on the 28th and 29th are visible. ***R. 932-40***. More unsuccessful efforts were made to access her credit card in Columbia, at 6:52 am. The face of the person using the card is obscured, but he is wearing a bandana similar to the one Rowland was wearing when stopped by Ofc. Kraft. Both locations used were on "the Sumter Highway." ***R. 368-71;*** State's Ex. 335 security camera footage of both transactions).

the wrong way up Saluda Ave., and eventually pulling into the parking lot where it backs into a parking space and can see Samantha waiting for her Uber at approximately 2:08 am. It also depicts her attempting to get into a gray or silver vehicle that she mistook for the Uber, and thereafter getting into Rowland's Impala, after it jumps a curb. ***R. 1277-31***;

- Officers processing the Impala found that "blood had gone through the fabric of the seat and soaked down into the foam under it. ***R. 654***. They also discovered a bottle of "Top Job" cleaner with suspected blood on it on the floorboard of the Impala," a "clear plastic spray bottle labeled window cleaner with a blue liquid" in it and "a white plastic spray bottle labeled "L.A.'s Totally Awesome" in the cabin. When the floorboard mats were removed, they were wet and a liquid substance smelling like bleach dripped off of them. Blue plastic gloves were also found in the car. In the trunk, they found wipes and a cleaning product with suspected blood on it. ***R. 638-43***;

- An expert in trace evidence testified that the liquid in the bottle of "Top Job," the liquid in the bottle marked "L.A.'s Totally Awesome." and the wipes found in the car were strong chlorinated oxidizers. Also, cuttings from both a black glove and the pair of gray Puma sweatpants had discoloration consistent with having been cleaned with bleach. ***R. 843-53***;

- A latent print from the rear interior window matched the victim's known handprint. ***R. 1036-38***;

- Several footprints from the rear interior window matched prints from either the victim's right or left feet. ***R. 632-34; 651; 1038-40***;

- Rowland's fingerprint was found on an envelope in the Impala that also had the victim's DNA on it (State's Ex. 56). ***R. 1041-42***;

- The handwritten information on State's Ex. 56 included a number "4" and "a circled out or overwritten portion under the number 4" is the word 'job.' " Also, "[b]eside it is another overwritten portion and then there's a colon, 30, 3-0, 4 PM. Next line is duct tape, tape whole body. Next line is gloves. Next line is all black. Next line is flip phone. Next line is gasoline. Next line is matches and then there's a crossed out line below the matches line." ***R. 826-27***;

- A reasonable inference from the information on State's Ex. 56 is that Rowland had gone out expressly looking for someone to kill on March 29, 2019;

- It was "probable" or "a high degree of likelihood," that this information was written by the same person who wrote information on Rowland's personnel records. ***R. 828-32***;

- Three latent prints from the interior cardboard roll of duct tape found in the Impala were identified as Rowland's. ***R. 1043***;

- Despite Rowland's diligent efforts to clean his Impala, DNA analysis of swabs and cuttings of items from either the Impala, Maria Howard's residence, or from the trash behind her residence, circumstantially proved that the car was the murder scene and confirmed his identity as the murderer;

- SLED forensic serologists examined a number of the seized items and forwarded those items that tested positively on a presumptive test for blood to the DNA lab. ***R. 1051-1063; 1083-1091***;

- The SLED DNA analyst testified that the victim's single source DNA or her DNA from mixtures not including Rowland was found on 24 of the items tested, while 14 mixtures of DNA of multiple contributors reflected the presence of DNA from both her and Rowland. ***R. 1100-06; 1122-66***;[12]
- The pathologist testified that Samantha died from multiple stab wounds. ***R. 1279***. She

[12] Her DNA was found on swabs from the back of Rowland's left shoe; a cutting from the heel of Rowland's black socks; blood on a swab of the rear driver side door interior panel; two swabs from different locations of the envelope with handwriting on it (State's Ex. 56); two swabs from different locations of a black Comstock jacket found in the Impala; a swab of blood from the rear side of the Impala's center console; swab of blood from the rear passenger seat of the Impala; a swab of blood from the side of the driver's seat head rest of the Impala; a swab of blood from the seat buckle receiver for the driver's seat; a swab from the finger of a black right-hand glove seized from a white basket in the closet of Maria Howard's bedroom; a hair from the same right-hand glove; swabs from the handles of a bag removed from the white, plastic Family Dollar bag seized from the trash behind Maria Howard's residence; a cutting "from five wads" of paper towels removed from the "white plastic Family Dollar bag;" a swab of the "interior as submitted" of a "glove marked B from Family Dollar bag;" swabs from the interior of a Dollar General bag seized from the trash behind Maria Howard's residence; swabs from an IGA bag and from toilet paper seized from the trash behind Maria Howard's residence; a cutting from the left side hem of a tan shirt removed from the Family Dollar bag; a "swab from a stain on open edge of the Family Dollar bag;" "swabs from the sole of the right shoe of a pair of pink, size 9K shoes" found in "the closet underneath the stairs of Maria Howard's residence;" swabs from serrated blade of State's Ex. 295, the multi-tool found in the Family Dollar bag seized from the trash behind Maria Howard's residence; and a hair found on the multi-tool.

Mixtures of both her and Rowland's DNA were found on swabs from under the fingernails of Rowland's right hand; a cutting from State's Ex. 11, Rowland's bandanna; a swab from the Impala's steering wheel, which also had Maria Howard's DNA; a swab of the Impala's gearshift, which likewise had Maria Howard's DNA; a swab of the exterior rear passenger side door handle, which again had Maria Howard's DNA; a swab from scraping the interior of State's Ex. 18, the black beanie, seized from the trunk of the Impala with the phrase "Cold Blooded" on it; swabs from the "foot bed and understrap of a black and red left side flip flop" found in the trunk of the Impala; a swab from the cuff of a "black left-hand glove" removed from the "white plastic Family Dollar bag" seized from the trash behind Maria Howard's residence; a cutting from a wad of paper towels found in the Family Dollar bag; a "cutting taken from the right cuff of State's Ex. 329, "a shirt removed from … the white plastic Family Dollar bag;" swabs from the "entire exterior as they were submitted of three gloves" removed from the Family Dollar bag; a cutting taken from "the left thigh area" of a pair of pants removed from the white plastic Family Dollar bag; and swabs from the inner edges of the handles of the multi-tool (and the presence of Rowland's DNA was confirmed by Y-STR analysis).

had been stabbed 120 times from her head to her feet; her hyoid bone and her jugular vein were severed; and she had lost all but roughly three tablespoons of blood as a result. ***R. 1233-70; 1272-79***; and

- Based on the very peculiar nature of the wounds found at autopsy, with some caused by a single blade and others caused by two parallel blades, the pathologist opined that State's Ex. 295, which could be used to inflict either type of wound, was the murder weapon. ***R. 1233-70; 1272-79***.

STANDARD OF REVIEW

Issue I: "[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion … is a question of law subject to de novo review." *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

Issues II-III: "In criminal cases, the appellate court sits to review errors of law only" and it is "bound by the trial court's factual findings unless they are clearly erroneous." *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citation omitted). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). The trial court abuses its discretion when "the ruling is unsupported by the evidence or controlled by an error of law." *State v. Roy Lee Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018). The appellant must satisfy the appellate court that "there has been prejudicial error." *State v. Smith*, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956).

ARGUMENTS

I. The trial judge properly denied Rowland's motion to suppress evidence obtained as a result of the stop of his car where the brief, investigatory stop was justified by exigent circumstances: the officer who stopped him was aware that the victim was last seen getting into a black, newer model Impala consistent with Rowland's car twenty-four hours earlier and roughly a block away from where Rowland was stopped, she was still missing, her

whereabouts were unknown, and the circumstances surrounding her disappearance suggested that she had met with foul play. Also, the officer who made the brief investigatory stop had a reasonable suspicion that Rowland's Impala may have been the car into which the victim had entered.

Respondent submits that the trial judge properly denied Rowland's motion to suppress evidence obtained as a result of the stop of his car. Here, the brief, investigatory stop was justified by exigent circumstances: the officer who stopped him was aware that Samantha was last seen getting into a black, late model Impala consistent with Rowland's car twenty-four hours earlier and roughly a block away from where Rowland was stopped, she was still missing, her whereabouts were unknown, and the circumstances surrounding her disappearance suggested that she had met with foul play, but might still be alive and in danger.[13] Also, the officer who made the brief investigatory stop had a reasonable suspicion that Rowland's Impala may have been the car into which Samantha had entered.

