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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Bentley Price, Circuit Court Judge
Appellate Case No. 2023-000075

THE STATE,

Respondent,

vs.

DLANOR PHILLIP TILTON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Did the trial judge abuse his discretion by admitting evidence Appellant was identified as a suspect through the employment of facial recognition software when the state failed to establish the admissibility of this evidence pursuant to Rule 702, SCRE, and State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), since the state witness through whom the evidence was admitted was not qualified as she was merely trained on how to operate the software and there was no evidence the facial recognition software was reliable?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion or violate Rule 702 of the South Carolina Rules of Evidence by admitting a former SLED analyst's testimony about a *possible* match to a suspect's photograph that was obtained through the use of a facial recognition program when the former analyst neither was offered as an expert witness nor presented any expert opinions and, thus, the requirements applicable to the admission of expert testimony were not applicable to her non-expert testimony? Moreover, assuming the trial judge somehow erred by admitting the former SLED analyst's testimony, was any error harmless under the circumstances involved?

STATEMENT OF THE CASE

In December of 2018, Appellant Dlanor Phillip Tilton was arrested following an investigation into a series of highly-similar armed robberies that were committed over the span of several nights in Myrtle Beach, South Carolina. In April of 2019, the Horry County Grand Jury indicted Tilton for three counts of armed robbery. That same month, the Horry County Grand Jury indicted Mazar Nathaniel Sturdivant—one of Tilton's accomplices—for three counts of armed robbery and Shamoray Rockel Holmes—another of Tilton's accomplices—for one count of armed robbery. On July 18, 2022, a joint jury trial was commenced in the Horry County Court of General Sessions with the Honorable Michael S. Holt, circuit court judge, presiding. At that time, Tilton was not present, and, following in limine discussions, the trial proceeded forward in Tilton's absence solely on two of Sturdivant's and Tilton's armed robbery charges with the Honorable Bentley Price, circuit court judge, presiding.[1] At the conclusion of the three-day trial, the jury convicted Sturdivant and Tilton as indicted. Following the verdict, the trial judge sentenced Sturdivant to concurrent terms of imprisonment of ten years for his two convictions. The trial judge also sentenced Tilton, but, because Tilton was absent, the sentence was sealed. Subsequently, Tilton was apprehended in Utah and extradited back to South Carolina. On January 12, 2023, a sentencing hearing was conducted in the Horry County Court of General Sessions with Judge Price again presiding. During the hearing, the trial judge unsealed Tilton's sentence and imposed concurrent twelve-year terms of imprisonment for his convictions. Tilton then timely filed a notice of appeal.

[1] Prior to the jury being sworn, the original trial judge was replaced due to an unexpected illness. (R. p. 34; p. 76).

STATEMENT OF FACTS

By his own candid admission, Tilton used Grindr, a social media app designed for gay and bisexual individuals, to scam people. (R. p. 139; p. 143; pp. 152-153). At least initially, Tilton, who claimed not to truly be gay himself, used the app to trick his targets into providing him with food, money, or meals by making them believe he was going to have sex with them. (R. p. 139; p. 143; pp. 152-153). However, toward the end of December 2018, Tilton escalated his criminal scheme and began using the Grindr app to set up armed robberies. (R. pp. 142-144; pp. 158-161).

On the night of December 28, 2018, Tilton made contact with Matthew Beckhoff, a resident of New Jersey who was visiting the Myrtle Beach area at the time, via the Grindr app and arranged to meet him on Bryant Street. (R. pp. 157-159). In response, Beckhoff drove to the address provided but left because something felt amiss. (R. p. 159). However, as soon as he drove away, he received a communication from Tilton asking him to return, and he did so despite his reservations. (R. pp. 159-160). When he returned to Bryant Street, he observed Sturdivant standing on a nearby street corner. (R. p. 160). Nevertheless, Beckhoff pulled up next to a dark house located at the address provided and stopped. (R. p. 160; p. 163; p. 182). Upon doing so, Tilton approached Beckhoff's car from the passenger side, jumped inside, and put a gun to his head. (R. p. 160; p. 163; p. 172; p. 182). Almost immediately after that, Sturdivant pointed a gun at Beckhoff through the vehicle's driver side window. (R. p. 160; p. 163; p. 182). Tilton and Sturdivant then demanded Beckhoff's belongings, and Beckhoff quickly handed over his phone, cash, and wallet. (R. p. 104; p. 160; p. 163; p. 182). At that point, Tilton and Sturdivant ordered Beckhoff to leave, he complied with their directive, and, after initially waiting roughly

