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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable Clifton Newman, Circuit Court Judge

THE STATE .....RESPONDENT

V.

NATHANIEL DAVID ROWLAND. ..... PETITIONER.

Appellate Case No. 2024-001771

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PETITIONER'S 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?

RESPONDENT'S RESTATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals err in finding that the trial judge did not abuse his discretion by denying Rowland's motion to suppress evidence obtained as a result of the stop of his car where the brief, investigatory stop was justified by reasonable suspicion and an exigent circumstance: the officer who stopped him was aware that the victim was last seen getting into a black, newer model Impala consistent with Rowland's car twenty-four hours earlier and roughly a block away from where Rowland was stopped, she was still missing, her whereabouts were still unknown, and the circumstances surrounding her disappearance suggested that she had met with foul play.

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

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

that was clearly at issue, and the probative value of her testimony was not substantially outweighed by its prejudicial effect.

STATEMENT OF THE CASE

Petitioner, Nathaniel David Rowland (Rowland), is confined in the South Carolina Department of Corrections (SCDC) as the result of his Richland County convictions and sentence arising from the kidnapping and murder of Samantha Josephson. The Richland County Grand Jury indicted him on April 16, 2019 for murder (2019-GS-40-2450), kidnapping (2019-GS-40-24503, and possession of a firearm during the commission of a violent crime (2019-GS-40-2528). (R. 1532-1537). The Honorable Clifton Newman held a pretrial hearing on July 16, 2021, at which Rowland was present and represented by counsel. Rowland then received a jury trial before Judge Newman on July 19-23, and 26-27, 2021. Assistant Public Defenders Tracy E. Pinnock, Alicia D. Goode, and Robert W. Pillinger, of the Richland County Public Defender's Office, represented him in the trial court. Fifth Circuit Solicitor Byron E. Gipson, along with Deputy Solicitors Daniel R. Goldberg and April W. Sampson, and Assistant Solicitor Amanda Marie Gaston prosecuted the case. The jury convicted him of all three charges (R. 1428- 1431), and Judge Newman sentenced him to life without parole for murder and five years concurrent for the weapons offense. No sentence was imposed for kidnapping because Rowland was sentenced for murder. *See* S.C. Code Ann. § 16-3-910 (2021). (R. 1442-43; R. 1532 -1537(sentencing sheets)). Rowland timely served and filed his notice of appeal.

After briefing, the Court of Appeals heard argument on May 7, 2024. On August 21, 2024, the Court of Appeals issued a published opinion affirming the convictions and sentences. Rowland filed a timely petition for rehearing which was denied on September 19, 2024.

On November 4, 2024, Rowland filed a petition for writ of certiorari requesting review by this Court. This return follows.

GENERAL SUMMARY OF FACTS

For purposes of this return, Respondent will reference the general summary provided by the Court of Appeals in its opinion:

> On Thursday, March 28, 2019, Samantha Josephson, a senior at the University of South Carolina, went out with a group of friends to the Five Points neighborhood in Columbia. The group ended up at the Bird Dog bar on Harden Street. Josephson kept in contact with her boyfriend in Mount Pleasant, Greg Corbishley, throughout the evening via phone calls, text messages, and FaceTime conversations. At approximately 2:04 a.m., Josephson called Corbishley to inform him that she ordered an Uber to take her home to her apartment at the Hub on Main Street. The couple ended the phone call, but Corbishley continued to track Josephson's location via the Find My Friends feature on iPhones. Corbishley testified it was normal for him to monitor Josephson's location on nights out to ensure she made it home safely. While he was tracking her location, Corbishley noticed Josephson's path of travel was going south of the Five Points neighborhood, the opposite direction in which a person would travel to go from the Bird Dog bar to the Hub apartments. Corbishley called, texted, and Snapchatted Josephson several times with no response. At around 2:30 a.m., Corbishley noticed Josephson's location had been turned off, and her last pinned location was at Montgomery Avenue and South Ott Road in the Rosewood area. [FN 1] Corbishley testified that, because Josephson never turned off her location during their relationship, he initially surmised she had accidentally dropped her phone in the Uber on the ride home. He exchanged text messages with Josephson's roommates at around 3:30 a.m. explaining the situation but ultimately fell asleep at 5:00 a.m.
>
> When he woke up at around 11:00 a.m. on March 29, Corbishley saw messages from Josephson's roommates that she never returned home, she did not show up for her morning shift at Liberty Tap Room in the Vista, and her roommates had notified the police. The officer who responded to the Hub to meet with Josephson's roommates gathered information to file a missing person report and issue a be on the lookout (BOLO) to the police department and the public. At 5:37 p.m., all Columbia Police Department employees received an email from Investigator Chris Odom requesting assistance in locating Josephson. A missing person awareness bulletin attached to the email included a photograph of Josephson, her information, and the following details about her disappearance:
>
> > The Columbia Police Department's Special Victim's Unit is seeking information leading to the location of the above missing individual. Josephson was last seen outside of Bird Dog in Five Point[s] around