A. The pretrial hearing and the trial judge's ruling.

Rowland's first motion at the July 16, 2021 motions hearing was to suppress "all evidence obtained … based on the unlawful traffic stop initiated by" Officer Kraft, of the City of Columbia Police Department. Counsel explained that Samantha Josephson, the victim, was last seen in Five Points shortly after 2:00 am. on March 29, 2019. She was with friends at an area bar called the Bird Dog on Harden St. Throughout the night, she and her boyfriend had been communicating with each other through text messages, Face Timing, and phone calls. ***R. 3***.

"[Around]" 2:00 am, she was outside of the Bird Dog. About the same time, she stopped

[13] Respondent submits that this argument is consistent with the trial judge's ruling that the stop was "part of the officer's investigating the missing person. It was proper for the officer to act as the officer did in this instance." ***R. 46***. *See also* ***R. 29-30*** (Asking trial counsel if "[t]here is no right for an officer to stop someone where they're investigating a missing person and … the car the person is driving matches the description of the vehicle the person got in that resulted in the person being missing"). Even if not consistent with his ruling, Rule 220(c), SCACR, allows this Court to affirm based on any ground appearing in the record and the facts of this case demonstrate the stop was based on exigent circumstances.

answering calls from her boyfriend. So, he began "track[ing] her phone, and it [led] in the opposite direction of where she would normally would have gone to go back … to her apartment … on Main Street." By 1:30 pm on the 29th, a friend reported "her missing to the Columbia Police Department." ***R. 3-4***. Although counsel proffered further facts relating to the stop, the trial judge declined to rule in the absence of testimony from a witness because the State did not stipulate to the facts. ***R. 4-13***. As a result, Rowland presented testimony from Officer Jeffrey Kraft, of the Columbia Police Department.

Ofc. Kraft testified that his shift began at 6:00 pm on the night of Friday, March 29, 2019. At 5:37 p.m., he and all other members of the Columbia Police Department had received an email from Inv. Chris Odom (Court's Ex. No. 2, ***R. 191***) requesting assistance in locating Samantha. ***R. 4; 15-16; 37-38; R. 191-192***. A missing person awareness bulletin attached to this email included a photograph of Samantha, her demographics, and the following information about her disappearance:

> [Ms.] Josephson was last seen outside of Bird Dog in Five Points at 0200 this morning. Prior to the phone going dead the phone was being tracked by her boyfriend. The last location was in the Rosewood Area. Josephson was last seen wearing an orange top and black jeans. Josephson did not show up for work this morning.

R. 192.

At 7:10 p.m., Ofc. Kraft and all Columbia Police Department employees received a second email, or BOLO, from Inv. Odom (Court's Ex. 3, ***R. 193-195***). This email contained updated information about Samantha and it informed officers that there was video of her "getting into a black Chevy Impala (newer model)." A still shot of the black Chevy Impala was also attached. However, the BOLO did not include a license tag number, "any registration information," or the name of any suspect(s). ***R. 16; 18-21; 38-39;*** Court's Ex. 3, ***R. 193-195***.

Later that night, Ofc. Kraft was patrolling the southern region of the city, which included

Five Points. At roughly 2:30 a.m. on March 30, 2019, he was driving north on Harden Street, headed toward Five Points. When he approached the intersection of Harden and Blossom Streets, he got behind a newer model, black Chevy Impala consistent with the picture in the BOLO. (This was a block from where Samantha was last seen). The light at the intersection was red and the Impala's driver signaled that he was turning left and pulled into the left turn lane, in order to turn onto Blossom St. Ofc. Kraft also moved into the left turn lane behind the Impala. Once the light was green, the driver of the Impala turned left onto Blossom St. ***R. 14; 16-17; 21; 40-41;*** Court's Ex. 5 (DVD of dash camera video).

As the Impala was turning, Ofc. Kraft activated his blue lights in order to initiate a traffic stop. The dash camera video (*see* Court's Ex. 5) activated about a minute before the blue lights were activated. This video and Ofc. Kraft's testimony reflect that after Ofc. Kraft activated his blue lights, the driver of the Impala signaled a left turn and that, although he turned onto Saluda Ave., he was headed in the wrong direction, and he came to a stop facing possible oncoming traffic. Ofc. Kraft testified that this was unsafe.[14] ***R. 14-15; 17; 19; 21-22; 24-26; 40-43;*** Court's Ex. 5 (DVD of dash camera video). Ofc. Kraft acknowledged that black Impalas are not "uncommon" (***7/16 Tr. 32***), but he testified that he stopped the Impala because it matched the car depicted in the BOLO for the missing victim. ***R. 17-18; 36-37;*** *see also* Court's Ex. 1 (incident report).

Once the Impala had stopped, Ofc. Kraft approached the car on the driver's side and spoke to the driver, who was later identified as Rowland. Rowland was wearing a hoodie and a bandana. Ofc. Kraft immediately identified himself. Ofc. Kraft then asked Rowland for his driver's license, but Rowland said that he did not have it. As they were talking, Ofc. Kraft

[14] That portion of Saluda Ave. has large and clearly visible grassy median dividing the two lanes of travel. As one stands on Blossom St., the Impala was on the left side of the median, facing any vehicles that might be driving down to Five Points.

smelled marijuana. When asked about it, Rowland admitted to smoking marijuana earlier. ***R. 22-24; 39-40;*** Court's Ex. 4 (DVD of body camera video).

Ofc. Kraft then asked Rowland to step out of the car. Rowland got out of the Impala. As soon as Ofc. Kraft told him that he was stopped "because you match a suspect …," Rowland immediately "reached inside his pockets and took off running." He did not even wait to hear what crime police thought the suspect had committed. ***R. 22-24; 39-40;*** Court's Ex. 4 (DVD of body camera video). Although Ofc. Kraft ordered Rowland to stop, Rowland continued fleeing. Kraft initially began pursuit, but he returned to the Impala while other officers on the scene gave chase because there was an African American woman in the passenger seat of the car. He did not learn the victim was dead until officers were processing the car after Rowland's arrest. ***R. 23-24; 27-28; 39-40;*** Court's Ex. 4 (DVD of body camera video).

Relying on *Robinson v. State*, 407 S.C. 169, 754 S.E.2d 862 (2014) and *State v. Green*, 341 S.C. 214, 532 S.E.2d 869 (Ct. App. 2000), trial counsel argued that a traffic stop constitutes a seizure for purposes of the Fourth Amendment. So, police must have either probable cause that a traffic violation has occurred or a reasonable suspicion that "the occupant is engaged in criminal activity." Judge Newman asked if "[t]here is no right for an officer to stop someone where they're investigating a missing person and … the car the person is driving matches the description of the vehicle the person got in that resulted in the person being missing." Counsel stated that there was not and argued that there was no "reasonable suspicion," as the term was defined in *Robinson*, since there was no information that any crime had occurred or that Rowland was engaged in criminal activity when Ofc. Kraft initiated the stop. Rather, the only information he had was that the victim was last seen in Five Points, getting into a newer model black Impala, which is a common car, and that no one had heard from her in twenty-four hours. ***R. 29-32***.

Counsel did not make any additional arguments after Ofc. Kraft was recalled in order to introduce Court's Exs. 1-5. ***R. 44***.

The State observed that the Court in *Robinson* had stated that a "reasonable suspicion is … something more than a[n] unparticularized suspicion or a hunch," and that a police officer may make "reasonable inferences about the criminality of the situation in light of his experience."[15] ***R. 44***. The State then argued that at the time Ofc. Kraft initiated the traffic stop,

> All he knows is that a young girl has gone missing, has been missing for some twenty-four hours. That there is video of her getting in -- the last video, the last known contact with her is of her getting in what appears to be a black Chevy Impala. That there has been no contact with her. No one has seen or heard from her since that time. And additionally that the location … where she was last seen getting into the black Impala, was approximately one block from where he sees this Impala.

R. 44.

Also, this was the first newer model black Impala he had seen that night and it was only a block away from where she was seen getting into the black Impala. "So, if you take that, and the reasonable inferences that he could have drawn from that, being that that could be the car that she got into," there was reasonable suspicion to briefly stop Rowland's vehicle. Additionally, *Robinson* stated that "if during the stop … of the vehicle the officer's suspicions are confirmed or further aroused, even if for a different reason than when he initiated the stop, then the stop can go on, and … the suspect can be detained further." Here, when Ofc. Kraft initiated the traffic stop, Rowland turned "the wrong way [onto] a one-way street [and] under these circumstances, Ofc. Kraft had a "reasonable suspicion to initiate the stop." ***R. 45-46***.

The trial judge agreed with the State's arguments and denied the motion to suppress "on

[15] *See Robinson*, 407 S.C. at 182, 754 S.E.2d at 868-69.

the basis it's part of the officer's investigating the missing person. It was proper for the officer to act as the officer did in this instance." ***R. 46***.