an hour or so due to his concerns about revealing his sexuality, he eventually alerted the police of what had occurred. (R. pp. 93-94; p. 97; pp. 99-100; p. 161; pp. 163-164; pp. 166-167).

On the following night, Tilton lured Christopher Ward, who—much like Beckhoff—was visiting Myrtle Beach at the time, to Bryant Street via the Grindr app, and Ward drove to the address Tilton provided, which was the address of an abandoned house. (R. pp. 143-144; p. 203; pp. 279-281). Once Ward had parked in the driveway there, two men suddenly sprang up from behind some bushes and ordered him out of his vehicle at gunpoint. (R. pp. 281-282). In response, Ward got out and tried to flee. (R. pp. 282-283). When he did, one of the robbers ran off, but the other—Sturdivant—chased after Ward, grabbed him, and struck him with his gun. (R. pp. 282-283; p. 285; p. 288; p. 292). Nevertheless, Ward continued to resist, was able to break free, and ran to a nearby house for help. (R. p. 283). Based on that, the police were rapidly alerted of what had transpired. (R. pp. 187-189; pp. 184-185; p. 283).

During the ensuing investigation into the incidents, Tilton was identified as a potential suspect after a photograph obtained from Grindr was processed through a facial recognition program used by SLED. (R. pp. 124-129; p. 132; pp. 134-135). After independently verifying Tilton was indeed the person depicted in the Grindr photograph, officers attempted to locate and arrest him on the night of December 30, 2018. (R. pp. 135-137; p. 201; p. 206). When they did, Tilton responded by fleeing into a residence on Bryant Street, and, following a brief chase, he was taken into custody there. (R. p. 140; pp. 183-184; p. 238).

At that same residence, officers found Sturdivant and several other individuals inside. (R. p. 248). Furthermore, during an ensuing warrant-based search of the residence, officers also located Ward's wallet, which had been in his car when he was accosted by the robbers, hidden

underneath a bed in one of the residence's bedrooms along with several BB guns that had been modified to look like real guns stashed in other spots. (R. pp. 217-224; pp. 288-289).

Early the next morning, officers spoke separately with both Tilton and Sturdivant. (R. p. 140). During their interviews, both admitted they were either present or in the vicinity at the time of the robberies, and Tilton acknowledged he had arranged meetings with the victims via the Grindr app. (R. pp. 142-144; pp. 255-256). However, the two denied personally committing the robberies, and each apparently implicated the other as the true perpetrator of the crimes. (R. pp. 24-26; p. 153; pp. 388-389).

Ultimately, based on what was uncovered in the investigation, Tilton and Sturdivant were both indicted for multiple counts of armed robbery, and their cases proceeded forward to a joint trial. (R. p. 2; pp. 22-23; p. 75; pp. 399-402). At the conclusion of that trial, the jury convicted both Tilton and Sturdivant of two counts of armed robbery. (R. p. 384).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing a trial judge's evidentiary ruling on appeal, an appellate court will not reverse absent a clear abuse of discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

ARGUMENT

The trial judge did not abuse his discretion or violate Rule 702 of the South Carolina Rules of Evidence by admitting a former SLED analyst's testimony about a *possible* match to a suspect's photograph that was obtained through the use of a facial recognition program because the former analyst neither was offered as an expert witness nor presented any expert opinions and, thus, the requirements applicable to the admission of expert testimony were not applicable to her non-expert testimony. However, even assuming the trial judge somehow erred by admitting the former SLED analyst's testimony, any error was entirely harmless under the circumstances involved.