> 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.

Law enforcement, friends, and family began to search for Josephson. They initially searched at her last known location in Rosewood but found nothing. The group then visited the Bird Dog bar in Five Points where Josephson was last seen by her friends, and where she told Corbishley she was as she left to return home the previous night. The Bird Dog staff provided them with video surveillance from outside the bar where they saw Josephson get into a black Chevrolet Impala. At 7:10 p.m., all Columbia Police Department employees received an updated BOLO for Josephson that read, "There is video of the victim getting into a black Chevy Impala (newer model)" and included a still shot of the vehicle.

Officer Jeffrey Kraft with the City of Columbia Police Department began his shift at 6:00 p.m. on Friday, March 29. At the time his shift began, Ofc. Kraft was aware of Josephson's status as a missing person and the circumstances surrounding her disappearance based on the two BOLO emails the police department employees received. On that night, as part of his regular duty, Ofc. Kraft was patrolling the Five Points and Rosewood areas. While on patrol, at approximately 2:33 a.m. on Saturday, March 30, Ofc. Kraft noticed a newer model black Chevrolet Impala that matched the vehicle in the BOLO travelling north on Harden Street heading into the Five Points district. Ofc. Kraft got behind the vehicle as it turned left at the intersection of Harden and Blossom Streets, approximately two blocks from where Josephson was last seen twenty-four hours prior at the Bird Dog. As the Impala turned onto Blossom Street, Ofc. Kraft activated his blue lights to initiate a traffic stop. The Impala continued to travel on Blossom Street before improperly turning left onto Saluda Avenue and coming to a stop facing the wrong way on the one-way road.

Ofc. Kraft approached the vehicle on the driver's side and spoke to the driver, who was later identified as Appellant. Ofc. Kraft identified himself and asked Appellant for his driver's license, which Appellant admitted he did not have. Ofc. Kraft then smelled marijuana emanating from the vehicle. When asked who was smoking, Appellant admitted he had been smoking earlier. Ofc. Kraft ordered Appellant out of the car and informed him he was stopped because his vehicle matched the description of a suspect vehicle. Before Ofc. Kraft could finish his statement, Appellant "took off running." He was ordered to stop but did not comply. Ofc. Kraft initially began pursuit of Appellant, but soon returned to the vehicle while other officers apprehended him because there was another individual in the vehicle at the time of the traffic stop. The woman in the passenger seat was identified as Vaniesha Wilson, a friend of Appellant who stated they were coming from Appellant's sister's house on Hemphill Road in Rosewood. Ofc. Kraft began a preliminary search of the vehicle where he discovered marijuana "shake" throughout the vehicle, as well as a rose gold iPhone and a set of keys with a pink key ring labeled "room". Ofc.