B. Renewal of motion during trial.

Although counsel renewed the motion to suppress immediately before Ofc. Kraft's testimony, counsel did not make any additional argument in support of it. ***R. 406***. Counsel again renewed the motion before jurors had seen any video footage. ***R. 416***. Counsel also renewed the motion at the close of the State's case. ***R. 1339-40***.

C. Discussion.

The trial judge properly denied Rowland's motion to suppress because Rowland failed to establish a Fourth Amendment violation. Rather, as the trial judge astutely surmised, it was proper for Ofc. Kraft to act as he did because he was investigating a missing person. The Fourth Amendment provides, in part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967). Yet, "because the ultimate touchstone of the Fourth Amendment is ' reasonableness,' the warrant requirement is subject to certain exceptions." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). *See also State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)); *Frasier*, 437 S.C. at 638, 879 S.E.2d at 769 ("Warrantless searches are generally considered per se unreasonable unless they fall within a recognized exception under the Fourth Amendment").

Rowland's contention that Ofc. Kraft lacked a reasonable suspicion to stop his car

ignores that "local police have multiple responsibilities, only one of which is the enforcement of criminal law." Livingston, "Police, Community Caretaking, and the Fourth Amendment," 1998 U. Chi. Leg. Forum 261, 261 (1998). In the course of affirming the warrantless search of an impounded vehicle for a firearm, the Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433 (1973), described these searches and seizures for non-law-enforcement purposes as "community caretaking functions" that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id*. at 441. A number of courts relied on a "community caretaking" exception to uphold warrantless searches and/or seizures, including the search for missing persons, for decades after *Cady*, until the Court's 2021 decision in *Caniglia v. Strom*, 141 S.Ct. 1596 (2021).[16] In *Caniglia*, the Court observed that *Cady*'s "recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere." 141 S.Ct. at 1600. The Court held that the " 'community caretaking' rule … goes beyond anything this Court has recognized" and that it was not an exception to the warrant requirement. *Id*. at 1599-1600.

The concurring opinions of Justices Alito and Kavanaugh make clear, however, that many of the searches and seizures conducted for non-law-enforcement purposes are still constitutional if they fall within an exigent circumstance. *See Id*. at 1600-01 (Alito, J.,

[16] *See*, *e.g*., *State v. Diloreto*, 850 A.2d 1226, 1234-37 (N.J. 2004) (police officers' warrantless seizure and patting down of defendant, who was mistakenly been identified as "an endangered missing person" in a NCIC alert and who was found sitting in a car in an area frequented by individuals attempting to commit suicide, while waiting on confirmation of the missing person's report was a proper caretaker response to the information confronting them); *United States v. Brown*, 447 Fed.Appx. 706, 709 (6th Cir. 2012) (finding that officers stop of defendant to inquire about missing minor, even if the stop had been non-consensual, would have been justified as a community-caretaking function of the police because defendant was the last person to have seen the missing minor); *United States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996) (recognizing that loud music emanating from home justified warrantless entry in order for law enforcement to perform community-caretaking function due to ongoing nuisance).

concurring) (stating that "[w]hile there is no overarching 'community caretaking' doctrine, it does not follow that all searches and seizures conducted for non-law-enforcement purposes must be developed in criminal cases analyzed under precisely the same Fourth Amendment rules developed in criminal cases," and finding that the case before the Court "falls within one important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide"); *id*. at 1603 (Kavanaugh, J., concurring) ("[T]he exigent circumstances doctrine allows officers to enter a *home* without a warrant in certain situations, including … to address a threat to the safety of law enforcement officers or the general public; to render emergency assistance to an injured occupant; or to protect an occupant who is threatened with serious injury") (emphasis added).

As Justice Kavanaugh's concurrence states, "this Fourth Amendment issue is more labeling than substance. The Court's Fourth Amendment case law already recognizes the exigent circumstances doctrine, which allows an officer to enter a *home* without a warrant if the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.' " *id*. at 1603 Kavanaugh, J., concurring) (emphasis added and citation omitted). "Exigencies" exist when an officer would reasonably suspect that the conditions create a need to act "now or never" to protect an important public interest—like a threat to public safety. *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973).

"One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 403.[17] *See also*

[17] In *Brigham City*, the respondents were arrested and charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. *Id*. at 401. Police had responded to complaints about a loud party at 3:00 am., heard sounds of a loud " 'altercation,' " and ultimately saw a juvenile strike one of the adults in the face, sending the adult to the sink spitting blood." Also, officers twice announced their presence, once before entering the home. *Id*. at 406. The United States Supreme Court reversed the Utah

Herring, 387 S.C. at 494, 692 S.E.2d at 210 (same) (citing *Brigham City*); *Mincey v. Arizona*, 437 U.S. 385, 392, (1978) ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency"). Indeed, " 'the responsibility of police officers to search for missing persons … and to aid the ill or injured has never been the subject of serious debate; nor has' the 'responsibility of police to provide services in an emergency.' " *Caniglia*, 141 S.Ct. at 1604 (Kavanaugh, J., concurring) (quoting Livingston, *supra*, at 302).

In the present case, Ofc. Kraft was faced with the exigent circumstance of attempting to find the victim, who had been missing for twenty-four hours and who was last seen getting into a black, newer model Impala consistent with Rowland's car approximately one block away from where Rowland was stopped. Also, her whereabouts were still unknown, and the circumstances surrounding her disappearance suggested that she had met with foul play but might still be alive and in danger. Additionally, her boyfriend was able to track her phone to the Rosewood area before the phone went silent. Given these circumstances, a brief, warrantless, investigatory stop of Rowland's car, even assuming *arguendo* it was a "seizure," did not violate the Fourth Amendment because it was justified by exigent circumstance. See *Brigham City*, 547 U.S. at 403, 406; *Mincey*, 437 U.S. at 392; *Caniglia*, 141 S.Ct. at 1603-04 (Kavanaugh, J., concurring).[18]

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courts' grant of respondents' "motion to suppress all evidence obtained after the officers entered the home."

The Court found that exigent circumstances supported the warrantless entry into the home because "the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning." The Court observed that "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." *Id*.

[18] While Ofc. Kraft's stated reason for stopping Rowland's Impala was because it was "suspicious, since it matched the car depicted in the BOLO, this is not inconsistent with finding the stop was based on exigent circumstances. Even if the Court views it as inconsistent, an action is "reasonable" under the Fourth Amendment, regardless of the individual officer's state of mind, "as long as the circumstances,

See also State v. Gervais, 546 So.2d 215 (La. 1989); *Neal v. State*, 256 S.W.3d 264 (Tex.Ct. Cr.App. 2008). *Cf*. *Illinois v. Lidster*, 540 U.S. 419 (2004).[19]

Alternatively, Respondent submits that Ofc. Kraft had a reasonable suspicion that Rowland was involved in the victim's disappearance. An investigative traffic stop does not violate the Fourth Amendment when the police have reasonable suspicion that the vehicle's occupants are involved in criminal activity. *United States v. Bell*, 183 F.3d 746, 749 (8th Cir. 1999); *see also Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). Under *Terry*, "a policeman who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke that suspicion." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Thus, reasonable suspicion exists when an officer has "a particularized and objective basis for suspecting legal wrongdoing" based on the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted).

The Supreme Court of South Carolina recently explained in *Frasier* that:

> Although reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion. [*Robinson*, 407 S.C.] at 182, 754 S.E.2d at 868. In other words, for an officer to have reasonable suspicion, "there [must] be an objective, specific basis for suspecting the person stopped of criminal activity." *Id.* While reasonable suspicion is not a high bar and "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570

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viewed objectively, justify [the] action." *Scott v. United States*, 436 U.S. 128, 138 (1978).

[19] In *Lidster*, the Court recognized that "special law enforcement concerns will sometimes justify highway stops without individualized suspicion," and it held the stop of all motorists at a police roadblock checkpoint, so police could ask for information about a recent fatal hit-and-run accident on that highway and hand each driver a flyer requesting assistance in identifying the vehicle and driver involved was reasonable. Thus, it did not violate the Fourth Amendment rights of a motorist arrested for driving under the influence of alcohol after he arrived at the stop. *Id*. at 424, 427-28.

> (2000). This inquiry involves the totality of the circumstances, and "[c]ourts must give due weight to common sense judgments reached by officers in light of their experience and training." *State v. Moore*, 415 S.C. 245, 252-53, 781 S.E.2d 897, 901 (2016).

Frasier, 437 S.C. at 635, 879 S.E.2d at 767.