Tilton contends the trial judge reversibly erred by permitting a witness—Megan Lukacs, a former SLED analyst—to testify she identified Tilton as a "possible match" to a suspect depicted in a photograph obtained from a Grindr account by using a facial recognition program. In support of that contention, Tilton—while relying upon Rule 702 of the South Carolina Rules of Evidence and the decision in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)—maintains Lukacs was not personally qualified to give such testimony and no evidence was presented concerning the reliability of the facial recognition software used. Importantly though, the solicitor did not offer Lukacs as an expert on anything, the trial judge did not qualify Lukacs as an expert witness, and Lukacs did not offer any expert opinions to the jury through her testimony. Instead, Lukacs simply communicated she identified *for investigative purposes* a possible match to the suspect's photograph by using a facial recognition program while further stressing that possible match was not a conclusive identification and was not even sufficiently reliable to constitute probable cause for an arrest. Therefore, since Lukacs neither was qualified by the trial judge as an expert witness nor offered any actual expert opinion testimony, the requirements of Rule 702 were not applicable to her testimony, and the trial judge did not abuse his broad discretion or otherwise err by admitting her non-expert testimony without first conducting an inapplicable analysis. However, even assuming the trial judge somehow erred by admitting that testimony, any error was entirely harmless when considering the actual substance

of the testimony—which made clear to the jury it was *not* being offered as conclusive or reliable proof Tilton truly was the person depicted in the suspect's Grindr photograph—along with all the other evidence presented, including the cumulative and unobjected-to testimony about the possible match. Tilton's convictions should be affirmed.

Relevant Facts

Early on during trial, the solicitor called Megan Lukacs, who was formerly an analyst at SLED, to the witness stand, and, before she could begin her testimony, Tilton's defense counsel quickly asked to discuss something with the trial judge. (R. p. 121; p. 123). In response, the trial judge conducted an in camera bench conference on the matter. (R. p. 121).

During that bench conference, defense counsel alleged "part of the way" Tilton was identified as being involved in the incidents was a photo taken from Grindr was submitted to SLED and analyzed via a facial recognition program. (R. pp. 121-122). After pointing that out, defense counsel questioned whether Lukacs would be able to establish the "scientific underpinnings" of the program used, and he asked the trial judge to "at the very least" make findings pursuant to State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999).

At that point, the trial judge asked the solicitor about Lukacs's intended testimony, and the solicitor indicated she was simply going to recount how she used a program to analyze a photograph and find a "possible match" that was then used by the Myrtle Beach Police Department to "come up" with a suspect. (R. p. 122). Upon hearing that, the trial judge instructed the solicitor to establish a foundation for the testimony and indicated he would make a determination once that had been done. (R. p. 122). Furthermore and importantly, the trial judge verified the solicitor did *not* intend to offer or qualify Lukacs as an expert. (R. p. 123).

Thereafter, Lukacs began testifying before the jury and explained she used to work for SLED as part of its criminal analytical team. (R. pp. 123-124). While a part of that team, she indicated she received a request from the Myrtle Beach Police Department to analyze a particular photograph with DataWorks, a facial recognition program used by SLED. (R. pp. 124-125). And, regarding that program, she explained it works as follows: (1) a user uploads a photograph to it and receives multiple "possible" matches with similar facial characteristics in return; (2) the user then reviews the returned photographs to see if any actually do look sufficiently similar to the one analyzed; and (3) if one is sufficiently similar, the user sends it along to the investigating agency purely as a "possible" match. (R. pp. 125-126).

Upon hearing that summation, the trial judge ruled Lukacs's testimony would be permitted. (R. p. 126). As her testimony continued, Lukacs stated she received at least one match after analyzing the photograph submitted by the Myrtle Beach Police Department and sent the results of her analysis to the agency. (R. pp. 127-128). At that point, the solicitor sought for the material Lukacs sent to be admitted into evidence along with a copy of the photograph from Grindr that was initially submitted for analysis, and the trial judge admitted those two items over Tilton's defense counsel's earlier objection.[2] (R. p. 128; State's Ex. # 17 (Photographs); State's Ex. # 18 (Photograph)).

