

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

JAMES BUBBA PATTERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001132

APPENDIX

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1 Q. I'm handing you State's 51. Are there any markings
2 on that box that tell you that that's been handled by SLED?

3 A. Yes. Like I told you earlier how we assign each thing
4 a unique lab number, as you notice there is a bar code
5 label here. When we log in a case, each item number, first
6 of all, gets a unique lab number and each item within the
7 case gets an item number. So this is showing me that this
8 is L12-06246, Item Number 1.

9 Q. And the lab number reflected on that box, is it also
10 reflected on that chain of custody log that you mentioned
11 earlier?

12 A. Yes, sir, it is.

13 Q. And what does that tell you?

14 A. It's just stating the same thing. It's gonna have
15 everything. It's gonna have that particular case, who
16 brought in the case and the items that are contained within
17 the case.

18 Q. And what was the item number, again, assigned to --

19 A. This particular box was Item Number 1.

20 Q. Referring to State's 9, for the contents of that box,
21 do you see a lab number located anywhere on there?

22 A. Yes, I do. As you can see, it has the initials and
23 then it has our lab number, the L12-06246.

24 Q. And referring to Item 1, when was that box received by
25 SLED?

1 A. May I look at my chain of custody?

2 Q. Please.

3 A. According to my chain of custody, it was submitted
4 5-29 of 2012.

5 Q. And are you aware of who it was submitted by?

6 A. James Sullivan of the West Columbia Police Department.

7 Q. And after being submitted by James Sullivan, where did
8 it go at SLED?

9 A. The forensic technician that logged it in is Doris
10 Yarborough.

11 **MR. MADSEN:** I'm going to renew my objection to
12 foundation under Crawford versus Washington.

13 **THE COURT:** All right. Overruled.

14 BY MR. BELL:

15 Q. And what did Ms. Yarborough do with it?

16 A. She placed it in our secure evidence room into
17 evidence processing intake shelf 25.

18 Q. And after it was put in the intake shelf, was it
19 touched again?

20 A. Yes, it was. A request must have been sent. Amy
21 Stephens pulled that evidence and transferred it to Betty
22 Butler on June 15, 2012.

23 Q. And Betty Butler is not a name we heard earlier. Who
24 is Betty Butler?

25 A. She's a forensic technician within the evidence

1 processing.

2 Q. And after Ms. Butler had it, was it ultimately
3 returned back to anybody?

4 A. It was returned back to the evidence control to Nikki
5 Perry Hughes who then placed it on a return shelf to go
6 back to the agency.

7 Q. I'm handing you what's marked as State's 49. Do you
8 know if that item was ever handled by SLED?

9 A. Yes, I do. Once again, it has that unique barcode
10 listed here with the unique lab number and the unique item
11 number.

12 Q. And, once again, what is the lab number present on
13 that item?

14 A. L12-06246, and this was Container B.

15 Q. And what is the first entry date of Item 1.1 on your
16 log?

17 A. May I refer to my notes, please?

18 Q. Please.

19 A. 1.1, the first entry date is gonna be June 19, 2012,
20 and it was done by forensic technician Betty Butler.

21 Q. And what movement did that item have after that date?

22 A. Betty Butler brought it to Nikki Perry Hughes on 6-25,
23 2012, and then it was placed onto a DNA intake shelf in a
24 secure evidence room.

25 Q. And ultimately where did it end up?

1 A. Another forensic technician that was employed there
2 had taken it off the intake shelf and transferred it -- and
3 that was Patricia Crooks -- transferred it to Maryann Boehm
4 with the DNA department.

5 Q. I'm handing you one more item. Can you tell us if
6 this item was manipulated by SLED?

7 A. Yes, it was. Once again, that unique lab number with
8 the barcode is present. That unique item number is also
9 present.

10 Q. And what is the item number associated with that?

11 A. It's gonna be Item Number 5 and, again, for L12-06246.

12 Q. And is that reflected on your report?

13 A. Yes, it is.

14 Q. And what was the initial submission date of that item?

15 A. It was submitted 12-14-2015 to myself and it was
16 received from Paige McCraw with the West Columbia Police
17 Department.

18 Q. And after that point what movement did that item have?

19 A. I placed it onto a DNA intake shelf, 86, on that same
20 day. Jackie M. Davis, who's also forensic technician in
21 our department, retrieved it from that DNA intake shelf and
22 transferred it to Maryann Boehm with the DNA department.

23 Q. Now these items with these lab numbers that you just
24 reviewed for us, for instance, State's 50, what kind of bag
25 is that contained in?

1 A. Well, everything that we handle in evidence control
2 that's brought to us is sealed, so it was already in a --
3 excuse me -- it was already in a sealed bag from West
4 Columbia Police Department. We place it in a heat-sealed
5 pouch. It is then heat-sealed across the top. The
6 submitting officer actually initials and dates that seal.
7 He also signs it and dates it as well.

8 Q. And should that bag ever be torn open during the
9 transfer process, would that be notated anywhere?

10 A. Yes. If there was anything that was wrong with the
11 bag, a narrative would be made about it.

12 Q. Do you see any notes that would reflect that that
13 package was unsealed prior to getting to the analyst?

14 A. No, sir, I did not see any notes.

15 Q. And does that apply to all of the items that you just
16 testified about?

17 A. Correct.

18 **MR. BELL:** Please answer any questions the defense may
19 have.

20 **THE WITNESS:** Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. MADSEN:

23 Q. Good morning. How are you?

24 A. I'm doing well, sir. Thank you.

25 Q. Has SLED ever fired anyone for not doing their job?

1 A. I'm sure that they have. You'd have to refer to Human
2 Resources.

3 Q. You basically are just reading from a piece of paper,
4 but you're assuming that everyone has done their job
5 exactly correct?

6 A. I am reading from the chain of custody, which is a
7 business record that states the movement of the evidence,
8 yes, sir.

9 Q. But you're assuming that everyone did what it says on
10 it?

11 A. I'm just reading the chain of custody.

12 Q. And you've got that chain of custody. Did you receive
13 some, I guess, DNA swabs from Investigator Sullivan of West
14 Columbia?

15 A. Did I personally receive any?

16 Q. Well, on the chain of custody did SLED?

17 A. Can I look through this real quick, please, sir?

18 Q. Sure. Please, please, please.

19 A. I see where swabs were submitted, yes, sir.

20 Q. Who submitted those?

21 A. James Sullivan with the West Columbia Police
22 Department.

23 Q. Can I see that? What number are you referring to?

24 A. Item Number 1.

25 Q. I'm talking about hat swabs.

1 A. Those are gonna be Item Number --

2 Q. Is that 1.1?

3 A. 1.1 is a swab that was taken from the hat and that was
4 produced by Betty Butler, forensic technician within the
5 evidence processing.

6 Q. That wasn't produced by Investigator Sullivan?

7 A. No, sir. He brought in the evidence and they
8 collected the swabs. Evidence processing actually
9 collected the swabs from that hat.

10 Q. Do you have anything else in your chain of custody
11 that indicated any other hat swabs were given to SLED? Can
12 you take a look and see?

13 A. No, sir, I don't see anything.

14 Q. And the reason that we keep the chain of custody is
15 because if there's errors in that, then our confidence in
16 the evidence just plummets, doesn't it?

17 A. It's to keep a valid record of how that evidence
18 moves. It's a tracking system.

19 Q. And SLED can't control what's happened to the evidence
20 before they get it?

21 A. No, sir, we can only testify to how it's moved
22 throughout our lab.

23 **MR. MADSEN:** That's all the questions I have.

24 **THE COURT:** Anything further?

25 **MR. BELL:** No, Your Honor.

1 **THE COURT:** You may come down. Thank you very much.
2 May this witness be excused?

3 **MR. MADSEN:** Yes, sir.

4 **THE COURT:** Without objection.

5 (Witness excused.)

6 **THE COURT:** Next witness.

7 **MS. MAYES:** The State calls James Hickman.

8 JAMES L. HICKMAN,

9 having been duly sworn, testified as follows:

10 **CLERK:** Once you're seated, state your full name;
11 spelling your last.

12 **THE WITNESS:** It's James L. Hickman, H-I-C-K-M-A-N.

13 DIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. All right. And can you tell us a little bit about
16 yourself? Where are you currently employed?

17 A. With Lexington County Sheriff's Department.

18 Q. How long have you been in law enforcement, Officer
19 Hickman?

20 A. About forty-three years.

21 Q. And specifically are you now affiliated in anything
22 concerning CSI or latent print analysis?

23 A. Yes, ma'am.

24 Q. How long have you studied fingerprint analysis?

25 A. I've -- all through my law enforcement career for

1 probably about thirty, forty years that's been part of my
2 job. The last part, since 2012, it's been a full-time --
3 not a full-time job, but I've done it a hundred percent
4 now.

5 Q. All right. And what is your current position at the
6 Lexington County Sheriff's Department?

7 A. It's latent print examiner and AFIS operator.

8 Q. All right. And when you talk about latent print
9 analysis, have you been qualified previously as an expert
10 in the field of fingerprint analysis?

11 A. Yes, ma'am.

12 Q. And is it possible for you to estimate how much
13 training you have received or given to other officers in
14 the field of fingerprint analysis?

15 A. Yes, ma'am. I received my basic law enforcement at
16 South Carolina Criminal Justice Academy. I also have a
17 bachelor's -- excuse me, not a bachelor's degree, an
18 associate's degree in police administration. Both the
19 classes concerned fingerprint analysis in them. I've also
20 completed a fingerprint recognition course from Midlands
21 Tech, a basic latent print comparison course, forty hours'
22 worth, from the South Carolina Criminal Justice Academy, an
23 advanced latent print comparison class, forty hours, from
24 the South Carolina Criminal Justice Academy and the
25 advanced administration of latent prints, which is a

1 hundred and twenty hours, at the FBI at Quantico, Virginia,
2 and I've also completed a home study course of criminal
3 investigation through the Institute of Applied Science in
4 Chicago, Illinois. I also teach all of the employees that
5 come through the sheriff's department a basic latent print
6 class so they can lift latent prints. I also have taught
7 the same course and more with the Citizens Academy that
8 comes through the Lexington County Sheriff's Department and
9 I have just -- I also teach the employees of the CSI unit a
10 latent print comparison class.

11 Q. All right. Now you mentioned the training that you
12 received at the FBI in Virginia. Can you tell us whether
13 or not you've been previously certified by the State Law
14 Enforcement Division as an operator of what's known as the
15 AFIS system?

16 A. Yes, ma'am, I have.

17 Q. And does -- the AFIS system, is that a database that
18 keeps fingerprints?

19 A. Yes, ma'am.

20 Q. And does that require knowledge as to comparison
21 analysis as well?

22 A. Yes, ma'am.

23 Q. Now moving on to where you are currently, can you tell
24 us whether or not you are still conducting comparison
25 analysis within the Lexington County Sheriff's Department

1 as well as assisting other agencies in comparison analysis
2 of latent prints?

3 A. Yes, ma'am, that -- that's one of my jobs. It's
4 whenever a latent print comes into the sheriff's department
5 it's sent to me and I analyze it and determine if it's any
6 good. If it's good and if there's a rolled print sent with
7 it, I'll compare the two to determine if there's a match or
8 not a match and I can also enter into the AFIS system to
9 see if there's a match comes out of it. I also do all of
10 the other departments in the county whenever they submit
11 their latent prints. I do the same for those.

12 Q. Have you testified as an expert witness in the field
13 of fingerprint analysis?

14 A. Yes, ma'am.

15 Q. Have you been previously qualified as an expert in
16 the courts of South Carolina in the field of fingerprint
17 analysis?

18 A. Yes, ma'am.

19 **MS. MAYES:** Your Honor, at this time the State would
20 offer Jim Hickman as an expert in the field of fingerprint
21 analysis.

22 **THE COURT:** Any voir dire or objection?

23 **MR. MADSEN:** Judge, it's a close one, but I stipulate
24 to his qualifications.

25 **THE COURT:** All right. You may proceed.

1 BY MS. MAYES:

2 Q. Now, Mr. Hickman, I want to start by asking you
3 whether or not you had the opportunity to review some
4 latent lifts that were submitted by the West Columbia
5 Police Department in connection with an armed robbery at
6 the K & M jewelry store?

7 A. Yes, ma'am.

8 Q. I want to pass up these two items and if you'll give
9 me a moment there is another item for you to review as
10 well.

11 All right. I've shown you State's Exhibit 26, which
12 is a bag, and within the bag are two items. I'm gonna ask
13 you whether or not you recognize the items in that bag?

14 A. Yes, ma'am, I do.

15 Q. All right. What are those items? What would you
16 describe them as?

17 A. Two latent prints on a lift card.

18 Q. All right. Now they were inside of a bag and can you
19 tell us what is noted on the outside of that bag in terms
20 of who collected those latent lifts?

21 A. It says recovered by J. Sullivan, I believe, is the
22 name.

23 Q. All right. So recovered by Investigator Sullivan.
24 And what was the location where they were recovered?

25 A. K & M.

1 Q. All right. K & M. And is there a date?

2 A. I don't see a date on the bag, it may be under the
3 tape, but there is a date on each one of the cards --

4 Q. All right.

5 A. -- which is 5-09-12.

6 Q. All right. So May 9, 2012, from K & M?

7 A. Yes, ma'am.

8 Q. Now these two latent lifts, if you could just briefly
9 tell us how one goes about -- or you mentioned that you
10 train officers in this as well. How does one go about
11 collecting a latent lift from a surface? For example, if
12 I reach down and touch this surface just like this and then
13 remove my hand away, how would you come along and check
14 that surface to see what I've left behind?

15 A. They would take some type of powder, most likely a
16 black powder, it's real fine, like soot, or maybe a face
17 powder, but black in color, and a brush and brush and apply
18 the powder over the area where the suspected latent print
19 is at. And then it develops, in other words, it starts up
20 where you can see it, and once it gets developed where you
21 see it and you're satisfied that that's as much as you can
22 do, you take a tape. In this instance, they used tape.
23 You can take a tape that's specially designed for this
24 process. It's sort of like scotch tape and packing tape,
25 but a whole lot better. You lay it down over the

1 impression, it lifts up, the powder adheres to the tape
2 itself and then the tape is applied to what we call a
3 backer card or a lift card and then the information's put
4 on the back of the card as to who lifted it, what time and
5 date it was, the address, et cetera.

6 Q. All right.

7 **MS. MAYES:** I beg the Court's indulgence.

8 BY MS. MAYES:

9 Q. And this item is currently in evidence, so I'm gonna
10 ask you now let's start with Card Number 1. Let's start
11 with Latent Print Number 1. Does it say on that latent
12 print -- or the attempted latent print, does it say where
13 within K & M Jewelry Store that attempt for a lift was
14 made?

15 A. It says print lifted from top of counter.

16 Q. Okay. So top of counter. And once you got that
17 lift from Investigator Sullivan, were you able to make a
18 determination as to who that print belonged to?

19 A. No, ma'am.

20 Q. Why or why not?

21 A. The print itself was not of a good quality for me to
22 do an examination on. It just wasn't any good.

23 Q. All right. And let me have you expound on that a
24 little bit more. When a print has insufficient quality,
25 what does that mean?

1 A. That means when we identify a print or try to identify
2 one, there's -- I have to look at it and we go through
3 different levels of examination. Like level one, I just
4 look at the ridge flow to see if I can see any ridge flow
5 going through the print and then the next step would be
6 go and see if I can find some individual characteristics
7 of that particular latent print like ridge endings,
8 bifurcations, islands, things like this, and then if I can
9 see a sufficient number of those that I'm satisfied with,
10 then I can go on to the next step. This particular one
11 here, I couldn't get past the first step. There just
12 wasn't enough quality. The print itself, I couldn't find
13 enough information in it for me to make any headway with
14 it, so as far as I was concerned it was no good.

15 Q. All right. And I mentioned before about touching
16 objects, but if I reach down and pick up this pen, do I
17 necessarily leave a full print behind?

18 A. No, ma'am, you do not.

19 Q. All right. Now moving on from that print -- and just
20 to clarify, that print that you've termed insufficient
21 quality, would you be able to ever match that to anyone
22 based on the quality of that print?

23 A. No, ma'am.

24 Q. Okay. So moving on now to the second one, what we're
25 gonna call Latent Print Number 2, does it indicate where

1 that print was lifted from?

2 A. It says lifted from top of jewelry case.

3 Q. All right. So lifted from the top of the jewelry
4 case. Now let's start with that one. Was that one
5 suitable to match to someone?

6 A. Yes, ma'am, it was.

7 Q. All right. And, first of all, were you able to
8 attempt to compare it to known prints of the Defendant in
9 this case, James Patterson?

10 A. Yes, ma'am, I was.

11 Q. Was it his print?

12 A. No, ma'am.

13 Q. So once you've determined that it's not his print,
14 what, if any, methods are sometimes used for comparison
15 analysis to see if it may belong to someone else?

16 A. Sometimes the case officer or someone within the
17 police department gets what we call elimination prints
18 from the victim or witnesses or whoever and they send them
19 to me.

20 Q. All right. And in this particular case being a
21 jewelry store, can you tell us whether or not prints were
22 submitted from employees in that jewelry store?

23 A. Yes, ma'am, they were.

24 Q. All right. And I guess those are what we call inked
25 prints or rolled prints that were submitted to you?

1 A. Yes, ma'am.

2 Q. And they were submitted by whom?

3 A. They were submitted by the solicitor's office.

4 Q. Okay. Well, do you know the officer?

5 A. No, ma'am, I don't. They were brought to me and I
6 took them, then I returned them to Investigator McCraw.

7 Q. Okay.

8 A. As far as the name, I can't read it.

9 Q. Okay. All right. Well, these items are in evidence,
10 and having been inked or rolled by another officer and
11 brought to you, can you tell us whose prints you analyzed
12 in addition to the suspect or to the Defendant in this
13 case, James Patterson?

14 A. This is a rolled set from Tokye Mansion.

15 Q. Okay. Tokye Mancine?

16 A. Mancine, and Frank Peter Mancine.

17 Q. Okay. So Tokye Mancine and Frank Mancine. And,
18 again, can you tell us whether or not it's usual or unusual
19 to get employee prints in a situation like this where they
20 may have also had access to the jewelry counter?

21 A. No, ma'am, it not unusual.

22 Q. All right. Were you able to make an identification
23 of that print, of Latent Lift Number 2, once you looked at
24 those known prints from Frank Mancine and Tokye Mancine?

25 A. Yes, ma'am, I was.

1 Q. Okay. Whose print did you determine this to be?

2 A. The print lift designated Number 2 was the right ring
3 finger of Tokye Mancine.

4 Q. The right ring finger of Tokye Mancine --

5 A. Yes, ma'am.

6 Q. -- the employee of K & M Jewelry. Now I'm going to
7 ask to you take a look at this item.

8 **MR. MADSEN:** No objection, Your Honor, if they want to
9 introduce it.

10 BY MS. MAYES:

11 Q. Do you sometimes prepare fingerprint charts to show
12 your latent print analysis procedure?

13 A. Yes, ma'am.

14 Q. Do you recognize this item?

15 A. Yes, ma'am.

16 Q. Who prepared this item?

17 A. I did.

18 Q. All right. Is that a fair and accurate representation
19 of the original fingerprint chart you did in this case to
20 compare the latent print to the known inked print of Tokye
21 Mancine?

22 A. Yes, ma'am.

23 **MS. MAYES:** Your Honor, at this time the State would
24 offer as an exhibit State's Exhibit 52.

25 **THE COURT:** Without objection.

1 (State's Exhibit Number 52, fingerprint blowup
2 diagram, was marked and admitted into evidence.)

3 BY MS. MAYES:

4 Q. And, Officer Hickman, if I could have you step down
5 and briefly describe for us what we're looking at here.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 A. You'll see on --

9 Q. Let's switch places. And if you could keep your voice
10 up so that the court reporter can catch your testimony.

11 A. Yes, ma'am. On the chart itself, you'll see two
12 different photographs or two different images. On this
13 side, which is my right side, it says "latent print". This
14 is the latent print shown on Item Number 2. On the left
15 side, or my left side, you'll see one marked "inked". This
16 is the inked or the rolled print that I took off of the
17 rolled set of elimination prints from Tokye Mancine.

18 Q. All right.

19 A. To do my identification on it, what I do is a side by
20 side. In other words, I look at the known print. This is
21 the known print, I knew where this one came from, and this
22 is the unknown. I look at it and, like I said earlier,
23 step one is I look and see if the print even looks like
24 what it should, the latent print. You can see -- on this
25 one you can see the ridge detail goes around in a circle.

1 It looks sort of like a target, just like a target. If you
2 look at the latent print, you will see the same image. It
3 looks like a target. The ridges go around and the target's
4 there. Once I determine that, then that's pretty much step
5 one. I go to step two and find a detail, a characteristic.
6 In this particular one, you'll see Number 1 marked here.
7 This is a bifurcation. This is a forking. This ridge
8 comes up and forks and goes into two. Then I'll come over
9 to the latent print and I'll find a similar place. It is
10 a ridge coming up and a forking. This is Number 1. Now I
11 go down and if I just follow that same ridge down, you'll
12 see another forking. It's open downward though. It's
13 here. You come back over here, follow the ridge down and
14 you'll see another fork in here. Then we go around, we'll
15 go one, two, three ridges over and go down. One, two,
16 three and down, you'll see a ridge ending here in the same
17 location. What I'm doing is I'm picking points out and
18 they are in the same location on here on the known as
19 they are on the latent. I go around, that's three, and
20 from the Number 3 I go one, two and up just slightly is
21 a bifurcation. Again, here, one, two and up is another
22 bifurcation. So, so far we've got four different
23 characteristics that are in the same location and
24 orientated the same. From Number 4 we go over one ridge
25 and there is another bifurcation, which is opening

1 downward. The same thing here. Over one there's a ridge
2 that's is open downward. That's another bifurcation. Now
3 to go six, we can come follow the same one down and come
4 over one, two, one, two, and we'll find another
5 bifurcation, which opens back to the left. Now from
6 Number 6 you've got to follow it all the way back up to
7 the top and then go over one, two to find a bifurcation.
8 All the way around and go one, two and there's -- excuse
9 me, one, two is right here, a bifurcation which opens
10 downward. And then for Point Number 8 we'll follow that
11 same ridge back around and we'll find a ridge ending.
12 That's eight different characteristics that are the same
13 on both the known print and the latent print. These
14 characteristics are the same and they are in the same
15 position and the orientation is the same. So with this
16 in mind, that's when I make my decision that these two
17 are the same.

18 Q. Okay. Thank you. You may return.

19 (Whereupon, the witness returns to the witness stand.)

20 BY MS. MAYES:

21 Q. And just to clarify, are fingerprints unique to each
22 individual?

23 A. Yes, ma'am, they are.

24 Q. And based upon your training and experience and that
25 comparison analysis, can you tell us to a reasonable degree

1 of scientific certainty that that latent lift belonged to
2 Tokye Mancine?

3 A. Yes, ma'am, I can.

4 **MS. MAYES:** Nothing further.

5 CROSS-EXAMINATION

6 BY MR. MADSEN:

7 Q. How you doing, Jim?

8 A. Just fine.

9 Q. So not only do you do fingerprints, but in the past
10 you've done crime scene -- all types of crime scene, right?

11 A. Yes, sir.

12 Q. And there can be different collections of evidence,
13 not only fingerprints, but physical evidence, DNA, things
14 along those natures, correct?

15 A. Yes, sir.

16 Q. And a lot of what you do as a CSI is going to be
17 evidence or things that aren't visible to the naked eye.
18 In other words, if I touch here, you're not gonna be able
19 to generally see my fingerprint, correct?

20 A. In fingerprints, yes, sir, correct.

21 Q. DNA can usually be that same way?

22 A. Yes, sir.

23 Q. And so, I guess, you also teach CSI people how to pull
24 fingerprints or how to collect evidence?

25 A. How to collect fingerprints.

1 Q. Just collect fingerprints?

2 A. Yes, sir.

3 Q. But you have been someone who's collected other type
4 of evidence, DNA, tire prints, things along those lines,
5 shoe prints?