Respondent submits that the facts outlined above, together with the reasonable inferences that Ofc. Kraft could draw from these facts, demonstrate that he had reasonable suspicion to briefly stop Rowland's Impala. *See Robinson*, 407 S.C. at 182, 754 S.E.2d at 869 ("The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, 'reasonably warrant' the intrusion").[20] *At the very least*, his knowledge provided the minimal, objective justification necessary for an investigatory stop. *See*, *e.g.*, *United States v. Juvenile TK*, 134 F.3d 899, 903 (8th Cir. 1998) (finding reasonable suspicion of criminal activity that justified an investigative stop based on the vehicle's temporal and geographic proximity to the crime scene); *United States v. Harrington*, 923 F.2d 1371, 1373 (9th Cir. 1991) (reasonable stop of defendant matching general physical description of bank robbery suspect, notwithstanding fact that an hour and ten minutes had passed since suspect was last seen by witnesses), *cert. denied*, 502 U.S. 854 (1991); *Creighton v. Anderson*, 922 F.2d 443, 450 (8th Cir.1990) (reasonable to stop car even though description of getaway car was somewhat different than that of defendant's car); *Thomas v. Newsome*, 821 F.2d 1550, 1553 & n. 3 (11th Cir. 1987) (reasonable suspicion to perform *Terry* stop even though, when officer saw blue Pinto driven by a black male as described in police bulletin, seven hours had passed since motel robbery), *cert. denied*, 484 U.S. 967 (1987); *United States v. Longmire*, 761 F.2d 411, 419–20 (7th Cir. 1985) (four hours after receiving radio dispatch closely matching description of car under surveillance,

[20] *See also United States v. Washington*, 109 F.3d 459, 465 (8th Cir. 1997) (officers have substantial latitude in interpreting and drawing inferences from factual circumstances).

automobile was stopped and searched for weapons, and reasonable suspicion was not dispelled by fact that dispatch indicated nothing more than the race of the two black females, and failed to indicate that the women were armed). *Cf. Oliver v. United States,* 656 A.2d 1159, 1167 (D.C. 1995) (recognizing the "unique qualities" of kidnapping justifying immediate police action and that "a kidnap victim may be deemed inherently endangered").

Furthermore, in *State v. Nelson*, 336 S.C. 186, 191-92, 519 S.E.2d 786, 788-89 (1999), the appellant was convicted by a jury of driving under the influence and asserted on appeal that the arresting officer lacked probable cause or reasonable suspicion to stop his vehicle for failing to stop at a stop sign. The Supreme Court of South Carolina observed that after the United States Supreme Court's decision in *Wong Sun v. United States*, 371 U.S. 471 (1963), "courts have recognized that new and distinct criminal acts following an illegal stop do not qualify as fruit of the poisonous tree simply because such acts were causally connected to the police misconduct." *Nelson*, 336 S.C. at 193, 519 S.E.2d at 789. The Court then found that *even if* the initial attempt to stop the appellant's vehicle was unlawful, he subsequently ran a stop sign and sped through a residential neighborhood, creating probable cause to stop him. *Id*. at 193-95, 519 S.E.2d at 789-90. Thus, any evidence obtained from the search was lawful. *Id*. In reaching its decision, the Court quoted the Eleventh Circuit's observation that: "A contrary rule would virtually immunize a defendant from prosecution for all crimes he might commit that have a sufficient causal connection to the police misconduct." *Id*. at 194, 519 S.E.2d at 790 (quoting *United States v. Bailey*, 691 F.2d 1009, 1017 (11th Cir. 1982)). *See also Robinson*, 407 S.C. at 182, 754 S.E.2d at 869 ("If, during the stop of the vehicle, the officer's suspicions are confirmed or further aroused—even if for a different reason than he initiated the stop—the stop may be prolonged, and the scope of the detention enlarged as circumstances require").

Similarly, under either of the above theories, Rowland's conduct after Ofc. Kraft activated the blue lights gave probable cause to stop him for a traffic violation, *i.e.*, driving on the wrong side of the roadway and into oncoming traffic on Saluda Ave. *See* S.C. Code Ann. § 56-5-1810(a) (Supp. 2019). Then, Rowland did not have his driver's license when asked for it. *See* Court's Ex. 4. *Contra* S.C. Code Ann. § 56-1-20 (Supp. 2019) ("No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article").

When Ofc. Kraft smelled marijuana and inquired about it, Rowland admitted smoking some earlier. And, when Ofc. Kraft stated that Rowland was stopped because he matched a suspect, Rowland "reached inside his pockets and took off running," without waiting to hear what the suspect allegedly did. This provided yet additional probable cause for his arrest and the search of his vehicle under *Nelson*. *See also*, *e.g.*, *State v. Howell*, 782 N.E.2d 1066, 1067-68 (Ind. Ct.App. 2003) (holding that even if traffic stop was unlawful, officer had probable cause to arrest for resisting arrest after the defendant attempted to flee), *abrogated by Gaddie v. State*, 10 N.E.3d 1249 (Ind. 2014); *Collins v. State*, 376 Md. 359, 373 (2003) (a suspect's "flight from a lawful *Terry* encounter may sufficiently enhance an officer's existing suspicion to warrant an arrest").[21] *Cf. State v. Walker*, 366 S.C. 643, 654, 623 S.E.2d 122, 127 (Ct. App. 2005) ("Flight

[21] *See also Rice v. District of Columbia*, 774 F. Supp. 2d 18, 23 (D.D.C. 2011) (suspect fleeing when officer stopped him by calling "freeze," gave the officer probable cause to arrest him for disobeying a police order); *Com. v. Stultz*, 114 A.3d 865, 883–84 (Pa. Super. 2015) ("Here, Officer Lauver had probable cause to arrest Appellant for fleeing when Appellant failed to pull over immediately after the officer activated his lights and sirens, and Appellant instead traveled at a high rate of speed and ran through a stop sign"); *Williams v. State*, No. CACR06-1184, 2007 WL 2782561, at *6 (Ark. Ct.App., Sept. 26, 2007) ("At the time police stopped the vehicle, they may not have had probable cause to search appellant's vehicle. However, as the trial court found, a search of appellant's vehicle and person became proper once appellant fled his vehicle"); *Robinson*, 407 S.C. at 186-91, 754 S.E.2d at 870-73 (upholding

from prosecution is admissible as evidence of guilt"). Accordingly, the record supports the trial judge's denial of Rowland's motion to suppress.

II. The trial judge did not abuse his discretion by allowing the State's questioned documents examiner to testify that it was "probable," or "a high degree of likelihood," that the person who wrote the information on the back of an envelope seized from Rowland's Impala (State's Ex. 56) was the same person whose handwriting appears on Rowland's personnel records obtained from Capital Waste Services and FedEx because (1) his testimony satisfied the threshold requirements for admissibility of expert testimony under Rule 702, SCRE and *State v. Council*; (2) his testimony was relevant and probative of who wrote the information on the envelope, as well as the identity of the murderer; and (3) the probative value of his testimony was not substantially outweighed by its prejudicial effect under Rule 403, SCRE.

Respondent further submits that the trial judge did not abuse his discretion by allowing the State's questioned documents examiner to testify that it was "probable," or "a high degree of likelihood," that the person who wrote the information on the back of an envelope seized from Rowland's Impala (State's Ex. 56) was the same person whose handwriting appears on Rowland's personnel records obtained from Capital Waste Services (Court's Ex. 6, ***R. 197-239***) and FedEx (Court's Ex. 7, ***R. 240-263***) because (1) his testimony satisfied the threshold requirements for admissibility of expert testimony under Rule 702, SCRE and *State v. Council*, 335 S.C. 1, 19, 519 S.E.2d 508, 517 (1999); (2) his testimony was relevant and probative of who wrote the information on the envelope, as well as the identity of the murderer; and (3) the probative value of his testimony was not substantially outweighed by its prejudicial effect under Rule 403, SCRE.

A. How the issue developed at trial.

Rowland's counsel also moved pretrial to exclude SLED questioned documents examiner John Jamieson's testimony about handwriting comparisons he made between the handwriting on the back of an envelope seized from Rowland's car during the execution of a search warrant with

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searches pursuant to the "plain view" and the search incident to lawful arrest exceptions to the warrant requirement).

two known documents. ***R. 47-48;*** *see also* ***R. 170***. Agent Jamieson testified that he has been employed in SLED's questioned documents department for four years, where his duties "include the examination and comparison of handwriting, hand printing, signatures, and numerals, " as well as examining "mechanical impressions, … ink comparisons, … paper comparisons, and [he] examine[s] for ulcerations, obliterations, and erasures in documents." After explaining his educational and work experience in this field, which began in 1981, he was qualified as an expert in questioned document analysis without objection. ***R. 48-49;168-69***.

