STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 6084 (S.C. Ct. App. Filed August 21, 2024)

Lower Court Case Nos. 2019-GS-40-02450, 2019-GS-40-02453, 2019-GS-40-02528

THE STATE,

RESPONDENT,

V.

NATHANIEL DAVID ROWLAND,

PETITIONER.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 19, 2024.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by holding the trial judge correctly denied Petitioner's motion to suppress all evidence obtained as a product of the unlawful stop of Petitioner'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 Court of Appeals err by holding the trial judge did not abuse his discretion by admitting expert testimony from the state's document examiner that it was "probable" the person who wrote an inscription on the back of an envelope found in Petitioner's car was the same person whose handwriting appears on Petitioner's personnel records obtained from previous employers 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 Court of Appeals err by holding the trial judge did not abuse his discretion by admitting testimony from the state's expert DNA analyst concerning Petitioner'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 Petitioner's inclusion?

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Petitioner on April 16, 2019 for murder, kidnapping, and possession of a weapon during the commission of a violent crime. R. 1526. A pretrial hearing was held on July 16, 2021, before the Honorable Clifton Newman. R. 1. Petitioner's case was called to trial on July 19, 2021, before Judge Newman, and a jury. Solicitor Bryon Gipson, Deputy Solicitors Daniel Goldberg and April Sampson, and Assistant Solicitor Amanda Gaston represented the state. R. 1. Tracy Pinnock, Alicia Goode, and Robert Pillinger

represented Petitioner. R. 1. On July 27, 2021, the jury found Petitioner guilty as indicted. R. 1428, ll. 6-25. He was sentenced to life without parole for murder and five years concurrent for the weapons offense. R. 1442, l. 24 – 1443, l. 6. No sentence was imposed for kidnapping pursuant to S.C. Code Ann. § 16-3-910 since Petitioner was sentenced to life for murder. R. 1534-1535.

On August 21, 2024, the Court of Appeals affirmed Petitioner's convictions and sentence in a published opinion. State v. Rowland, 444 S.C. 84, 905 S.E.2d 825 (2024). On September 5, 2024, Petitioner filed a petition for rehearing with the Court of Appeals. By order dated September 19, 2024, the Court of Appeals denied rehearing. This petition for writ of certiorari follows.

ARGUMENT

1. The Court of Appeals erred by holding the trial judge correctly denied Petitioner's motion to suppress all evidence obtained as a product of the unlawful stop of Petitioner'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.

Petitioner moved pretrial to suppress all evidence obtained as a result of the unlawful traffic stop of his vehicle during the early morning hours of March 30, 2019. He argued the stop violated his Fourth Amendment rights because 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. In support of the motion, the defense presented the testimony of Officer Jeffrey Kraft with the Columbia Police Department. Kraft was on duty on the night of Friday, March 29, 2019. His shift started at six o'clock that evening. R. 15, ll. 9-18. All Columbia Police Department employees, including Kraft, received an email from Investigator Chris Odom at 5:37 p.m. requesting assistance in locating Samantha Josephson. R. 37, ll. 13-25; R. 191. Attached to Odom's email was a missing person awareness bulletin, which included a photograph of Josephson, her demographics, and information about her disappearance. R. 37, l. 20 – 38, l. 3. Specifically, the bulletin stated, "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. that same evening, Investigator Odom sent an additional email to all Columbia Police Department employees, including Kraft, with updated information concerning the missing person. R. 38, ll. 12-24. In his email, Odom said there was video of Josephson "getting into a black Chevy Impala (newer model)." R. 193. Attached to this second email was a still shot from surveillance footage of Josephson standing outside the Bird Dog before she disappeared and a still shot of the black Chevy Impala. R. 38, l. 12 – 39, l. 2; R. 194-195.

During his shift that night, Officer Kraft was patrolling the southern region of the city, including Five Points where Josephson was last seen. R. 27, ll. 1-9. Around 2:30 a.m. on March 30, 2019, Kraft was driving down Harden Street toward Five Points. R. 16, l. 25 – 17, l. 4. As he approached the intersection of Harden and Blossom Streets, which is a block from where Josephson was last seen, Kraft saw a black Chevy Impala traveling in front of him. R. 16, l. 25 – 17, l. 4; R. 21, ll. 4-8. The traffic light at the intersection of Harden and Blossom was red. R. 17, ll. 7-8. The driver of the Impala indicated his left turn signal and moved into the left turn lane on Harden Street to turn onto Blossom Street. R. 17, ll. 12-13. Kraft likewise moved into the left turn lane behind the Impala. When the light turned green, the driver of the Impala turned left onto Blossom. R. 17, ll. 14-18; Court's Exhibit No. 5 (DVD of Dash Camera).

As the vehicle was turning, Kraft activated his blue lights and initiated a traffic stop. R. 17, ll. 19-20. The driver of the Impala turned on his left turn signal and turned left onto Saluda Avenue where he eventually pulled over and came to a complete stop. R. 19, ll. 3-8. There was a large grassy median dividing the two lanes of travel at the beginning of Saluda Avenue. R. 25, ll. 16-22. In his effort to pull over, the driver of the Impala turned the wrong way onto Saluda Avenue to the left of the large median as opposed to the right. R. 21, l. 22 – 22, l. 10; R. 24, l. 21 – 25, l. 22; R. 43, ll. 1-22; Court's Exhibit No. 5 (DVD of Dash Camera).