6 A. Yes, sir, I have.

7 Q. That's been in your -- in forty odd years that's been
8 a large portion also?

9 A. Yes, sir.

10 Q. You just kind of specialize in fingerprints now?

11 A. Yes, sir.

12 Q. And generally when you're trying to collect evidence,
13 you want to try to get everything that you can out of an
14 abundance of caution?

15 A. Yes, sir.

16 Q. And if it's not submitted to you, there's no way you
17 can match anything if you don't receive evidence?

18 A. No, sir.

19 Q. And I think you had said that there was one from
20 Ms. Mancine that was from a jewelry case, the one that you
21 matched?

22 A. Yes, sir. Lift Number 2 it says it's from the top of
23 the jewelry case.

24 Q. And logic dictates if that's pulled from a case
25 they've got to be within arm's reach?

1 A. I can't say that because I don't know what kind of
2 jewelry case it is. I can only assume that it was a
3 jewelry store and it was a display case and --

4 Q. Yes, it was a jewelry case, it was a display -- I
5 mean, generally unless the hand's detached, you've got to
6 be within arm's reach, right?

7 A. Yes, sir.

8 **MR. MADSEN:** That's all the questions I have.

9 **THE COURT:** Anything further?

10 **MS. MAYES:** Nothing further from this witness, Your
11 Honor.

12 **THE COURT:** All right. You may come down. Thank you
13 very much. May this witness be excused?

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **MR. MADSEN:** Yes, Your Honor.

16 (Witness excused.)

17 **MS. MAYES:** The State calls Betty Butler.

18 BETTY WALKER BUTLER,

19 having been duly sworn, testified as follows:

20 **THE CLERK:** Once you're seated, state your full name;
21 spelling the last on the record, please.

22 **THE WITNESS:** Betty Walker Butter, B-U-T-L-E-R.

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. All right. And good morning, Ms. Butler.

1 A. Good morning.

2 Q. Can you tell us a little bit about yourself? Where
3 are you employed?

4 A. I'm employed with the South Carolina Law Enforcement
5 Division, also known as SLED.

6 Q. All right. And how long have you been an agent with
7 the State Law Enforcement Division?

8 A. I was a forensic technician for over twenty years.

9 Q. All right. And with twenty years' experience at the
10 State Law Enforcement Division, tell us a little bit about
11 what a forensic technician does and how that leads to
12 what's known as evidence processing.

13 A. As a forensic technician in evidence processing
14 department, we look for -- do a presumptive test for blood,
15 semen, we look for sometimes body fluids, skin cells, hair
16 or anything that could be of value to a particular case.

17 Q. All right. What is your training and background and
18 experience that led into you becoming a forensic technician
19 at the State Law Enforcement Division?

20 A. I was trained by two forensic technicians and a DNA
21 analyst that is qualified as a court expert. I was trained
22 on hundreds of items before I was able to go online. We
23 take a competency test and then after that every year you
24 have to take a proficiency test to make sure you still know
25 what you're doing.

1 Q. Have you testified previously in the field of evidence
2 processing in this state?

3 A. Yes, I have.

4 Q. Is it possible for you to estimate how many such
5 times you have previously testified concerning your role
6 in evidence processing?

7 A. Over sixty-five times.

8 Q. Have you previously testified as an expert in that
9 field?

10 A. Yes, I have.

11 **MS. MAYES:** Your Honor, at this time the State offers
12 Betty Butler as an expert in the field of evidence
13 processing.

14 **THE COURT:** Any voir dire or objection?

15 **MR. MADSEN:** No, Your Honor.

16 **THE COURT:** You may proceed.

17 BY MS. MAYES:

18 Q. Ms. Butler, I'm gonna show you an item. It is in a
19 bag that is labeled State's 9. It is in evidence. Okay.
20 And I'm gonna start with the outside of that bag and I'm
21 gonna ask you looking at the outside of that bag are you
22 able to identify whether or not you had any role in
23 processing that item of evidence?

24 A. Yes, I have.

25 Q. And what is that item of evidence?

1 A. A black hat.

2 Q. All right. A black hat. Now do you recognize your
3 initials on the outside of that bag?

4 A. Yes. Every item that we process we have to put the
5 item number, which is Item 1, my initials, B-W-B. We have
6 the lab number, which is L12-06246, and we have the date
7 that we process it, which is June 19th of 2012.

8 Q. All right. So June 19th, 2012, is when you actually
9 processed that. Now for what purpose was that black hat
10 submitted to the State Law Enforcement Division?

11 A. It was request for ownership. See who actually put
12 the hat on, wore the hat.

13 Q. All right. And how do you go about trying to make
14 that determination at the crime lab?

15 A. When we receive a particular item request for
16 ownership, what we want to do is we examine it, we look at
17 it. We examine it first. We want to go on the inside
18 because that's where -- that's where you normally wear the
19 hat and that's normally where your sweat and your skin
20 cells collect. We normally -- the band of the hat is
21 normally what comes down over your -- over your forehead
22 and that's where you get more sweat and skin cells and
23 that's why we did the band of the hat for ownership.

24 Q. All right. So what is your role in trying to collect
25 evidence that ultimately will go to the DNA lab for further

1 testing?

2 A. My role in this particular case was to collect for
3 ownership, which is for blood, sweat or skin cells. What
4 we do is we use a clean -- we use gloves and we have --
5 everything is gloves. We use a lab coat, we use a clean
6 paper, then we have to scrape the inside of the band to
7 collect. It's like scraping the band. You can collect all
8 of the sweat and skin cells that collected on the band of
9 the hat.

10 Q. All right. And what type of tool or instrument do you
11 use to collect skin cells and DNA from within that hat?

12 A. We use a scalpel to actually -- and a swab that we
13 scrape and we swab this. I clean-swab it. That means we
14 use -- and we have to dry the swab after we collect
15 everything that we scrape out and swab out of it. We have
16 to -- we use that one swab. We put it on a way so it can
17 dry. It has to dry completely and then you put an item
18 number. Everything has a unique item number, which is
19 Item 1.1. The swab came from the parent item, which is
20 Item 1.

21 Q. All right. I'm gonna show you another item now and
22 ask you whether you recognize it and, if so, how?

23 A. Yes, I do. It's SLED Lab Number L12-06246. It has my
24 initials, it has the date June 19, 2012, across the seal,
25 it has my name and it has also the date here and it also

1 has the gold coin envelope from the swab that I collected
2 and also has my initials and the date that I sealed it on
3 the envelope.

4 Q. All right. And, again, what is that date?

5 A. The date is June 19, 2012.

6 Q. Okay. So the swabs that you mentioned, can you tell
7 us whether or not they are located within the golden
8 envelope?

9 A. I can't tell you. It feels like they're in there, but
10 I put them in there when I transfer them to the analyst, so
11 the analyst would be able -- I'd have to look in and see if
12 it's the same swab that I put in there.

13 Q. All right. And so just to clarify, once you take that
14 swab from inside the hat, you then do what in order to get
15 it to the DNA analyst?

16 A. Once I collect the swab, I have to dry it out. I put
17 an item number on it, which is Item 1.1 -- SLED Item 1.1.
18 I put it into this gold coin envelope, seal it. I put my
19 initials and the date. I have to put it into a heat-sealed
20 pouch. I also put my initials and the date that I seal it
21 so it will be secured to move it within the lab.

22 Q. All right. And so just to clarify, once you take that
23 sample, that swab, and you put it into the envelope and you
24 seal it up in the heat-sealed pouch, does anyone else
25 tamper with it prior to it arriving to the DNA analyst?

1 A. If someone did, the seal would be broken and the DNA
2 analyst would know.

3 Q. Okay. So -- and the purpose of the heat-sealed pouch
4 is what?

5 A. To protect the swab as it moves throughout the
6 laboratory until it gets where it's supposed to, to the DNA
7 analyst.

8 Q. All right. So you take the swab on June 19, 2012, you
9 seal it up and it went ultimately to who for analysis?

10 A. Maryann Boehm, the DNA analyst, for analysis.

11 **MS. MAYES:** I beg the Court's indulgence.

12 BY MS. MAYES:

13 Q. And does that conclude your involvement in the case,
14 collecting those samples on June 19, 2012?

15 A. That's correct.

16 Q. And the last time you saw those swabs, can you tell
17 us whether or not they were -- they were sealed in that
18 heat-sealed pouch?

19 A. Yes, they were sealed in this heat-sealed pouch. It's
20 still sealed upon the top because the DNA analyst cuts it
21 along the side with her initials, so I know this was
22 secured with my initials and the date because it's still
23 sealed.

24 **MS. MAYES:** Your Honor, I believe the only additional
25 thing we would do at this time is mark this item for ID and

1 this is the item noted by Betty Butler to be swabs taken
2 from the hat. This would be 53 for identification.

3 (State's Exhibit Number 53 was marked for
4 identification.)

5 BY MS. MAYES:

6 Q. And the hat itself, once you had collected those
7 swabs, which are -- which you have identified, once you had
8 collected those swabs, did you do anything further with the
9 hat?

10 A. Once I've collected the swabs, I have to put the item
11 number on the hat, which is Item Number 1.0. I also put my
12 initials on the hat with the lab number also written inside
13 the hat. I put it -- I leave it into the white paper that
14 we collect the sample on, close it up, put it back into the
15 bag, seal it back into the box and then send it back to
16 evidence control.

17 Q. Okay. And then ultimately is the hat itself free to
18 go back to the agency, such as West Columbia Police
19 Department?

20 A. Yes, it is.

21 Q. Okay. Because you've completed the testing once you
22 take those swabs?

23 A. That's correct.

24 MS. MAYES: Thank you. Nothing further.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION

2 BY MR. MADSEN:

3 Q. Ms. Butler, how are you doing?

4 A. I'm doing well.

5 Q. You don't remember doing the swabs on that hat, do
6 you?

7 A. Yes, I do.

8 Q. You actually physically remember doing it?

9 A. Yes, I do.

10 Q. Okay. And when you do something with DNA, there's
11 protocols that you have to follow to the letter, correct?

12 A. Yes, it is.

13 Q. Because if you don't or something happens, you can
14 taint those results?

15 A. Yes, that's correct.

16 Q. A little mistake can throw stuff off, can't it?

17 A. Yes, it can.

18 Q. And the only place that you swab on the hat is around
19 the brim?

20 A. That's correct. The band of the hat, yes.

21 Q. And the hat is the same as when you got it and you did
22 the testing?23 A. Except for the -- my item number, my initials and the
24 lab number.

25 Q. And that shows that you've done it?

1 A. Yes.

2 Q. And then -- but you don't do anything on any other
3 portion of the hat, correct?

4 A. No.

5 Q. Just the inside?

6 A. Just -- just the band because that's where your
7 evidence would be because of the way you put the hat on.

8 Q. And that's what we -- I guess we call that touch DNA?

9 A. You can call it touch or it was for ownership, who
10 wore the hat, who put the hat on his or her head.

11 Q. Sure. And then you generate a report or what you do
12 is reviewed by a Stephanie Stanley?

13 A. Yes, it does.

14 Q. And was a report generated based on what you've done?

15 A. Yes, it does.

16 Q. Do you have a copy of your report?

17 A. Yes, I do.

18 Q. And your report was generated, I guess, April 2013?

19 A. It was -- this report was generated by Stephanie
20 Stanley April 29, 2013.

21 Q. Okay. April 29th. I'm sorry. Okay. Of 2013. And
22 you've got to do that before the DNA scientist does their
23 stuff?

24 A. No, through --

25 Q. You don't have to take the swabs first?

1 A. I have to take the swabs, not the report. The report
2 can generate later on down the line --

3 Q. I got you.

4 A. -- but I have the worksheet.

5 Q. But the swabs have got to be done?

6 A. Yes.

7 Q. And there was a listing on the report of the incident
8 date. What date is that?

9 A. April 24, 2015.

10 Q. April 24th?

11 A. I'm sorry. May 21, 2015.

12 Q. 2015? Are you sure?

13 A. 21 -- 2012. I'm sorry.

14 Q. So the incident date on -- that's associated with this
15 evidence is May 21st of 2012, correct?

16 A. Yes, it is.

17 **MR. MADSEN:** That's all the questions I have.

18 **THE COURT:** Anything further?

19 **MS. MAYES:** Yes, sir.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. Do you actually enter that information yourself
23 concerning incident date?

24 A. No, I do not.

25 Q. All right. So that's not something you're responsible

1 for?

2 A. No, I'm not.

3 Q. And just to -- just to clarify, because he was asking
4 you about an incident date that's reflected on a form or on
5 a report that's -- that you don't enter, but what exactly
6 does -- does the State Law Enforcement Division label
7 indicate concerning the date that hat was recovered and the
8 location it was recovered?

9 A. I don't know whether this is a SLED label or not, but
10 it says evidence room location, SLED, box. It has the
11 description of the evidence, which is black in color hat.
12 It has offense, armed robbery, offense location, which is
13 507 Meeting Street. Date recovered was May 9, 2012, and
14 they have the suspect unknown. Victim, K & M Jewelry.

15 Q. All right. So it indicates K & M Jewelry, May 9,
16 2012, on Meeting Street, correct?

17 A. That's correct.

18 Q. And at that time the suspect was unknown. And
19 Mr. Madsen was asking you about why you swab the inside of
20 the hat and, again, if you're looking for ownership or as
21 you put it, who wore the hat, why are you looking near the
22 band?

23 A. When you wear a hat, you have your hair, which is --
24 sometimes maybe you won't get anything, but around here you
25 sweat, your forehead, you sweat a lot, and you transfer

1 sweat and skin cells more from your forehead than anyplace
2 else.

3 Q. All right. And is it possible to transfer skin cells
4 even without sweating?

5 A. Yes.

6 Q. All right. And that's what's known as touch DNA,
7 things of that nature, correct?

8 A. Yes. Skin cells, yes.

9 Q. And in addition to looking for who wore the hat and in
10 trying to collect samples to determine that, can you tell
11 us whether or not you would have noted if any errors were
12 made by yourself during the processing of that evidence?

13 A. Yes, on the worksheet if any errors was made it would
14 be noted on the worksheet and there is nothing noted on the
15 worksheet and so there was no errors made.

16 **MS. MAYES:** Thank you. Nothing further.

17 **MR. MADSEN:** Nothing further.

18 **THE COURT:** All right. You may come down. Thank you
19 very much. May the witness be excused?

20 **MS. MAYES:** Yes, Your Honor.

21 **MR. MADSEN:** Yes, Your Honor.

22 **THE COURT:** Without objection.

23 (Witness excused.)

24 **MS. MAYES:** The State calls Maryann Boehm.

25 MARYANN E. BOEHM,

1 having been duly sworn, testified as follows:

2 **THE CLERK:** Once you're seated, state your full name;
3 spelling your last, please.

4 **THE WITNESS:** My name is Maryann E. Boehm, B-O-E-H-M.

5 DIRECT EXAMINATION

6 BY MS. MAYES:

7 Q. And good morning, Agent Boehm. Can you tell us a
8 little bit about yourself? Where are you employed and in
9 what capacity?

10 A. I am employed at the South Carolina Law Enforcement
11 Division, commonly known as SLED. I am assigned to the DNA
12 casework department. We receive evidence from local law
13 enforcement agencies from a crime and create -- develop DNA
14 profiles from the evidence, as well as known standards
15 submitted in that case, and make comparisons based on our
16 findings and write a report.

17 Q. How long have you worked at the State Law Enforcement
18 Division?

19 A. Approximately ten years.

20 Q. And specifically in the field of DNA analysis?

21 A. Yes, ma'am, ten years.

22 Q. What is your educational background?

23 A. I received a bachelor's of science in integrated
24 science and technology with a concentration in
25 biotechnology from James Madison University, and that's in

1 Harrisonburg, Virginia.

2 Q. And what training do you have specifically in the
3 field of forensic DNA analysis?

4 A. Upon my employment at SLED, I was trained for
5 approximately a year in the proper procedures and
6 techniques used in our laboratory. I also attended outside
7 training on specific instrumentation and procedures used
8 in our laboratory.

9 Q. Are you required to complete any type of continuing
10 education in the field of DNA analysis?

11 A. Yes, ma'am. We are required to do at least eight
12 hours of continuing education each year.

13 Q. Are you also subject to what's known as peer review
14 within the State crime lab by other DNA analysts and
15 forensic supervisors?

16 A. Yes, ma'am. Each report that we issue goes through
17 two peer reviews. It goes through a technical review and
18 then an administrative review.

19 Q. Is it possible for you to estimate how many times you
20 have conducted forensic DNA analysis during your ten years
21 at the State crime lab?

22 A. That's -- that would be hard to estimate. I do
23 hundreds of cases each year.

24 Q. So hundreds a year?

25 A. Yes, ma'am.

1 Q. At this point have you done over a thousand in your
2 estimation?

3 A. I would believe so.

4 Q. Can you tell us, Agent Boehm, whether or not you have
5 testified previously as an expert in the field of DNA
6 analysis and identification?

7 A. Yes, ma'am, I have.

8 Q. Does that include statistical calculations associated
9 with DNA analysis?

10 A. Yes, ma'am.

11 Q. How many such times have you testified?

12 A. Approximately fifty times.

13 Q. As an expert in this field?

14 A. Yes, approximately fifty times.

15 **MS. MAYES:** Your Honor, at this time the State would
16 offer Agent Boehm as an expert in the field of DNA analysis
17 and statistical calculation.

18 **THE COURT:** Any voir or objection?

19 **MR. MADSEN:** No, Your Honor. No objection.

20 **THE COURT:** You may proceed.

21 BY MS. MAYES:

22 Q. I want to start by asking you, Agent Boehm, what is
23 meant by the term deoxyribonucleic acid, DNA?

24 A. Deoxyribonucleic acid, the abbreviation is DNA.

25 That's what we commonly use. It is information in every

1 cell of our body with the exception of red blood cells. We
2 get our physical features, like our hair color or height
3 from DNA. It's also responsible for passing along traits
4 from generation to generation. We get half of our DNA from
5 our mother and half from our father. With the exception of
6 identical twins, no two individuals have the same DNA. In
7 forensic science we're interested in the portions that vary
8 between individuals. We test fifteen different locations
9 and the combination of those test results make up a DNA
10 profile.

11 Q. I need you to slow down a little bit so the court
12 reporter can get all of your testimony.

13 A. I'm sorry.

14 Q. Are, or is, a DNA profile unique as to each individual
15 with the exception of identical twins?

16 A. Yes, with the exception of identical twins no two
17 people have the same DNA profile.

18 Q. Now looking at any particular case where you're doing
19 an analysis, can you tell us what type of body fluid have
20 that DNA? What about blood?

21 A. Blood will contain DNA. Any body fluid from a human
22 individual will contain DNA; blood, semen, saliva.

23 Q. All right. What about skin cells?

24 A. Yes, skin cells also developed from your skin will
25 have DNA present.

1 Q. And in that I'm including skin cells that can come off
2 when you wear an item, for example, when you wear an item
3 of clothing.

4 A. Yes, that is correct.

5 Q. And sometimes you're able to determine DNA that way?

6 A. That's correct.

7 Q. Now if you want to compare DNA from a clothing item
8 to a known individual, how do you go about -- how does
9 the State Law Enforcement Division recommend going about
10 getting a DNA sample from that individual they want to
11 compare something to?

12 A. We need a known sample with an established chain of
13 custody; meaning they -- someone is present when they
14 collect that DNA standard, and any time it's transferred
15 from an individual or to a different storage container it
16 is noted and the proper chain of custody.

17 Q. All right. But specifically how do you get a sample?
18 How do you recommend getting a sample from a suspect in a
19 case?

20 A. Oh, with a buccal swab or a blood standard is what we
21 prefer. Buccal swabs are typically the easier of the two
22 to collect. It's just a swab from the inside of the cheek
23 versus drawing blood.

24 Q. All right. When you request a buccal swab from the
25 inside of the cheek, why are you requesting it from there?

1 A. Because it's an easy source of DNA. It's a lot less
2 invasive than having to collect blood from an individual.
3 The DNA throughout an individual is the same, so even if I
4 have a blood sample from evidence, it will be the same DNA
5 profile as the saliva or skin cells of that same person.

6 Q. All right. So to clarify, you can take a buccal swab
7 and put it inside someone's cheek and collect DNA that way?

8 A. Yes, ma'am.

9 Q. Now I want to draw your attention specifically to this
10 case and ask you how you became involved in the case that
11 has been identified as SLED Lab Number L12-06246, the armed
12 robbery at the K & M Jewelry Store.

13 A. I was assigned this case to do the DNA on the evidence
14 that was submitted for this case.

15 Q. All right. And I want to go back to the original
16 evidence that you received in this case for analysis. What
17 is the original evidence that you received? I'm going to
18 ask you specifically regarding Item 1.1. What was that
19 item?

20 A. Item 1.1 was a swab from a black hat.

21 Q. All right. Swab from black hat. And I want to ask
22 you to take a look at this item and ask you whether or not
23 you recognize it?

24 A. Yes, I do. It has our lab number on this yellow
25 sticker. It has the initials of the individual who created

1 the swabs and the date and then it has my initials and date
2 of where I opened up the heat-sealed pouch.

3 Q. All right. And this is State's Exhibit 49 for -- I
4 beg the Court's indulgence.

5 BY MS. MAYES:

6 Q. So looking here at State's Exhibit 49, now you
7 mentioned that it was sealed. Who was the person that
8 collected that Item 1.1 and submitted it to you?

9 A. Forensic technician Betty Butler.

10 Q. All right. Betty Butler. Now does she seal it up
11 after she takes the swab from that hat?

12 A. Yes, ma'am. She'll take the swab, put it in this
13 coin envelope and then put the coin envelope into the
14 heat-sealed pouch.

15 Q. All right. How do you ensure that it remains sealed
16 an un-tampered with prior to coming to you for DNA
17 analysis?

18 A. It's maintained by the chain of custody, so any time
19 it moves location it is -- that information is stored
20 within our computer system. Also, once I do receive the
21 heat-sealed pouch, I will look it over to make sure there
22 is no signs of tampering.

23 Q. All right. And in this particular case, when you
24 receive that swab from the black hat and it came to you for
25 DNA analysis, was there any evidence of tampering?

1 A. No, ma'am.

2 Q. In fact, who was the first person to unseal it after
3 it had been sealed by Betty Butler?

4 A. That would be me.

5 Q. All right. So you're the only person who unsealed
6 that evidence?

7 A. That's correct.

8 Q. And for what purpose did you unseal that evidence?

9 A. To perform DNA analysis on that item.

10 Q. All right. And at this point, was the suspect known
11 or unknown in terms of identity?

12 A. There was no -- no listed suspect in the case
13 information I had.

14 Q. All right. So let's have you address the date. What
15 date was it that you received it to start DNA analysis?

16 A. Could I have a copy of the chain of custody?

17 Q. (Handing.) And was that bag dated in terms of when
18 Betty had collected that swab and sealed it?

19 A. Yes, Betty initialed and put the date that she sealed
20 it at the top on top of the seal. That would be June 19,
21 2012.

22 Q. All right. June 19, 2012.

23 A. I took it into my custody on September 12th of 2012.

24 Q. All right. So you got it September 12th of 2012?

25 A. Yes, ma'am.

1 Q. And I believe you indicated at this point suspect is
2 unknown and you're conducting DNA analysis to potentially
3 determine the identity associated with that swab from the
4 hat, correct?

5 A. That is correct.

6 Q. So you started the analysis in September. How long
7 of a process is that for you?

8 A. It appears -- it can vary. That's why I referred to
9 my case file to see how long this one actually took. From
10 the time I started with the evidence on September 12th by
11 the time I completed it, it would have been four days. I
12 completed it on September 16, 2012.

13 Q. Okay. So September 16, 2012, you complete a DNA
14 analysis on that swab from the hat?

15 A. That's correct.

16 Q. And were you able to develop what's known as a DNA
17 profile?

18 A. I did.

19 Q. All right. And was that enough of a DNA profile for
20 you ultimately to compare to someone else?

21 A. That's correct, it was.

22 Q. All right. Now at this point a suspect is unknown and
23 you have developed a DNA profile on that swab from the hat,
24 so how do you go about trying to see if there's anybody out
25 there that it could potentially be a match to, that could

1 match that DNA profile?