Agent Jamieson first became involved in this case on April 4, 2019. He was asked to compare two known documents – Rowland's personnel records from Capital Waste Services and FedEx 9 (Court's Exs. 7-8, respectively)– with handwriting found on the back of an envelope seized from Rowland's Impala pursuant to a search warrant (see Court's Ex. 6).[22] He issued his report on April 8th. Once he issued his report, it was reviewed by his partner in the questioned documents department, Gail Heath. "[T]he report is then peer-reviewed and technically reviewed. The check boxes are made in the BEAST system,[23] and the report is thereafter made available electronically to investigators. ***R. 159-64***.

Based on his comparison of the known documents with the handwriting on the envelope found in Rowland's car, he concluded that it was "probable, meaning a high degree of likelihood, that the writer of the known documents whom I took to be Nathaniel Rowland wrote the writings

[22] The envelope was admitted over objection at trial as State's Ex. 56, and the records from Capital Waste Services and FedEx were introduced as State's Exs. 192 and 193, respectively.

[23] "The Crime Fighter BEAST (Bar Coded Evidence Analysis Statistical Tracking) system is a Laboratory Information Management System (LIMS) specifically designed for forensic crime laboratories and medical examiners. Configuration of the system allows the LIMS to reach into every section of the lab as well as linking the lab to submitting agencies." *See* https://www.officer.com/command-hq/technology/computers-software/product/10212526/porter-lee-corp-crime-fighter-beast-bar-coded-evidence-analysis-statistical-tracking (last visited March 14, 2023).

on the questioned document, Court's Exhibit Number 6."[24] So, his opinion was that the same person wrote both the known documents and the questioned document. ***R. 164-65; 170-72***.

He explained that the "lack of direct, comparable, known writing" was a factor that limited his examination because "some of the letter forms and the connections between letters were not duplicated between the questioned and the known documents. So, he could not compare them. Although he requested additional known standards, which might have enabled him to give a more conclusive opinion, he was not given any. ***R. 164-66; 172-74***.

Trial counsel began an argument that the jury should not be allowed to hear Agent Jamieson's conclusion. However, the trial judge found that the issue was premature, since he had not heard any testimony about how the various documents were acquired. So, counsel indicated that she would make the argument later. ***R. 175-80***.

The trial judge heard further arguments on this issue during a break before Agent Jamieson testified. Counsel noted that the defense's position was stated in a memorandum previously provided to the court. *See* Court's Ex. 2. Counsel argued that Agent Jamieson's testimony should be excluded because his conclusion did not identify Rowland "as the author of the questioned document." Also, he should not be allowed to testify that Rowland "probably" wrote the document because this would not assist jurors in understanding the evidence or determining a fact in issue under Rule 702, SCRE. Also, Agent Jamieson may have been able to reach a more definite opinion if the State had provided him with additional known handwriting standards, as he requested, but the State did not provide any. ***R. 802-03***.

Further, instead of making a motion under *Schmerber v. California*, 384U.S. 757 (1966), the State relied on the employment records obtained by search warrant. ***R. 803-04***. Additionally,

[24] His report explained that his terminology included "identification," "strong probability" (or almost certain), and "probable" (or "a high degree of likelihood"). ***R. 164-65***.

counsel argued that Agent Jamieson's testimony was not relevant under Rule 401, SCRE, because it did not prove anything. However, it was "extremely prejudicial and extremely confusing to the jury" because jurors would assume that Rowland wrote it. Therefore, counsel objected to his testimony under Rules 401, 403, and 702. ***R. 804***. *See also* ***R. 175-79***.

The State argued that the motion should be denied because the jury was exclusively tasked with weighing the evidence and that Agent Jamieson's testimony was "extremely probative." He would explain that on his scale of terminology, "probable" is only "one step right below almost certain." Also, the process that he followed is "highly scientific and reliable as well as peer reviewed." Nor would he testify that Rowland wrote the known documents "because he has no way to know that for sure," and the State was not going to introduce the report. ***R. 804-05***. In response, counsel renewed the argument that the testimony was not relevant, and if no witness testified that Rowland authored his employment records, then there was an additional relevancy problem because the State could not present expert testimony that he wrote any of the documents. ***R. 806-07***.

The State argued that the testimony was relevant to who wrote on the envelope found in Rowland's car and that the known documents were self-authenticating. So, the motion went to the weight that Rowland would assign to the evidence, not its admissibility. Further, the State noted that Agent Jamieson had forty years of experience in the area, with four years at SLED, he had "testified as an expert many, many, many times," he had been published, and "these sort of scientific comparisons … are all peer reviewed." ***R. 807-08***.

The trial judge denied the motion. He first quoted Rule 702, SCRE, and he observed his "gatekeeping function" under the factors stated in *Council*. He then found that Agent Jamieson had "forty years of training and experience." Noting the standard of Rule 702, he found that:

> The report of his examination that was handed up to me and which he testified to states that it is probable, meaning a high degree of likelihood, that the writer of Items 8 and 21, which were [the] known writings of [Rowland], that the same person who wrote those two items, i.e. [Rowland], also wrote Item 22. He indicated some limiting factors in not having comparable or other comparable known writings. But based on the writings that he had, it's his view that, to a high degree of likelihood, that that is -- those items were written by [Rowland]. He believes that if he wrote one and two, he probably wrote three to a high degree of certainty, and the law does not and the standard does not require certainty by an expert.
>
> If the testimony would assist the trier of fact, and the person offering the testimony and the opinion offered has a sufficient degree of reliability, it should be admitted for the jury then to weigh the strength of the testimony. In ruling on the motion to exclude the testimony of Mr. Jamieson, that motion is denied for the reasons just stated.

R. 809-10.

When the State thereafter moved to introduce the envelope seized from Rowland's car through Agent Jamieson, as State's Ex. 56, Rowland unsuccessfully renewed his objection. ***R. 824-25***.[25] The jury then heard Agent Jamieson's testimony that he received two sets of known documents: State's Ex. 192, Rowland's personnel file from Capital Waste Services, and State's Ex. 193, Rowland's employment records from FedEx Ground. He also received the questioned document, State's Ex. 56. He explained the similarities between the handwriting State's Ex. 56 and the handwriting on the known documents at length. He then testified, "My determination was that it's probable that the writer of the known documents … also wrote the questioned document. Probable means a high degree of likelihood that they were written all by the same writer." ***R. 828-32***.

He also explained the scale of terminology that he uses, as he had in the pretrial hearing,

[25] Through Agent Jamieson, the State elicited what had been written on the envelope: There was "a number 4" and "a circled out or overwritten portion under the number 4" is the word "job." Also, "[b]eside it is another overwritten portion and then there's a colon, 30, 3-0, 4 PM. Next line is duct tape, tape whole body. Next line is gloves. Next line is all black. Next line is flip phone. Next line is gasoline. Next line is matches and then there's a crossed out line below the matches line." ***R. 826-27***.

so that jurors could fully understand his opinion. ***R. 831-34***. Counsel's cross-examination fully vetted where "probable" stood on the scale of possible determinations he could reach for questioned documents. Counsel likewise elicited that investigators failed to provide him with additional known standards, despite his request for them. ***R. 834-39***.

B. Discussion.

Rowland did not object to Agent Jamieson's qualification as an expert either pretrial or at trial (*see* ***R. 822; R. 169***) and he has never asserted that handwriting analysis is not beyond the common knowledge of the jury. *See Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013) ("where a subject is beyond the common knowledge of the jury, expert testimony is required"). Nor does he presently contend that Agent Jamieson's testimony did not satisfy any of the *Council* factors for the admission of expert testimony under Rule 702, SCRE, except for reliability.[26] Rather, he claims that the challenged evidence was not reliable because Agent Jamieson found that it was "probable" that Rowland wrote Sate's Ex. 56. His argument is fundamentally flawed.

The trial judge made the requisite threshold determination of reliability under Rule 702, SCRE, and his finding is supported by the record. The trial judge's "gatekeeping" role does not mean the trial judge must decide if the expert is "correct." See *Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. "There is always a possibility that an expert witness's opinions are incorrect. Yet, *whether to accept the expert's opinions or not is a matter for the jury to decide*. Trial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence." *Id*. at 639-40, 817 S.E.2d at 272.

[26] Before admitting Agent Jamieson's testimony, Rule 702 and *Council* required the trial judge to consider: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." 335 S.C. at 19, 519 S.E.2d at 517. *See also State v. Ramsey*, 345 S.C. 607, 615, 550 S.E.2d 294, 298-99 (2001).