After the vehicle stopped, Kraft approached the car on the driver's side and spoke with the driver who was later identified as Petitioner. R. 22, ll. 11-21. Kraft asked Petitioner for identification. R. 23, ll. 3-4. Petitioner said he did not have identification. R. 23, ll. 5-11. As he was talking to Petitioner, Kraft allegedly smelled marijuana and asked Petitioner to step out of the car. R. 23, ll. 5-16. After Petitioner got out of the car, he "took off running" and was apprehended nearby by other officers with the Columbia Police Department. R. 23, l. 12 – 24, l. 6; Court's Exhibit No. 4 (DVD of Body Camera).

At the time Kraft initiated the traffic stop on Petitioner's vehicle, all he knew was that Josephson was missing; that she had not been seen or heard from in twenty-four hours; that she was last seen getting into a newer model black Chevy Impala in front of the Bird Dog in Five Points; and that the last known location of her phone was the Rosewood area. R. 20, l. 23 – 21, l. 8; R. 26, ll. 14-25; R. 191-195. The missing person bulletin Kraft received did not specify the license plate number for the Chevy Impala or the vehicle registration information nor did it identity a potential driver of the vehicle. R. 18, ll. 7-20; R. 20, ll. 7-22; R. 191-195. Kraft had no information that Josephson got into the Impala unwillingly. R. 26, ll. 20-25. He first learned Josephson was found deceased in a different county as he was processing Petitioner's car shortly after the traffic stop. R. 27, l. 24 – 28, l. 17; Court's Exhibit No. 4 (DVD of Body Camera).

Kraft testified that the sole reason he activated his blue lights and initiated a traffic stop on Petitioner's vehicle was because it was a black Chevy Impala, which matched the description of the vehicle Josephson was last seen getting into before she disappeared. In the incident report he completed concerning the stop, Kraft wrote that he "conducted a suspicious vehicle stop" because the vehicle "matched a missing persons BOLO [be on the lookout]." R. 17, l. 19 – 18, l. 11; R. 36, l. 10 – 37, l. 3; R. 181-190. Kraft conceded that Petitioner had not committed a traffic violation prior to Kraft activating his blue lights and initiating the traffic stop. R. 19, ll. 12-14. He further conceded that a Chevy Impala is "not an uncommon car." R. 27, ll. 1-11.

At the conclusion of Kraft's *in camera* testimony, defense counsel asserted that a traffic stop constitutes a seizure for purposes of the Fourth Amendment and, thus, law enforcement must have probable cause that a traffic violation has occurred or reasonable suspicion that an occupant is engaged in criminal activity before it may stop a vehicle. R. 29, ll. 11-20. Counsel argued that because Kraft admitted Petitioner had not committed a traffic violation before Kraft activated his blue lights and because Kraft did not have reasonable suspicion the occupants of the car were engaged in criminal activity, the traffic stop was unlawful and violated Petitioner's constitutional rights. R. 29, l. 6 – 30, l. 13.

In response to the judge's inquiry concerning what constitutes reasonable suspicion, defense counsel read from Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014): "A police officer may stop and briefly detain a vehicle if they have reasonable suspicion that the occupants are involved in criminal activity. Reasonable suspicion is something more than an inchoate [and] unparticularized suspicion or hunch." Counsel argued that "the information provided to Officer Kraft does not rise to criminal activity. What they have is that . . . nobody's heard from her for twenty-four hours, not that that was done unwillingly or that she was pulled into the car unwillingly. The information they had was that she was last seen in Five Points getting into the back of a car and given the description of the car. That's the information he [Kraft] had, not that any crime had occurred or that Mr. Rowland was engaged in criminal activity at the time he initiated the stop." R. 31, l. 5 – 32, l. 3.

The deputy solicitor conceded that at the time Officer Kraft initiated the traffic stop, all Kraft knew was that Josephson had been missing for twenty-four hours, that there was video of her getting into what appeared to be a black Chevy Impala about a block from where Kraft initiated the stop, and that no one had seen or heard from Josephson since. R. 44, ll. 13-23. The solicitor argued that "if it was a situation where he [Kraft] was pulling over every Impala that he ever saw throughout the night, twenty Impalas, then perhaps that might be an issue. This was - - he [Kraft] testified this was the first one [Impala] he even saw that night, and it happened to be one block

away from where she [Josephson] was last seen getting into a black Impala."[1] R. 45, ll. 1-6. The solicitor maintained that Kraft could have reasonably inferred that since Petitioner's vehicle was the first Chevy Impala he had seen that night in close proximity to where Josephson was last seen that it "could be the car that she [Josephson] got into." Moreover, the solicitor contended that "the case, Robinson, goes on to state 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." He emphasized this portion of Robinson because after Kraft activated his blue lights and initiated the traffic stop, Petitioner turned the wrong way down a one way street. R. 45, ll. 1-20.

The trial judge ultimately denied the motion. He asserted, "I agree with the arguments of the solicitor, and I deny the motion to suppress on the basis it's part of the officer investigating the missing person. It was proper for the officer to act as the officer did in this instance, and the motion to suppress is denied." R. 46, ll. 2-7.

The Court of Appeals held the trial judge did not err when he denied Petitioner's motion to suppress. The court determined "Ofc. Kraft was acting diligently in the course of a missing person investigation, and the facts and circumstances he knew about Josephson's disappearance at the time he spotted the Impala two blocks from the location where Josephson was last seen surpassed the threshold of a 'mere hunch or unparticularized suspicion.'" State v. Rowland, 444 S.C. 84, 99-100, 905 S.E.2d 825, 833 (2024). In short, the Court of Appeals concluded Kraft had reasonable suspicion to stop Petitioner's vehicle. The court also held "[Petitioner] failed to establish a Fourth Amendment violation because Ofc. Kraft's initial investigatory stop was justified by the exigent circumstance of attempting to find a missing person." Id. at 98-99, 905 S.E.2d at 832.