2 A. All right. At SLED we have a database. This database
3 consists of profiles from known individuals as well as
4 profiles developed from evidence at crime scenes. If the
5 item of evidence that I am testing is eligible to enter
6 into this database, I will put it in, which this item was,
7 to see if there is any match to either a known individual
8 or to another crime scene.

9 Q. All right. And were you able to submit that DNA
10 profile into your DNA database?

11 A. I was.

12 Q. All right. And were you able to determine a match --
13 a DNA profile match from the database?

14 **MR. MADSEN:** Judge, can we approach?

15 (Proceedings held at the bench; not reported.)

16 BY MS. MAYES:

17 Q. All right. And, Agent Boehm, back in September of
18 2012 when you were able to develop a profile, can you tell
19 us -- this is a yes or no question -- was that DNA profile
20 entered into the DNA database?

21 A. Yes, ma'am.

22 Q. Okay. And is that a database that the State Law
23 Enforcement Division has access to?

24 A. That is correct.

25 Q. All right. Following that event, did you receive

1 ultimately some samples of DNA from James Bubba Patterson,
2 the Defendant in this case?

3 A. I did.

4 Q. All right. And those samples that you received were
5 collected in what format?

6 A. They were buccal swabs.

7 Q. All right. And you use a term like "buccal swabs",
8 but if you can break that down for us, what exactly are you
9 talking about with buccal swabs?

10 A. Again, that's a known standard. A sterile swab is
11 used to rub the inside of the cheek, which this transfers
12 the skin cells from the inside of the cheek, they're called
13 buccal cells, onto that swab and we use those to extract
14 and we create a profile for that known standard.

15 Q. All right. So that's the example you were giving us
16 earlier where you can collect DNA from the inside of
17 someone's cheek?

18 A. That is correct.

19 Q. All right. I'm gonna show you an item, which is
20 State's Exhibit 50, and ask you whether or not you
21 recognize this item and what it is?

22 A. Yes, ma'am. This is the buccal swabs that were
23 submitted to SLED.

24 Q. From who?

25 A. From James Peterson.

1 Q. Could you give us that name again, please?

2 A. James Peterson.

3 Q. Let me see your report. All right. The suspect name?

4 A. Oh, Patterson. I'm sorry. James Patterson.

5 Q. All right. And what officer collected those buccal
6 swabs from the inside of James Patterson's cheek?

7 A. I can't tell you who collected them, but Paige McCraw
8 was the individual who submitted them to SLED.

9 Q. All right. I'm gonna stop you right there. Now how
10 many swabs are taken? Is it one or more than one?

11 A. It was two swabs that were taken.

12 Q. All right. And generally what does that reflect when
13 you have two swabs?

14 A. They swab the individual twice at the same time.

15 Q. Okay. Do you know whether the left cheek is being
16 swabbed and the right cheek is being swabbed?

17 A. Some agencies will do that. It doesn't matter. Like
18 I said before, your DNA's the same, so we just combine them
19 into one item if there are two different, a left cheek and
20 a right cheek. It's all the same to us. It's all the same
21 DNA.

22 Q. Can you tell us whether or not that item remained
23 sealed as it was delivered to the State Law Enforcement
24 Division from Paige McCraw up until the time that you would
25 have conducted your DNA profile or attempted to develop a

1 DNA profile from those cheek swabs from the Defendant?

2 A. Yes, ma'am, it was sealed.

3 Q. How do you know that?

4 A. There was no sign of tampering. Also, the pouch, the
5 evidence bag was sealed up at the top, I was the one to
6 break that seal, and the seal up here was intact and there
7 was no other signs of tampering. I was the one who created
8 this seal right here.

9 Q. All right. So the officer, Paige McCraw, delivers
10 them to the State Law Enforcement Division and no one else
11 then seals them prior to you?

12 A. That's correct.

13 Q. Were you able to develop the DNA profile from the
14 cheek swabs that had been taken from James Patterson?

15 A. Yes, ma'am.

16 **MS. MAYES:** I beg the Court's indulgence.

17 BY MS. MAYES:

18 Q. All right. Agent Boehm, you have identified this as
19 being the cheek swab samples submitted to you regarding
20 James Patterson and that they were unsealed prior to you
21 breaking that seal and that you were able to develop a DNA
22 profile; is that correct?

23 A. That's correct.

24 **MS. MAYES:** Your Honor, at this time we would offer
25 State's Exhibit 50 as evidence and also State's Exhibit 49

1 as evidence. These are the items she has identified as the
2 swabs from the hat that she unsealed and the swabs -- the
3 buccal swabs that she unsealed.

4 **MR. MADSEN:** Judge, I would just renew my pretrial
5 objections.

6 **THE COURT:** All right. Overruled.

7 (State's Exhibit Number 49, DNA swab from hat, and 50,
8 DNA buccal swabs, were admitted into evidence.)

9 BY MS. MAYES:

10 Q. If you could, please, cut this seal and I want to get
11 into the envelope that holds the buccal swabs from the
12 suspect's cheek.

13 A. You instructed me to cut here, but I would prefer to
14 do it here where there is no seal.

15 Q. All right.

16 A. (Witness complies.)

17 Q. All right. Now if you could go ahead and open that
18 envelope that contains the buccal swabs.

19 A. (Witness complies.)

20 Q. And, again, does this item contain any notes or
21 notations by you that you recognize?

22 A. Yes, ma'am. It has the case number and item number
23 that I handwrote at the bottom and then I have my initials
24 and date of the seal.

25 Q. All right. And, again, the name on the envelope?

1 A. Buccal swab of left cheek area of James Patterson and
2 then buccal -- or DNA -- buccal DNA swab number two of
3 right cheek area of James Patterson.

4 Q. All right. So left and right cheek. Now if you could
5 go ahead and open that up so we can see the envelopes that
6 the suspect's standards are in.

7 A. There are two swab boxes.

8 Q. Okay. All right. Now these are the two swab boxes
9 also in evidence. And just to clarify, the swabs
10 themselves, what type of sticks are they on?

11 A. I believe they're wooden. Some swabs have plastic
12 sticks, but the majority of them have wooden sticks and
13 then a sterile white cotton swab.

14 Q. All right. So both of these swabs are located in
15 there. And can you tell us, again, the name of the person
16 each swab is from and does it note who collected that swab?

17 A. Yes. The name of the individual the swab was from is
18 James Patterson and it says it collected by P. McCraw.

19 Q. All right. P. McCraw collected both of these swabs
20 from the left cheek and the right cheek of the Defendant,
21 James Patterson, correct?

22 A. Yes, ma'am.

23 Q. So we now have known standards from the cheek of James
24 Patterson and you've got the known DNA profile from the hat
25 swabs?

1 A. That's correct.

2 Q. Can you tell us whether or not you were able to
3 develop a full DNA profile from the cheek swabs of James
4 Patterson?

5 A. I was.

6 Q. Were you able to then compare the DNA profile from the
7 hat swabs to the DNA profile of James Patterson?

8 A. Yes, ma'am, I did.

9 Q. What did you determine upon comparing those two DNA
10 profiles?

11 A. I determined that the DNA profile developed from the
12 hat swabs matches the DNA profile of James Patterson.

13 Q. All right. And you say matches. It's a DNA match?

14 A. That's correct.

15 Q. All right. So this is a DNA match and you mentioned
16 before in your testimony that DNA is unique as to each
17 individual, but specifically how unique is this DNA
18 profile? How unique is the DNA profile of James Bubba
19 Patterson?

20 A. The probability of randomly selecting an unrelated
21 individual having a DNA profile matching the DNA profile
22 developed from the hat is approximately 1 in 730
23 quintillion.

24 Q. All right. I need you to slow down. One in 730
25 quintillion?

1 A. Yes, ma'am.

2 Q. Quintillion. What is the world population currently?

3 A. Approximately seven billion.

4 Q. Seven billion?

5 A. (Nods head.)

6 Q. What is one quintillion as opposed to seven billion?

7 A. Approximately --

8 Q. Is quintillion more than seven billion?

9 A. Yes, a quintillion is more than a billion.

10 Q. What does that large number mean?

11 A. It means that if I test 730 quintillion individuals, I
12 expect one person to have a DNA profile that matches the
13 DNA profile developed from the evidence.

14 Q. And specifically in terms of the world population,
15 what is that ratio of 730 quintillion as opposed to the
16 world's population?

17 A. Approximately a hundred billion times.

18 Q. What do you mean?

19 A. It's a hundred billion times more than the world's
20 population.

21 Q. Okay. So that number is a hundred billion times more
22 than the current world population?

23 A. That's correct.

24 Q. When we talk about DNA and developing a profile, how
25 do you chart it out to actually recognize the unique points

1 along a DNA profile?

2 A. We report it in a table form. We have the evidence as
3 well as the known standard listed in our report, it's in a
4 table, and each location that we test and each value result
5 is put on this table.

6 Q. All right. Did you develop a table, a DNA chart, for
7 the profile developed from the hat swabs?

8 A. Yes, I did.

9 Q. Did you develop a DNA chart for the profile developed
10 from James Patterson's cheek swabs?

11 A. Yes, I did.

12 **MS. MAYES:** I beg the Court's indulgence.

13 BY MS. MAYES:

14 Q. I'm gonna show you an item and ask you whether or not
15 you recognize it?

16 A. These are the results of the DNA profile from the
17 black hat and the profile developed from James Patterson.

18 Q. All right. And who actually developed this chart or
19 laid out this sequence in this manner? Was this part of
20 your original report?

21 A. It is from it. It is not the exact replication of my
22 report, but it is from that.

23 Q. Okay. The DNA charts in other words?

24 A. Yes.

25 Q. Okay. These are the DNA charts that you developed?

1 A. It's similar to the one I developed.

2 Q. All right. Well, let me ask you this way. All right.
3 But as to these items, the cheek swabs submitted by Paige
4 McCraw and the DNA samples from the hat?

5 A. Yes, these are -- it's the same -- all the
6 information's on that chart as in my chart.

7 **MS. MAYES:** Your Honor, at this time the State would
8 offer this item as evidence. I believe this would be --

9 **MR. MADSEN:** My only objection is subject to my
10 pretrial objections, Your Honor.

11 **THE COURT:** Overruled. The item's admitted.

12 **MS. MAYES:** I believe this will be 53.

13 **THE COURT REPORTER:** Well, we better use 54 since 53
14 was marked wrong.

15 **MS. MAYES:** Okay.

16 (State's Exhibit Number 54, DNA results, was marked
17 and admitted into evidence.)

18 BY MS. MAYES:

19 Q. All right. Agent Boehm, I'm gonna ask you to step
20 down, if you could.

21 (Whereupon, the witness steps down from the witness
22 stand.)

23 BY MS. MAYES:

24 Q. I'm gonna try and position this so every juror can see
25 and if you'd come around to this side over here.

1 Now you mentioned a DNA chart that shows the unique
2 characteristics of the DNA profile. What are we looking at
3 here?

4 A. So this is the DNA profile developed from the hat.
5 You can see this is the item number and the description of
6 the evidence and then the same thing down here is the item
7 number submitted to SLED and then the description of the
8 standard. Same DNA profile.

9 Q. Okay. And I'm gonna get out of your way and ask you,
10 if you could, to start here as we go through Table 1 for
11 the black hat, noted here to be the black hat, and Table 2
12 here to be the DNA profile of James Patterson. And, again,
13 this DNA profile is developed from what?

14 A. The buccal swabs collected from James Patterson.

15 Q. All right. These cheek swabs?

16 A. Yes, ma'am.

17 Q. All right. If you could, take us through now what
18 we're looking at here at the top, what that number
19 represents and what these numbers here along the way
20 represent as well.

21 A. Okay. So if you look at this first square up here,
22 the DAS 1179, that is the actual location on the DNA strand
23 that we're testing that varies between individuals. This
24 12, 15 is the test results from the hat and then it's the
25 same thing throughout the profile. So then the next

1 location. I said there were fifteen different locations we
2 tested. The same thing. Up here is gonna be the actual
3 location on the DNA and then the results. All the way
4 through. Amelogenin is not unique to everyone, it is
5 determining what sex it is, so it's gonna be either X for
6 a female or XY for a male. And then I developed the same
7 profile. I developed a profile from the known standard,
8 too. So the same information. DAS 1179 is the location
9 and then these are the results from that item.

10 Q. All right. So let me -- let me go back here where you
11 mentioned that this indicates whether this is going to be
12 the DNA of a female subject or a male subject. What does
13 that XY tell you? Is that a chromosome?

14 A. Yes, they're both -- and a female has two X
15 chromosomes, a male has an XY. In this case, XY would be
16 a male.

17 Q. Okay. So we know these are DNA samples from a male.
18 Now moving over here as you go down the chart, if you could
19 start here with the 12 and the 15 and then you see a 12 and
20 a 15 here. What does that tell you?

21 A. Well, first I look at the evidence and determine if
22 it's a single source profile or if it's a profile that's
23 multiple people or a mixture of DNA. I deemed this as a
24 single source profile. A single source profile will have
25 either one or two numbers at each location. Mixtures are

1 gonna have more than two at more than two locations to deem
2 them a mixture. So first I decide that and then once I
3 develop a known standard for comparison, I do the -- I
4 compare it. So location by location I will compare the
5 evidence to the standard. So the evidence has a 12, 15 and
6 my standard has a 12, 15. Yes, it does.

7 Q. All right. The 12 means what and the 15 means what?

8 A. Those are the number of repeats that vary between
9 individuals on the DNA strand. So this person -- or the
10 evidence had a 12 repeat and a 15 repeat.

11 Q. Okay. So, again, these are strands of DNA along the
12 sequence that you're examining?

13 A. Yes, this is a portion of DNA that we're testing.

14 Q. All right. And the 12 and the 15 match and as we see
15 each location along the way the numbers match up all the
16 way through here to the end where you've got a 27 and 30
17 and a 27 and a 30 and, ultimately, to reasonable degree of
18 scientific certainty, what does that tell you about these
19 two DNA profiles?

20 A. That it is a match; that the DNA from this person is
21 the same DNA from this item.

22 Q. DNA from this person is the same DNA as in the hat?

23 A. Right, bearing there's no identical twins.

24 Q. Okay. And as you mentioned earlier, that DNA is
25 present -- that DNA is unique to be one in 730 quintillion

1 people would have that type of DNA, correct?

2 A. That's correct.

3 Q. Now you may return to your seat.

4 (Whereupon, the witness returns to the witness stand.)

5 BY MS. MAYES:

6 Q. Now you also mentioned that this is a single
7 contributor and, just to clarify, what you're referring to
8 is the fact that you only found the DNA of one person in
9 that hat, correct?

10 A. That is correct.

11 **MS. MAYES:** I beg the Court's indulgence. Nothing
12 further.

13 **THE COURT:** Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. MADSEN:

16 Q. How many strands of DNA do we have?

17 A. It's one strand of DNA and multiple chromosomes.

18 Q. We have pairs of them though, don't we?

19 A. We have pairs of chromosomes.

20 Q. And how many chromosomes?

21 A. Twenty-three.

22 Q. And these numbers that are on top of this chart, the
23 DAS 1179, is that a loci?

24 A. Yes, in technical scientific terms it's a loci or a
25 location on the DNA.

1 Q. And then we get the number below, like that 12 and 15,
2 you get one from your father and one from your mother and
3 those are called alleles?

4 A. Yes, sir.

5 Q. And you test at, what, fifteen different loci?

6 A. Yes, sir.

7 Q. Don't we have billions of loci in our body?

8 A. I don't know the exact number.

9 Q. More than fifteen?

10 A. Yes.

11 Q. More than a hundred?

12 A. Probably, yes.

13 Q. More than a thousand?

14 A. I would think so.

15 Q. More than a million?

16 A. I don't know.

17 Q. Isn't that kind of your job to know?

18 A. No. I know that there's more, but these are the
19 fifteen that we test at SLED. There are more that are in
20 our DNA strand, but the kit we use to do our testing has
21 these fifteen locations.

22 Q. So there's other places that you can test, SLED just
23 decides not to do that, correct?

24 A. Yes.

25 Q. Because it's not in the kit that y'all use?

- 1 A. That would be correct.
- 2 Q. And so when you're testing DNA and you get something
3 like this hat, if I swab on the brim of this that's not
4 gonna give you DNA from me touching on the top?
- 5 A. That would be correct.
- 6 Q. And that's not necessarily -- even if I touch in here,
7 I'm not necessarily gonna leave DNA?
- 8 A. Yes, that's correct.
- 9 Q. So if you put on my shoes for a few minutes, I might
10 have DNA in there, but if you're out of them pretty quick
11 you're not gonna potentially leave DNA in them, are you?
- 12 A. That's correct.
- 13 Q. And you generated -- she showed a big chart, but you
14 generated a report, an actual report, correct?
- 15 A. Yes, sir.
- 16 Q. And your last one was January 28th of 2016; is that
17 correct?
- 18 A. That's correct.
- 19 Q. Do you have a copy of that?
- 20 A. I have the one I'm testifying off of.
- 21 Q. Can I take a look at it?
- 22 A. Yes, sir.
- 23 Q. And that's -- and there's an incident date that's
24 listed on your report?
- 25 A. Yes, sir.

1 Q. And that incident date is 5-21 of 2012?

2 A. That's correct.

3 Q. In other words, when the crime is supposed to have
4 been committed?

5 A. According to our documentation, yes.

6 Q. And DNA can be sensitive; can it not? Little problems
7 or little things can add up to large problems?

8 A. Can you rephrase that question? I don't --

9 Q. Well, you try to make sure that you cross your T's and
10 dot your I's when you do your DNA testing, don't you?

11 A. Yes, there's several controls that we use to ensure
12 that the kit and the whole process is working correctly.

13 Q. And if you don't use those controls or there's
14 mistakes, that can affect the test or the outcome; can it
15 not?

16 A. That would be correct.

17 **MR. MADSEN:** That's all the questions I have.

18 **THE COURT:** Anything further?

19 **MS. MAYES:** Yes, sir, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. The kit that you referred to -- or the testing method
23 that you referred to, can you tell us whether or not that
24 has been approved not only by the State Law Enforcement
25 Division, but by other agencies such as the FBI?

1 A. Yes, ma'am. Before we do any kind of testing with a
2 kit, bring it online, we have to do an internal validation.
3 We test certain things to make sure the kit is performing
4 as it's supposed to, you know, as the manufacturer says
5 that it's going to, like sensitivity, we do mixture
6 studies, contamination, make sure nothing's contaminated or
7 anything like that before we bring it online. This is also
8 a kit that is commonly used within other state agencies or
9 DNA labs. It also was approved by the Federal Bureau of
10 Investigation, the FBI, to use.

11 Q. All right. And so can you tell us whether or not that
12 testing method of DNA analysis is accepted by peers in the
13 scientific field of DNA analysis?

14 A. Yes, ma'am, it is.

15 Q. And has there been any evidence of errors committed on
16 your part during the DNA analysis of this case?

17 A. No, ma'am. All the controls I ran performed
18 correctly. We have negative controls that are supposed to
19 be free of DNA. If there was a DNA profile in it or hint
20 of DNA, then it would lead to, you know, a source of DNA
21 within our reagents. We also run a positive control to
22 make sure that the kit is typing correctly and accurately
23 and that was also correct.

24 **MS. MAYES:** I beg the Court's indulgence. Nothing
25 further, Your Honor.

1 **THE COURT:** Anything further?

2 **MR. MADSEN:** No, Your Honor.

3 **THE COURT:** You may come down. Thank you very much,
4 ma'am.

5 (Witness excused.)

6 **MS. MAYES:** The State calls Rhonda Fields.

7 **THE COURT:** Hold on. Approach the bench, please.

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** All right, ladies and gentlemen. Again,
10 the next witness may be somewhat lengthy and it's time for
11 our lunch break, so let's take a lunch break at this time.
12 I'll ask you to be back in the jury room at 2:00 at which
13 time we'll continue with the trial. Again, don't discuss
14 the case among yourselves when you return to the jury room
15 and anyone else over the lunch hour. Have a pleasant lunch
16 hour and we'll see you at 2:00.

17 (Whereupon, the jury was excused for lunch at
18 12:51 PM.)

19 **THE COURT:** All right. We'll stand at ease until
20 2:00.

21 (Whereupon, a luncheon recess was taken.)

22 **BAILIFF:** Please keep your seats. Court's now in
23 session.

24 **THE COURT:** Is the State ready to proceed?

25 **MS. MAYES:** Yes, sir, Your Honor. We can go ahead and

1 proffer this witness to the Court.

2 **THE COURT:** Go ahead.

3 **MS. MAYES:** The State calls Rhonda Fields.

4 **RHONDA FIELDS,**

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Please state your name on the record,
7 please, ma'am.

8 **THE WITNESS:** Rhonda Fields.

9 **MS. MAYES:** Your Honor, I'm also gonna pass up the
10 case of State versus Anderson. We have supplied a copy
11 to Mr. Madsen. This is a case that deals with the
12 admissibility of information related to an AFIS hit and
13 an AFIS notification once a suspect has been identified
14 and the State maintains that the use of AFIS is similar
15 -- very similar and analogous to the DNA database.

16 **THE COURT:** Go ahead.

17 **DIRECT EXAMINATION (In-camera)**

18 **BY MS. MAYES:**

19 **Q.** Now, Agent Field, where are you employed?

20 **A.** The South Carolina Law Enforcement Division, commonly
21 known as SLED.

22 **Q.** In what division?

23 **A.** The DNA database unit.

24 **Q.** Can you tell us whether or not SLED has access to a
25 DNA database?

1 A. We do.

2 Q. Can you tell us in this case, particularly this SLED
3 lab number, was a DNA profile developed from the swabs from
4 the black hat?

5 A. There was a profile developed, yes.

6 Q. Was it entered into the database?

7 A. It was.

8 Q. By whom?

9 A. Maryann Boehm, who would be a DNA casework analyst.

10 Q. And were you involved in reviewing information from
11 that database search?

12 A. I was.

13 Q. And you testified yesterday and since that time have
14 you had the opportunity to review your role in this?

15 A. I have.

16 Q. Were you actually involved in reviewing the database
17 search?

18 A. I was.

19 Q. All right. Is that an actual analysis or what's
20 involved in that?

21 A. There's a confirmation process that happens once a
22 match is identified. There's a reanalysis of the -- the
23 database profile to ensure that the original analysis was
24 performed properly and that the same results are generated
25 upon reanalysis and fingerprints are also verified to

1 confirm identity.

2 Q. All right. So, in other words, you're using
3 fingerprints to confirm the identity of the person who's
4 entered into the database?

5 A. That's correct, yes.

6 Q. Now going back to where we were, were you involved in
7 the review of the DNA database search?

8 A. I was.

9 Q. And was a suspect developed?

10 A. There was.

11 Q. Was notification sent to law enforcement?

12 A. Yes.

13 Q. To who?

14 A. Investigator Bruce Wade of the West Columbia Police
15 Department.

16 Q. On what date?

17 A. The letter was drafted on October 31, 2012. It was
18 actually released to Investigator Bruce Wade on November 6,
19 2012.

20 Q. And who was the suspect?

21 A. James Patterson.

22 **MS. MAYES:** All right. And, Your Honor, in terms of
23 the proffer, we would only be offering testimony that she
24 was involved in the -- reviewing the DNA database search,
25 that a suspect was developed, that notification was sent

1 to law enforcement, the date of that notification and that
2 the suspect was James Patterson.

3 BY MS. MAYES:

4 Q. But for the Court's benefit and for the purposes of
5 this hearing, let me ask you, Agent Field, in terms of the
6 actual DNA database, how do y'all go about verifying the
7 information that's in that database and the reliability of
8 it?

9 A. Again, we go through the confirmation process and
10 that's what I reviewed. I reviewed that there was
11 confirmation that the -- that the DNA profile developed
12 as a result of the reanalysis of the sample matched the
13 original profile and that the fingerprints were confirmed
14 and then I just do -- and then the letter's reviewed before
15 the letter is submitted to the investigating agency.

16 Q. All right. Do you have with you the document that
17 actually shows the match, the ID number for the match?

18 A. I do.

19 Q. All right. On that particular document, what is the
20 ID number for the DNA profile in the database for James
21 Patterson?