See also Council, 335 S.C. at 18-19, 515 S.E.2d at 517 (expert testified mitochondrial DNA analysis on pubic hair found at the crime scene "most probably" belonged to the defendant).

Or, as this Court has stated:

> As long as the trial court is satisfied the expert's testimony consists of a reliable method faithfully and reliably applied, the gate of admissibility should be opened. *The correctness of the conclusion reached by an expert's faithful application of a reliable method (and the credibility of the expert who reached it) is for the jury*, for the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf."

State v. Warner, 430 S.C. 76, 86–87, 842 S.E.2d 361, 366 (Ct. App. 2020) (emphasis added), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022).

Similarly, there is no merit to his argument that this evidence was not relevant under Rule 401, SCRE, or that it did not assist the jury in understanding the evidence or determining a fact at issue. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. Under Rule 401, SCRE, evidence is "relevant" if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "The test for relevancy is not stringent, and its standard is not difficult to vault. …. Indeed, evidence that carries the probative weight of a feather tips a balanced scale and assists the jury in arriving at the truth of an issue." *State v. White*, 437 S.C. 490, 495, 879 S.E.2d 21, 24 (Ct. App. 2022). *See also State v. Sweat*, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004) ("Evidence which assists the jury in arriving at the truth ... is relevant").

Contrary to Rowland's assertion, Agent Jamieson's opinion was relevant because it was probative on the issue of who wrote the information on State's Ex. 56. Hence, it was probative of the identity of the person who murdered Samantha Josephson. Unquestionably, this was a fact at

issue in the trial. *See State v. Phillips*, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020) ("To understand the probative value of any evidence, we must consider what was practically in dispute at trial"); *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014) ("The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case"). Because there were no eyewitnesses to the murder, this piece of circumstantial evidence was important, albeit not conclusive, circumstantial proof of identity. Further, State's Ex. 56 was probative of premeditation and malice because one may infer from the words written that Rowland went to Five Points on March 29, 2019, with a predetermined plan to murder. *Accord State v. Milam*, 88 S.C. 127, ___, 70 S.E. 447, 449 (1911) ("While there may be and probably is some distinction between 'malice' and 'malice aforethought,' the latter conveying more the idea of premeditation and design, and being, therefore, more intense in respect to the wickedness of heart involved than in the word 'malice' alone, still the word 'aforethought' is usually understood to refer rather to the time when the evil intent is conceived").

Moreover, the probative value of his opinion was not substantially outweighed by its prejudicial effect under Rule 403. Rowland contends that this evidence "was unfairly prejudicial, confusing, and misleading" under Rule 403.[27] " 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " *Gray*, 408 S.C. at 616, 759 S.E.2d at 168 (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998)). Respondent submits that Rowland has not articulated precisely how this evidence was unfairly prejudicial and that the record does not support any such claim.

[27] The Court in *Phillips* stated that "the danger of unfair prejudice is a separate analysis from the danger of confusion of the issues or misleading the jury." *Phillips*, 430 S.C. at 329, 844 S.E.2d at 656.

Instead, his complaint is that this evidence was confusing and misled the jury. Again, his argument lacks merit. Unlike the DNA evidence in *Phillips*, the State elicited precisely how and why Agent Jamieson concluded that the same person who wrote the information in Rowland's employment records "probably" wrote State's Ex. 56. His testimony also fully explained the scale of terminology that he uses in conducting handwriting analysis and where "probably" falls on that scale. Further, Rowland was able to vet this information on cross-examination as well as the fact investigators failed to provide him with additional known standards, despite his request for them. *Contra Phillips*, 430 S.C. at 326-41, 844 S.E.2d at 654-62.

Because "[a]n appellate courts "reviews Rule 403 rulings pursuant to an abuse of discretion standard and gives great deference to the trial court," *Lee v. Bunch*, 373 S.C. 654, 658, 647 S.E.2d 197, 199 (2007), this Court should reverse a trial court's decision regarding the comparative probative value and prejudicial effect of evidence "only in exceptional circumstances." *Johnson v. Horry County Solid Waste Authority*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010). There are no exceptional circumstances in this case and the trial judge's ruling must be affirmed.

Finally, Respondent submits that any alleged error must be viewed as harmless beyond a reasonable doubt. "Where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless." *State v. Byers*, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 266, 267 (2006)); *Lowry v. State*, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) ("Harmless error review looks to the basis on which the jury actually rested its verdict. …. From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must 'find that error unimportant in relation to

everything else the jury considered on the issue in question, as revealed in the record' ").

Rowland's claim of prejudice from admission of State's Ex. 56 ignores that his fingerprint is on it (*see* ***R. 1041-42***), as is the victim's blood. *See* ***R. 1060-61; 1123-25***. A reasonable inference from the presence of his fingerprint on the envelope is that he may have written the handwritten information on it or that he was *at the very least* familiar with its contents. The presence of her blood on it is evidence that it was in his Impala when he murdered her. Given this and the State's other evidence proving his guilt of the crimes charged, any error in admitting testimony necessarily was harmless beyond a reasonable doubt. Although this was a circumstantial evidence case, proof that Rowland kidnapped and murdered Samantha Josephson was overwhelming.

While Respondent will not restate the "Statement of Facts," the State's evidence showed that: Samantha was stabbed 120 times with the muti-tool and had lost all but 3 tablespoons of blood as a result; her footprints and a handprint were found in the Impala; her DNA was found on a number of areas in the Impala, as well as on a number of items seized from Howard's residence and from the trash behind it, including articles of his clothing; 14 mixtures of DNA of multiple contributors reflected the presence of DNA from both her and Rowland, and both Samantha's and Rowland's DNA was on the murder weapon, and there was surveillance video of Rowland driving around the Five Points area for about fifteen minutes before he spotted her and this video showed her mistakenly getting into his car. When this and the State's other circumstantial evidence is considered in total, the evidence was so overwhelming that no other result could be reached. Indeed, there was an "avalanche" of circumstantial evidence that established Rowland's guilt beyond a reasonable doubt. *See* Statement of Facts, *supra*; *See also Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018) (evidence of a defendant's guilt is

"overwhelming" when it includes "something conclusive, such as DNA evidence demonstrating guilt").

III. The trial judge did not abuse his discretion by allowing a SLED DNA analyst to testify that Rowland's DNA was present on a "multi-tool" used as the murder weapon (State's Ex. 295), as well as on a cutting from a wad of paper towels (see State's Ex. 328) and a cutting from a pair of his pants that were seized from the trash behind his girlfriend's apartment where the analyst's opinion regarding these items was relevant because it was probative on the issue of the identity of the person who murdered Samantha Josephson, a fact that was clearly at issue, and the probative value of her testimony was not substantially outweighed by its prejudicial effect.

Finally, Rowland contends that the trial judge abused his discretion by allowing SLED Agent Ryan Dewayne, a DNA analyst, to testify that Rowland's DNA was present on three items seized from the trash behind his girlfriend's apartment: a "multi-tool," which was the murder weapon, a cutting from a wad of paper towels and a cutting from a pair of his pants. He maintains that Agent Dewayne's conclusion that there was "weak support" for the presence of his DNA on these items could not assist the jury in understanding the evidence or determining a fact at issue under Rule 702, SCRE, and that the probative value of the evidence was substantially outweighed by its prejudicial effect under Rule 403, SCRE. Respondent submits that there was no abuse of discretion because Agent Dewayne's opinion regarding these items, *i.e.*, that his DNA was present on them, was relevant because it was probative on the issue of the identity of the person who murdered the victim, a fact that was clearly at issue. Also, the probative value of her testimony was not substantially outweighed by its prejudicial effect.

A. How issue developed at trial.

Rowland also moved pretrial to bar Agent Dewayne from testifying that his DNA was included on SLED Item 104.2, which was a swab from the inner edges of the handles of the "multi-tool, which was the murder weapon. He also moved to exclude testimony that his DNA was included on SLED Item 108.3.2, a cutting from a wad of paper towels, and on SLED Item

131.1.2.1, a cutting from the left thigh area of a pair of pants. In support of his motion, counsel presented testimony from Dr. Norah Rudin, who was qualified without objection as an expert in forensic DNA analysis. *See* ***R. 51-106; 107-22***.

The State presented Agent Dewayne. ***R. 122-41***. She explained her experience and familiarity with the STRmix and Yfiler Plus software that SLED utilizes for conducting DNA analysis. She further explained that SLED has "thresholds for inclusion and exclusion, and [that] if a likelihood ratio falls right in the middle of those or [there is] a likelihood ratio of one, that is considered uninformative or inconclusive and we cannot make any kind of result or comparison with that number."[28] Yet, if testing on a mixture gives an inconclusive result, she still believes that the jury should be presented with this finding regardless of the implications from it, in order to render a verdict. ***R. 122-26***.