Following that, Lukacs explained the "possible" match she received, which—without objection—she identified as a booking photo of Tilton, was only sent to the Myrtle Beach Police Department as an "investigative lead." (R. p. 129). And, in discussing that photograph, she *repeatedly* emphasized it was "not a positive identification" and she was not stating Tilton was

[2] Notably, when the items were admitted, defense counsel did *not* identify any additional grounds for his objection aside from the narrow one previously advanced. (R. p. 128).

with certainty the person depicted in the photograph submitted for analysis. (R. p. 129; p. 132). Furthermore, Lukacs noted the material she sent to the police department expressly included a disclaimer stating the "possible match" identified in it was not a positive identification and was not probable cause to arrest, which could only be established through further investigation. (R. pp. 130-131).

Thereafter, Sergeant Bishop Gibson from the Myrtle Beach Police Department testified about his investigation into the incidents and—without objection—confirmed he received a "possible match" after submitting a photograph of a potential suspect to SLED for analysis. (R. pp. 134-135). Sergeant Gibson explained he then used that information to obtain a variety of additional photographs of Tilton from DMV records, social media accounts, and other sources. (R. pp. 135-137). Upon comparing all those photographs to the potential suspect's Grindr photograph, he indicated he believed Tilton was, in fact, the suspect. (R. pp. 137-138). Beyond that, Sergeant Gibson recounted he spoke with Tilton after he was arrested in connection to the robberies and, during that conversation, Tilton *confirmed* he was the one who used Grindr to make arrangements to meet both the victim from the December 28 incident and the victim from the December 29 incident. (R. pp. 142-144).

Subsequently, as the trial continued on, Beckhoff, the December 28 incident victim, identified Tilton as one of the robbers by name and from surveillance footage, and he expressed certainty in his identification. (R. pp. 159-160; p. 163; p. 172; p. 182). In addition to that, testimony was presented establishing Tilton fled from officers when they came to arrest him and an ensuing search of his residence resulted in the discovery of a wallet belonging to Ward, the victim from the December 29 incident, hidden underneath a bed. (R. pp. 217-218; pp. 225-226; p. 234; pp. 237-239). Furthermore, Sturdivant elected to testify on his own behalf, and, during

his testimony, he—without objection—confirmed Tilton, whom he admitted to knowing personally, was the individual depicted in the Grindr photograph submitted to SLED for analysis and was using the Grindr app to meet men. (R. p. 305; p. 308; pp. 315-316; pp. 324-325).

After all the evidence and testimony was presented, the parties presented their closing arguments to the jury. (R. pp. 333-366). As part of his closing argument remarks, the solicitor conceded facial recognition technology may be "pretty inaccurate" but noted there was no risk of misidentification in Tilton's case due to the fact he had been identified by Sturdivant himself from the Grindr photograph. (R. pp. 336-337). Similarly, during his closing argument remarks, Tilton's defense counsel conceded the use of the facial recognition program "really became much less of an issue" as the trial went on, and he further pointed out the fact Tilton had his picture on Grindr was nevertheless not proof he committed a robbery. (R. pp. 349-350).

Subsequently, after the trial judge instructed the jury on the applicable law, the jurors began their deliberations.[3] (R. pp. 366-379; p. 381). A little over two hours later, they convicted Tilton and Sturdivant as indicted. (R. p. 384).

Analysis

In South Carolina, "[e]xpert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing

[3] Notably, since no expert testimony was presented during the trial, the trial judge did *not* include any instructions on expert testimony as part of his jury charge. (R. pp. 366-379; p. 381).

so long as it is the type of information that is reasonably relied upon in the field to make opinions." Id. at 445-446, 699 S.E.2d at 175.