> Kraft and additional officers began to notice what looked to be blood stains, footprints on the interior back windows, and cleaning supplies scattered throughout the vehicle. While Ofc. Kraft was securing the vehicle during Appellant's apprehension, he was informed by another officer that Josephson's body had been discovered at approximately 2:00 p.m. on Friday, March 29, by turkey hunters in a remote, wooded area in Clarendon County. [FN 2] Thus, officers terminated their preliminary search and waited for crime scene technicians to arrive to properly process the vehicle and its contents. [FN 3]
>
> > [FN 1] It was later discovered that Josephson's last known location was in the vicinity of Appellant's sister's home at Hemphill Road in Rosewood.
> >
> > [FN 2] Josephson's body was recovered in a wooded area off of a "farmer's access road" in New Zion. The hunters who found her body testified that the area was not one of high traffic, and there is "no reason [a person] would just end up there." The area where she was found was later determined to be approximately one mile "straight through the woods" to Appellant's parents' home.
> >
> > [FN 3] Crime scene investigators recovered an overwhelming amount of evidence against Appellant. A brief overview of some of this evidence includes: (1) forensic analysis/cell site location information of GPS coordinates of Appellant, Appellant's girlfriend, and Josephson; (2) video surveillance from various locations in the city of Columbia; (3) trace evidence, including various prints, in Appellant's vehicle; and (4) DNA mixtures on various items in Appellant's car and other locations.

State v. Rowland, 444 S.C. 84, 91–94, 905 S.E.2d 825, 828–30 (Ct. App. 2024), *reh'g denied* (Sept. 19, 2024).

A more complete listing of the copious evidence of Rowland's guilt may be found in the final brief of respondent at pp. 3-14. Due to the page limitations for returns, and as stated, Respondent will rely for purposes of this return on the Court of Appeals' summary.

STANDARD OF REVIEW

Issue One

"[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court's factual

findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review." *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

Issues Two and Three

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

ARGUMENT

Primarily, certiorari review is not warranted as Rowland has shown only an ordinary application of proper appellate review to the issues presented to the Court of Appeals. Rowland has failed to show "there are special or important reasons" for additional review. Rule 242 (b), SCACR. Consequently, Respondent submits the petition should be denied in its entirety.

I. The Traffic Stop.

Treatment in the Court of Appeals:

The trial judge denied the defense's motion to suppress evidence from the trial stop finding that the stop was "part of the officer's investigating the missing person. It was proper for the officer to act as the officer did in this instance." (R. 46). On appeal, Rowland argued the trial court erred and asserted that "there was no information that any crime had occurred or that Appellant

was engaged in criminal activity when Ofc. Kraft initiated the stop" thus, the officer lacked reasonable suspicion and the stop was improper. (*See* Op. at 7).

The Court of Appeals rejected Rowland argument and found that "Ofc. Kraft was acting diligently in the course of a missing person investigation and he had reasonable suspicion for the stop." (Op. at 8). Indeed, the Court of Appeals further reasoned that the action in these discrete circumstances fell under the "exigent circumstance" doctrine as the officer was actively attempting to find a missing person. (Op. at 9). Moreover, Rowland's actions, including flight, and the smell of marijuana permitted extension of the stop. The Court of Appeals set out these facts as supported by the record:

> 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." Further, after Ofc. Kraft's blue lights were activated, Appellant turned the wrong way down a one-way road. This fact coupled with Appellant's lack of identification, the apparent odor of marijuana emanating from the car, and Appellant's flight on foot permitted further detention by law enforcement...

(Op. at 9).

The Court of Appeals, applying this Court's precedent in *Robinson v. State*, 407 S.C. 169, 754 S.E.2d 862 (2014) and *State v. Frasier*, 437 S.C. 625, 879 S.E.2d 762 (2022), and federal law supporting the exigent circumstance exception, thus, found no abuse of discretion in the trial judge's ruling. (Op. at 9-10). Rowland can show no error in the Court of Appeals ruling.

Discussion:

An investigative traffic stop does not violate the Fourth Amendment when the police have reasonable suspicion that the vehicle's occupants are involved in criminal activity. *United States v. Bell*, 183 F.3d 746, 749 (8th Cir. 1999); *see also Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). Under

Terry, "a policeman who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke that suspicion." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Thus, reasonable suspicion exists when an officer has "a particularized and objective basis for suspecting legal wrongdoing" based on the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted).