[1] The solicitor's assertion concerning Kraft's testimony is incorrect. Kraft did not testify that Petitioner's vehicle was the first Chevy Impala he saw that night. Rather, Kraft testified that Petitioner's vehicle was the first Impala he had stopped that night. Kraft further testified that a black Impala is "not an uncommon car." R. 27, ll. 1-11.

Standard of Review

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This Court reviews the trial court's factual findings for any evidentiary support. However, the legal conclusion—in this case whether reasonable suspicion exists—is a question of law this Court reviews *de novo*. State v. Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

Discussion

The Court of Appeals erred by holding the trial judge correctly denied Petitioner's motion to suppress all evidence obtained as a product of the unlawful stop of Petitioner's vehicle in violation of the Fourth Amendment because Officer Kraft 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.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. Thus, the Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention. United States v. Mendenhall, 446 U.S. 544 (1980). "A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable person would have believed that he was not free to leave." Robinson v. State, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014) (citing Mendenhall, 446 U.S. at 554). "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment." State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing Whren v. United States, 517 U.S. 806 (1996) and State v. Maybank, 352 S.C. 310, 573 S.E.2d 851 (Ct. App. 2002)). "Thus, an automobile stop is 'subject to the constitutional imperative that it not be unreasonable under the circumstances.'" Id. (quoting Whren, 517 U.S. at 810). "Where probable cause exists to believe that a traffic violation

has occurred, the decision to stop the automobile is reasonable per se." Id. (citing Whren, 517 U.S. at 810). "The police may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity." Id. at 97-98, 623 S.E.2d at 847 (citing State v. Butler, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000)); State v. Forester, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977).

"Reasonable suspicion is something more than an 'inchoate and unparticularized suspicion' or hunch." Robinson, 407 S.C. at 182, 754 S.E.2d at 868 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). "Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity." Id. at 182, 754 S.E.2d at 868-869 (citing United States v. Cortez, 449 U.S. 411, 417-418 (1981). "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." Id. at 182, 754 S.E.2d at 869 (citing Terry, 392 U.S. at 21, 27).

Officer Kraft seized Petitioner within the meaning of the Fourth Amendment at the time he activated his blue lights and initiated the traffic stop on Petitioner's vehicle. At that point, a reasonable person in Petitioner's position would not have felt free to leave. See Mendenhall, 446 U.S. at 554. Because the seizure began at that point, the requisite reasonable suspicion likewise must have been present at the same time.[2] See Robinson, 407 S.C. at 183, 754 S.E.2d at 869. Kraft admitted that at the time he activated his blue lights and initiated the traffic stop on Petitioner's vehicle, he did not have probable cause that Petitioner committed a traffic violation. Rather, the sole reason he stopped Petitioner's car was because it was a black Chevy Impala which matched the

[2] The Court of Appeals also discussed what occurred *after* Officer Kraft activated his blue lights, including the fact that Petitioner turned the wrong way down a one way road in his haste to pull over, that Petitioner did not have identification, and that there was an "apparent odor of marijuana emanating from the car." However, Petitioner was seized pursuant to the Fourth Amendment at the moment Officer Kraft activated his blue lights and initiated the traffic stop. Accordingly, what occurred *after* Petitioner was seized is irrelevant to the reasonable suspicion determination.

color, make, and model of the vehicle Josephson was seen getting into before she disappeared about twenty-four hours prior. Importantly, Kraft did not know that a crime had even been committed as he had no knowledge that Josephson's body had been found hours earlier in Clarendon County. This does not amount to reasonable suspicion that the occupants of the vehicle were engaged in criminal activity. Kraft merely had a "hunch" that perhaps the vehicle was related to Josephson's disappearance. See Robinson, 407 S.C. at 182, 754 S.E.2d at 868.

If the stop of Petitioner's vehicle was legal, then law enforcement would have been constitutionally permitted to stop any black Chevy Impala in the Five Points and Rosewood area in hours and days after Josephson's disappearance.

Because Officer Kraft did not have probable cause that Petitioner committed a traffic violation nor reasonable suspicion that the occupants of the car were engaged in criminal activity, the stop was unreasonable and violated Petitioner's Fourth Amendment rights. Consequently, the trial judge should have suppressed all evidence obtained a result of the unlawful stop. See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (The exclusionary rule prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine.).

In its opinion, the Court of Appeals found "the case at hand is similar to our supreme court's case, Robinson v. State." Respectfully, this case is easily distinguishable from Robinson. In Robinson, at the time the officer pulled up behind the car Robinson was driving, thereby seizing Robinson within the meaning of the Fourth Amendment, "the officer knew the following: (1) there was a parked car in *a closed and darkened church parking lot* on a Tuesday night; (2) the car was *behind a fence with its lights off*; (3) the car had *no reason* to be within the fence at that time of night when the church was closed; and (4) the area where the car was parked was *not readily open to the public*." 407 S.C. at 183, 754 S.E.2d at 869 (emphasis added). From these facts the officer inferred that a couple might be parked in the vehicle "necking" on church grounds, a potential

misdemeanor under S.C. Code Ann. § 16-11-760. Id. This Court held these facts gave rise to a reasonable suspicion that potential criminal activity was afoot and that the stop was therefore justified based solely on the officer's assumption that there was a couple "necking" in the car. Id.