Agent Dewayne also responded to Dr. Rudin's other criticisms, including those relating to the validations of SLED's Y-STR analysis:

> For Yfiler Plus specifically, we had an out[side] agency, Sorensen in Utah. They had experts travel to our laboratory and perform the validation. What that entailed is that they tested the sensitivity, the accuracy, the precision of that technology on our instruments using our protocols and our chemicals and everything in our laboratory. They then took that data to their lab and did a validation summary and wrote up the data in that sense. That was then given back to our technical leader, and it was evaluated thoroughly to make sure there were not mistakes and that everything was understood.

R. 126-27. *See also* ***R. 127-41***. Likewise, outside auditors have reviewed SLED's validations for years and have agreed with those validations. ***R. 127***.

The trial judge heard arguments from both counsel and the State. He initially took the motion under advisement. ***R. 142-58***. However, he heard arguments and ruled before the testimony before the jury of either the second of two serologists or Agent Dewayne. ***R. 1067-82***.

[28] The Yfiler Plus software is utilized for Y-STR testing. This is the testing that is the primary focus of the current argument. ***R. 124-26***.

In pertinent part, counsel argued that Agent Dewayne's testimony about each of the three items at issue should be excluded because the minimally probative value of "weak support" for the inclusion of Rowland's profile in the mixture of DNA that was found was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Counsel relied upon *Phillips*, *supra*, and a Memorandum (Court's Ex. 3, ***R. 1453-1525***) in support of this motion. ***R. 1069-71***. *See also* ***R. 1076-78; R. 154-58***.

The State observed that Rowland was only complaining of 3 out of over 100 items that had been tested where there was "weak support" for his inclusion. It argued that counsel's opening made a "big issue" of the absence of evidence from Rowland on the victim. permitting Agent Dewayne's testimony would help jurors understand the evidence. Specifically, it would allow jurors to "understand the nature of the evidence that was collected from the trash at Maria Howard's house," and whether Mr. Rowland's DNA profile or that of anyone else was on the various items recovered from the trash. ***R. 1071-74***.

The State further argued that this evidence was probative of who contributed to the DNA mixture developed on all three items and whether Rowland was included. Also, the probative value of this evidence was not substantially outweighed by its prejudicial effect. Even Dr. Rudin agreed that the likelihood ratios used in this case "are actually useful when … interpreting complex mixtures." And, unlike the DNA introduced in *Phillips*, this evidence would not be confusing or misleading to the jury because Agent Dewayne would accurately testify to her findings, as she had done pretrial. ***R. 1074-76***.

The trial judge denied the motion. He noted the defense's motion was "pretty much "locked on … *Phillips*." He then found that the Court in *Phillips* allows correctly presented DNA evidence but had found the evidence in *Phillips* was improperly presented. He found that this

case differed from *Phillips* because he had heard the expert witnesses, whereas the trial judge in *Phillips* had not. This meant that "not only could the judge [in *Phillips*] not establish a record of the basis for his decision, but [there was] nothing for the appellate courts to review because there was no evidence received." Also, the DNA analyst and the assistant solicitor in *Phillips* both misstated the analyst's findings. After noting that the test for admissibility of expert testimony under Rule 702, SCRE, was "well recognized," he found that "for the court to exclude a portion of the DNA testimony simply because the evidence is weak and to make no reference to the fact that this item was tested, that may well mislead the jury." ***R. 1079-81***.

The trial judge observed that there had been testimony that Rowland had been wearing gloves, that he was cleaning the murder weapon "to erase … whatever evidentiary value was there," and that he had used chlorine bleach. So, not hearing this evidence might also mislead the jury. Again, he found that experts "don't have to testify they are 100 percent certain." Then, he found that:

> There is no basis to exclude the DNA testimony in this case. It all goes to the weight and not the admissibility. There is nothing misleading based on a witness stating that there was uninformative statistical results, or the evidence was weak as to one item but strong as to the other item. It's all essential for the jury to have the tools they need to deliberate and to decide this case.

R. 1081-82. Although he denied the motion, he stated that he would closely monitor the testimony to ensure that "there will be no misleading or false statements by any witnesses or by any of the lawyers in prosecuting and defending the case." ***R. 1082***.

Agent Dewayne thereafter testified to her findings. She testified that she developed a DNA profile from the cutting of the wad of paper towels (*see* State's Ex. 328) that was a mixture originating from three individuals. The first scenario was "Samantha … and two unidentified, unrelated, individuals contributed to the mixture versus a scenario two, where three unidentified,

unrelated individuals contributed to the mixture." Agent Dewayne opined that the DNA profile was "approximately 2.7 septillion times more likely if Samantha … and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." "Under the same scenarios involving … Rowland, the DNA profile is approximately 3 times more likely if … Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." Agent Dewayne explained that "[t]he statistic supports inclusion for both" Samantha and Rowland. With respect to the verbal scale, "the statistic associated with Samantha … falls within our very strong support range; [and] the statistic associated with … Rowland … falls within our weak range." ***R. 1147-48***.

Agent Dewayne developed a DNA profile from a cutting from the left thigh of pants (*see* State's Ex. 329) that was a mixture of three individuals. "The first scenario is that "Samantha and two unidentified, unrelated individuals contributed to the mixture versus a scenario of three unidentified, unrelated individuals contributing to the mixture." Agent Dewayne opined that "the DNA profile is approximately 3.1 septillion times more likely if Samantha … and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." ***R. 1158-59***. "Under the same scenarios [for Rowland], the DNA profile is approximately 55 times more likely if … Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." ***R. 1159***.

Further, Agent Dewayne developed a DNA profile from the swab of the inner edges of the handles of the multi-tool (State's Ex. 295) that was a mixture originating from three individuals. "Scenario one is Samantha … and two unidentified, unrelated, individuals

contributed to the mixture versus a scenario two, where three unidentified, unrelated individuals contributed to the mixture. The result is the DNA profiled is approximately 2.6 septillion times more likely if Samantha … and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." There was very strong support for Samantha's inclusion. "Under the same scenarios, the DNA profile is approximately 49 times more likely if … Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." This was only in the "weak level of support." ***R. 1160-62***.

Agent Dewayne developed a Y-STR profile from the swab of the multitool's handle that contained a mixture of at least two male individuals. She excluded four potential suspects from this mixture.[29] The partial profile from the major contributor to this mixture was an unidentified male, but the "partial Y-STR … profile of the minor contributor to this mixture matches" Rowland's Y-STR profile. The probability of randomly selecting an unrelated male individual having a Y-STR profile matching the minor contributor to this mixture is approximately 1 in 59." She could not exclude any of his paternal male relatives. ***R. 1162-63***.

B. Discussion.

There was no abuse of discretion. As discussed in Argument II, a trial judge's "gatekeeping" role does not require the trial judge to decide if the expert is "correct." *Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. "There is always a possibility that an expert witness's opinions are incorrect. However, *whether to accept the expert's opinions or not is a matter for the jury to decide*. Trial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it may be offered into evidence." *Id*. at 639-

[29] She excluded Xavier McFadden, Marcus Duane Williams, Osharmar Williams, and Derod Fleming. ***R. 1162***.

40, 817 S.E.2d at 272. *See also Warner*, 430 S.C. at 86-87, 842 S.E.2d at 366. So, his Rule 702 argument lacks merit.

His arguments that this evidence was not relevant under Rule 401, SCRE, or that it did not assist the jury in understanding the evidence or determining a fact at issue also lack merit. Again, the relevancy requirement "is not stringent, and its standard is not difficult to vault." *White*, 437 S.C. at 495, 879 S.E.2d at 24. *See also Sweat*, 362 S.C. at 126, 606 S.E.2d at 513 ("Evidence which assists the jury in arriving at the truth ... is relevant"). Here, Agent Dewayne's opinion as to these items was relevant because it was probative on the issue of the identity of the person who murdered Samantha Josephson, a fact that was clearly at issue. *See Phillips*, 430 S.C. at 327, 844 S.E.2d at 655 ("To understand the probative value of any evidence, we must consider what was practically in dispute at trial"); *Gray*, 408 S.C. at 610, 759 S.E.2d at 165 ("The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case"). Indeed, she specifically stated that both Samantha's and Rowland's DNA was included in the mixture of DNA developed from the cutting of the wad of paper towels, despite the very low likelihood ratio for including Rowland (*i.e.*, three times as likely). ***R. 1147-48***. Because there were no eyewitnesses to the murder, the fact Rowland's DNA was on the murder weapon and the other items constituted important, albeit not conclusive, circumstantial proof of identity, even if there was "weak support" for including his profile in the mixture of DNA that was developed. *See Council*, 335 S.C. at 18-19, 515 S.E.2d at 517 (expert testified mitochondrial DNA analysis on pubic hair found at the crime scene "most probably" belonged to the defendant).