22 A. It's SC00499452.

23 Q. And what is the match ID?

24 A. The match ID is SA0000077927.

25 Q. All right. And you mentioned that in addition to the

1 DNA profile being entered into the database with that
2 person's name that there's also a fingerprint card?

3 A. Well, whenever samples are collected for the purpose
4 of going into the DNA database, thumbprints are collected
5 in the process and those thumbprints that are collected are
6 the ones that are used to verify it in the database, so it
7 wasn't an actually ten print card.

8 Q. All right. So that's a second form of verification
9 for the name entered into the system along with that DNA
10 profile?

11 A. That's correct.

12 Q. All right. And then do you also have with you the
13 match ID number attributed with this search?

14 A. I do.

15 Q. What is that?

16 A. It's SA0000077927.

17 Q. And do you see your initials anywhere on this
18 document for having reviewed it and reviewed this search
19 process?

20 A. I do.

21 Q. Where is it located?

22 A. On the bottom there's a row of tabs. Above those
23 row of tabs are fields that indicate who the letter was
24 drafted by, the date drafted and the individuals that were
25 responsible for reviewing the letter along with the date

1 that review was performed.

2 Q. All right. And does it also contain what's called a
3 match confirmation date?

4 A. It does.

5 Q. And what was the match confirmation date in this
6 case?

7 A. 11-6-2012.

8 Q. All right. And is that also noted beside your
9 initials?

10 A. It is to the right of the initials, but my actual
11 review was performed on 11-5-2012. There was a second
12 reviewer. She was the one that reviewed it on 11-6-2012
13 and the date of the final review is consistent with the
14 match confirmation date.

15 Q. Okay. So your review was on 11-5 and then it's also
16 still reviewed by yet another person as well?

17 A. That's correct.

18 Q. All right. And following these reviews, ultimately
19 did the State Law Enforcement Division send a notice of a
20 DNA match to the West Columbia Police Department?

21 A. We did.

22 **MS. MAYES:** Nothing further, Your Honor.

23 **THE COURT:** Cross-examination?

24 CROSS-EXAMINATION (In-camera)

25 BY MR. MADSEN:

1 Q. The DNA in the database, there's no chain of custody
2 associated with that, correct?

3 A. That's correct.

4 Q. And that is a database that for the most part are
5 individuals that when they get arrested their DNA is placed
6 in that database?

7 A. And actually let me go back to the previous question.
8 Some of the profiles in the database do have a chain of
9 custody, mostly the evidence items, but the ones that are
10 attached -- or assigned to individuals wouldn't have chain
11 of custody.

12 Q. So the people -- there's no way to track back who
13 took that, when they took that. There's no chain of
14 custody whatsoever on the people, there could be on the
15 items?

16 A. Exactly.

17 Q. Especially if SLED has generated that?

18 A. Exactly, yes.

19 Q. But on the individuals there's not?

20 A. That is correct.

21 Q. And -- I'm trying to think what my second question
22 was.

23 A. I'm sorry. Usually collected at the time of arrest,
24 and that is true. Some of them are collected at the time
25 of arrest, others upon --

1 Q. Conviction?

2 A. -- conviction, right.

3 Q. And there's nothing within your system that shows
4 when the individuals are collected?

5 A. Actually we do have a tracking system that shows
6 when the item was -- the sample was collected and it also
7 -- and it also -- like I said, we get in cards along with
8 the biological samples from these individuals and the
9 individual collecting the item sometimes will sign and
10 date the cards. It doesn't always happen. And, again,
11 there's no chain of custody once it's collected though.

12 Q. And you didn't actually perform this initial analysis,
13 a Lieutenant McClure did that, correct?

14 A. He would have performed the re --

15 Q. The comparison?

16 A. Right. Right.

17 Q. Not the collection, but the comparison?

18 A. Right, he would have -- he would have done the initial
19 evaluation of the match and proceeded with the confirmation
20 process.

21 Q. And when he's doing that comparison, you're not
22 looking over his shoulder or anything. He generates the
23 report and then that's later sent to you and you take a
24 look and see whether or not you agree with what he's
25 done?

1 A. Absolutely, yes.

2 Q. But you don't do any of that?

3 A. No, sir.

4 Q. So you would agree then as far as the authentication
5 of the individual DNA there's no way to do that?

6 A. Right. Actually there's no chain of custody
7 associated with that sample, individual sample.

8 **MR. MADSEN:** That's all the questions I have.

9 **THE COURT:** All right.

10 REDIRECT EXAMINATION (In-camera)

11 BY MS. MAYES:

12 Q. And just to clarify, there are thumbprints associated
13 as well, correct?

14 A. That's correct.

15 Q. And those thumbprints are used as an additional form
16 of confirmation for that individual?

17 A. That's right.

18 **MS. MAYES:** Nothing further.

19 RECROSS EXAMINATION (In-camera)

20 BY MR. MADSEN:

21 Q. And when we say thumbprints, we're talking about like
22 McClure and you, not the individuals who submit the DNA?

23 A. I'm sorry. The thumbprints are on the collection
24 card that are associated with the biological sample and
25 those thumbprints are submitted to our latent print

1 department and a latent print examiner verifies that the
2 thumbprints on the card do belong to this individual.

3 **MR. MADSEN:** No more questions.

4 **THE COURT:** You can step down.

5 (Witness excused.)

6 **THE COURT:** All right. Any objection to this line
7 of testimony?

8 **MR. MADSEN:** Yes, Your Honor. We've got objections
9 under 401, 402 and 403. We do not believe that it is
10 relevant. Even if it is relevant, it is more prejudicial
11 than probative. We've got argument under due process,
12 Your Honor, that they can't authenticate or give any type
13 of chain of custody as to this sample. We believe that
14 it's an attempt basically by the State under 404(b) to
15 show a bad act. This is a law enforcement agency, SLED,
16 and their database that's collected DNA samples.

17 Additionally, kind of in conjunction with 404(b), it
18 kind of goes along with 609, evidence of prior crime, so
19 we don't believe it should come in there. And then
20 obviously it is cumulative to the DNA that they've already
21 submitted and for those reasons we do not believe that it
22 is appropriate on top of the fact that you've got someone
23 who's done a review -- or reviews what someone else has
24 done, but if the State wanted to they could certainly have
25 had Lieutenant McClure here. Even if he's retired, they

1 have subpoena power and so they're even kind of -- after
2 all that they're kind of one person removed.

3 **THE COURT:** All right. What's the State's position?

4 **MS. MAYES:** Your Honor, we do believe that we have
5 met the criteria for admissibility pursuant to State
6 versus Anderson using the AFIS analogy. It is probative
7 to the State's case to establish how he was initially
8 developed as a suspect because that's what led Captain
9 Wade to actually putting him in the photo lineup and then
10 ultimately taking the secondary DNA sample from him that
11 was used for comparison analysis and the jury has heard
12 that that DNA is a match, but what's missing is the link
13 between the robbery and how he was developed as a suspect
14 initially. We are not offering any evidence as to who was
15 in that database, how people are entered into the database
16 or the fact that it contains convicted offenders.

17 **THE COURT:** All right. Objection's overruled. I'll
18 allow it.

19 Are you ready for the jury?

20 **MS. MAYES:** Yes, sir, Your Honor.

21 **THE COURT:** And the testimony will be limited as you
22 indicated.

23 **MS. MAYES:** Yes, sir, Your Honor.

24 **THE COURT:** Ready for the jury?

25 **MR. MADSEN:** Yes, Your Honor.

1 **THE COURT:** Bring the jury, please.

2 (Whereupon, the jury returns to the courtroom at
3 2:22 PM.)

4 **THE COURT:** All right. Ladies and gentlemen, I
5 apologize for the short delay. We had a legal matter I
6 had to take up with the attorneys. We're now ready to
7 continue with the trial.

8 Solicitor, call your next witness.

9 **MS. MAYES:** The State calls Agent Rhonda Fields.

10 RHONDA FIELDS,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Have a seat, ma'am. Please state your
13 name on the record; spelling your last, please.

14 **THE WITNESS:** Rhonda Fields.

15 DIRECT EXAMINATION

16 BY MS. MAYES:

17 Q. All right. And, Agent Fields, where are you currently
18 employed?

19 A. South Carolina Law Enforcement Division, commonly
20 known as SLED.

21 Q. In what division?

22 A. The DNA database unit.

23 Q. Can you tell us whether or not SLED has access to a
24 DNA database?

25 A. We do.

1 Q. And I want to take you back to 2012 and ask you
2 whether or not a DNA profile was developed from swabs from
3 a black hat?

4 A. Yes.

5 MR. MADSEN: Judge, I'd like to just renew my
6 objection at this point.

7 THE COURT: All right. It's on the record.
8 Overruled.

9 BY MS. MAYES:

10 Q. And can you tell us whether or not that DNA profile
11 from the swabs from the black hat was entered into the DNA
12 database?

13 A. There was a profile from that item entered into the
14 DNA database.

15 Q. All right. And by who?

16 A. Maryann Boehm.

17 Q. Okay. Maryann Boehm, the DNA analyst in this case?

18 A. That's correct.

19 Q. As a result, was a suspect developed?

20 A. Yes.

21 Q. Was notification sent to law enforcement?

22 A. Yes, it was.

23 Q. To what agency?

24 A. The West Columbia Police Department.

25 Q. And specifically who?

1 A. Investigator Bruce Wade.

2 Q. All right. And what was the date that SLED sent that
3 notification to Investigator Bruce Wade?

4 A. It would have been November 6, 2012.

5 Q. All right. November 6, 2012. And who was that
6 suspect?

7 A. It was James Patterson.

8 **MS. MAYES:** Thank you. Nothing further.

9 **THE COURT:** Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. MADSEN:

12 Q. You didn't do that comparison, did you?

13 A. No, I did not initiate it.

14 Q. Lieutenant David McClure did that?

15 A. That's correct.

16 Q. And, in fact, you found an error in that on April 12,
17 2016, correct?

18 A. That's correct, yes.

19 Q. So today?

20 A. Yesterday.

21 Q. Yesterday?

22 A. That's correct.

23 Q. Okay. This is the 13th.

24 A. Right.

25 **MR. MADSEN:** That's all the questions I have.

1 REDIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. Just to clarify, did the error have anything to do
4 with the actual process in conducting that DNA database
5 hit?

6 A. It did not. It did not.

7 Q. Okay. What did it have to do with?

8 A. It was the date of the letter. The -- there was a
9 computer glitch in which our system assigned a draft date
10 to the letter that was issued to the investigating agency
11 instead of the actual approval date and unfortunately
12 there's no way a new letter can be generated because it
13 would attach today's date. So it was discovered yesterday
14 and a letter was prepared.

15 Q. All right. Well, just to clarify, so that had to do
16 with the date on the letter, correct?

17 A. That's correct.

18 Q. Did it have anything to do with the identity of the
19 suspect?

20 A. No.

21 MS. MAYES: Nothing further.

22 RECROSS EXAMINATION

23 BY MR. MADSEN:

24 Q. So that's computer-generated and not discovered -- it
25 was computer-generated, right?

1 A. Right, the letter is.

2 Q. And y'all don't realize that until four years later?

3 A. Right. Right.

4 **MR. MADSEN:** That's all the questions I have.

5 **THE COURT:** All right. You may come down. Thank you
6 very much. Can this witness be excused?

7 **MS. MAYES:** Yes, sir, Your Honor.

8 **THE COURT:** Without objection?

9 **MR. MADSEN:** Without objection.

10 (Witness excused.)

11 **MS. MAYES:** Your Honor, at this time the State will
12 rest.

13 **THE COURT:** All right. Ladies and gentlemen, that
14 completes all the evidence that the State's going to
15 present. Now, as I told you earlier, the State -- I mean,
16 the Defendant has the opportunity to present a defense if
17 he wishes to do so, but is not required to do so under any
18 circumstances. There are a number of legal matters that
19 I must take up with the attorneys at this stage in the
20 proceeding and that process is going to probably run close
21 to an hour. So I'm not gonna have you sit in that jury
22 room for an hour. I'm gonna dismiss you for the day and
23 ask you to be back tomorrow morning at 9:30 at which time
24 we will continue with the trial. You're dismissed. Please
25 don't discuss the case among yourselves when you return to

1 the jury room or with anyone else over the evening hours.

2 Thank you very much. 9:30.

3 (Whereupon, the jury was excused for the day at
4 2:28 PM.)

5 **THE COURT:** All right. Any motions?

6 **MR. MADSEN:** Your Honor, we would have a motion for a
7 directed verdict. Given the evidence even in light most
8 favorable to the State, we do not believe that they have
9 satisfied their burden of proof and, therefore, we ask for
10 the Court to direct not guilty or to dismiss the armed
11 robbery, the possession of a weapon and also the grand
12 larceny charge. Additionally, Your Honor, we would renew
13 all of our objections and our motions at this point in
14 time.

15 **THE COURT:** All right. Thank you very much. What's
16 the State's position?

17 **MS. MAYES:** Your Honor, the State has met the required
18 elements as to each of these offenses. The armed robbery,
19 that a weapon or what appeared to be a deadly weapon was
20 presented. As to possession of a weapon during a violent
21 crime, that the suspect was in possession of the firearm.
22 And, finally, as to the grand larceny, Your Honor, there
23 has been sufficient testimony that the value of those goods
24 exceeded \$10,000, that they were removed from the store.

25 **THE COURT:** All right. As to the motion for directed

1 verdict, I feel the evidence goes beyond that of mere
2 conjecture or suspicion and that there is evidence, either
3 direct or circumstantial or some combination of both --
4 from both which reasonably tends to prove the guilt of the
5 Defendant or from which that guilt might be logically and
6 reasonably deduced if that evidence is taken in the light
7 most favorable to the State, so I must respectfully deny
8 the motion for directed verdict.

9 Now, Mr. Madsen, let me advise your client of his
10 constitutional rights, please.

11 **MR. MADSEN:** Yes, sir.

12 **THE COURT:** If you'll please stand, Mr. Patterson.
13 Mr. Patterson, at this time I'm going to explain certain
14 of your rights to you. If you do not understand anything
15 I say, please let me know. If you want me to explain
16 anything in more detail, please let me know. Do you
17 understand?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** We've now reached the stage of the trial
20 where you may present your defense. You have the right to
21 claim the protections given to you by the Fifth Amendment
22 of the Constitution of the United States. This amendment
23 states in part, "No person shall be compelled in any
24 criminal case to be a witness against himself or herself".
25 This means that you cannot be required to testify in this

1 case. You have the right to testify on your own behalf;
2 however, no one can make you testify. This is a personal
3 right and no one can waive this right except you. If you
4 decide to testify, you will be subject to the same rules
5 that govern other witnesses and you may be examined and
6 cross-examined on any relevant issue in this case.

7 In addition, if you have any convictions involving
8 dishonesty or a false statement or for crimes punishable
9 by imprisonment for more than one year and this Court
10 determines that the probative value of admitting this
11 evidence outweighs its prejudicial effect to you, the
12 solicitor will be able to introduce your record to attack
13 your credibility. If you decide to testify, this decision
14 on your part must be freely, voluntarily and intelligently
15 made and with knowledge of the protections given to you by
16 the Fifth Amendment and the consequences of your decision
17 to testify.

18 If you decide not to testify, I will instruct the jury
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely
21 no prejudice to you because you did not testify. It's left
22 entirely up to you whether or not you testify. You may
23 talk with your attorney, your family and friends or anyone
24 else, but the final decision will be left entirely up to
25 you. Do you understand what I've explained to you?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you have any questions about what I've
3 explained to you?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** Have you discussed with your lawyer
6 whether or not you should testify?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you wish to talk to your lawyer any
9 more about it at this time?

10 **THE DEFENDANT:** No, sir.

11 **THE COURT:** Sir?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** Do you wish to testify?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** All right. Thank you very much, sir.
16 That's it.

17 All right, counsel. We just over the lunch hour
18 drafted a set of charges and I haven't had a chance to
19 review them, so why don't we take about a ten or fifteen
20 minute break and I'll review these. If I find that they
21 are sufficient, then I'll run copies and give copies to
22 each you, all right?

23 **MS. MAYES:** Yes, sir, Your Honor.

24 **MR. MADSEN:** Yes, Your Honor.

25 **THE COURT:** All right. Let's stand at ease for about

1 fifteen minutes.

2 (Recess taken.)

3 **THE COURT:** Counsel, any objection to using the
4 indictments as the verdict form?

5 **MS. MAYES:** No objection from the State, Your Honor.

6 **MR. MADSEN:** I mean, I prefer verdict forms, but -- I
7 mean, I know we used to always use the indictments and then
8 there's kind of been a trend over the last five to ten
9 years to go to a verdict form, but I'll leave it in the
10 Court's discretion.

11 **THE COURT:** I know some defense counsel would just as
12 soon they not be reading it again and again.

13 **MR. MADSEN:** And that would be me.

14 (Pause in the proceedings.)

15 **MR. MADSEN:** Judge, everything looks fine on the
16 charge. I do have a circumstantial evidence charge.

17 **THE COURT:** That's different?

18 **MR. MADSEN:** That is different. It's a little bit
19 more specific in regards to circumstantial evidence.
20 Basically indicating that to rely upon circumstantial
21 evidence that they have to prove conclusively the guilt to
22 the exclusion of other reasonable hypothesis and it's not
23 appropriate just to have a probability, and that is State
24 versus Edwards.

25 **MS. MAYES:** The State would object, Your Honor. We

1 do believe that the Court's bench charge is sufficient and
2 appropriately encompasses the law.

3 **THE COURT:** Hasn't there been -- I'm gonna look it up
4 and let you know, but I thought there had been a fairly
5 recent case about to the exclusion of every other
6 reasonable hypothesis. I think that there has been.

7 **MR. MADSEN:** And I'm not aware if it is.

8 **THE COURT:** I'll find it. If I find it, I'll -- if I
9 don't find it, I'll consider this, but something sticks in
10 my mind. I'm not one of those people who can call cases
11 and citations out of my head.

12 **MR. MADSEN:** Other than that, everything looks fine.

13 **THE COURT:** Other than that, can you give me an
14 estimate of your closing time? We're just trying to -- for
15 scheduling purposes.

16 **MS. MAYES:** Twenty to twenty-five minutes, Your Honor.

17 **THE COURT:** Will you do it?

18 **MS. MAYES:** Yes, sir, Your Honor. We're still
19 operating under the current law where the State -- well,
20 you're not gonna put up any evidence?

21 **MR. MADSEN:** (Shakes head.)

22 **MS. MAYES:** Okay. So we're going to open first?

23 **THE COURT:** Close.

24 **MR. MADSEN:** No.

25 **MS. MAYES:** That's what I meant. Okay.

1 **THE COURT:** Right.

2 **MS. MAYES:** About twenty, twenty-five minutes, Your
3 Honor.

4 **THE COURT:** On the law and -- the law and the facts?

5 **MS. MAYES:** I beg the Court's indulgence. Yes, Your
6 Honor, I would include everything in the original opening
7 argument.

8 **THE COURT:** I assume you'll want a little flexibility
9 in that time -- in that time frame?

10 **MS. MAYES:** Yes, sir.

11 **THE COURT:** You've never run over?

12 **MS. MAYES:** I have.

13 **THE COURT:** I'm getting some inside information.

14 **MS. MAYES:** Okay.

15 **THE COURT:** Mr. Madsen?

16 **MR. MADSEN:** I would think about the same. I'll be
17 shorter than Ms. Mayes.

18 **THE COURT:** All right. We'll stand at ease until
19 9:30.

20 **MS. MAYES:** Thank you, Your Honor.

21 (Whereupon, the proceedings for April 13, 2016, were
22 concluded at 3:14 PM.)

23 (The following proceedings were held on April 14,
24 2016, beginning at 9:34 AM.)

25 **BAILIFF:** All rise. The Honorable G. Thomas Cooper

1 presiding.

2 **THE COURT:** Be seated. Thank you.

3 Good morning, Counsel.

4 **MR. MADSEN:** Good morning.

5 **THE COURT:** Is the State ready to proceed?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 **THE COURT:** Is the defense ready to proceed?

8 **MR. MADSEN:** Yes, sir.

9 **THE COURT:** Last night I reviewed the defense Request
10 to Charge Number 1 citing State v. Edwards and I think I
11 told you as we were leaving I remembered something
12 recently. State v. Edwards was overruled in 2005 by
13 State v. Cherry and as recently as 2013 the Supreme Court
14 issued another revised circumstantial evidence charge. And
15 although I believe that my Grippon charge that you already
16 had seen is satisfactory under the Logan case, nevertheless
17 I modified the circumstantial evidence charge to comport
18 with the instructions in State v. Logan. I haven't handed
19 everybody out a new copy because we were running out of
20 paper, but -- so the circumstantial evidence charge will be
21 as noted. Anyway, it's on the top right of Page 6.

22 **MS. MAYES:** The top right of Page 6?

23 **THE COURT:** Yes. I don't get in too much trouble when
24 I do what the Supreme Court tells me to do.

25 All right. Anything further?

1 **MR. MADSEN:** No, sir.

2 **MS. MAYES:** Nothing from the State, Your Honor.

3 **THE COURT:** Ready for the jury?

4 **MS. MAYES:** Yes, sir. I'm just reviewing this charge
5 briefly.

6 **THE COURT:** All right. Take a minute. I'm not gonna
7 rush you. We're in no hurry.

8 **MS. MAYES:** We're ready, Your Honor.

9 **THE COURT:** Mr. Madsen?

10 **MR. MADSEN:** Yes, sir. I'm sorry.

11 **THE COURT:** All right. Bring in the jury. Hold on.
12 Hold the jury. Mr. Madsen, do you want to announce --

13 **MR. MADSEN:** However the Court wants to do it. I can
14 do it, Your Honor can do it.

15 **THE COURT:** Either way.

16 **MR. MADSEN:** It doesn't matter to me.

17 **THE COURT:** Will you want to make any motion after you
18 do that? I don't want to bring the jury in and send them
19 right back out. Do you want to do it for the record now?

20 **MR. MADSEN:** I would, Your Honor.

21 **THE COURT:** You can rest now for the record, make your
22 motion for the record.

23 **MR. MADSEN:** And then just let the Court announce.

24 Your Honor, at this point in time the defense rests.
25 We would like to renew all of our motions for directed

1 verdict. We would like to renew all of our objections, all
2 of our pre-trial motions. Your Honor, we do not believe
3 that the State has provided sufficient evidence to go to
4 the jury and we would also move for a new trial.

5 **THE COURT:** All right. Thank you very much. Well,
6 I've considered all the evidence in this case. I find the
7 State has made a sufficient showing to send this case to
8 the jury and I must respectfully deny your motions.

9 Now bring the jury in.

10 (Whereupon, the jury enters the courtroom at 9:41 AM.)

11 **THE COURT:** Good morning, ladies and gentlemen. As I
12 told you at the beginning of the trial, the Defendant does
13 not have any obligation to present a defense and this
14 morning the Defendant has announced that they do not wish
15 to call any witnesses or present any defense. They have
16 rested their case also. So that means that this morning
17 we will conclude this trial with the final arguments of
18 counsel and my charge on the law to you at which time you
19 will be given the case for deliberation.

20 Have they seen the menus?

21 **THE CLERK:** Yes, sir.

22 **THE COURT:** Have you seen the menus? Okay. Good. I
23 was -- I was trying to get you some Lizard's Thicket, but
24 the Clerk insisted on Roly Poly. This will be a new
25 experience for me. I've never eaten at a Roly Poly, so

1 we'll all get to experience it together.

2 All right. Solicitor, you may begin with your final
3 remarks.

4 **MS. MAYES:** May it please the Court?

5 **THE COURT:** Yes, ma'am.