In this case, Officer Kraft did not have reasonable suspicion that the occupants of the Impala were engaged in criminal activity. Again, at the time Kraft initiated the traffic stop on Petitioner's vehicle, all he knew was that (1) Josephson was missing; (2) she had not been seen or heard from in 24 hours; (3) she was last seen getting into a newer model black Chevy Impala in front of the Bird Dog; and (4) the last known location of her phone was the Rosewood area. The missing person bulletin Kraft received did not specify the license plate number for the Impala or the vehicle registration information nor did it identity a driver of the vehicle. Importantly, Kraft did not know a crime had been committed as he had no knowledge that Josephson's body had been found hours earlier. Accordingly, unlike in Robinson where the officer had an objective, specific basis for suspecting the occupants of the car of criminal activity, Kraft merely had a "hunch" that perhaps the random Chevy Impala he observed was related to Josephson's disappearance.

The Court of Appeals also held "[Petitioner] failed to establish a Fourth Amendment violation because Ofc. Kraft's initial investigatory stop was justified by the exigent circumstance of attempting to find a missing person." In support of this holding, the court appeared to rely on a "community caretaker exception" to the warrant requirement used to "uphold warrantless searches and/or seizures, including the search for missing persons." However, our state has never adopted the so called "community caretaker exception" and the exception was directly rejected by the Supreme Court of the United States in Caniglia v. Strom, 593 U.S. 194 (2021).

As noted in the concurrence in Caniglia, the exigent circumstances doctrine applies when officers have an "objectively reasonable basis" for believing that an occupant is "seriously injured or threatened with such injury." Caniglia, 593 U.S. at 207 (Kavanaugh, J., concurring) (citing Brigham City, Utah v. Stuart, 547 U.S. 398, 400, 403 (2006)). No such "objectively reasonable

basis" existed in this case for the reasons argued above establishing Kraft did not have reasonable suspicion to stop Petitioner's vehicle. Therefore, the Court of Appeals incorrectly concluded the traffic stop of Petitioner's vehicle was "justified by the exigent circumstance of attempting to find a missing person."

Respectfully, this Court should grant certiorari and hold the trial judge erred by denying Petitioner's motion to suppress.

2. The Court of Appeals erred by holding the trial judge did not abuse his discretion by admitting expert testimony from the state's document examiner that it was "probable" the person who wrote an inscription on the back of an envelope found in Petitioner's car was the same person whose handwriting appears on Petitioner's personnel records obtained from previous employers 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.

Petitioner moved pretrial to exclude any testimony concerning handwriting analysis and comparisons from James Jamieson, a questioned document examiner at the South Carolina Law Enforcement Division (SLED) pursuant to Rule 702, SCRE, Rule 401, SCRE, and Rule 403, SCRE. R. 1445-1449. In support of his motion, Petitioner proffered Jamieson's testimony during a pretrial hearing. R. 157, l. 13 – 172, l. 21.

Jamieson, who was qualified as an expert in questioned document analysis, compared the handwriting found on the back of an envelope seized from Petitioner's car during the execution of a search warrant (the questioned document) with the handwriting on two "known documents." R. 169, ll. 19-23. The known documents were Petitioner's personnel records obtained by law enforcement from Capital Waste Services and FedEx by way of respective search warrants. R. 197-239. Jamieson concluded that it was "probable, meaning a high degree of likelihood, that the writer" of the various personnel records, wrote the handwriting on the back of the envelope. He explained that the "lack of direct, comparable, known writing was one of the limiting factors in [his] examination." R. 164, ll. 15-23. Jamieson further indicated that the submission of known standards

of the writer of the personnel records, allegedly Petitioner, may be of assistance in his analysis and that the standard should be "written to dictation using a ballpoint pen on blank envelopes and should fully duplicate all of the questioned material verbatim." R. 166, ll. 11-20. However, Jamieson never received any other known writing standards to compare to the questioned document. R. 167, ll. 11-13.

At the conclusion of the proffer, defense counsel argued that Jamieson's testimony should be excluded pursuant to Rule 702, SCRE, because it would not assist the jury in determining a fact at issue or in understanding the evidence. R. 175, l. 9 – 176, l. 11; R. 179, ll. 10-19. Counsel emphasized that Jamieson did not identify Petitioner as the writer of the questioned document (the handwriting found on the back of the envelope). Jamieson merely found that it was "probable" Petitioner wrote the document. R. 175, l. 21 – 176, l. 4. She argued that because Jamieson is unable to identify Petitioner as the writer of all three documents, the envelope and the two personnel files, his testimony will not assist the trier of fact. R. 176, ll. 5-9. "If nothing else, it is making them [the jurors] assume that Mr. Rowland [Petitioner] was the person [who] wrote this, this list [found on the back of the envelope]." R. 176, ll. 9-11. The trial judge interrupted counsel's argument and asserted the motion was premature because he had not heard "enough background" to rule on the motion. R. 179, l. 20 – 180, l. 14. Consequently, counsel asserted she would "shelve" her argument until more testimony was offered during trial. R. 180, ll. 15-22.

Before Jamieson testified before the jury, Petitioner renewed his objection. Defense counsel again argued his expert testimony should be excluded pursuant to Rule 702 because Jamieson could not or did not identify Petitioner as the writer of the questioned document. He merely found it was "probably this person." Counsel emphasized that "saying something is probable is offering an assumption" which does not "assist the jury in understanding a material fact." "Probable is not an identification." She asserted that perhaps Jamieson could have come to some further conclusion if

the state had provided Jamieson with additional known handwriting standards as Jamieson requested. However, the state failed to do so. R. 803, l. 2 – 804, l. 4.