Rule 702 of the South Carolina Rules of Evidence governs the admission of *expert* testimony in our state. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). Pursuant to that rule, expert testimony is admissible under the following circumstances:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. In light of that, a trial judge—"*[w]hen admitting scientific evidence under Rule 702, SCRE*"—must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. Council, 335 S.C. at 20, 515 S.E.2d at 518 (emphasis added); see State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

In the case sub judice, there can be no question the State would have been required to satisfy the requirements of Rule 702 *if* it had sought to qualify Lukacs as an expert witness and have her offer expert testimony on the subject of facial recognition technology. Importantly though, Lukacs was *not* offered as an expert witness during Tilton's trial, and she did *not* offer any expert opinions, including any suggesting Tilton had been scientifically or conclusively identified from the submitted Grindr photograph through the use of facial recognition software.

Instead, through her testimony, Lukacs simply explained she employed a facial recognition program purely in an effort to generate potential investigative leads, and she identified the photograph she obtained as a result of her work as "just a possible match" as opposed to an actual definitive identification. (R. p. 132). And, to make sure there could be no confusion as to the limited nature of what she was trying to convey to the jury, Lukacs emphasized she was not stating her use of the software meant Tilton was with certainty the person depicted in the submitted Grindr photograph, and she specifically noted the material she sent to the police department included a disclaimer explaining it was neither a positive identification nor sufficient information to constitute even probable cause for an arrest.

Thus, Lukacs's testimony was not presented as reliable proof Tilton was, in fact, the person depicted in the Grindr photograph obtained by the Myrtle Beach Police Department, and it could not possibly have been construed as such by the jury based on the careful qualifications Lukacs placed on her own testimony. See United States v. Scheffer, 523 U.S. 303, 309 (1998) (instructing "the exclusion of unreliable evidence is a principle objective of many evidentiary rules" and identifying Rule 702 of the Federal Rules of Evidence as an example of such a rule). To the contrary, Lukacs's testimony was offered solely for the limited purpose of providing background information explaining how Tilton was first identified as a potential suspect in the armed robberies, which would have otherwise been entirely unexplained absent such testimony, while leaving it to the evidence obtained *as a result of* the ensuing investigation to constitute the proof truly identifying Tilton as being one of the ones involved in the charged crimes. See State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) ("Evidence explaining why law enforcement is in a particular area has been held to be relevant information for the jury to consider."); Lee v. State, 29 S.W.3d 570, 577 (Tex. App. 2000) ("Police officers may testify to

explain how the investigation began and how the defendant became a suspect."); cf. State v. Parrish, 434 So. 2d 475, 478 (La. Ct. App. 1983) ("This was not evidence offered as an expert opinion, but was relevant to explain [the investigator's] actions and course of conduct."); Patterson, 425 S.C. at 510, 823 S.E.2d at 223 ("[W]e believe the reference to the database was relevant and highly probative because it explained a critical step in the investigation. Specifically, the database testimony explained how Patterson came to be identified as a suspect in the first place. Without the testimony, the jury would have been left to speculate as to the means law enforcement used to initially place Patterson at the crime scene."). Therefore, similar to how other evidentiary rules do not preclude admission when certain evidence—such as potential hearsay—is offered for one purpose instead of another, Rule 702 did *not* govern the admissibility of Lukacs's testimony since she was not offered, qualified, or utilized as an expert witness and did not offer any testimony constituting an expert or scientific opinion designed to aid the jury in determining a fact in issue. Cf. State v. Heyward, 441 S.C. 484, 498, 895 S.E.2d 658, 666 (2023) ("What is required to authenticate a particular piece of evidence is necessarily determined by what the proponent claims the evidence is."); Rhodes v. State, 349 S.C. 25, 31, 561 S.E.2d 606, 609 (2002) ("[I]t was repeatedly made clear during trial that the information Thompson had heard was 'from the street,' i.e., a 'rumor.' It was not offered to prove that petitioner had committed the crimes, but rather to explain Cook's identification of petitioner in the yearbook. This in turn led to petitioner's apprehension and the subsequent identification of him by both victims via the photographic line-up." (footnote omitted)); State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) ("[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken. Here, these statements were not entered for their truth but rather to explain why the officers began their

surveillance." (citation omitted)). As a result, the trial judge—who verified Lukacs was not being offered as an expert before permitting her to testify in the limited manner she did—did not abuse his discretion or otherwise err by rejecting defense counsel's objection based *solely* on Rule 702 and the Council decision. Cf. State v. Gragg, 878 N.E.2d 55, 64 (Ohio Ct. App. 2017) ("On appeal, appellant argues that the trial court erred by admitting the Draeger test results because the state failed to establish the test's reliability in violation of Evid.R. 702. . . . Contrary to appellant's assertion, Lieutenant Pierce's testimony was not offered as expert testimony. Thus, Evid.R. 702 was not implicated.").