6 **MS. MAYES:** He thought he had it all planned out.
7 He had with him a dry-cleaning bag and he laid that
8 dry-cleaning bag over the glass counter as he committed
9 this robbery with the expectation that any time he touched
10 down on that dry-cleaning bag he wouldn't leave any
11 fingerprints behind. Pretty clever. He also had a getaway
12 car just a block away. Again, he thought he had it all
13 planned out. But the one thing that he wasn't banking on
14 was that the store owner, Frank Mancine, would respond when
15 that weapon was pulled in his face and in the face of his
16 customers, and Frank Mancine responded in self-defense
17 because he fired a shot as James Patterson fled that store,
18 and when he fired that shot, the Defendant took off running
19 at full speed and that's what he wasn't banking on. And as
20 he ran down that sidewalk as fast as he could, knowing that
21 Frank Mancine was just a few seconds away on his trail, he
22 drops that hat right there on the sidewalk. Just yards
23 away from the entrance to that store.

24 Now this is downtown West Columbia, two blocks from
25 The Riverwalk, broad daylight, 2:30 in the afternoon. You

1 don't just go to a shopping center and see a fedora laying
2 on the sidewalk. The same fedora he was wearing in both of
3 those videos on May 7th and May 9th. It's the same fedora
4 he dropped right there on that sidewalk as he was running
5 as fast as he could to get away from Frank Mancine and get
6 to that getaway car. He's not even gonna take the time to
7 stop and pick up that fedora. Anybody else who lost a
8 fedora walking down the sidewalk would stop and pick it up;
9 unless you're running away from a crime of this nature and
10 you can't risk getting caught.

11 So he makes it up the block, gets in that van, the
12 light gray van that Jennifer Hubbard saw him in, and then
13 what happens? The back window gets shot out and the glass
14 goes all the way into the roadway. So now we've got a van
15 with no back window and a damaged back hatch and that,
16 ladies and gentlemen, brings us to exactly where we are.
17 No matter how carefully one may plan a crime, no matter
18 how clever they may think they are, ultimately with any
19 crime of this nature you're gonna leave clues behind,
20 you're gonna leave substantial evidence that eventually
21 will catch up with you, and that's exactly where we are.

22 Because he got out of there so fast Jennifer Hubbard
23 couldn't get a license plate, Frank Mancine couldn't get a
24 license plate. Nobody had a name, but they had that
25 fedora, and so that brings us to what we call a combination

1 of direct evidence and circumstantial evidence. And at the
2 close of my argument and the argument of Mr. Madsen, the
3 Judge will charge you on exactly what is meant by direct
4 evidence and circumstantial evidence, but the most
5 important thing to remember is that both are good and valid
6 forms of evidence. Both are valued equally under the law.

7 So direct evidence is evidence that someone actually
8 sees or hears or experiences firsthand. And the direct
9 evidence in this case is that Frank Mancine saw James Bubba
10 Patterson not once, but twice, in his store. A well-lit
11 store, the lighting on the ceiling, storefront windows
12 where natural light comes in all day long. Twice he meets
13 with him. And you heard the testimony about the length of
14 that counter. Twenty inches. So Frank Mancine is closer
15 to him, far closer than I am to each of you right now.

16 So he's wearing the hat, he's got on sunglasses. Keep
17 in mind he's actually seeing him, conversing with him. He
18 thinks he's a customer. And so, again, this goes on two
19 separate days where he's having this interaction with James
20 Bubba Patterson before ultimately he pulls out that weapon
21 and puts it in his face and commits the robbery. Now I
22 submit to each of you, you see me here standing in front
23 of you, talking with you. If I put on sunglasses, is that
24 really gonna hide my identity? Of course not. You know
25 what I look like. You know what I look like as I speak,

1 you know what I look like as I turn my head. If somebody
2 shows you a photo lineup, are you going to be able to pick
3 me out? Of course you are.

4 So that, ladies and gentlemen, is what we call direct
5 evidence and here the direct evidence was Frank Mancine saw
6 him, identified him, conversed with him, interacted with
7 him and then ultimately when he was developed as a suspect
8 he immediately picked him out of that photo lineup. You
9 heard the testimony of Detective Wade as well as Frank
10 Mancine himself. When he looked at that lineup, he knew
11 who had robbed him and had no difficulty picking him out.
12 And then, on top of that, you heard his testimony from the
13 witness stand. Again, direct evidence from an eyewitness
14 who saw it and experienced it firsthand. On that witness
15 stand he's able to say with no doubt whatsoever that is the
16 man who robbed me. Again, direct evidence.

17 Now in addition to direct evidence, let's talk about
18 forensic evidence, scientific evidence. We have advanced
19 so much in the field of CSI, not just crime scene
20 investigation, but also forensic technology. Things like
21 DNA weren't even available in the field of criminal law
22 forty or fifty years ago. And here we are where DNA is a
23 unique science, it's an understanding of a unique genetic
24 pattern that each of us have and is never duplicated. No
25 one else has our DNA. No one else has James Bubba

1 Patterson's DNA. The DNA that was found on that hat.

2 So let's talk about the sequence of events that led
3 us through this investigation. So that fedora is laying
4 there on the sidewalk. You heard the testimony that an
5 officer, a Scott -- Captain Scott Morrison actually stood
6 by the sidewalk and guarded that hat to make sure that it
7 was not interfered with or tampered with in any way until
8 Investigator Sullivan was able to arrive on the scene and
9 carefully and securely place that hat into evidence in that
10 sealed bag, and once the hat is taken into evidence and
11 sealed, he delivers it to the State crime lab.

12 And you heard the testimony of Betty Butler, the
13 forensic technician. She knows that the hat has not been
14 tampered with in any way because she's the one that breaks
15 the seal to actually do the swabbing on the hat. And you
16 heard the testimony of Ms. Butler as she spoke about how
17 she goes about determining whose DNA is on this hat. Well,
18 the first thing she does is swab all around the band on the
19 inside because anybody wearing this hat has to put it on
20 and then take it off and the friction of doing so results
21 in skin cells and DNA being left behind. And, again, we
22 know that James Bubba Patterson was wearing this hat not
23 just on the day of the robbery, but two days before on the
24 other surveillance video, May 7th, he's wearing the same
25 identical hat. Putting it on, taking it off. Putting it

1 on, taking it off. This is May 9th, 2:30 in the afternoon.
2 We know what May is like here in South Carolina. Any
3 degree of sweat also leaves DNA behind. And ultimately
4 what they determined is there's not multiple wearers of
5 this hat, there's not multiple contributors of DNA on this
6 hat. There's only one contributor. One. One finding of
7 DNA. She swabbed all around this band. There's no mixture
8 of DNA, just one contributor. Right there, James Bubba
9 Patterson. And to a degree, a reasonable degree of
10 scientific certainty, how sure are they that it is his
11 DNA and not the DNA of any other person? One in 730
12 quintillion. That's the ratio of anyone else potentially
13 having such DNA. A hundred billion times the current world
14 population. There's no doubt whatsoever who was wearing
15 that hat and who left it on that sidewalk.

16 But let's talk about what happened in the very
17 beginning when they first found that hat even before he was
18 developed as a suspect because they had no suspect. Once
19 Betty Butler does that swab on the DNA, she sends it to the
20 DNA analyst, Maryann Boehm. And, again, it's sealed. We
21 know it wasn't tampered with. Maryann Boehm was able to
22 establish that. She's the next one in line to get that
23 sealed package from Betty Butler. She develops the DNA
24 profile on that hat in 2012. 2012. Just a few months
25 after it's happened. And as they explained, DNA is not a

1 science where you get an answer the next day or even the
2 next week. DNA is a very thorough, scientific procedure of
3 testing. It is exact and it requires time and patience.
4 So a few months after this has happened, now we're in
5 November of 2012, and Maryann Boehm finally has that full
6 DNA profile. The swabs on that hat has given her a full
7 DNA profile, so she enters it into the DNA database and
8 there you go. They've got a suspect now. James Bubba
9 Patterson.

10 So SLED notifies Detective Wade at the West Columbia
11 Police Department here's your name, here's your suspect.
12 It's James Bubba Patterson. And that's when Detective
13 Wade locates a photograph -- requests that the State Law
14 Enforcement Division generate a photo lineup. That's how
15 he ended up in the photo lineup, after that DNA database
16 search. There he goes in a photo lineup that was generated
17 by the State Law Enforcement Division. That's when he's
18 identified by Frank Mancine.

19 And then, in addition to that, Detective Wade says
20 well, let's see what else we can find out about James Bubba
21 Patterson. So he does a search that he leads him to a
22 vehicle and he finds out that on May 24, 2012, fifteen days
23 after the armed robbery in West Columbia, he finds out
24 there is a vehicle registered to James Bubba Patterson
25 which fits the description of the vehicle at the crime

1 scene because it's a van. It's on the Eagle One Towing lot
2 and it ends up on the Eagle One Towing lot the same day
3 that Deputy Brendan Pennington with the Richland County
4 Sheriff's Department found him driving that vehicle. So
5 now we know not only is he the owner, but he's the driver
6 of that van.

7 So he heads down to Eagle One. He observes the van
8 himself, but now all of a sudden it's not light gray like
9 Jennifer Hubbard remembers it being, it's white. It's been
10 painted white. A quick paint job that doesn't even match
11 up that new door on the back that's no longer a Plymouth
12 Voyager door, now all of a sudden it's a Dodge Caravan
13 door. A Dodge Caravan door on the back of a Plymouth
14 Voyager because as he fled that scene and his window's been
15 shot out, the first thing he's got to do is switch up that
16 van. He's got to get a new door, he's got to get a door
17 with a window. So you go to Pull-A-Part, a scrap yard,
18 junkyard, anywhere you can to locate a new door that will
19 fit even if it's a Dodge Caravan and it's white and you've
20 got to paint the van white. But as we know he painted that
21 van white, but right here in State's Exhibit 47, right
22 here on the interior, he didn't have time for all of
23 that, he don't have time to paint the light gray on the
24 interior, so right there it stays the same color it's
25 been from the beginning, the same color it was back when

1 Anthony Kennedy owned that van and sold it to James Bubba
2 Patterson. There's the light gray paint right there.

3 (Whereupon, State's Exhibit Number 6 was played.)

4 And here you see the pregnant customer that he had no
5 regard for when he comes in and pulls that weapon. There
6 you see the dry-cleaning bag and the fedora. And here you
7 see Mr. Mancine conversing with him, looking directly at
8 him. Now he's reaching for that weapon in the back of his
9 jacket, he's looking at other customers, getting ready to
10 pull out that weapon. And here you see him using his left
11 hand, his right hand, folding the bag with his right hand,
12 putting that right hand on that dry-cleaning bag, careful
13 not to touch that counter. Yelling at customers, using his
14 right hand to grab that jewelry, using his right hand to
15 grab that bag, and now he's taking off running at full
16 speed as he leaves that door.

17 (Video concludes.)

18 Now the law in this case is actually very simple.
19 And, again, when I'm done the Judge will address you on
20 exactly what the law is and what the elements are, but I
21 ask you to keep in mind, again, that under the law the
22 crime of armed robbery is actually one that's quite simple.

23 Okay. So we look here at armed robbery. It's as
24 simple as the act of committing a robbery, while armed
25 with a pistol or other deadly weapon or any object which

1 a person present during the commission of a robbery
2 reasonably believed to be a deadly weapon. So it's never
3 a defense to say something like well, I didn't have any
4 bullets in my gun or my gun didn't work or anything like
5 that. Someone presents a firearm or what the person being
6 robbed believes to be a firearm, that is sufficient proof
7 of armed robbery. And in this case we know he committed a
8 robbery and we know he pulled out that weapon, not only on
9 Mr. Mancine and Mr. Mancine's mother, but also on the other
10 customers in the store, and we know that he was armed with
11 a firearm. That charge has been proven beyond a reasonable
12 doubt.

13 Now the next charge before you is the charge of
14 possession of a firearm during the commission of a violent
15 crime. Well, again, very simple. We know that he
16 possessed a firearm. We saw him with it, we saw him leave
17 with it. Next, during the commission of a violent crime.
18 What is a violent crime? Violent crimes are defined by
19 statute. Under South Carolina law, armed robbery is a
20 violent crime. Again, that charge has been proven beyond
21 a reasonable doubt.

22 So finally that leaves us with the charge of grand
23 larceny. What is grand larceny? Well, this is an
24 old-fashioned jewelry heist. Because jewelry when it's
25 gold or contains gold or rhodium or any other precious

1 metal can immediately be sold whether on the street, as a
2 commodity, to a buyer. You immediately have collateral.
3 It's the same as cash. In 2012 with the price of gold
4 being well-over a thousand dollars an ounce, he's got
5 thousands of dollars right there in that bag. How easy is
6 it to turn around gold? Very simple. How many times do
7 you drive around -- you don't even have to go to Columbia.
8 You can drive around 378, you can drive down Number 1.
9 Gold buyers. Everybody wants to buy gold so then they can
10 turn around and sell it for a higher price. How many of us
11 sell our gold as soon as that price went up like it did a
12 few years ago? So selling that gold was about the easiest
13 thing there is to do. He had fifteen days to sell all that
14 gold. Very easily done. There's no paper trail, no way to
15 trace it. You go in, you sell it and leave with cash. We
16 know that he had a bag full of gold jewelry. You saw him
17 dumping those trays into that bag and we know that the
18 value of that jewelry, even for the sake of insurance, was
19 over \$20,000. Under the law this charge of grand larceny
20 requires proof of \$10,000 or more. We know that has been
21 doubled at least, if not tripled, in this act of grand
22 larceny. Again, this charge proven beyond a reasonable
23 doubt.

24 Finally, that leaves us to where we are with a summary
25 of the evidence in this case. This is what it comes down

1 to; a combination of direct evidence, circumstantial
2 evidence, forensic evidence and scientific evidence that
3 leads to only one conclusion and that is that James Bubba
4 Patterson committed that robbery at K & M Jewelry right
5 here in Lexington County. We know his DNA is on the hat.
6 How well do we know that? One in 730 quintillion. The
7 odds of it being anybody else? One in 730 quintillion.
8 We know that he was identified in the photo lineup by
9 Mr. Mancine. We know that Mr. Mancine identified him
10 right here in this courtroom. No doubt whatsoever. And,
11 finally, that van. Circumstantial evidence, but, again,
12 under the law circumstantial evidence is just as good as
13 direct evidence that we have here, direct evidence that we
14 have here, and the forensic and scientific evidence that we
15 have here. It's far more than speculation, it's far more
16 than assumption or all of those things that Mr. Madsen had
17 mentioned in his opening address to you. This, ladies and
18 gentlemen, is proof beyond a reasonable doubt.

19 We know that in that van that used to be light gray
20 there's also evidence of an abrasion in that van, State's
21 Exhibit 48. And take a look at that abrasion which is in
22 evidence. It's a high impact, high velocity abrasion.
23 What causes that? A projectile coming through that back
24 window. The same projectile that shattered that glass
25 window all over the street and made him replace that back

1 door with a Dodge Caravan door.

2 What it comes down to in this state and in this county
3 a crime of this nature cannot be tolerated. The middle of
4 the day, customers in that store. He's pulling a weapon on
5 a pregnant female telling her to load that bag for him.
6 Absolutely cannot be tolerated. You have before you the
7 most noble of opportunities. The chance to strike back
8 against injustice and deliver a verdict that speaks the
9 truth. In this case, that verdict is guilty of armed
10 robbery, guilty of grand larceny and guilty of possession
11 of a weapon during a violent crime. Thank you.

12 **THE COURT:** Mr. Madsen?

13 **MR. MADSEN:** I told you in the beginning of this
14 case that this case was about speculation, conjecture and
15 assumption. Speculation, conjecture and assumption that
16 comes from an investigation that was incomplete, inept
17 and inaccurate. An incomplete, inept and inaccurate
18 investigation. Do you have any faith in what the State did
19 after listening to the testimony? Do you have any faith
20 whatsoever? Their interviewing or lack of interviewing of
21 individuals? Yeah, I'm gonna get to it a little bit later,
22 but I thought it was kind of interesting we got a blow by
23 blow of the video except when Mrs. Mancine was that close.
24 Ms. Mayes was silent on that. Remember, she's standing
25 right here. She puts on a hat and a sunglasses, y'all can

1 ID her. That close. We're silent on that. We don't want
2 to talk about that in the video. We don't want to call
3 that person to the stand. We don't want to talk about the
4 fact that they see a sixpack that has James in it, but not
5 that robber.

6 How about the collection or storing of evidence? Do
7 you have any doubt about that? You certainly have a
8 reasonable doubt about that. Now I'm not gonna cast any
9 aspersions, but y'all saw this hat earlier. It's kind of
10 been put back. It was awful crumpled up during the trial.
11 It looked like it had been beaten around a little bit. Do
12 you have any questions about this careful handling of
13 evidence that was in a bag within a box? It's been put
14 back together now. It certainly doesn't look like earlier
15 when the witnesses had it and it was all crumpled up. They
16 don't want to make you think that -- you know, how that
17 evidence was handled. The collection, the storing and the
18 handling of evidence.

19 The chain of custody. How many errors did you hear
20 about? How many problems did you hear about? The State
21 wants you to trust the testimony of people when they read
22 off the chain of custody and other things. They talk about
23 James Peterson, they talk about a 5-21 incident date, that
24 lose evidence. Detective Wade, swabs taken by that man on
25 29th, taken by Investigator Sullivan that no one knows

1 where they're at. That's what you're supposed to trust?

2 How about the losing of reports? We got a new system.

3 Sorry, we got a new system and we've lost stuff. Hey,

4 guess what? SLED's had a new system, too, and they've

5 messed up stuff also. That is what you are supposed to

6 believe in. That is their case. And I found it

7 interesting their last witness gets up there and says oh,

8 by the way, I found an error four years later. Those are

9 the people that you're supposed to trust. This case isn't

10 just tainted with reasonable doubt, it is drenched with

11 reasonable doubt, it is soaked with reasonable doubt.

12 Now let me talk about some of the witnesses. Let's

13 start with Mr. Mancine. He seems like a nice guy. He's

14 running an honorable business for the last twenty years.

15 I'm not saying that he got up there and perjured himself

16 on that stand, but he is wrong. About ten minutes in the

17 store. That video is three minutes. I start asking him

18 questions about what goes on in there and I don't think --

19 most of you aren't as old as I am, but it reminded me of

20 when I was about ten years old watching Oliver North

21 sitting in front of Congress answering questions on the

22 Iran Contra Affair. I do not remember, I do not recall.

23 Some of the jurors that are as old as me will remember that

24 and that's why you're a collection of twelve because you

25 have that experience and you can share that because he was

1 a big deal back in the early eighties and that hearing was
2 a big deal. But he can't remember. And when I started
3 asking those questions, he couldn't remember. Because it's
4 three minutes in that store, folks. Three minutes in that
5 store, folks. As I said, he has trouble remembering the
6 details. Has trouble remembering those details.

7 He gives off two generic descriptions. The first
8 officer out there, he gives a description, then he speaks
9 to Detective Wade an hour or two later on audio and all of
10 a sudden the fellow has grown a couple of inches, he's now
11 120 pounds, but that's it. A black male, early forties.
12 Two different descriptions. Nothing else. We know from
13 watching the video that the fellow's got a hat on. He's
14 got large sunglasses that obscure the face. We don't get
15 any other description. Of course, now four years later,
16 the fellow has unusually large lips. You're gonna get that
17 photo lineup and do you see any unusually large lips that
18 stand out? I'll submit to you he doesn't have unusually
19 large lips. That's what he gives four years later, his
20 most generic description? Four years later and he has
21 unusually large lips.

22 You know, you've got photographs of the interior of
23 the store. It's not a big store. Everyone's in there for
24 the same three minutes. Mrs. Mancine is just as close as
25 Mr. Mancine. Mr. Mancine really wants to believe, but he's

1 wrong. So you've got no ID by Kim Mancine. We've got
2 fingerprints, so we know she's within arm's reach. Tommy
3 Warner, the other fellow in that small store. You don't
4 think that if he picks out James he's not here. No, we
5 don't need that. How about Ashley Knight? The testimony
6 is that the bag was thrown to her, which means she's nice
7 and tight. It's not that far from one side over there to
8 the other. No ID. You can never put a quantitative
9 numerical value on reasonable doubt. Twenty-five percent
10 of the people ID'd my client. Like I said, you can't put a
11 numerical value on reasonable doubt, but I would assume
12 that you, if there was a number, that twenty-five percent
13 would be that number. That would be the gold standard of
14 that number.

15 We're gonna jump ahead a little bit, but I found it
16 interesting that Jennifer Hubbard said hey, it was hard to
17 focus on anything but the gun. That makes sense. You
18 never get used to something like that. It's scary. I'm
19 sorry he had to go through that, but it's hard to focus on
20 anything but the gun. He even told you that he had an
21 adrenaline rush, anxiety. You're upset, you're worried
22 when you're staring down the barrel of a gun.

23 Now do you remember about six months later
24 Investigator Wade said he went back to the store and he
25 showed ID's to Mr. Mancine and Mrs. Mancine? And his

1 testimony, just under a minute. Just under a minute.
2 Let's stand here for just a second. Let's stand here for
3 just under a minute. Still looking at that piece of paper,
4 still not picked someone out, still going. Let's stop
5 there at fifty seconds. That's just under a minute. When
6 you say it, it doesn't sound that long. When you sit there
7 and think about looking at it, how long does it seem? It
8 takes almost a minute to ID him.

9 Now let's talk about Jennifer Hubbard, the lady that
10 was out there waiting for her child on the bus, and sees a
11 van pull up. It doesn't have any ladders on top. You can
12 see the video. The fellow looks like he has a black jacket
13 on, but this man has a gray suit. At one point she said
14 it was a light gray suit, then I think she said it was a
15 darker gray suit and then I think she said it was kind of
16 the same suit color that Mr. Bell had on at that point in
17 time, but he had on a gray suit. He didn't have a hat on.
18 It's not the kind of hat that you fold up and throw in your
19 pocket, it's not a ball cap that you crumple up and put in
20 your back pocket. He had nothing in the bag. It was a
21 clear bag and there was nothing in it. You can see in
22 that video there's clothes in the bag. And that man was
23 one 180 to 200 pounds. She told Detective McCraw, who's
24 the evidence lady now but was a detective, that she could
25 ID, but law enforcement doesn't want her to ID the wrong

1 guy. We've already got one person who says he's not in
2 this lineup, let's not have another one. That's reasonable
3 doubt, that stinks. That's reasonable doubt and they know
4 it, so they never follow through with it. She says that
5 when Mr. Mancine shot he was ninety feet away. I thought
6 about bringing a tape measurer to see how far ninety feet
7 is. It's a long way. It's a long way. She talks about
8 the blue Monte Carlo, says that about a minute later it
9 takes off. No, let's not worry about that. Let's not
10 investigate that, let's not work it, let's not do anything
11 about that. There's no reason to. There's no reason to
12 whatsoever. Let's just let it go.

13 Now you heard about Investigator Sullivan, who works
14 at the solicitor's office, how he was the CSI guy back
15 then, and what's he tell you? That when he goes out there
16 to work on a crime scene he's got to use an abundance of
17 caution, which is what you should do. Hey, I might as well
18 take it just in case. He talks about that's what he did
19 with those cigarette butts, but, you know, Jennifer Hubbard
20 didn't see him smoking, no one did, the ground was wet,
21 they were not wet, so why not collect them just in case.
22 It's an abundance of caution. That sounds perfectly smart.
23 But we know from the video that the fellow comes in through
24 the front door. We don't fingerprint that, we don't get
25 touch DNA from that. Let's not do that. That's not an

1 abundance of caution. And we know the fellow comes through
2 the front door and we know that when Mr. Mancine goes out
3 that he pushes, so out of an abundance of caution let's
4 just not collect that.

5 How about his lost report? He gave that to Detective
6 Wade. We have no idea where it is. There's a -- there's
7 a new system and it's gone. Well, if he gave it to Wade,
8 it's not in the system. It's on a piece of paper and it's
9 gone. So what else has been lost? What else is gone? I
10 guess, you know, changing computer systems is kind of the
11 new "my dog ate my homework". It's just gone.

12 How about as an abundance of caution those jewelry
13 trays, which were the subject of that report, how about
14 touch DNA on those? We know the fellow touched those.
15 You can see it on the video. Do we submit those to SLED
16 for touch DNA out of an abundance of caution? It would
17 be a real easy way to figure out who that perpetrator was.
18 A real, real easy way, but we don't do that out of an
19 abundance of caution.