Additionally, counsel argued Jamieson's testimony should be excluded pursuant to Rules 401 and 403, SCRE. She asserted, "I don't believe it is relevant under 401 because it's not proving anything. And, Your Honor, I believe that allowing him [Jamieson] to testify to something is probable is extremely prejudicial and extremely confusing to the jury because they will then assume that Mr. Rowland [Petitioner] is the one who wrote it. The testimony is not going to be that he [Petitioner] did [write the questioned document], and we should not be having experts testify and offering opinions suggesting that the jury should assume those things. So, I would object to his testimony under 401, 403, and for failing [to meet the] requirements of 702." R. 804, ll. 7-17.

The assistant solicitor argued Petitioner's argument "goes strictly to the weight of the evidence rather than the admissibility." R. 805, ll. 10-12. She contended that Jamieson's conclusion was reached based on a process that is "highly scientific and reliable as well as peer reviewed." R. 805, ll. 7-10. She further asserted that the evidence is "extremely probative." R. 805, ll. 804, l. 21 – 807, l. 3. Lastly, the solicitor emphasized that Jamieson would not identify Petitioner as the author of the employment documents obtained by law enforcement because "he [Jamieson] has no way to know that for sure." R. 805, ll. 13-18.

Based on the solicitor's concession that Jamieson did not know whether Petitioner wrote the "known documents," defense counsel further argued the evidence was not relevant, was unfairly prejudicial and misleading, and could not assist the jury. She asserted, "[I]f we don't have a witness to testify that Mr. Rowland [Petitioner] was the author of the employment records, how are they [the state] then going to offer an opinion by an expert that he [Petitioner] wrote any of these items?" R. 806, ll. 1-19. She maintained it was a "multilevel problem" given the state had no evidence Petitioner wrote the personnel records obtained by law enforcement. Jamieson would merely be testifying that the unidentified person who wrote the employment records also wrote the list found

on the envelope in Petitioner's car. R. 807, ll. 1-8. Counsel concluded his testimony should be excluded. R. 807, ll. 9-12.

Briefly in response, the assistant solicitor maintained the personnel records are self-authenticating and that it was for the jury to deduce the identity of the author of the handwriting found on the envelope based on Jamieson's testimony. R. 807, ll. 14-25.

The judge ultimately denied the motion. In so ruling, he mostly restated the requirements contained in Rule 702, SCRE, for the admission of expert testimony. The judge also emphasized Jamieson's forty years of experience and restated Jamieson's conclusions. R. 808, l. 18 – 810, l. 15.

Jamieson's *in camera* testimony and his testimony before the jury were similar. Before the jury, Jamieson, who was qualified as an expert in questioned document analysis, testified that he was provided with the envelope that was found in Petitioner's car. The envelope had a handwritten inscription on the top of the back side. R. 823, l. 5 – 825, l. 23. Jamieson explained to the jury what was written on the envelope: "We have a number 4 and we have a circled out or overwritten portion under the number 4. We have job, j-o-b. Beside 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, l. 24 – 827, l. 10; See R. 196.

In addition to the envelope, Jamieson received two sets of documents: State's Exhibit No. 192, which was the personnel file for Petitioner from Capital Waste Services, and State's Exhibit No. 193, which were Petitioner's employment records from FedEx Ground. R. 812, l. 3 – 817, l. 6; R. 827, ll. 12-23. Jamieson referred to these two sets of documents as the "known documents." He compared the handwriting on the envelope, the questioned document, to the handwriting on the known documents. R. 826, ll. 6-9. He explained to the jury the similarities between the handwriting on the questioned document and the handwriting on the known documents. R. 828, l. 12 – 832, l. 1.

The scale Jamieson utilizes to report his findings includes identification or elimination, meaning the person is identified or excluded as having written the questioned document; strong probability, meaning it is "almost certain that the person either did or did not write" the questioned document; probable, meaning there is a high degree of likelihood that the person either did or did not write the questioned document; indication, meaning there is a degree of likelihood that the person either did or did not write the document, but the examination is limited by some factors within the known or questioned writing; and "I don't know." R. 832, l. 21 – 833, l. 22. Using this scale, Jamieson determined that it was "probable" that the writer of the known documents, State's Exhibit No. 192 and State's Exhibit No. 193, also wrote the questioned document, the handwriting on the envelope. R. 832, l. 9 – 834, l. 3; R. 839, l. 22 – 840, l. 1. Again, Jamieson maintained that probable "means a high degree of likelihood that they were written all by the same writer, both the questioned and known." R. 832, ll. 12-14. He admitted that "probable falls two steps below identification" and that he was unable to "come up with a more definitive conclusion." R. 833, ll. 17-22; R. 837, ll. 10-23. He further acknowledged that he requested more known documents from law enforcement, but he never received any. R. 837, l. 24 – 839, l. 1. Moreover, Jamieson conceded that he had no personal knowledge as to who wrote the known documents submitted for his comparison. He merely compared the documents he was given. R. 839, ll. 12-21.