In *Frasier* this Court explained that:

> Although reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion. [*Robinson*, 407 S.C.] at 182, 754 S.E.2d at 868. In other words, for an officer to have reasonable suspicion, "there [must] be an objective, specific basis for suspecting the person stopped of criminal activity." *Id.* While reasonable suspicion is not a high bar and "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). This inquiry involves the totality of the circumstances, and "[c]ourts must give due weight to common sense judgments reached by officers in light of their experience and training." *State v. Moore*, 415 S.C. 245, 252-53, 781 S.E.2d 897, 901 (2016).

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

The Court of Appeals correctly considered that based on the facts and reasonable inferences that Ofc. Kraft could draw from these facts, that he had reasonable suspicion to briefly stop Rowland's Impala. *See Robinson*, 407 S.C. at 182, 754 S.E.2d at 869 ("The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences, 'reasonably

warrant' the intrusion").[1] *At the very least*, his knowledge provided the minimal, objective justification necessary for an investigatory stop. *See, e.g., United States v. Juvenile TK*, 134 F.3d 899, 903 (8th Cir. 1998) (finding reasonable suspicion of criminal activity that justified an investigative stop based on the vehicle's temporal and geographic proximity to the crime scene); *United States v. Harrington*, 923 F.2d 1371, 1373 (9th Cir. 1991) (reasonable stop of defendant matching general physical description of bank robbery suspect, notwithstanding fact that an hour and ten minutes had passed since suspect was last seen by witnesses), *cert. denied*, 502 U.S. 854 (1991); *Creighton v. Anderson*, 922 F.2d 443, 450 (8th Cir.1990) (reasonable to stop car even though description of getaway car was somewhat different than that of defendant's car); *Thomas v. Newsome*, 821 F.2d 1550, 1553 & n. 3 (11th Cir. 1987) (reasonable suspicion to perform *Terry* stop even though, when officer saw blue Pinto driven by a black male as described in police bulletin, seven hours had passed since motel robbery), *cert. denied*, 484 U.S. 967 (1987); *United States v. Longmire*, 761 F.2d 411, 419–20 (7th Cir. 1985) (four hours after receiving radio dispatch closely matching description of car under surveillance, automobile was stopped and searched for weapons, and reasonable suspicion was not dispelled by fact that dispatch indicated nothing more than the race of the two black females, and failed to indicate that the women were armed). *Cf. Oliver v. United States,* 656 A.2d 1159, 1167 (D.C. 1995) (recognizing the "unique qualities" of kidnapping justifying immediate police action and that "a kidnap victim may be deemed inherently endangered"). Moreover, as the Court of Appeals noted, the "exigent circumstances" doctrine applied, as well. (Op. at 9). Notably, the court referenced *Mincey v. Arizona,* 437 U.S. 385, 392 (1978), with the parenthetical explanation, "The need to protect or preserve life or avoid serious

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

injury is justification for what would be otherwise illegal absent an exigency or emergency." (Op. at 9).

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

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

in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article").

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

Accordingly, the trial record shows no error of law in the trial judge's ruling or lack of factual support, thus, no abuse of discretion. The Court of Appeals did not err in affirming the lower court. Consequently, Rowland has failed to show certiorari review is warranted.

II. Expert Opinion: Handwriting.

Treatment in the Court of Appeals:

Rowland's counsel moved at trial to exclude SLED Agent Jamieson's testimony about the handwriting on the back of an envelope seized from Rowland's car during the execution of a search warrant when compared with two known documents from Rowland's employment history. The agent was a credentialed document examiner with education in, among other things, "the examination and comparison of handwriting." He was qualified as an expert in questioned

document analysis without objection. (R. 48-49-168-169). The agent explained that his terminology allowed ranking which including "identification," "strong probability" (or almost certain), and "probable" (or "a high degree of likelihood"). (R. 164-165). As to the writing on the envelope found in Rowland's car, he concluded that it was "probable, meaning a high degree of likelihood, that the writer of the known documents who I took to be Nathan Rowland wrote the writings on the questioned document..." (R. 164-165; 170-172). Rowland argued that the expert opinion could not assist the factfinder; that it was not relevant, and any probative value was substantially outweighed by unfair prejudice, confusion of the issues, and misleading the juror, citing Rules 702, 401, and 403, SCRE. (Op. at 10).