However, even assuming the trial judge somehow erred by admitting Lukacs's testimony without conducting an analysis pursuant to Rule 702, any error in that regard was entirely harmless when considering the testimony's true substance along with the other evidence presented during trial. Demonstrating that fact, the substance of Lukacs's testimony made clear through its many caveats it was *not* being offered as reliable identification evidence that constituted proof of Tilton's guilt for the charged crimes, which helped to ensure its admission could not have resulted in any unfair or improper prejudice to Tilton. Cf. State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (finding the improper admission of hearsay evidence to be harmless where the hearsay evidence was impeached by the jury's exposure to the fact the evidence was not based on any first-hand knowledge). Beyond that, Lukacs's limited testimony indicating she identified Tilton as a "possible" match to the suspect depicted in the Grindr photograph was wholly cumulative to other testimony establishing the exact same thing and more. More specifically, Sergeant Gibson confirmed without objection during his own testimony Tilton was identified as a possible match after he submitted the Grindr photograph to SLED, Tilton's co-defendant conclusively identified Tilton as the person depicted in the Grindr

photograph without—unlike Lukacs—placing any caveats on his testimony, and Tilton personally identified himself as having been the one who made contact with the armed robbery victims via Grindr through his statements to law enforcement that were admitted during trial.[4] See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); State v. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted."); cf. State v. Kirby, 325 S.C. 390, 396-397, 481 S.E.2d 150, 153 (Ct. App. 1996) ("Since Kirby did not object to this similar testimony from Cpl. Bradley, the testimony of Lt. McGlocklin was merely cumulative and its admission was harmless beyond a reasonable doubt."). Considering the limited nature of Lukacs's testimony coupled with that other cumulative evidence of guilt, any error in the admission of the challenged testimony was entirely harmless. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (explaining "[w]hether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole" and recognizing the erroneous admission of evidence will be harmless when its impact is minimal in the context of the entire record); see also State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."). Accordingly, for all those reasons, Tilton's convictions should be affirmed.

[4] Significantly, the introduction of the powerful evidence that was admitted subsequent to Lukacs's limited explanatory testimony about how the investigation first came to focus on Tilton is likely exactly why—as previously noted—defense counsel conceded to the jury his apparent problems with the facial recognition software's use "really became much less of an issue" as the trial progressed. (R. pp. 349-350).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Appellant.

CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Lara M. Caudy, Esquire
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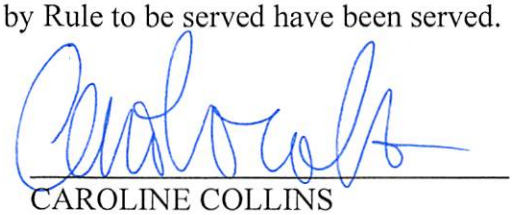
I further certify all parties required by Rule to be served have been served.
This 26th day of February, 2024.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General

Caroline Collins

From: Caroline Collins
Sent: Monday, February 26, 2024 12:37 PM
To: Lara Caudy (lcaudy@sccid.sc.gov)
Cc: Mark Farthing; Mcinnis, Sara
Subject: The State v. Dlanor Phillip Tilton (2023-000075)
Attachments: Tilton.FBOR (03513182xD2C78).PDF

Good Afternoon Ms. Caudy,

Attached please find the Final Brief of Respondent in The State v. Dlanor Phillip Tilton (2023-000075). This brief will be submitted to the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please reply to confirm receipt of this email.

Thank you,

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