Later, during the deputy solicitor's closing argument, he asserted:

> You heard from the handwriting expert, and he told you that **he took Mr. Rowland's FedEx personnel file and his Capital Waste personnel file**, and he looked at records. And you can look at them for yourself when you're in the jury room. There's handwritten stuff all over them. And **he looked at that and he said yep. The same person filled out both of those applications**.
>
> And **then he compared that to the list, this list. And he told you that there was a high degree of likelihood that the person that wrote those applications wrote this list: duct tape, gloves, all black, flip phone, gasoline, matches. What else is important about that list? Nathaniel Rowland's fingerprint is on that list; Samantha Josephson's blood is on that list.**

> He references duct tape. There's duct tape somewhere over here that's got his prints on it, Nathaniel Rowland's prints on duct tape just like on that list, but you look at them for yourself. **You decide if you think he wrote it, even though Mr. Jamieson told you that it's highly likely.**

R. 1377, l. 18 – 1378, l. 12 (emphasis added).

The Court of Appeals held the evidence was relevant since the envelope was found in Petitioner's car, a crucial part of the crime scene, and contained Josephson's blood and Petitioner's fingerprint. Additionally, the expert testified that it was probable that the same individual who filled out Petitioner's employment records also authored the list on the envelope. The court further found the evidence was admissible pursuant to Rule 702 because it assisted the jury in determining who wrote the inscription on the envelope and the judge was not required to decide if the expert's testimony is "correct." Lastly, the Court of Appeals held the probative value of the expert's testimony did not outweigh the dangers of unfair prejudice.

Discussion

The Court of Appeals erred by holding the judge did not abuse his discretion by admitting Jamieson's expert testimony that it was "probable" the writer of the known documents, Petitioner's personnel records, was the same writer of the inscription found on the back of the envelope seized from Petitioner's vehicle since Jamieson's testimony was not relevant, was unfairly prejudicial, confusing, and misleading, and could not assist the jury in determining a fact at issue.

"'Relevant evidence' means evidence having 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." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . " Rule 403, SCRE. Unfair prejudice pursuant to Rule 403 "is the tendency of the evidence to suggest a decision based on something other than the legitimate probative force of the

evidence." State v. Phillips, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020) (citing State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014)).

Jamieson's testimony should have been excluded because it was not relevant nor probative. At the forefront, Jamieson had no evidence that Petitioner was the author of the personnel records, which Jamieson used as his "known documents." Moreover, Jamieson could not opine that the writer of the known documents wrote the writing on the questioned document, the envelope. He merely concluded that it was "probable" that the same *unidentified* person wrote all three documents. This testimony does not have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." The only purpose of this testimony was to allow the jury to speculate that Petitioner was the writer of the questioned document. For these reasons, Jamieson's testimony was unfairly prejudicial and misleading as it allowed the jury to convict Petitioner on an improper basis, namely speculation.

Jamieson's testimony also should have been excluded pursuant to Rule 702 since he was unable to opine that Petitioner was the author of the questioned document (the inscription on the back of the envelope found in Petitioner's car). "When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect." Id. (citing Rule 403, SCRE). Without being able to conclusively determine whether Petitioner was the writer of the list on the envelope, Jamieson's opinion could not assist the jury in understanding the evidence or determining a fact at issue as required by Rule 702. His opinion that the same *unidentified* person who wrote the personnel records obtained from Capital Waste Services and FedEx *probably* wrote the list on the back of the envelope that was found in the center console of Petitioner's car only caused the jury to speculate.

Respectfully, this Court should grant certiorari and hold the trial judge abused his discretion by admitting Jamieson's expert testimony, reverse Petitioner's convictions, and remand for a new trial.

3. The Court of Appeals erred by holding the trial judge did not abuse his discretion by admitting testimony from the state's expert DNA analyst concerning Petitioner'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 Petitioner's inclusion.

Petitioner moved pretrial to exclude the state's expert DNA analyst, Ryan DeWane, from testifying about Petitioner's inclusion in a mixture of DNA found on a multitool, which the state alleged was the weapon used to inflict the wounds on Josephson's body, and cuttings from a wad of paper towels and a pair of pants, all of which were found in the trash behind Maria Howard's residence. Specifically, Petitioner objected to testimony concerning SLED Item 108.3.2, which were cuttings from a wad of paper towels; Item 104.2, which was a swab from the inner edges of the handles of the multitool; and Item 131.1.2.1, which was a cutting from the left thigh area of a pair of pants. R. 1067, ll. 6-17; R. 1453. Petitioner's objection was based on Rule 702, SCRE, and Rule 403, SCRE. R. 1453.

Petitioner proffered the testimony of Dr. Norah Rudin, who was qualified as an expert in forensic DNA analysis, in support of his motion. R. 50, l. 2 – 122, l. 11. Ryan DeWane, the state's expert DNA analyst who analyzed the evidence in this case, also testified pretrial. R. 125, l. 7 – 141, l. 21. Based on her analysis, DeWane developed a DNA profile from the cutting of the wad of paper towels. She interpreted this DNA profile as a mixture originating from three individuals. One scenario is that Josephson, the decedent, and two unidentified, unrelated individuals contributed to the mixture versus a scenario of three unidentified, unrelated individuals contributing to the mixture. "The result of that comparison is the DNA profile is approximately 2.7 septillion

times more likely if Samantha Josephson and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." R. 1147, ll. 4-20. "Under the same scenarios involving Nathaniel Rowland [Petitioner]," DeWane determined that "the DNA profile is approximately 3 times more likely if Nathaniel Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." R. 1147, l. 21 – 1148, l. 1. She concluded that the "statistic supports the inclusion" of both Petitioner and Josephson's DNA in the mixture with the "statistic associated with" Josephson falling into the "very strong support range" and the "statistic associated with" Petitioner falling into the "weak range." R. 1148, ll. 2-12.

As to the cutting from the pair of pants, DeWane developed a DNA profile interpreted as a mixture of three individuals. One scenario is that Josephson "and two unidentified, unrelated individuals contributed to the mixture versus a scenario of three unidentified, unrelated individuals contributing to the mixture." "The result of that comparison is the DNA profile is approximately 3.1 septillion times more likely if Samantha Josephson and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." Under the same scenario involving Petitioner, DeWane maintained the "DNA profile is approximately 5 times more likely if Nathanial Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." R. 1158, l. 9 – 1159, l. 11.