The Court of Appeals initially noted the importance of the note. The note – which has a listing of a "to do" list that included an entry "duct tape, tape whole body" and "gloves" "gasoline" and "matches" – was written in Rowland's hand, and had on it his fingerprint and the victim's blood. (Op. at 11; *see also* R. 826-827). The trial judge denied the motion. He first quoted Rule 702, SCRE, and observed his "gatekeeping function" under the factors stated in *Council*.[2] He then found that Agent Jamieson had "forty years of training and experience," and, noting the standard of Rule 702, the trial judge found that:

> The report of his examination that was handed up to me and which he testified to states that it is probable, meaning a high degree of likelihood, that the writer of Items 8 and 21, which were [the] known writings of [Rowland], that the same person who wrote those two items, i.e. [Rowland], also wrote Item 22. He indicated some limiting factors in not having comparable or other comparable known writings. But based on the writings that he had, it's his view that, to a high degree of likelihood, that that is -- those items were written by [Rowland]. He believes that if he wrote one and two, he probably wrote three to a high degree of certainty, and the law does not and the standard does not require certainty by an expert.

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2 *State v. Council*, 335 S.C. 1, 519 S.E.2d 508 (1999).

> If the testimony would assist the trier of fact, and the person offering the testimony and the opinion offered has a sufficient degree of reliability, it should be admitted for the jury then to weigh the strength of the testimony. In ruling on the motion to exclude the testimony of Mr. Jamieson, that motion is denied for the reasons just stated.

(R. 809-810).

The testimony was received over Rowland's objection. The agent opined: "My determination was that it's probable that the writer of the known documents ... also wrote the questioned document. Probable means a high degree of likelihood that they were written all by the same writer." (R. 828-832). He also explained in his testimony before the jury the scale of terminology that he uses, as he had in the pretrial hearing. (R. 831-834). Counsel's cross-examination fully vetted where "probable" stood on the scale of possible determinations he could reach for questioned documents. (R. 834-839). The Court of Appeals concluded that the trial judge did not abuse his discretion because Rowland's argument was essentially the opinion was not sure enough. (Op. at 12). However, a trial court is not tasked with determining the correctness of the opinion, but the expert's application of method used in the discipline at issue. (Op. at 12). Further, the court resolved the testimony was still highly probative, and outweighed potential danger of unfair prejudice. (Op. at 13).

Discussion:

The Court of Appeals correctly assessed the limited nature of Rowland's objection. Rowland did not object to Agent Jamieson's qualification as an expert either pretrial or at trial (*see* R. 822; R. 169) and did not assert that handwriting analysis is not beyond the common knowledge of the jury. *See Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013) ("where a subject is beyond the common knowledge of the jury, expert testimony is required"). Nor did he contend that Agent Jamieson's testimony did not satisfy any of the *Council*

factors for the admission of expert testimony under Rule 702, SCRE,[3] except for reliability. Rather, he claimed that the challenged evidence was not reliable because Agent Jamieson found that it was "probable" that Rowland wrote Sate's Ex. 56. Rowland's argument was fundamentally flawed, and failed to demonstrate any potential abuse of discretion by the trial judge.

The trial judge made the requisite threshold determination of reliability under Rule 702, SCRE, and his finding is supported by the record. The trial judge's "gatekeeping" role does not mean the trial judge must decide if the expert is "correct." *See Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. "[W]hether to accept the expert's opinions or not is a matter for the jury to decide. Trial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence." *Id.* at 639-40, 817 S.E.2d at 272. Similarly, there is no merit to his argument that this evidence was not relevant under Rule 401, SCRE, or that it did not assist the jury in understanding the evidence or determining a fact at issue.