20 I talked about this a little bit earlier, but
21 Investigator Sullivan took swabs of the hat and took
22 them to SLED on 5-29, but no one knows where those are.
23 Whatever happened to that lost evidence? That's reasonable
24 doubt in and of itself. Lost evidence.

25 Now we've also got some jewelry that's left behind.

1 Did we fingerprint or touch DNA any of that out of an
2 abundance of caution? They just showed it to you on the
3 video. He's grabbing at stuff, he's pawing at stuff. The
4 fellow's trying to get out of there as soon as possible.
5 Out of an abundance of caution do we check any of that?
6 No, we don't need to.

7 Now Investigator Sullivan did pull prints, but they
8 don't even do elimination prints until I think it was
9 March of 2016, so almost four years later. Then we get the
10 elimination prints and find out that one of the prints is
11 not good and the other one comes back to Kim Mancine, the
12 mother and the owner of the store. We wait four years for
13 that. We see a hat out there just lying there about ninety
14 feet from the store. I think that was Sergeant Fair who
15 talked about how far that hat was. Just kind of lying
16 there.

17 After all that, after the losing of things, the
18 losing of evidence, the losing of reports, do you have
19 any confidence whatsoever in the evidence that they
20 collected, how they stored it, what they did with it?
21 None. Absolutely none. Never tested, not out of an
22 abundance of caution, sitting on the floor. We see the
23 video. We know where it's at, jewelry's all messed up,
24 messed around. Why don't we do that? No reason to do
25 that even though we're trying to make sure that we do

1 everything out of an abundance of caution.

2 You heard from the DMV lady. James buys the car for
3 \$500. It takes him a year to get it titled to get it on
4 the road. I will submit to you that buying a \$500 van,
5 you're not buying the Cadillac of vans. And like
6 Mr. Kennedy told you, and you're gonna have pictures of
7 the van, rust, a motor problem, he had to put a motor in.
8 One year to work on that van to get it on the road. One
9 year. Do you think a \$500 van might need some work? When
10 we see the van out at Eagle One, there's ladders on top.
11 It's a work van. Captain Odom testified to that, that
12 you could tell it was a work van, that it was a painter's
13 van, and I think he said residential and commercial
14 painter. The State kind of tried to allude to hey, he's
15 a painter so he's gonna know how to paint. My dentist is
16 Dr. Robinson right down the street. When I walk in, I say
17 "Hi, Dr. Robinson". He is a doctor, but I'm not gonna
18 allow him to do heart surgery on me. He's a dentist.
19 Residential painting, commercial painting, using paint
20 brushes in situations like that would be entirely
21 different.

22 One of the more important things I think that came out
23 from their witness is that that van hadn't been cleaned.
24 It was dirty, there was stuff all over the place. It was
25 a work van that was used. You'll have pictures that the

1 State put in of this used van. Did it look like it had
2 been cleaned up? Does it look like anybody's tried to hide
3 anything?

4 What did Captain Odom tell you his job was? His job
5 was to oversee patrol and it sounds like a pretty large
6 patrol that's pretty busy that deals with a lot of breaking
7 in of motor vehicles, breaking of glass, and how hard it is
8 to get out that glass. Anyone that's ever had the glass
9 broken in your car, you can clean as long and as hard as
10 you want and two years later you're still gonna find glass.
11 But they didn't find any in the van. You don't think that
12 there would be photographs of that? Hey, we found the
13 broken glass. In that dirty, used van on the inside and
14 there's no glass. We know the glass was shattered and we
15 know which way the bullet's going, but there's no glass.
16 And, of course, there's no bullet. This \$500 van that had
17 a rip in the headliner. Hey, that will be our bullet
18 place. That will be it. The work van, stuff going in and
19 out, that will be our -- but there's no projectile.

20 I never quite understood this. So I think that SLED
21 -- or the State's theory is that there's two different
22 paintings. You paint all of it and then you repaint the --
23 the trunk a different color? That doesn't make a lot of
24 sense, but -- and it's not the original color because you
25 can kind of see whenever you buy a car and the person you

1 buy it from always like to put their little stickers on the
2 back so you're kind of a rolling advertisement for them,
3 that's been painted, and the idea was oh, maybe he just
4 went out and got a white door.

5 Now we've kind of alluded, but let's talk a little bit
6 about the chief investigator, Wade. We know from Jennifer
7 Hubbard that the bag's empty when the fellow gets out and
8 walks up the street. I think he says maybe he tried to
9 call one cleaner and that's it. Okay, fine. Hey, do you
10 have anyone that came into your store today with a bag that
11 maybe did an armed robbery later? No, we didn't see anyone
12 like that. Okay, thanks. Click. Done. Let's not worry
13 about anything else. They've got a way to check stores,
14 tickets, go around. You know, oh, gold is a commodity.
15 You're not gonna get a receipt? You're not gonna get
16 something from the stores? It's just traded, you know.
17 And even -- I can't remember, it might have been
18 Investigator Sullivan, it might have been Captain Odom,
19 y'all are twelve and you've got a lot better memory, but
20 someone says hey, I asked the question, it's different
21 than selling one necklace on the street as compared with
22 \$30,000 worth of jewelry. Don't you think that would be a
23 little harder to fence \$30,000 worth of jewelry as compared
24 to one? But according to them it just disappeared, it's
25 gone. They have the ability to check pawn tickets. Pawn

1 shops buy a lot of jewelry. They've got to get tickets.
2 You can track those back. Detective Wade talked about that
3 that's something that they do. Let's just not do it in
4 this case. Let's just not do it in this case. So they
5 don't.

6 They arrest James at his home. We could go get a
7 search warrant. Captain Odom would help them. He helped
8 them once. Let's not go and try to find the jewelry, find
9 anything there. Let's not do that. No reason to. You
10 know, how about -- the place is a strip mall, big windows
11 all the way down. No one sees anything. No one's
12 interviewed. Stores to the left, stores to the right. All
13 of them set up the same way with those big windows that let
14 that light in. No one's interviewed. They don't check the
15 pull-a-parts. James Patterson buys a new door and puts it
16 on the back of his van. You don't think they would love to
17 have that, to have someone say hey, two days after the
18 robbery he replaced the back door and here's the receipt
19 for the back door. They don't check.

20 Now you heard Detective McCraw talking about the chain
21 of custody. Do you have any faith in that? I think the
22 solicitor had to go find and give her her report. Do you
23 have any faith in that whatsoever?

24 Let's talk for a little bit about SLED. So SLED does
25 these reports, these reports that the State wants you to

1 have faith in, for an incident that occurred on 5-21. An
2 incident that occurred on 5-21 of 2012. There's a problem
3 with that. The robbery occurred on 5-9 of 2012. No, just
4 ignore that. We make sure to cross our T's and dot our
5 I's. No big deal. We only swabbed the inside of the hat,
6 not the brim, not the top. The place where it's already
7 been swabbed by Investigator Sullivan.

8 **MS. MAYES:** Objection to evidence not in the record
9 and mischaracterization of testimony.

10 **THE COURT:** All right. Overruled.

11 **MR. MADSEN:** The SLED DNA person even says I take the
12 hat, I put the hat on for a few minutes, I take it off,
13 it's not necessarily gonna have my DNA in it. That's their
14 witness.

15 Now you heard a little bit when I started to
16 cross-examine the DNA expert who when we started talking
17 about the loci and how many a person has had no idea, I
18 just use what I get in the box. Just what's in the box.
19 But we did hear from -- that this is a loci and that the
20 number down here you get one from your father and one from
21 your mother and that there's more than a hundred of these,
22 more than a thousand, we're just not really sure. So here
23 we've got mother, father, and I don't know what the third
24 number is. It doesn't match James Patterson. Maybe it's
25 mother, father, stepfather? You get one from your mother,

1 you get one from your father, yet we've got a third number.
2 Who's that come from? Of course, when the DNA person is
3 testifying we're talking about stuff from James Peterson.
4 This is a person who crosses their T's, dots their I's.
5 Little problems can turn into big problems. The solicitor
6 asked her again, "Who are we talking about?". James
7 Peterson. Then the solicitor comes over because she knows
8 it's a problem. James Patterson. Oh, okay. These are
9 the people that the State wants you to trust. They want
10 you to trust a name.

11 We talked about it earlier. How about finding errors
12 in the SLED report on the 12th? Which I'm not real sure
13 what's today's date, I think it's the 15th, so three days
14 ago. Three days ago? Four years later? Hey, everyone's
15 changing computer systems. Everyone's changing computer
16 systems. Oh, well. You know what my father-in-law would
17 say? That's just kind of good enough for government work.
18 That's not the standard here. That is not the standard,
19 ladies and gentlemen. That is not the standard.

20 Now I'll be done talking here in just a minute. The
21 Judge is going to charge you on the law and he's going to
22 tell you that the State has the entire burden of proof in
23 this case. That the State has the entire burden of proof
24 and they must prove their case beyond a reasonable doubt.
25 Sitting there in your chairs did you hear reasonable doubt?

1 Did you hear it again and again and again? Each one of
2 those pieces of paper is a piece of reasonable doubt.
3 Each one of those things that you heard is a piece of
4 reasonable doubt. And in this case not only did you hear
5 about reasonable doubt, but you can look at reasonable
6 doubt. It's on the floor sitting in front of you. There's
7 reasonable doubt all over the place in this case and that's
8 why James Patterson's not guilty. He's not guilty of armed
9 robbery, he's not guilty of grand larceny, he's not guilty
10 of possession of a weapon during the commission of a
11 violent crime. He is not guilty. Thank you.

12 **THE COURT:** Anybody need a break? All right. We'll
13 proceed.

14 **MS. MAYES:** Your Honor, may we approach?

15 (Proceedings held at the bench; not reported.)

16 **THE COURT:** Clean up.

17 All right. Ladies and gentlemen, you've now heard all
18 of the testimony in this case, you've heard the arguments
19 of both the State and the Defendant and you will take to
20 the jury room all the evidence in this case that's been
21 introduced. And I'll mention the video in a minute, but
22 now I must explain the law of the state of South Carolina
23 to you as it applies to this case.

24 I'll remind you, again, that during this trial you
25 and I had certain duties to perform. As the trial judge,

1 it's my responsibility to preside over the trial of the
2 case. I also have the duty to rule on the admissibility
3 of the evidence offered during the trial. You are to
4 consider only the competent evidence that's been submitted
5 to you. If there was any testimony ordered stricken from
6 the record, and I don't believe there was, you would have
7 to disregard that testimony. You are to consider only the
8 testimony which has been presented from this witness stand
9 and any exhibits which may have been made a part of the
10 record and any stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case and as the presiding judge I am the
13 sole judge of the law in this case and it's your duty as
14 jurors to accept and apply the law as I now state it to
15 you. If you already have any ideas as to what the law is
16 or what the law ought to be that does not agree with what
17 I now tell you the law is, you must abandon this idea
18 because you're sworn to accept the law and apply the law
19 exactly as I state it to you.

20 In every case tried in this court before a jury the
21 jury becomes the sole and exclusive judge of the facts.
22 The trial judge cannot intimate, state or comment on or
23 make any statements to a trial jury about the facts in the
24 case and since you, the jury, are the sole judges of the
25 facts in the case you're not to infer from anything that I

1 might have said or done during the progress of this trial
2 in ruling upon the admissibility of evidence or otherwise
3 or anything that I say now during the course of these
4 instructions that I have any opinion about the facts in
5 this case. The law does not allow me to have an opinion
6 about the facts in the case. This is a matter solely for
7 you, the jury, to determine and as jurors it's your duty
8 to determine the effect, value and weight of the evidence
9 presented during this trial.

10 I remind you that the facts -- that the fact that
11 the warrants were issued and that Mr. Patterson was
12 arrested, charged and indicted in this case are not
13 evidence in this case and cannot be considered by you as
14 evidence of guilt in this case. Nor does it present any
15 -- create any presumption or inference of guilt. The
16 documents that I showed you earlier are simply the formal
17 written instruments which contain the charges against
18 Mr. Patterson. It's the formal documents by which this
19 case was brought into court.

20 The indictments in this case allege several offenses
21 against Mr. Patterson. They are armed robbery, possession
22 of a weapon during a violent crime, grand larceny of a
23 value of \$10,000 or more. Now each indictment charges a
24 separate and distinct offense. You must decide each
25 indictment separately on the evidence and the law

1 applicable to it uninfluenced by your decision as to any
2 other indictment. Mr. Patterson may be convicted or
3 acquitted on any or all of the offenses charged. You will
4 be asked to write a separate verdict of guilty or not
5 guilty for each indictment.

6 Now Mr. Patterson, as I told you earlier, has pled
7 guilty to this indictment and that plea puts the burden
8 on the State to prove him guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself or herself innocent. I charge
11 you, again, this is an important rule of law that a
12 defendant in a criminal case, no matter what the
13 seriousness of the charge may be, will always be presumed
14 innocent of the crime for which the indictment was issued
15 unless guilt has been proven by evidence satisfying you
16 of that guilt beyond a reasonable doubt. And this
17 presumption of innocence does not even end when you begin
18 your deliberations, but it accompanies Mr. Patterson
19 throughout the trial until or unless you reach a verdict
20 of guilt based on evidence satisfying each one of you of
21 that guilt beyond a reasonable doubt.

22 It's been said the presumption of innocence is like
23 a robe of righteousness placed about the shoulders of
24 Mr. Patterson which remains with him until and unless it
25 has been stripped from him by evidence satisfying you of

1 his guilt beyond a reasonable doubt. The presumption of
2 innocence is not a mere legal theory, it's not a legal
3 phrase. It is a substantial right to which every defendant
4 is entitled unless you, the jury, are satisfied from the
5 evidence of the Defendant's guilt beyond a reasonable
6 doubt.

7 Well, what is reasonable doubt in the law? Reasonable
8 doubt is the kind of doubt that would cause a reasonable
9 person to hesitate to do something. I'll repeat that.
10 A reasonable doubt in the law is the kind of doubt that
11 would cause a reasonable person to hesitate to act. The
12 State has the burden of proving Mr. Patterson guilty
13 beyond a reasonable doubt. Some of you may have served
14 as jurors in civil cases where you were told it's only
15 necessary to prove that a fact is more likely true than not
16 true, such as by the greater weight of the evidence or the
17 preponderance of the evidence, but in criminal cases the
18 State's proof must be more powerful than that. It must
19 be beyond a reasonable doubt. Proof beyond a reasonable
20 doubt is proof that leaves you firmly convinced of the
21 Defendant's guilt. Now there are very few things in this
22 world we know with absolute certainty. In criminal cases,
23 the law does not require proof that overcomes every
24 possible doubt. If based on your consideration of the
25 evidence, you are firmly convinced that Mr. Patterson is

1 guilty of the crime charged, you must find him guilty. On
2 the other hand, if you think there's a real possibility
3 that Mr. Patterson is not guilty, you must give him the
4 benefit of the doubt and find him not guilty.

5 Now as counsel may have mentioned, there are two
6 types of evidence which are generally presented during a
7 trial; direct evidence and circumstantial evidence.
8 Direct evidence directly proves the existence of a fact
9 and does not require any kind of deduction. Circumstantial
10 evidence, on the other hand, is proof of a series or chain
11 of facts and circumstances indicating the existence of some
12 fact. Crimes may be proven by circumstantial evidence.
13 The law makes no distinction between the weight or value
14 to be given to either direct or circumstantial evidence.
15 However, to the extent the State relies on circumstantial
16 evidence, all of the circumstances must be consistent with
17 each other and when taken together point conclusively to
18 the guilt of the accused beyond a reasonable doubt. If
19 these circumstances merely portray Mr. Patterson's behavior
20 as suspicious, the proof has failed. The State has the
21 burden of proving Mr. Patterson guilty beyond a reasonable
22 doubt and this burden rests with the State regardless of
23 whether the State relies on direct evidence, circumstantial
24 evidence or a some combination of the two.

25 Now, necessarily, you must determine the credibility

1 of the witnesses who testified in this case. Credibility
2 simply means believability. It becomes your duty as jurors
3 to analyze and evaluate the evidence and determine which
4 evidence convinces you of its truth. In determining the
5 believability of witnesses who have testified in this case,
6 you may believe one witness over several witnesses or
7 several witness over one witness. You may believe a part
8 of the testimony of a witness and reject the remaining part
9 of the testimony of that same witness. You may believe
10 the testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may consider
12 also whether any witness has exhibited to you any interest
13 in this case or bias or prejudice or other motive in this
14 case. You also may consider the appearance and manner of
15 a witness while on the witness stand.

16 Now our rules of court, our rules of evidence,
17 ordinarily do not permit witnesses -- I guess what we
18 call lay witnesses to testify about their opinions or
19 conclusions. An exception to this rule exists for
20 witnesses we call expert witnesses and you might have seen
21 the process of determining expert witnesses during the
22 course of the trial. A witness who by education and
23 experience has become expert in some science or profession
24 or calling may state an opinion as to relevant and material
25 matter in which the witness claims to be an expert and may

1 also state the reasons for that opinion. You should
2 consider any expert opinions received in evidence in this
3 case like any other evidence and give it the weight you
4 think it deserves. If you decide that the opinion of an
5 expert is not based on sufficient education or experience
6 or if you conclude that the reasons given in support of
7 the opinion are not sound or that the opinion is outweighed
8 by other evidence, you may disregard the testimony of a
9 witness in its entirety. An expert witness's testimony is
10 to be given no greater weight than that of other witnesses
11 simply because the witness is an expert.

12 Now an issue in this case is the identification of
13 Mr. Patterson as the person who committed the crime
14 charged. The State has the burden of proving identity
15 beyond a reasonable doubt. You must be satisfied beyond a
16 reasonable doubt of the accuracy of the identification of
17 Mr. Patterson before you may convict him. Identification
18 testimony is an expression of belief or impression by a
19 witness. You must determine the accuracy of the
20 identification of Mr. Patterson. You must consider the
21 believability of the identification witness the same way
22 as any other witness. You may consider whether the witness
23 had an adequate opportunity to observe the offender at the
24 time of the offense and this will be affected by things
25 like how long or short a time was available, how close

1 the witness was, the lighting conditions, and whether the
2 witness had the chance to see or know the person from the
3 past. Once again, I instruct you that the burden is on
4 the State and extends to every element of the crime charged
5 and this specifically includes the burden of proving beyond
6 a reasonable doubt the identity of Mr. Patterson as the
7 person who committed the crime. If, after examining the
8 testimony, you have a reasonable doubt as to the accuracy
9 of the identification, you must find Mr. Patterson not
10 guilty.

11 Now in order to establish criminal liability, criminal
12 intent is required. For example, the mental state required
13 to be proven by the State for some particular crime might
14 be some purpose or recklessness or criminal negligence.
15 Criminal intent must be proven by the State beyond a
16 reasonable doubt. Criminal intent is always a matter that
17 must be determined by the jury from the circumstances
18 surrounding the situation. There's no way to prove intent
19 to a mathematical certainty. There's no way medical
20 science can dissect a person's brain and determine what
21 the person had in mind, so the law says that criminal
22 intent may be inferred from the circumstances shown to
23 have existed. This is how you make a determination
24 whether or not the element requiring intent was present.
25 It's not necessary to establish intent by direct and

1 positive evidence, but intent may be established by
2 inference in the same way as any other fact by taking into
3 consideration the acts of the party and all of the facts
4 and circumstances of the case. In other words, criminal
5 intent is a mental state, a conscious wrongdoing. It's
6 up you to determine what Mr. Patterson intended to do
7 based on the circumstances shown to have existed.

8 As you know, Mr. Patterson is charged with armed
9 robbery. In order to prove this offense, the State must
10 first prove beyond a reasonable doubt that Mr. Patterson
11 took property from the person or presence of another
12 person. Property is in the presence of a person if it is
13 within the person's reach, inspection, observation or
14 control so that the person could, if not overcome with
15 violence or prevented by fear, keep the possession of
16 his own property. The State must also prove beyond a
17 reasonable doubt that Mr. Patterson carried away the
18 property intending to permanently deprive the owner of the
19 property and to keep the property for his own use. The
20 slightest removal of the property or complete possession
21 of the property, even for an instant, by Mr. Patterson is
22 sufficient to show a taking and carrying away of the
23 property. The taking and carrying away of the property
24 must have been done by violence or by putting the owner of
25 the property in fear of violence.

1 And, finally, the State must prove beyond a reasonable
2 doubt that Mr. Patterson was armed during the robbery with
3 a deadly weapon or what appeared to be a deadly weapon or
4 an object which a person present during the commission of
5 the robbery reasonably believed to be a deadly weapon.
6 And a deadly weapon is any article, instrument or substance
7 which is likely to cause death or great bodily harm.
8 Whether an instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each case. And
10 the following are examples of instruments which may be a
11 deadly weapon; a pistol or a shotgun or a rifle. And a
12 gun may be a deadly weapon even if it's not operating.

13 Second, Mr. Patterson is charged with possession of a
14 weapon during the commission of or attempt to commit a
15 violent crime. The State must prove beyond a reasonable
16 doubt that Mr. Patterson was, in fact, in possession of a
17 firearm or visibly displayed what appeared to be a firearm
18 during the commission of a violent crime. A firearm means
19 any machine gun, automatic rifle, revolver, pistol or any
20 weapon which could -- well, is designed to or may be
21 readily converted to expel a projectile.

22 In order to find Mr. Patterson guilty of possession
23 of a weapon during the commission of a violent crime, you
24 must first find the Defendant guilty of either committing
25 a violent crime or attempting to commit a violent crime,

1 and an armed robbery is a violent crime. The State must
2 prove beyond a reasonable doubt that the weapon furthered
3 or advanced or helped in the commission of the crime.

4 Third, Mr. Patterson is charged with grand larceny.
5 The State must prove beyond a reasonable doubt that
6 Mr. Patterson took and carried away the property of another
7 against the will or without the consent of the other
8 person. The slightest removal of the property or the
9 complete possession of the property, even for an instant,
10 by Mr. Patterson is enough to show a taking and carrying
11 away of the property. The State must also prove beyond a
12 reasonable doubt that Mr. Patterson intended to permanently
13 deprive the owner of the property. And, finally, the State
14 must prove that the value being taken -- or the property
15 taken was \$10,000 or more.

16 Now, ladies and gentlemen, I conclude with this
17 instruction to you, and I emphasize it. I instruct you
18 and emphasize the fact that Mr. Patterson did not testify
19 in this case is not a factor to be considered by you in
20 any way in your deliberations and in your consideration on
21 the question of the guilt or innocence of Mr. Patterson.
22 It must not be considered by you in any manner whatsoever.
23 Mr. Patterson has a constitutional right to remain silent
24 and the assertion of this right must not to be considered
25 by you in your deliberations. I repeat. Under your oath

1 you are to draw no conclusion whatsoever from the fact
2 that Mr. Patterson did not testify. The fact that
3 Mr. Patterson did not testify should not even be discussed
4 in the jury room. The burden of proof, as I've stated to
5 you frequently, is on the State. Mr. Patterson is not
6 required to prove himself innocent. The burden of proof
7 remains on the State to prove guilt beyond a reasonable
8 doubt.

9 Now, Madam Forelady, when you go to the jury room,
10 you will have this verdict form with you. The possible
11 verdicts are, with respect to the charge of armed robbery,
12 we find the Defendant guilty or not guilty. The second
13 would be with respect to the possession of a weapon during
14 the commission of a violent crime, we find the Defendant
15 guilty or not guilty. And the same is true of grand
16 larceny, we find the Defendant guilty or not guilty. And
17 there's no significance whatsoever in the manner and order
18 in which I stated these possible verdicts. Your verdict
19 must not be based on sympathy or prejudice or any other
20 factor that's not in evidence in this case.

21 Now, ladies and gentlemen, all twelve jurors must
22 agree on a verdict. In other words, your verdict must be
23 a unanimous one. At any time all jurors are not present
24 in the jury room the jury must stop deliberating until all
25 twelve jurors are present. Madam Forelady, when the jury

1 agrees on a verdict, you will write the verdict on the
2 verdict form, sign your name as foreperson, date it and
3 knock on the jury room door and inform the bailiff that
4 you've reached a verdict and at that time we will receive
5 you back into the courtroom.