As to the swab of the inner edges of the handles of the multitool, DeWane developed a DNA profile she interpreted as a mixture originating from three individuals. R. 1160, l. 22 – 1161, l. 9. "Scenario one is Samantha Josephson and two unidentified, unrelated, individuals contributed to the mixture versus 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 Josephson and two unidentified, unrelated individuals contributed to the mixture than if

three unidentified, unrelated individuals contributed to the mixture." The level of support for Josephson's inclusion in the mixture falls into the very strong support range. R. 1160, l. 22 – 1161, l. 21. "Under the same scenarios" regarding Petitioner, DeWane determined "the DNA profiled is approximately 49 times more likely if Nathaniel Rowland and two unidentified, unrelated individuals contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture." The level of support for Rowland's inclusion in the mixture falls into the weak support range. R. 1161, l. 22 – 1162, l. 14.

DeWane performed additional analysis on the swab from the multitool called "Y-STR methodology." Based on this methodology, DeWane developed a Y-STR profile containing a mixture of at least two male individuals. The profile from the major contributor to this mixture is an unidentified male. However, DeWane opined that the profile of the minor contributor to the mixture "*matches* the Y-STR profile of Nathaniel Rowland. 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." R. 1162, l. 15 – 1163, l. 10 (emphasis added).

Before DeWane testified before the jury, defense counsel argued her testimony concerning these three items, the swab from the inner edges of the handle of the multitool and the cuttings from the wad of paper towels and pants, should be excluded because of the weak support for the inclusion of Petitioner's profile in the mixture of DNA developed. R. 156, l. 10 – 157, l. 8; R. 1069, l. 4 – 1070, l. 22. Counsel asserted the minimal probative value of the evidence was outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. R. 1070, ll. 16-22. She contended that the jury will likely be misled to believe Petitioner's DNA "matched" the DNA found on these items. She further argued the evidence would not assist the jury in understanding the evidence or determining a fact at issue as required by Rule 702, SCRE, because of the weak support for Petitioner's inclusion in the mixture of DNA found on the items. R. 1453.

The judge ultimately overruled Petitioner's objection. He found 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 . . . It could well mislead the jury for the jury to not hear this complete testimony concerning what was analyzed and what was found." R. 1081, ll. 1-13. The judge concluded that Petitioner's argument "goes to the weight and not the admissibility" of the evidence. R. 1081, ll. 19-21. He asserted, "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." R. 1081, ll. 21-24.

The Court of Appeals held the judge did not abuse his discretion by admitting DeWane's testimony pursuant to Rule 702 because the judge properly heard the testimony *in camera* and applied the Council factors before admitting the evidence. Additionally, the court held the judge did not abuse his discretion by admitting the testimony pursuant to Rule 403. It emphasized the judge was not required to determine whether the expert's testimony was correct. The court determined the testimony "assisted the jury in understanding the results of the DNA analyses on multiple, relevant items of evidence." Moreover, the Court of Appeals concluded "the DNA mixtures were probative of who murdered Josephson." Lastly, the court held that even if some portion of the expert's testimony was erroneously admitted, such error would be harmless.

Discussion

The Court of Appeals erred by holding the trial judge did not abuse his discretion by admitting testimony from the state's expert DNA analyst concerning Petitioner's inclusion in a mixture of DNA found on a multitool and cuttings from a wad of paper towels and a pair of pants, all found in the trash behind Maria Howard's residence, since the testimony could not assist the jury in understanding the evidence or determining a fact at issue as required by Rule 702, SCRE, and because 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 Petitioner's inclusion.

"When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect." Id. (citing Rule 403, SCRE). Unfair prejudice pursuant to Rule 403 "is the tendency of the evidence to suggest a decision based on something other than the legitimate probative force of the evidence." Phillips, 430 S.C. at 328, 844 S.E.2d at 656 (citing State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014)).

In United State v. Graves, 465 F.Supp.2d 450 (E.D. Pa. 2006), Graves moved to exclude DNA evidence from his trial for armed bank robbery. The government sought to admit DNA analysis from an umbrella allegedly used and discarded by the robber and a pair of sneakers taken from Grave's girlfriend's residence that purportedly matched shoe prints from the teller counter. Id. at 452-53. Graves argued "because of the low statistical significance of the DNA evidence, its probative value is substantially outweighed by the danger of unfair prejudice and confusion of the issues under Rule 403, FRE." Id. at 457. The government argued the statistical significance went to the weight of the evidence rather than its admissibility. Id. The DNA report regarding the sneakers indicated the probability of selecting an unrelated individual at random from the African American population who could be a potential contributor ("random match probability") to the mixture of DNA detected was 1 in 2,900 for the left sneaker and 1 in 3,600 for the right sneaker. Id. at 453-54. For the umbrella, the report indicated the presence of DNA of more than one individual and listed a random match probability of approximately 1 in 2. Id.

While the court recognized that some courts have admitted DNA evidence even when the statistical significance of the data was relatively low and the probability of a random match in the

relevant population was rather high, it recognized the potential danger "for the jury to misconstrue the statistical significance of the DNA evidence." Id. at 458-59. The court held the sneaker DNA evidence was admissible because it had a far greater random match probability and in light of the safeguards of cross-examination, proper explanations, and clarifying jury instructions. Id. at 459. However, the court held the umbrella evidence was inadmissible, writing: "In contrast, 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.