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. Under Rule 401, SCRE, evidence is "relevant" if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Contrary to Rowland's assertion, Agent Jamieson's opinion was relevant because it was probative on the issue of who wrote the information on State's Ex. 56. Hence, it

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

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

Moreover, the probative value of his opinion was not substantially outweighed by its prejudicial effect under Rule 403. Rowland contends that this evidence "was unfairly prejudicial, confusing, and misleading" under Rule 403.27 " 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " *Gray*, 408 S.C. at 616, 759 S.E.2d at 168 (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998)). This Court in *Phillips* stated that "the danger of unfair prejudice is a separate analysis from the danger of confusion of the issues or misleading the jury." *Phillips*, 430 S.C. at 329, 844 S.E.2d at

656. Unlike the DNA evidence in *Phillips*, the State elicited precisely how and why Agent Jamieson concluded that the same person who wrote the information in Rowland's employment records "probably" wrote State's Ex. 56. His testimony also fully explained the scale of terminology that he uses in conducting handwriting analysis and where "probably" falls on that scale. Appellate courts give significant deference to Rule 403 rulings, *Lee v. Bunch*, 373 S.C. 654, 658, 647 S.E.2d 197, 199 (2007), and should reverse "only in exceptional circumstances." *Johnson v. Horry County Solid Waste Authority*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010). There are no exceptional circumstances in this case and the trial judge's ruling must be affirmed, which is precisely what the Court of Appeals did.

Finally, Respondent asserts that even if error existed (and it maintains it does not), any alleged error must be viewed as harmless beyond a reasonable doubt. *See Lowry v. State*, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) ("Harmless error review looks to the basis on which the jury actually rested its verdict. .... From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must 'find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record' "). *See also Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018) (evidence of a defendant's guilt is "overwhelming" when it includes "something conclusive, such as DNA evidence demonstrating guilt"). Rowland's claim of prejudice from admission of State's Ex. 56 ignores that his fingerprint is on it, as is the victim's blood. (*See* R. 1041-42; 1060-1061; 1123-1125). A reasonable inference from the presence of his fingerprint on the envelope is that he may have written the handwritten information on it or that he was *at the very least* familiar with its contents. The presence of her blood on it is evidence that it was in his Impala when he murdered her. Given this and the State's other evidence proving his guilt of the crimes charged, any error in admitting testimony necessarily was harmless

beyond a reasonable doubt. Further, although this was a circumstantial evidence case, proof that Rowland kidnapped and murdered Samantha Josephson was overwhelming. The State's evidence showed that: Samantha was stabbed 120 times with the muti-tool and had lost all but 3 tablespoons of blood as a result; her footprints and a handprint were found in the Impala; her DNA was found on a number of areas in the Impala, as well as on a number of items seized from Howard's residence and from the trash behind it, including articles of his clothing; 14 mixtures of DNA of multiple contributors reflected the presence of DNA from both her and Rowland, and both Samantha's and Rowland's DNA was on the murder weapon, and there was surveillance video of Rowland driving around the Five Points area for about fifteen minutes before he spotted her and this video showed her mistakenly getting into his car. When this and the State's other circumstantial evidence is considered in total, the evidence was so overwhelming that no other result could be reached. (*See* FBOR, pp. 4-15 and R, 1100-1106; 1122-1166; 1233-1270; 1272-1279; 343-346; 495-499; 1295-1301; 1326-1328; States's 13 and 12).

Even so, Respondent maintains that the trial record shows no error of law in the trial judge's ruling or lack of factual support, thus, no abuse of discretion. The Court of Appeals did not err in affirming the lower court. Consequently, Rowland has failed to show certiorari review is warranted.

II. Expert Opinion: DNA.

Treatment in the Court of Appeals:

Similarly to the argument regarding handwriting, Rowland complained that testing on three items (paper towels; cutting from Rowland's pants, and a swab from a multi-tool knife) should not be admitted as they provided only "weak support" for his inclusion. (Op. at 13-14). The Court of Appeals reasoned, as with the prior challenge, that case law does not require a trial

judge to consider the correctness of the opinion, and Rowland did not challenge the credentials or science. (Op. at 15-16). The Court of Appeals also considered that the testimony was "crucial for the jury, albeit not conclusive" on identity of the murderer, and the great probative value outweighed any potential danger of unfair prejudice, confusion of the issues or any misleading of the jury, especially where the testimony was presented to "assist[] the jury in understanding the results of the DNA analyses on multiple, relevant items of evidence." (Op. at 16). Lastly, though not finding error, the Court of Appeals considered that any potential error regarding the opinion as to these three items could only be considered harmless in light of the virtual "avalanche" of evidence demonstrating the fatal connection between Rowland and his victim, and also in light of the fact Rowland was only contesting three out of over one hundred items tested under DNA protocols. (Op. at 16-17).