Further, the probative value of her opinion was not substantially outweighed by its prejudicial effect under Rule 403. As discussed, " '[u]nfair prejudice does not mean the damage

to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " *Gray*, 408 S.C. at 616, 759 S.E.2d at 168 (quoting *Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429). Agent Dewayne's testimony that Rowland's DNA was included in each of the mixtures at issue could not be unfairly prejudicial because there was very strong support for inclusion of the victim on each item, including the murder weapon. Also, each item was seized from the trash behind the residence of Rowland's girlfriend. Further, he is only complaining of testimony of three items where his DNA was included in the mixture of DNA out of fourteen items where both his and the victim's DNA were included.

Rowland's contention that this evidence "was unfairly prejudicial, confusing, and misleading" under Rule 403, SCRE, is likewise without merit. Unlike the DNA evidence in *Phillips*, before the State elicited evidence of Agent Dewayne's findings, it first elicited her testimony that explained DNA analysis, what is meant by a "mixture," that SLED uses "a statistical software profile called STRmix to do our comparisons," and how analysis with this software enables SLED to include or exclude someone from a mixture of unknown individuals. She also explained that "If we have any possible inclusions, then we report that conclusion with a statistic." On the other hand, no statistic is assigned to an excluded individual. ***R. 1094-96***.

Importantly, she explained that:

> We have a verbal scale at the end of our reports. This shows our level of support based on the number that's generated. …. We have multiple levels of support. Our lowest level is weak support. We then have … moderate support, strong support, and then very strong support. …. The larger the number is, the more support will be associated with it. Our strongest level of support starts at 1 million and above.

R. 1096-97.

Agent Dewayne does not use the term "match" in STRmix analysis, but this does not

mean there is any less confidence in a particular result. ***R. 1097***. Additionally, she informed jurors that " [a] likelihood ratio is the type of statistic that [SLED] calculate[s] for STRmix" analysis. "This is simply a mathematical comparison of two possible scenarios, that … could explain the DNA profile that we get. The number that is generated is always supporting which scenario is more likely to create that profile." There are two scenarios. The first "suggests that individual is included," while the second suggests that "they are excluded or it's someone else." ***R. 1098***. Given this testimony and the fact the trial judge heard her live testimony, as opposed to simply the arguments and representations by the State, the concerns expressed over the DNA evidence in *Phillips* simply were not present here. *Contra Phillips*, 430 S.C. at 326-41, 844 S.E.2d at 654-62.

Further, Rowland's counsel was able to fully vet Agent Dewayne's analysis of each of the items that she tested and point out any perceived defect that counsel found to the jury. *See* ***R. 1165-1215***. Among the various matters that counsel established, she elicited testimony that it is easy to transfer touch DNA; that "DNA can transfer from one item to another without the person having direct contact with that originating source;" and that one would likely find a car's owner DNA in the car if the owner drove it. ***R. 1170-72***. More importantly, she specifically questioned Agent Dewayne's analysis of the three items at issue, emphasizing the "weak support" for Rowland's inclusion on each of these items. She also pointed out that Rowland's DNA was not on the blade of the multi-tool; that the Y-STR of the swabs from the handle revealed an unknown major contributor, whereas there was weak support for Rowland's inclusion; that there was an unknown contributor to the DNA from the wad of paper towels; and there was also an unknown contributor to the DNA from the pants retrieved from the garbage. *See* ***R. 1185-87; 1194-96; 1210-11***.

In light of the manner in which the prosecution presented Agent Dewayne's analysis and counsel's extensive cross-examination of her, the challenged DNA evidence was not "unfairly prejudicial, confusing, and misleading" under Rule 403, SCRE.[30] Because appellate courts "review[] Rule 403 rulings pursuant to an abuse of discretion standard and give[] great deference to the trial court," *Lee*, 373 S.C. at 658, 647 S.E.2d at 199, this Court should reverse a trial court's decision regarding the comparative probative value and prejudicial effect of evidence "only in exceptional circumstances." *Johnson*, 389 S.C. at 534, 698 S.E.2d at 838. There are no exceptional circumstances in this case and the trial judge's ruling must be affirmed.

Finally, Respondent submits that any alleged error must be viewed as harmless beyond a reasonable doubt. "Where 'guilt has been conclusively proven by competent evidence such that

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[30] Respondent submits that this Court should not consider Rowland's reliance on *United State v. Graves*, 465 F.Supp.2d 450 (E.D. Pa. 2006), because it was not presented to the trial judge. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground"). Also, his reliance is misplaced. In *Graves*, the random match probabilities were one in 2,900 for the left shoe, one in 3,600 for the right shoe, and one in two for an umbrella he was carrying during the crime. *Id*. at 458. The court concluded that the DNA evidence on the shoes was admissible, but that "even with appropriate safeguards, the minimal probative value of the umbrella DNA evidence—in which half of the relevant population cannot be excluded as a contributor to the DNA sample—is substantially outweighed by the danger of unfair prejudice and confusion of the issues." *Id*. at 459.

Yet, the issue in *Graves* was whether the district court abused its discretion in excluding the evidence; there was no finding that the court would have abused its discretion had it allowed the evidence. Further, this case is distinguishable because Rowland does not challenge the presence of the victim's DNA on any of these items. Moreover, even *Graves* recognized that "[c]ourts in other circuits have 'allowed DNA evidence into admission when the statistical significance of the data was relatively low and the probability of a random match in the relevant population was rather high' ") (quoting *United States v. Morrow*, 374 F.Supp.2d 51, 63 (D.D.C.2005)). So, his argument goes to the weight he thinks jurors should have given the evidence, not its admissibility. *See Hampton v. State*, 961 N.E.2d 480, 493 (Ind. 2012) (fact DNA match may not be absolute goes to the weight and credibility of the evidence"); *Com. v. O'Laughlin*, 843 N.E.2d 617, 633 (Mass. 2006) (rejecting defendant's challenge to the admissibility of DNA evidence that "only demonstrated that the likelihood that any individual contributed to the mixture of DNA was one in two" and concluding that "[t]he probative value of the evidence is for the jury to decide"); *United States v. Cuff*, 37 F.Supp.2d 279, 282 (S.D.N.Y. 1999) (admitting DNA evidence where blood typing only supported the conclusion that the defendant could not "be excluded as the source of blood recovered from a crime scene"); *Com. v. Crews*, 640 A.2d 395, 403 (Pa. 1994) ("[T]he relevant, though inconclusive, DNA evidence was admissible in this case; its weight and persuasiveness were properly matters for the jury to determine").

no other rational conclusion can be reached,' an insubstantial error that does not affect the result of the trial is considered harmless." *Byers*, 392 S.C. at 447, 710 S.E.2d at 60 (quoting *Pagan*, 369 S.C. at 212, 631 S.E.2d at 267); *Lowry*, 376 S.C. at 508, 657 S.E.2d at 765. Here, the error is insubstantial given the undeniable inclusion of the victim's DNA on the murder weapon and the other challenged items.

Further, while Respondent will not restate the Statement of Facts, the State notes that: she was stabbed 120 times with the muti-tool and had lost all but 3 tablespoons of blood as a result; her footprints and a handprint were found in the Impala; her DNA was found on a number of areas in the Impala, as well as on a number of items seized from Howard's residence and from the trash behind it, including articles of his clothing; a total of 14 mixtures of DNA of multiple contributors reflected the presence of DNA from both her and Rowland; there was surveillance video of Rowland driving around the Five Points area for about fifteen minutes before he spotted her, and this video showed her mistakenly getting into his car. When this and the State's other circumstantial evidence is considered in total, the evidence was so overwhelming that no other result could be reached. Indeed, there was an "avalanche" of circumstantial evidence that established Rowland's guilt beyond a reasonable doubt. *See* Statement of Facts, *supra*; *Smalls*, 422 S.C. at 191, 810 S.E.2d at 845 (evidence of a defendant's guilt is "overwhelming" when it includes "something conclusive, such as DNA evidence demonstrating guilt").

CONCLUSION

For all of the foregoing reasons, this Court should affirm the judgment, convictions, and sentence.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2021-000822

THE STATE, ...RESPONDENT

v.

NATHANIEL DAVID ROWLAND, ...APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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