In Phillips, this Court held the judge erred by admitting testimony from a DNA analyst that Phillips could not be excluded as a contributor to a mixture of DNA recovered from two samples taken from the crime scene: the grip of the gun used to kill the decedent and the decedent's right front jeans pocket where money or other items of value were allegedly removed by the perpetrator. 430 S.C. at 321, 844 S.E.2d at 652. The analyst testified, however, that "the statistical probability that another person—not Phillips—could have been the contributor to the touch DNA sample taken from the gun was one in two hundred, and the probability another person was the contributor to the jeans pocket sample was one in two." Id. at 325, 844 S.E.2d at 654. The Court held the probative value of the expert's testimony connecting Phillips to the DNA on the gun was minimal because Phillips admitted he touched the gun earlier in the day. Id. at 327, 844 S.E.2d at 655. It further concluded that "[a]t first glance" the probative value of the evidence "Phillips had his hand in the [decedent's] pocket" appeared high because there was no innocent explanation. Id. at 328, 844 S.E.2d at 655. However, because the expert "testified that one in two people—half the population—could have been the person who left the DNA in [the decedent's] pocket," the probative value of the evidence is "minimal." Id.

This Court then balanced the minimal probative value of the expert's testimony "against the danger of unfair prejudice, confusion of the issues, or misleading the jury." Id. at 328, 844 S.E.2d at

655-656 (citing Rule 403, SCRE). After a thorough analysis, the Court determined the expert's testimony, which "involved three fundamental concepts"—"touch DNA, non-exclusion DNA, and random match probability"—had a significant potential to confuse and mislead the jury. Id. at 330-331, 844 S.E.2d at 657 (internal quotation marks omitted). Pursuant to Council and Rule 702, this Court held the judge abused his discretion by admitting the testimony. The judge failed to require the state to present a factual and scientific foundation for the expert's testimony as required. Id. at 341, 844 S.E.2d at 662. When this Court conducted such an analysis on appeal, it concluded the evidence should have been excluded. Id.

In this case, because of the weak support for the inclusion of Petitioner in the mixture of DNA found on the swab from the multitool and the cuttings from the wad of paper towels and pants, DeWane's testimony concerning these items could not assist the jury in determining a fact at issue or in understanding the evidence as required by Rule 702. Moreover, for this same reason, the evidence had little to no probative value. However, there is a strong probability that DeWane's testimony misled and confused the jury because the jury likely believed Petitioner's DNA "matched" the DNA found on these items. Therefore, the evidence was unfairly prejudicial to Petitioner due to the significant chance it was misused by the jury. The evidence should have been excluded pursuant to Rule 403.

The deputy solicitor's closing argument is evidence of how DeWane's testimony concerning the results of her analysis on the multitool misled and confused the jury. He asserted, "**[W]ell, that's not the only DNA [Josephson's blood] found on that thing actually.** ***Nathaniel Rowland's DNA was included as part of the mixture on the handle of this weapon, the murder weapon*****. It was included** ***by way of two different methodologies*** you heard about, included in the mixture. **His DNA on the handle.**" R. 1376, ll. 2-9 (emphasis added). The solicitor improperly used DeWane's testimony exactly as the defense feared—to mislead the jury to believe that Petitioner's DNA was conclusively on the multitool, the alleged "murder weapon."

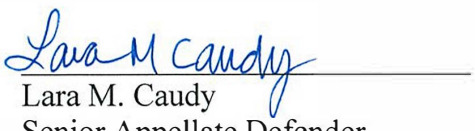
Moreover, unlike the Court of Appeals held, the erroneous admission of DeWane's testimony was not harmless. "The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (citing State v. Charping, 313 S.C. 147, 157, 437 S.E.2d 88, 94 (1993); See Chapman v. California, 386 U.S. 18, 24 (1967). "Our jurisprudence requires [this Court] not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict. Id. at 389-90, 728 S.E.2d at 475; See State v. Mizzell, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). The evidence in this case was wholly circumstantial. The state improperly used DeWane's testimony to argue that Petitioner's DNA was conclusively on the multitool, the alleged "murder weapon." Consequently, it cannot be said beyond a reasonable doubt that DeWane's erroneously admitted testimony did not contribute to the verdict.

Respectfully, this Court should grant certiorari and hold the trial judge abused his discretion by admitting this testimony, reverse Petitioner's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant certiorari and order full briefing pursuant to Rule 242(i), SCACR. Petitioner ultimately requests this Court reverse his convictions and remand for a new trial.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of November, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 6084 (S.C. Ct. App. Filed August 21, 2024)
Lower Court Case No. 2019-GS-40-02450, 2019-GS-400-02453, 2019-GS-40-02528

THE STATE,

RESPONDENT,

V.

NATHANIEL DAVID ROWLAND,

PETITIONER.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari in this case have been served on Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS); and the Court of Appeals, at 1220 Senate Street, Columbia, SC 29201, this 4th day of November, 2024.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

From:	Mcinnis, Sara
To:	mbrown@scag.gov
Cc:	abennett@scag.gov; Caudy, Lara
Subject:	2024-001771 The State v. Nathaniel D. Rowland Petition for Writ of Certiorari to the Court of Appeals
Date:	Monday, November 4, 2024 2:39:00 PM
Attachments:	2024-001771 The State v. Nathaniel D. Rowland Petition for Writ of Certiorari to the Court of Appeals.pdf

Good Afternoon Ms. Brown,

Please find attached for service in the above-referenced case the petition for writ of certiorari to the Court of Appeals, which will be filed with the Supreme Court today, November 4, 2024, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330