Discussion:

The record supports that the trial judge did not abuse his discretion. The Court of Appeals properly assessed Rowland's argument was much like the prior argument against the handwriting analysis. Again, a trial judge's "gatekeeping" role does not require the trial judge to decide if the expert is "correct." *Roy Lee Jones*, 423 S.C. at 640-41, 817 S.E.2d at 272. Rowland's Rule 702 argument lacks merit. Further, his arguments that this evidence was not relevant under Rule 401, SCRE, or that it did not assist the jury in understanding the evidence or determining a fact at issue also lack merit.

Here, Agent Dewayne's opinion as to these items was relevant because it was probative on the issue of the identity of the person who murdered Samantha Josephson, a fact that was clearly at issue. *See State v. Phillips*, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020) ("To understand the probative value of any evidence, we must consider what was practically in dispute at trial").

Indeed, she specifically stated that both Samantha's and Rowland's DNA was included in the mixture of DNA developed from the cutting of the wad of paper towels, despite the very low likelihood ratio for including Rowland (*i.e.*, three times as likely). (R. 1147-1148). Because there were no eyewitnesses to the murder, the fact Rowland's DNA was on the murder weapon and the other items constituted important, albeit not conclusive, circumstantial proof of identity, even if there was "weak support" for including his profile in the mixture of DNA that was developed. *See Council*, 335 S.C. at 18-19, 515 S.E.2d at 517 (expert testified mitochondrial DNA analysis on pubic hair found at the crime scene "most probably" belonged to the defendant).

Further, the Court of Appeal correctly reasoned that the probative value of her opinion was not substantially outweighed by its prejudicial effect under Rule 403. Agent Dewayne's testimony that Rowland's DNA was included in each of the mixtures at issue could not be unfairly prejudicial because there was very strong support for inclusion of the victim on each item, including the murder weapon. Also, each item was seized from the trash behind the residence of Rowland's girlfriend. Further, he is only complaining of testimony of three items where his DNA was included in the mixture of DNA out of fourteen items where both his and the victim's DNA were included.

Rowland's contention that this evidence "was unfairly prejudicial, confusing, and misleading" under Rule 403, SCRE, is likewise without merit as resolved by the Court of Appeals. Unlike the DNA evidence in *Phillips*, before the State elicited evidence of Agent Dewayne's findings, it first elicited her testimony that explained DNA analysis, what is meant by a "mixture," that SLED uses "a statistical software profile called STRmix to do our comparisons," and how analysis with this software enables SLED to include or exclude someone from a mixture of unknown individuals. She also explained that "If we have any possible inclusions, then we report

that conclusion with a statistic." On the other hand, no statistic is assigned to an excluded individual. (R. 1094-1096). Importantly, she explained that:

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

(R. 1096-97).

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

Further, Rowland's counsel was able to fully vet Agent Dewayne's analysis of each of the items that she tested and point out any perceived defect that counsel found to the jury. (*See* R. 1165-1215). Among the various matters that counsel established, she elicited testimony that it is easy to transfer touch DNA; that "DNA can transfer from one item to another without the person having direct contact with that originating source;" and that one would likely find a car's owner DNA in the car if the owner drove it. (R. 1170-1172). More importantly, she specifically

questioned Agent Dewayne's analysis of the three items at issue, emphasizing the "weak support" for Rowland's inclusion on each of these items. She also pointed out that Rowland's DNA was not on the blade of the multi-tool; that the Y-STR of the swabs from the handle revealed an unknown major contributor, whereas there was weak support for Rowland's inclusion; that there was an unknown contributor to the DNA from the wad of paper towels; and there was also an unknown contributor to the DNA from the pants retrieved from the garbage. (*See* R. 1185-1187; 1194-1196; 1210-1211).