6 Now I'll ask you to return to your jury room, but do
7 not begin your deliberations until you're told to do so by
8 the clerk or a bailiff. All of the evidence has to be
9 collected and brought to you.

10 Now if you wish to play the video, I'm sure we can do
11 it on a laptop or some other manner or way to do it. I
12 probably couldn't do it, but we'll find a way for it to be
13 played to you if you'd like to see it.

14 All right. Your lunch has been ordered. It was
15 ordered to be here about 12:00. So go to the jury room,
16 just relax for a few minutes until we're able to collect
17 all of the evidence and we'll deliver it to you with
18 the verdict form at which time you may begin your
19 deliberations. Thank you very much.

20 (Whereupon, the jury retires to the jury room at
21 11:12 AM.)

22 **THE COURT:** Any exceptions to the charge from the
23 State?

24 **MS. MAYES:** None from the State, Your Honor.

25 **THE COURT:** From the defense?

1 **MR. MADSEN:** Yes, sir, Your Honor.

2 **THE COURT:** Go ahead.

3 **MR. MADSEN:** I hate to say it, but Your Honor when
4 you did your presumption of innocence indicated to the jury
5 that Mr. Patterson had pled guilty to the indictments.

6 **THE COURT:** I did?

7 **MR. MADSEN:** Yes, sir.

8 **THE COURT:** I'm sorry.

9 **MR. MADSEN:** We've got to move -- I don't think it
10 was intentional by the Court, but that's a bell that cannot
11 be un-rung and obviously we're gonna have to move for a
12 mistrial.

13 **THE COURT:** Okay.

14 **MR. MADSEN:** I hate to do it at this point, but, I
15 mean --

16 **THE COURT:** I've already told them one time he pled
17 not guilty. I'll tell them again. The motion for mistrial
18 is overruled.

19 **MR. MADSEN:** I understand that, Your Honor, but, like
20 I said, that's pretty important language right at the
21 beginning.

22 **THE COURT:** My law clerk said I mumbled "not". I'll
23 correct it. 99.9 percent of the charge emphasizes
24 innocence on the presumption. How about checking on the
25 evidence? Are you ready for it to go to the jury?

1 **MS. MAYES:** Yes, sir.

2 **THE COURT:** I'll bring them in in just a minute.

3 (Pause in the proceedings.)

4 **THE COURT:** All right. Counsel, let me have your
5 attention. Any objection to dismissing the alternates now?

6 **MS. MAYES:** None from the State.

7 **MR. MADSEN:** No, Your Honor.

8 **THE COURT:** All right. Bring in the jury.

9 (Whereupon, the jury returns to the courtroom at
10 11:23 AM.)

11 **THE COURT:** Madam Forelady and members of the jury,
12 it's come to my attention that I misspoke during the course
13 of my jury charge to you. Early in the -- when I was
14 talking about the presumption of innocence, I've been told
15 that I said Mr. Patterson has pled guilty. I don't know
16 if anybody -- well, if I did say so, that is clearly wrong.
17 Mr. Patterson has pled not guilty to this indictment,
18 that's why we're here, and the State has the burden to
19 prove him guilty. If I said that, it was in error. It
20 was just an oversight on my part, so I just wanted to make
21 that amply clear that he has pled not guilty. And, again,
22 the State has the burden to prove him guilty beyond a
23 reasonable doubt. So I needed to correct that in front of
24 you and on the record.

25 The evidence has been collected, so we're just about

1 ready for you to begin your deliberations. So if you'll
2 retire to the jury room again and the evidence is on the
3 way.

4 (Whereupon, the jury retires to the jury room at
5 11:24 AM.)

6 **THE COURT:** All right. Any further exceptions?

7 **MR. MADSEN:** Judge, I think that the preservation
8 rules just require me to re-object and object to that and
9 to re-move for a mistrial.

10 **THE COURT:** All right. Denied.

11 Let's get the evidence, please.

12 (Whereupon, the evidence and the verdict form was
13 given to the jury and deliberations were commenced at
14 11:25 AM.)

15 **THE COURT:** Have a seat, counsel, please.

16 (Whereupon, the alternates enter the courtroom.)

17 **THE COURT:** Gentlemen -- well, this week you are 217
18 and 26. I hope you don't feel like you've been prisoners.
19 I have to dismiss you now at this time, but I do want to
20 thank you for your service. I will tell you that it is
21 not infrequent that we need alternates. You'd be surprised
22 how many people can't get their car started or babies get
23 sick or grand-momma fell down or any number of reasons
24 why alternates are necessary. For a trial to last a week
25 and not replace an alternate is pretty unusual, so your

1 presence, even though you're not going to participate in
2 deliberations, is still vital to this system.

3 Now I will tell you that you can stay if you wish.
4 Some jurors feel they'd like to see what happens, but
5 you're free to go. And I think the checks have already
6 been mailed, haven't they, Ms. Frick?

7 **THE CLERK:** They'll probably go out tomorrow, Your
8 Honor. Hopefully, they'll go out tomorrow.

9 **THE COURT:** Also I want to tell you that you can
10 talk to anybody if you want to, if they want to get your
11 ideas or thoughts, but you don't have to talk to anyone.
12 If one of the attorneys or somebody in the audience says
13 they'd like to talk to you about the case, just say I
14 don't care to talk to you. If you have any problem about
15 that, the bailiff will let me know and I'll take care of
16 it.

17 Anyway good luck to both you. Thank you for staying
18 with us and maybe we'll see you down the road somewhere.

19 (Whereupon, the alternate jurors were dismissed at
20 11:29 AM.)

21 **THE COURT:** All right. We'll stand at ease until we
22 hear from the jury.

23 (Whereupon, a luncheon recess taken.)

24 **THE COURT:** They want the video. Mark that as a
25 Court's Exhibit. Court's Number 1.

1 (Court's Exhibit Number 1 was marked for
2 identification.)

3 **MS. MAYES:** We have two options, Judge. We have the
4 ability to play it here. We have a laptop that has been
5 cleaned, although I know sometimes there may be an
6 objection to sending a State-owned laptop back there, but
7 that's where we are.

8 **THE COURT:** Well, there's one up here, too, but it's
9 owned by the State.

10 **MR. MADSEN:** However Your Honor wants to handle it.

11 **THE COURT:** Okay. Well, let's take the one that you
12 say has been cleaned.

13 **MS. MAYES:** And it has no Internet access from what
14 we understand. It's been disabled.

15 **THE COURT:** Okay. Good. Where's the -- is the disk
16 back there?

17 **MS. MAYES:** Your Honor, 6 and 7 are the exhibits
18 which are the two video surveillances. We will just --
19 if counsel will step over, we'd like to have everyone
20 verify --

21 **THE COURT:** Are they loaded on there?

22 **MS. MAYES:** Yes, sir.

23 **THE COURT:** Oh.

24 **MR. SULLIVAN:** Not yet.

25 **MS. MAYES:** Okay. The CD would be inserted.

1 **THE COURT:** Wait. Say what?

2 **MR. MADSEN:** They should have them.

3 **MR. BELL:** Your Honor, they do have the CDs that
4 contain the videos. They are not on the laptop currently.

5 **THE COURT:** I thought that's what he said.

6 (Whereupon, a laptop was sent back to the jury room
7 11:33 AM.)

8 (Recess taken.)

9 **BAILIFF:** All rise. Court's in session. The
10 Honorable G. Thomas Cooper presiding.

11 **THE COURT:** All right. Be seated.

12 The bailiff informs the Court that the jury has
13 reached a verdict. Before I call for the jury, we got a
14 note during lunch, and I'll read it to you. Number 91
15 would like to call my business before payroll is sent in.

16 I didn't think it was necessary to reconvene the
17 court or to advise counsel that he needed to make a phone
18 call, but in an abundance of caution I sent Mr. Haiger
19 with him to make his phone call. The jury was instructed
20 not to deliberate while Mr. 91 was out of the room and
21 Mr. Haiger accompanied the juror to his car, got his
22 phone and basically overheard his conversation to his
23 boss about -- that had nothing to do with this case, but
24 -- so I advise you of that. If it's of any concern to
25 anybody, now's your chance to say something. Just mark

1 that.

2 (Court's Exhibit Number 2 was marked for
3 identification.)

4 **MS. MAYES:** No objection from the State, Your Honor.

5 **MR. MADSEN:** Nothing from the defense, Your Honor.

6 **THE COURT:** All right. Madam Clerk, if counsel
7 requests to poll the jury, they'll be polled by number?

8 **THE CLERK:** Yes, sir.

9 **THE COURT:** All right. Is the State ready to receive
10 the verdict?

11 **MS. MAYES:** Yes, sir, Your Honor.

12 **THE COURT:** Is the defense ready to receive the
13 verdict?

14 **MR. MADSEN:** Yes, Your Honor.

15 **THE COURT:** Bring in the jury, please.

16 (Whereupon, the jury return to the courtroom at
17 12:54 PM to deliver its verdict.)

18 **THE COURT:** Madam Forelady, the bailiff informs the
19 Court that the jury has reached a verdict. Has the jury
20 reached a verdict?

21 **THE FOREPERSON:** We have, Your Honor.

22 **THE COURT:** All right. Would you please hand it to
23 the bailiff who will hand it to the Court.

24 **THE FOREPERSON:** (Handing.)

25 **THE COURT:** Madam Clerk, would you publish the

1 verdict, please.

2 **THE CLERK:** Indictment 2013-GS-32-00891, indictment
3 2013-GS-32-01132, and indictment 2013-GS-32-00890, the
4 State versus James Bubba Patterson. With respect to the
5 charge of armed robbery, we, the jury, unanimously find
6 the Defendant guilty. With respect -- excuse me. With
7 respect to the charge of possession of a weapon during the
8 commission of a violent crime, we, the jury, unanimously
9 find the Defendant guilty. With respect to the charge of
10 grand larceny, value of \$10,000 or more, we, the jury,
11 unanimously find the Defendant guilty. And it's so signed
12 by the Forelady, April 14, 2016.

13 Madam Forelady, ladies and gentlemen of the jury, if
14 these are your verdicts, please indicate, each of you, by
15 raising your right hand.

16 All hands were raised, Your Honor.

17 **THE COURT:** All right. Any desire to poll the jury?

18 **MR. MADSEN:** No, Your Honor.

19 **MS. MAYES:** Not from the State, Your Honor.

20 **THE COURT:** All right. Thank you very much.

21 All right. Ladies and gentlemen, that will conclude
22 the case. Well, not quite. Because of our workload, and
23 I'm speaking of myself now and the fact that we are what
24 are call circuit judges, we travel around the State, we
25 do not have the luxury as they do on the television of

1 waiting to sentence a defendant. In other words, the
2 sentencing procedure will take place -- based on your
3 verdict the sentencing procedure will take place now,
4 although it's gonna take a few minutes to do the paperwork.

5 So what I'm gonna tell you now is that you may stay,
6 if you wish, to watch the sentencing procedure or you are
7 free to leave. You have completed what we asked you to do,
8 and that was consider the facts and make a determination
9 of guilt or innocence. It's gonna take about five or
10 ten minutes to do the paperwork and, as I say, I see a
11 couple of your former jurors sitting in the audience, and
12 you're welcome to do the same thing. The bailiff's gonna
13 take you to your jury room in just a second and let you
14 know if we have work excuses and things like that if you
15 need it after which time you --

16 **BAILIFF:** They've already got them, Your Honor.

17 **THE COURT:** They've already got them? Oh. Boy,
18 that's efficiency.

19 **BAILIFF:** Ms. Hope's good.

20 **THE COURT:** All right. Well, if you do choose to
21 leave at this point, I want to thank you for your service.
22 I tell jurors all the time this system can do without me,
23 it can do without these attorneys, but it can't do without
24 you. You're such an important part of the judicial system
25 of this county and this state and this nation that your

1 role was written into the Constitution some two hundred
2 and fifty years ago. It's an important thing that you do.
3 We could not solve these disputes in our community if it
4 weren't for citizens who are willing to come, sit and
5 listen to the evidence, and you've been very attentive I've
6 noticed, you've listened to the evidence, you've made a
7 decision based on that evidence, and for that I want to
8 thank you. And I'm sure counsel for the parties joins me
9 in that, as well as the court staff here.

10 So you may retire to your jury room for just a
11 minute. If you wish to stay, notify the bailiff, they'll
12 make arrangements for you. I'm going to go back to my
13 chambers for a minute during which time I assume counsel
14 will -- will you take care of this?

15 **THE CLERK:** Yes, sir.

16 **THE COURT:** Just some paperwork.

17 All right. Thank you very much, ladies and gentlemen.

18 (Whereupon, the jury was dismissed at 12:59 PM.)

19 **THE COURT:** Any motions?

20 **MR. MADSEN:** Your Honor, we would renew our motion
21 for a directed verdict. We would renew all of our
22 objections, all of our motions, including our motion for
23 mistrial based on the -- the jury instructions. We would
24 also -- Your Honor, we do not believe that under the
25 thirteenth juror doctrine that there was sufficient

1 evidence for a jury to conclude guilt beyond a reasonable
2 doubt and so we renew all of those motions.

3 **THE COURT:** Thank you very much. The jury, in the
4 Court's opinion, had sufficient evidence to base their
5 verdict on and I must respectfully deny your motions.

6 Solicitor, will you let me know when you get your
7 paperwork done?

8 **MS. MAYES:** Your Honor, I believe we're almost ready.
9 There is just one thing I need Mr. Madsen to confirm.

10 **THE COURT:** All right. Well, y'all work that out.
11 I'm just going to go to my chambers for a minute.

12 (Recess taken.)

13 **BAILIFF:** Court is now in session. All rise.

14 **THE COURT:** All right. Be seated.

15 All right, Mr. Madsen. Bring in your client.

16 **THE COURT:** Solicitor, are the victims here?

17 **MS. MAYES:** Your Honor, he's gone back to the store,
18 but Ms. Frazier will be speaking on his behalf.

19 **THE COURT:** All right. You may proceed.

20 **MS. MAYES:** Your Honor, I have his prior record for
21 when you are ready.

22 **THE COURT:** I'm ready.

23 **MS. MAYES:** Your Honor, Mr. Patterson has a lengthy
24 prior record. It begins in 1986 with multiple convictions
25 for burglary. In 1986, there's a conviction for burg --

1 one count of burglary third degree. Confinement was two
2 years. There's an additional count of burglary third
3 degree; confinement for five years with two years
4 probation. Then it shows burglary third degree, multiple
5 charges, one disposition, two years.

6 **THE COURT:** When was that?

7 **MS. MAYES:** That is also 1986, Your Honor. It looks
8 like it was a multiple disposition on those charges.

9 **THE COURT:** All right.

10 **MS. MAYES:** It looks like there are two to three
11 burglary charges encompassed in that arrest. Then in 1987,
12 unlawful weapon, convicted. 1987, shoplifting, convicted.
13 Trespassing, convicted in 1990. 1988, also an unlawful
14 weapon conviction. Then in 1992, burglary third degree,
15 convicted. He got thirty days. Also, an additional count
16 of burglary third degree. He was convicted and got three
17 years suspended to one year.

18 **THE COURT:** That's '92?

19 **MS. MAYES:** Yes, Your Honor.

20 **THE COURT:** Okay.

21 **MS. MAYES:** In 1995, a conviction for assault on a
22 police officer. He was sentenced to a straight nine
23 years.

24 **THE COURT:** Nine years?

25 **MS. MAYES:** Nine years, yes, sir. He has a conviction

1 for escape, which was two years concurrent. In 2002, Your
2 Honor, he has multiple convictions for burglary second
3 degree. These were classified as nonviolent. It appears
4 to be more than one conviction. This is a burglary second
5 degree in 2002, ten years straight sentence concurrent,
6 with a petit larceny. Burglary second degree, ten years,
7 concurrent sentence. And then he has an assault of a high
8 and aggravated nature, three years, probation revoked. He
9 has --

10 **THE COURT:** So that was in 2002?

11 **MS. MAYES:** Yes, sir. And then he has an attempted
12 burglary second degree, three years concurrent with the
13 probation revocation. And, again, it's showing burglary
14 second degree, convicted, ten years. So I'm not sure
15 exactly how many he has there, but they are multiple
16 convictions for burglary. It appears to be concurrent
17 with one another. Then it shows that his probation was
18 actually revoked and he served a full ten-year sentence
19 that would have started in 2001. So it looks like maybe
20 those court charges weren't resolved until 2002, but in
21 that time frame of 2001, 2002 it looks like he began a
22 full ten-year sentence in SCDC and would have completed
23 that sentence and then gotten out wherein this crime was
24 committed subsequently.

25 **THE COURT:** All right. I'll hear from the victim.

1 **MS. FRAZIER:** Thank you, Your Honor. My name is Wendy
2 Frazier. I'm a victim advocate here at the solicitor's
3 office. I have been communicating with Frank Mancine via
4 text this afternoon in regards to letting him know that
5 there was a guilty verdict and he would like the Court to
6 know that he's glad that this fellow was found guilty and
7 that he's glad for him to be off the street. He would
8 like for him to get the maximum sentence, if possible.
9 Mr. Mancine had to go back to his work because business
10 has been closed down all week as a result of the trial,
11 so that's why they had to leave. They would have loved
12 to have been here, but they had to get back to work. And
13 they wanted to thank the Court, Your Honor.

14 **THE COURT:** All right. Anything further from the
15 State?

16 **MS. MAYES:** No, sir, Your Honor.

17 **THE COURT:** Mr. Madsen?

18 **MR. MADSEN:** Judge, just in regards to the record, it
19 sounded like a few of those things were for probation
20 violations from the same charge. Additionally, I think
21 there was a burglary. That thirty days sounds more like
22 a trespassing sentence than a burglary, although he does
23 acknowledge that he has that record, Your Honor.

24 As you heard, James is fifty-three years of age. He
25 graduated high school and he went to Eau Claire. He has a

1 common law wife that he lives with and he's been with her
2 for five years. He does construction and painting, Your
3 Honor, and had steady work. You might have seen sitting
4 kind of behind us during the course he's had his sister and
5 both of his brothers have been here, Your Honor. I have
6 found James to be a very soft-spoken individual. He has
7 been incarcerated since his arrest, which I believe was on
8 11-15 of 2012, which by my calculation is 1,245 days that
9 he has been incarcerated, Your Honor.

10 **THE COURT:** Any problem with that?

11 **MS. MAYES:** No, sir, Your Honor. And, just briefly,
12 concerning the delay, there was the initial delay due to
13 the Blair and incompetency issues. Those were resolved in
14 2014 and 2015. After the passing of Detective Bramlet, we
15 re-did the DNA. We had a completely new Schmerber hearing
16 and a completely new draw and re-did the DNA for a second
17 time to eliminate any chain of custody issues regarding
18 Detective Bramlet and, of course, the second DNA draw was
19 confirmed to be a match as well.

20 **THE COURT:** But he was in custody that whole time?

21 **MS. MAYES:** Yes, sir, Your Honor.

22 **MR. MADSEN:** Yes, sir. And I hope they don't think
23 that we're casting aspersions on that because obviously
24 if it had just -- if there weren't other issues out there
25 Your Honor would have obviously heard a Langford-type of

1 motion, but we do believe he is entitled to the 1,245 days.
2 I don't know if his brother or sister want to say anything
3 on his behalf. They have been up here most of the time.

4 As I said, I found him to be a very soft-spoken
5 individual. We would ask Your Honor to consider the
6 minimum sentence of ten years. As Your Honor is aware,
7 that is an 85 percent and it is a most serious, so he would
8 have to serve 85 percent of anything that Your Honor gives
9 him. He is a fifty-three-year-old individual and we would
10 ask Your Honor to consider the minimum ten-year sentence.

11 **THE COURT:** All right. Mr. Patterson, do you have
12 anything you want to say?

13 **THE DEFENDANT:** No, sir.

14 **MR. MADSEN:** That's not the mike. That's a light.

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** Mr. Patterson, your record doesn't help
17 you out any. The fact that you've already served a
18 ten-year sentence and still continued to commit crimes,
19 that's not -- I don't have a lot of sympathy. You
20 understand that, don't you?

21 **THE DEFENDANT:** (Nods head.)

22 **THE COURT:** All right, sir. Mr. James Bubba
23 Patterson, on your charge of possession of a weapon during
24 a violent crime, the sentence of the Court is you be
25 committed to the State Department of Corrections for a

1 period of five years. On your grand larceny, the sentence
2 of the Court is you be committed to the State Department
3 of Corrections for a period of ten years. On your armed
4 robbery, the sentence of the Court is you be committed to
5 the State Department of Corrections for a period of twenty
6 years. I'm gonna run all sentences concurrent and give you
7 credit for 1,245 days of pre-trial service.

8 Good luck to you, sir.

9 **MS. MAYES:** Thank you, Your Honor.

10 (Whereupon, the proceedings were concluded for
11 April 14, 2016, at 1:17 PM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 11th-14th days of April, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

July 7, 2016

s/Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES BUBBA PATTERSON,

APPELLANT

APPELLATE CASE NO 2016-000863

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JUN 30 2017

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in admitting testimony that Appellant's DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?
2. Did the trial judge err in admitting testimony that Appellant's DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?
3. In his preliminary comments, did the trial judge err by indicating to the jury that a trial was a search for the truth?

STATEMENT OF THE CASE

In April of 2013, the Lexington County Grand Jury indicted Appellant Patterson for grand larceny, armed robbery and possession of a weapon during the commission of a violent crime, indictments #2013-GS-32-0890, 0891, 0892. On December 4, 2015, Appellant appeared before the Honorable Frank R. Addy, Jr. for a competency hearing as well as a motion by the State to obtain additional DNA samples. Robert M. Madsen represented Appellant at the hearing. Suzanne Mayes was the prosecutor. Judge Addy found Appellant competent to stand trial and order additional DNA samples.

On April 11, 2016, Appellant proceeded to jury trial before the Honorable G. Thomas Cooper. Robert M. Madsen and David Michael Mauldin represented Appellant at trial. Suzanne Mayes and Lester McGill Bell, Jr. prosecuted the case. The jury returned verdicts of guilty as charged. Judge Cooper sentenced Appellant to twenty (20) years in prison for armed robbery, ten (10) years concurrent for grand larceny and five (5) years concurrent for the weapons charge. A timely notice of intent to appeal was served on April 15, 2016. This appeal follows.

ARGUMENTS

1. **The trial judge erred in admitting testimony that Appellant's DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database.**

The jury found Appellant guilty of the armed robbery of the K&M Jewelry store on May 9, 2012. Appellant became a suspect in the robbery after his DNA was matched to DNA found on a black fedora hat left at the scene and worn by the robber during the armed robbery, as seen on video surveillance tape from the store. At trial the State attempted to introduce testimony from witness Rhonda Fields from the South Carolina Law Enforcement Division [SLED] in regard to matching DNA found on the hat to Appellant's DNA contained in the Combined DNA Index System [CODIS]. (R. pp. 337-344). Appellant objected to the testimony based on three separate grounds: 1.) Lieutenant David McClure of SLED, not Agent Fields, searched CODIS and made the match but the State did not plan to call Lieutenant McClure because he retired from SLED¹ (R. p. 338, lines 9-25); 2.) the State failed to establish the proper chain of custody for the DNA sample found in CODIS (R. p. 339, lines 13-15); and 3.) the testimony improperly indicated that Appellant had a prior record (R. p. 338, lines 10-16).

The State proffered the testimony of Agent Fields. (R. pp. 342-344). Although Lieutenant McClure conducted the CODIS search, Agent Fields testified, "I'm familiar with the procedures. I don't have the documentation with me, but I believe I was involved in the review process because I worked in the DNA database unit at the time this letter was generated, so there were a couple of us assigned to the database and depending on who would have been on rotation for review I could have been involved in the review. But, again, I don't have that information on

¹ The State did not argue that Lieutenant McClure was unavailable.

the stand with me.” (R. p. 344, lines 1-8). The State decided to call Agent Fields as a witness later in the trial, presumably so she could verify that she was involved in the review of Lieutenant McClure’s match. (R. p. 344, lines 11-12).