In light of the manner in which the prosecution presented Agent Dewayne's analysis and counsel's extensive cross-examination of her, the challenged DNA evidence was not "unfairly prejudicial, confusing, and misleading" under Rule 403, SCRE.[4] Because appellate courts "review[] Rule 403 rulings pursuant to an abuse of discretion standard and give[] great deference to the trial court," *Lee*, 373 S.C. at 658, 647 S.E.2d at 199, this Court should reverse a trial court's decision regarding the comparative probative value and prejudicial effect of evidence "only in exceptional circumstances." *Johnson*, 389 S.C. at 534, 698 S.E.2d at 838. There are no exceptional circumstances in this case and the trial judge's ruling must be affirmed.

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[4] Respondent submits that this Court should not consider Rowland's reliance on *United State v. Graves*, 465 F.Supp.2d 450 (E.D. Pa. 2006), (*see* Pet. at 22), because it was not presented to the trial judge. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground"). Also, his reliance is misplaced. In *Graves*, the issue was whether the district court abused its discretion in excluding the evidence; there was no finding that the court would have abused its discretion had it allowed the evidence. Further, this case is distinguishable because Rowland does not challenge the presence of the victim's DNA on any of these items. Moreover, even *Graves* recognized that "[c]ourts in other circuits have 'allowed DNA evidence into admission when the statistical significance of the data was relatively low and the probability of a random match in the relevant population was rather high' ") (quoting *United States v. Morrow*, 374 F.Supp.2d 51, 63 (D.D.C.2005)). So, his argument goes to the weight he thinks jurors should have given the evidence, not its admissibility.

Finally, Respondent agrees with the Court of Appeals that given the overwhelming evidence, any potential error in admissibility would be harmless on this record for those reasons cited in the opinion and the harmless error discussion in Section II above. However, Respondent maintains that the trial record shows no error of law in the trial judge's ruling or lack of factual support, thus, no abuse of discretion. The Court of Appeals did not err in affirming the lower court. Consequently, Rowland has failed to show certiorari review is warranted.

CONCLUSION

Based on the foregoing, this Court should deny the petition.

Respectfully submitted,

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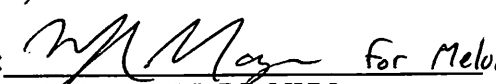
By:  for Melody Brown
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT[5]

December 31, 2024

[5] The above-signed acknowledges the substantial work in this matter by former Senior Assistant Attorney General W. Edgar Salter, III, who has since retired from the Office. Much of his work from the brief in the Court of Appeals is repeated herein for consistency.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2024-001771

THE STATE .....RESPONDENT

V.

NATHANIEL DAVID ROWLAND. ..... PETITIONER.

CERTIFICATE OF SERVICE

I, Brandy B. Rankin hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Return to Petition for Writ of Certiorari, and Certificate of Service has been forwarded to Appellant's counsel, Lara Caudy and Ms. Caudy's assistant, Sara McInnis via email today, December 31, 2024, at LCaudy@sccid.sc.gov and SMcInnis@sccid.sc.gov .

I further certify that all parties required by Rule to be served have been served.

This is the 31st day of December 2024.

s/ Brandy B. Rankin
Brandy B. Rankin
Legal Assistant

Brandy Rankin

From: Brandy Rankin
Sent: Tuesday, December 31, 2024 9:37 AM
To: Caudy, Lara
Cc: smcinnis@sccid.sc.gov; Melody Brown; Angela Brown
Subject: Return to Petition for Writ of Certiorari - Nathaniel David Rowland - Appellate Case No. 001771
Attachments: Return to Petition for Writ of Certiorari - Nathaniel Rowland.pdf

Dear Ms. Caudy,

Please find attached the Respondent's Return to Petition for Writ of Certiorari & Certificate of Service, regarding the above-captioned case. This Return will be filed with the South Carolina Supreme Court today, December 31, 2024, along with a copy of this email. Thank you.

Sincerely,
Brandy Rankin

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