Later in the trial the State again proffered Agent Fields’ testimony. (R. pp. 532-541). Agent Fields confirmed that she was involved in reviewing Lieutenant David McClure’s database search. (R. p. 533, lines 13-18). Appellant again objected to the admission of Agent Fields’ testimony. (R. p. 541, line 8 – p. 542, lines 1-2). Appellant argued that the testimony was irrelevant and even if relevant, more prejudicial than probative. Additionally, Appellant specifically argued, “We’ve got argument under due process, Your Honor, that they can’t authenticate or give any type of chain of custody as to this sample.” (R. p. 541, lines 11-13). The State argued, “Your Honor, we do believe that we have met the criteria for admissibility pursuant to *State versus Anderson*² using the AFIS analogy.” (R. p. 542, lines 4-6). The trial judge overruled Appellant’s objections. (R. p. 542, lines 17-18). Appellant renewed the objection when Agent Fields testified before the jury. (R. p. 544, lines 5-6). Appellant renewed all objections at the close of the trial (R. p. 556, line 23 – p. 557, lines 1-4) and renewed all objections after the jury returned a verdict. (R. p. 608, lines 20-23). The trial judge erred in admitting the testimony in reference to Appellant’s DNA contained in CODIS.

In *State v. Anderson*, 386 S.C. 120, 128–29, 687 S.E.2d 35, 39 (2009) (fn #8 omitted), the South Carolina Supreme Court wrote:

In terms of initial admissibility, Rule 901(a) provides: “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), SCRE. Although not exhaustive, Rule

² *State v. Anderson*, 386 S.C. 120, 122, 687 S.E.2d 35 (2009).

901 further provides examples of authentication or identification which conform with the requirements of the rule. Rule 901(b), SCRE.

One example of authentication provided by Rule 901(b)(3) is comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. The DNA sample found in CODIS in the present case, however, was not authenticated. Agent Fields admitted that no chain of custody existed in regard to DNA in the database. (R. p. 538, lines 1-3).

The State's reliance on State v. Anderson, *id.* is misplaced because, unlike the fingerprint card at issue in Anderson, the DNA sample in the present case constitutes fungible evidence more analogous to the blood sample at issue in State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992). See Anderson, fn #4. In Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992), the South Carolina Supreme Court wrote:

While the admission of evidence is within the discretion of the trial judge, we have held that it is an abuse of discretion to admit the results of a blood alcohol test where the identity of those who sealed, labeled, and transported the blood sample is not established. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990). The evidence in the record of this case does not identify those persons who handled the blood from the time it was drawn until the time it was tested. Accordingly, we conclude that the trial judge abused his discretion in admitting the blood alcohol test.

The trial judge in the present case abused his discretion in admitting testimony in regard to Appellant's DNA sample contained in CODIS when the State failed to authenticate the sample by establishing a proper chain of custody.

Pursuant to Anderson, the State was required to establish when the DNA sample contained in CODIS was taken and by whom the sample was taken. "As discussed by the Court of Appeals, Rich does not establish an authentication requirement that necessitates the testimony of the actual person who took the fingerprints on the master fingerprint card. Instead, it merely requires " 'evidence as to *when and by whom* the card was made and that the prints on the card

were in fact those of this defendant.’ ” Anderson, 378 S.C. at 248, 662 S.E.2d at 464 (quoting Rich, 293 S.C. at 174, 359 S.E.2d at 282).” State v. Anderson, 386 S.C. 120, 128, 687 S.E.2d 35, 39 (2009). The State failed to establish when and by whom the DNA sample contained in CODIS was taken. Additionally, The State failed to call the person who initially searched the database and made the match, Lieutenant McClure, as a witness

The DNA database, CODIS, is an investigative tool utilized by law enforcement. In State v. Hill, 409 S.C. 50, 57, 760 S.E.2d 802, 806 (2014), a letter from SLED to a local law enforcement agency was introduced in evidence and read:

Dear Neil Livingston, the short tandem repeat, STRPCR DNA profile developed from item 19 was compared to the Combined [sic] DNA Index System, CODIS. This profile matches the STRPCR DNA profile developed from Bruce Antwain Hill. This information is provided for investigative purposes only. If the suspect is charged, an additional biological specimen must be submitted for court purposes. This search was conducted by Lieutenant David McClure with the South Carolina Law Enforcement Division.

As noted in the SLED letter in Hill, the DNA contained in CODIS does not meet the standard for admissibility pursuant to Rule 901, SCRE.

Once Appellant was developed as a suspect through CODIS, the State obtained additional DNA samples from Appellant and compared those samples to the DNA found on the fedora at the scene of the robbery. The fact that Appellant’s DNA was in the database was irrelevant. As argued by Appellant, “And then obviously it is cumulative to the DNA that they’ve already submitted and for those reasons we do not believe that it is appropriate on top of the fact that you’ve got someone else who’s done a review – or reviews what someone else has done, but if the State wanted to they could certainly have had Lieutenant McClure here.” (R. p. 541, lines 19-25). Even if relevant, the testimony was far more prejudicial than probative as

discussed further in issue two. The trial judge abused his discretion in admitting the unauthenticated DNA sample from CODIS when the State failed to call the witness who conducted the search and failed to establish a proper chain of custody.

2. The trial judge erred in admitting testimony that Appellant's DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act

In addition to objecting to Agent Fields' testimony in regard to Appellant's DNA contained in CODIS because the sample was not authenticated and lacked a proper chain of custody, Appellant also objected to the testimony based on the fact that it constituted improper evidence of a prior bad act. (R. p. 338, lines 10-16). Appellant argued, "The solicitor has indicated that they are not going to refer to CODIS, but call it a database. Your Honor, my DNA is not in a database, yours or Solicitor Mayes, so I think referring to that is going to basically be a comment on the fact of saying his DNA has been placed in there and that he has a prior record and I don't think that is appropriate." (R. p. 338, lines 10-16). After the second proffer Appellant specifically argued, "We believe it's an attempt basically by the State under 404(b) to show a bad act. This is a law enforcement agency, SLED, and their database that's collected DNA samples. Additionally, kind of in conjunction with 404(b), it kind of goes along with 609, evidence of prior crime, so we don't believe it should come in there." (R. p. 541, lines 13-19).

In State v. Hill, 409 S.C. 50, 760 S.E.2d 802 (2014), the South Carolina Supreme Court found that a letter from SLED to a local police department referencing CODIS and, by implication, Defendant's criminal record was inadmissible but found the error in that case harmless as cumulative. The Court in Hill wrote, "Appellant contends the circuit court erred when it admitted a SLED letter into evidence because the letter implicitly referenced Appellant's

criminal record and therefore highly prejudiced Appellant. While we agree the admission of the letter was error, we hold that this error does not warrant reversal of Appellant's convictions." Hill 409 S.C. at 56-57, 760 S.E.2d at 806.

Agent Fields' testimony in the present case is the equivalent of the letter in Hill and inadmissible. In the present case, however, the error was not harmless. In Hill, unlike the present case, there was other evidence of Appellant's DNA being in the CODIS database. "While we do not condone the publishing of this letter to the jury, its admission does not amount to reversible error. The evidence contained in this letter was merely cumulative to other evidence of Appellant's DNA being in the CODIS database. Accordingly, we find that the publication of this letter was harmless in light of the other evidence which was admitted without objection." Hill 409 S.C. at 56-57, 760 S.E.2d at 806. Unlike Hill, Appellant in the present case objected to all references to his DNA being in the CODIS database.

The reference to CODIS, by implication, improperly referenced Appellant's prior record. The reference was prejudicial. The reference to Appellant's DNA being contained in CODIS in the present case is distinguished from the vague reference to a fingerprint card that was found harmless in State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). Fingerprints may be on file in the Integrated Automated Fingerprint Identification System [IAFIS or AFIS] and available to law enforcement for a number of reasons other than an arrest or conviction including employee background checks, licensing and other non-criminal justice purposes where authorized. The DNA database, on the other hand, contains convicted offender DNA profiles and, in some states, arrestee profiles. There does not appear to be a civil component, as with AFIS, in the DNA databases.

While the State in the present case did not attempt to introduce the letter, as in the Hill case, and did not introduce evidence as to why Appellant's DNA was in the database and there was no specific reference to a prior crime, the clear inference was that Appellant had been convicted of a crime of a serious nature requiring that a DNA sample be maintained in the database. Additionally, the State referenced the DNA database in closing argument. (R. p. 564, lines 6-8). The error in admitting the testimony that Appellant's DNA was contained in the DNA database was not harmless in the present case.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE; see State v. Lyle, 125 S.C. 406, 415-16, 118 S.E. 803, 807 (1923) (noting the rule "universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged"). "However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b). As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE. State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895. If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b). Id. Even if prior bad act evidence falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Clasby, 385 S.C. at 155, 682 S.E.2d at 896.

As argued by Appellant, the DNA database testimony was irrelevant in light of the fact that the State obtained additional DNA samples from Appellant. (R. p. 541, lines 8-22). The

State could simply have argued that Appellant was developed as a suspect without regard to the DNA database. Even if relevant, the evidence does not meet an exception under Rule 404(b) and the testimony that Appellant's DNA was in the database, inferring that he had a prior record, was certainly more prejudicial than probative. The trial judge erred in admitting the testimony that Appellant's DNA was in the DNA database.

3. The trial judge erred by indicating to the jury, in his preliminary comments, that a trial was a search for the truth.

In his preliminary comments to the jury the judge stated:

All right, ladies and gentlemen. Before we actually begin the trial, I want to take a few minutes to explain our procedure, but even before I do that I want to tell you that a trial probably will be different from what you might expect. Now many people do not have the chance to attend court hearings as you are now doing and they may think that from watching television or movies or reading books that trial are always full of drama and intense action. While some of these things may be true at times, this trial is not for entertainment. It's a fundamental part of our democracy **in a search for the truth** in an effort to make sure that justice is done between the parties before the court. **Searching for the truth** and making sure that justice is done is often a slow, deliberate and repetitive process, the opposite of what you might have seen on television or in the movies or read in books. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what may be called the greatest justice system ever created.

(R. p. 179, line 13 – p. 180, lines 1-7). (emphasis added). Appellant objected to the comments arguing that, pursuant to State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012), the search for the truth language impermissibly shifted the burden of proof. (R. p. 243, lines 3-21). The judge overruled the objection noting that he was not charging the jury but simply making some opening remarks. (R. p. 243, line 25 – p. 244, lines 1-17). The judge found that the comment did not shift the burden of proof. The trial judge erred.

In State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012), the South Carolina

Supreme Court wrote:

Although the issue is not preserved, we instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

In State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000), the South Carolina Supreme Court held that jury instructions on reasonable doubt which also charge the jury to "search for the truth" run the risk of unconstitutionally shifting the burden of proof to the defendant but found the error in that case harmless. Recently in State v. Beaty, No. 2015-000718, 2016 WL 7474479, at *2 (S.C. Dec. 29, 2016), the Court wrote:

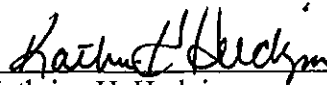
It is true, as the trial judge noted, that the comments here can be distinguished from Aleksey in that his was a "statement" and not a jury charge. Further, the remarks were not linked to either reasonable doubt or circumstantial evidence as was condemned in Aleksey. However, we agree with appellant that a trial court should refrain from informing the jury, whether through comments or through its charge, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases may be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict it believes best serves the jury's perception of justice. We caution trial judges to avoid these terms and any other that may divert the jury from its obligation in a criminal case to determine, based solely on the evidence presented, whether the State has proven the defendant's guilt beyond a reasonable doubt.

The judge's comments in the present case are substantially the same comments addressed by the Court in Beaty. As the Court found in Beaty, the comments constituted error. Unlike Beaty, however, the error in the present case was not harmless. The State's evidence in the

present case was not overwhelming and the burden shifting comments were not cured by any subsequent comments or instructions.

CONCLUSION

Based on the above arguments, Appellant's convictions and sentence should be reversed and the case remanded for a new trial.



Kathrine H. Hudgins
Appellate Defender

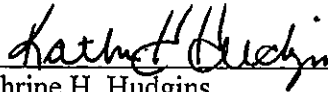
ATTORNEY FOR APPELLANT

This 30th day of June, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

June 30th, 2017



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JUN 30 2017

SC Court of Appeals

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2016-000863

JUN 27 2017
SC Court of Appeals

THE STATE,

Respondent,

vs.

JAMES BUBBA PATTERSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly admitted evidence related to a search of SLED's DNA database because the State properly authenticated that evidence by establishing it was what it was purported to be in multiple ways and because the high probative value of that evidence, which was essential to explain to the jury how Appellant was identified as a suspect in the armed robbery of the jewelry store and which did not constitute improper character evidence, was not substantially outweighed by its potential for undue prejudice. However, even assuming the trial judge somehow erred by admitting the evidence related to the DNA database search, any error was entirely harmless in light of that evidence's minimal potential to cause any undue prejudice to Appellant, the cumulative nature of that evidence in relation to other unobjected-to and unchallenged evidence, and the other overwhelming evidence of Appellant's guilt presented during trial.

II.

The trial judge's preliminary remarks, which included "search for the truth" language, did not shift the burden of proof or create a reasonable likelihood the jury would decide Appellant's case in an unconstitutional manner, and any harm that could have resulted from the trial judge's use of "search for the truth" language in his preliminary remarks was subsequently cured by the trial judge's jury instructions, which properly and thoroughly charged the jury on the applicable law, instructed the jury the State had the burden of proving Appellant's guilt beyond a reasonable doubt, and explained to the jury Appellant had no responsibility of any kind to prove his own innocence.

STATEMENT OF THE CASE

In November of 2012, Appellant James Bubba Patterson was arrested following an investigation into an armed robbery that had occurred several months earlier at a jewelry store located in West Columbia, South Carolina. In April of 2013, the Lexington County Grand Jury indicted Appellant for armed robbery, grand larceny, and possession of a weapon during the commission of a violent crime. On April 11, 2016, a jury trial was commenced in the Lexington County Court of General Sessions with the Honorable G. Thomas Cooper, Jr., circuit court judge, presiding. At the conclusion of the multi-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for armed robbery, ten years for grand larceny, and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 2:30 p.m. on the afternoon of May 9, 2012, Frank Mancine was working at K & M Jewelry, a jewelry store located in West Columbia, South Carolina, when a man wearing a dark-colored suit, a dark-colored fedora, and sunglasses entered the store. (R. p. 82; p. 89; p. 95; pp. 100-102; pp. 195-196; p. 247). Recognizing the man from a visit to the store only two days earlier, Mancine went over to provide him with assistance, and the man asked to be shown some necklaces. (R. p. 103; pp. 114-115; p. 196; p. 198; p. 202; p. 204). Based on the man's request, Mancine unlocked several of the store's jewelry counters and began to show various items to the man while Mancine's mother, who was the store's owner, assisted two other customers nearby. (R. pp. 195-196; p. 202). As Mancine showed the man the store's merchandise, the man suddenly pulled out a pistol, pointed it at Mancine and the other people in the store, and demanded the store's jewelry. (R. p. 97; pp. 196-197; pp. 220-221). The robber then filled a bag with approximately \$29,000 worth of the store's gold necklaces and bracelets and began to exit the store. (R. p. 197; p. 203; p. 209). When he did so, Mancine retrieved his own pistol, which was concealed nearby, and fired a shot at the robber. (R. p. 118; p. 197; p. 233; p. 235). However, Mancine's gun jammed and his shot missed, and the robber was able to quickly flee from the store. (R. p. 120; pp. 203-204; p. 235). Mancine then unjammed his pistol and promptly chased after the robber. (R. p. 121; p. 204; p. 211). During the chase, he observed the robber's hat on the ground outside the store. (R. p. 69; p. 211). He then saw the robber seated in an older light-colored van parked nearby, and he shot out the rear window of the van as the robber "violently" sped away from the scene with the stolen jewelry. (R. pp. 121-123; p. 209; pp. 212-213; p. 237).

Minutes later, law enforcement officers began arriving at the jewelry store after being alerted of the armed robbery. (R. p. 245; p. 248; p. 258; pp. 289-291; pp. 346-347). Upon arriving, Sergeant Ronald Fair of the West Columbia Police Department spoke with Mancine, obtained a description of the robber, who was described as an approximately forty-year-old man that was 5'5" tall and weighed 150 pounds, and relayed that description to other officers in the area.¹ (R. p. 214; p. 254). Additionally, Sergeant Fair briefly spoke with Mancine's mother and the two customers who were inside the store at the time of the robbery. (R. p. 256; p. 371). Furthermore, officers reviewed and obtained surveillance footage from the jewelry store recorded on both the day of the robbery and two days earlier, located and collected a black fedora from the sidewalk outside of the jewelry store, and collected two fingerprints from the glass jewelry counters inside the store.² (R. p. 81; pp. 199-200; pp. 249-253; p. 259; pp. 291-293; p. 296; pp. 309-311; p. 348). However, the officers were unable to locate the robber that day, and the jewelry taken during the incident was not recovered. (R. p. 321; p. 348).

Thereafter, on May 29, 2012, Investigator James Sullivan of the West Columbia Police Department transported the black fedora collected from the scene of the robbery to the South Carolina State Law Enforcement Division ("SLED") for analysis. (R. pp. 289-293; p. 322; pp. 468-469). A few weeks later, Betty Butler, a forensic technician at SLED, collected a DNA sample from the hat and submitted it for further analysis. (R. pp. 492-497). Subsequently, in September of 2012, Maryann Boehm, an expert DNA analyst at SLED, developed a DNA profile from the evidence collected from the hat and entered that profile into SLED's DNA database.

¹ Later that day, Mancine provided a slightly different description to another officer and indicated the robber was roughly 5'7" to 5'8" tall and weighed roughly 120 pounds. (R. pp. 68-69; pp. 88-89; pp. 347-348).

² Subsequent to the robbery, the two fingerprints collected from the jewelry store were analyzed by James Hickman, a latent print examiner for the Lexington County Sheriff's Office and an expert in fingerprint analysis. (R. p. 320; p. 336; pp. 475-476; pp. 478-479). After conducting his analysis, Hickman concluded one of the fingerprints recovered from the scene was left by Mancine's mother while the other fingerprint was not of sufficient quality to be used for comparative purposes. (R. pp. 483-485).

(R. p. 504; p. 506; pp. 509-513; p. 533). Based on that submission, Appellant James Bubba Patterson was identified as a suspect in the robbery after it was determined his DNA profile, which had previously been submitted to the DNA database, matched the profile collected from the hat found at the crime scene, and that information was relayed to Captain Bruce Wade of the West Columbia Police Department. (R. p. 70; pp. 342-343; p. 346; p. 350; pp. 533-534; p. 537; pp. 543-545).

Upon learning of Appellant's connection to the robbery, Captain Wade obtained a photographic lineup from SLED that contained Appellant's photograph along with the photographs of five other similar-looking individuals and took that photographic lineup to the jewelry store on November 15, 2012. (R. pp. 72-74; p. 218; pp. 350-351; p. 354). At the jewelry store, Captain Wade showed the photographic lineup to both Mancine and Mancine's mother.³ (R. p. 72; p. 91; pp. 105-107; p. 217; pp. 353-355; pp. 369-370; p. 384). Mancine's mother was unable to select anyone from the lineup. (R. p. 91; p. 370). However, "almost immediately" after seeing the lineup, Mancine identified Appellant's photograph as an image of the individual who robbed the jewelry store. (R. p. 72; pp. 75-76; p. 90; pp. 108-109; p. 219; p. 355).

On the same day, Captain Wade tracked Appellant's vehicle to an impound lot for a towing company and went to examine the vehicle along with Captain Joseph Odom of the Richland County Sheriff's Office after a search warrant was obtained for it.⁴ (R. pp. 70-71; pp. 151-152; pp. 356-358; pp. 363-364; pp. 399-401; pp. 420-421; pp. 426-427). Upon examining the vehicle, which was an older light-colored van consistent with the van used by the robber, the

³ In addition to showing the photographic lineup to Mancine and Mancine's mother, Captain Wade contacted the customers who were present in the store at the time of the robbery in an effort to have them view the lineup, but they indicated to the officer "they didn't want anything else to do with" the case and, as a result, were never actually shown the lineup. (R. p. 99; p. 371).

⁴ Appellant's vehicle had been securely held at the impound lot since May 24, 2012, and was never reclaimed. (R. p. 357; pp. 393-394; pp. 399-401).

officers discovered the van had been repainted and appeared to have had its rear hatch replaced with a rear hatch from a different brand of vehicle.⁵ (R. p. 71; pp. 359-361; p. 425; pp. 427-428; p. 434). Additionally, the officers discovered the van had a puncture mark to its ceiling near the rear hatch window. (R. pp. 431-432).

Based on the information Captain Wade collected during his investigation, Appellant was arrested in connection to the armed robbery on the following day. (R. p. 77; p. 364; pp. 388-389). At the time of his arrest, Appellant was forty-nine years old, was 5'5" tall, and weighed 140 pounds. (R. pp. 389-390). Following Appellant's arrest, Captain Wade met with Appellant and advised him of his rights, and Appellant signed a waiver form indicating he relinquished those rights. (R. pp. 78-79). Captain Wade then advised Appellant he wanted to speak with him about a robbery of a jewelry store located in West Columbia. (R. p. 80). In response, Appellant, a resident of Columbia, claimed he had only been to West Columbia three or four times during his lifetime and denied any involvement in the robbery. (R. p. 80; p. 85; pp. 377-378). At that point, Captain Wade alerted Appellant his DNA had been collected from a hat recovered at the scene of the crime, and Appellant responded to that information by becoming irate, cursing, ripping up the waiver form he had signed, and eating the pieces of that form. (R. p. 80; p. 85). Appellant then invoked his rights, and Captain Wade terminated the interview.⁶ (R. p. 80; p. 86).

Thereafter, officers collected a sample of Appellant's DNA, and it was transported to SLED for analysis.⁷ (R. p. 36; pp. 446-447; p. 471). Upon receiving Appellant's DNA sample,

⁵ When Appellant purchased the van in December of 2010, it had all its original parts other than its engine, which had been replaced. (R. pp. 406-408; p. 417).

⁶ During trial, the trial judge ultimately suppressed testimony related to Appellant's post-arrest statement. (R. pp. 131-133).

⁷ Initially, Appellant's DNA sample was collected in 2013 by a detective who subsequently died before Appellant could be brought to trial. (R. p. 36). As a result, a new sample of Appellant's DNA was collected in December of

Boehm developed a DNA profile for Appellant and compared that profile to the profile that had previously been developed from the hat found at the scene of the robbery. (R. p. 519). After conducting that analysis, Boehm concluded Appellant's unique DNA profile conclusively matched the DNA profile found on the robber's hat. (R. p. 519).

Subsequently, Appellant was indicted for armed robbery, grand larceny, and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial. (R. p. 60; pp. 617-625). At the outset of trial, the trial judge presented some preliminary remarks to the jury. (R. pp. 179-185). During those remarks, the trial judge explained:

[A] trial will probably be different from what you might expect. Now many people do not have the chance to attend actual court hearings as you are now doing and they may think that from watching television or movies or reading books that trials are always full of drama and intense action. While some of these things may be true at times, this trial is not for entertainment. It's a fundamental part of our democracy in a search for the truth in an effort to make sure that justice is done between the parties before the court. Searching for the truth and making sure that justice is done is often a slow, deliberate and repetitive process, the opposite of what you might have seen on television or in the movies or read in books. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what many have called the greatest justice system ever created.

The attorneys appearing before you are advocates for the parties they represent, but first and foremost they are officers of this court, sworn to uphold the integrity and fairness of our judicial system and to help you in a search for the truth. You should expect them to be professional, competent and ethical in the representation of their client's interest and remember that you also have taken an oath to try this case to reach a fair and just verdict and you're also expected to be professional, reasonable and ethical.

(R. pp. 179-180). As his remarks continued, the trial judge instructed the jurors the State had the burden of proving Appellant's guilt beyond a reasonable doubt, specifically informed the jurors it was their duty "to decide whether the State has met that burden," noted Appellant had no burden to prove anything during the trial, and explained Appellant was presumed to be innocent

2015, and a new analysis of that DNA sample was conducted prior to trial. (R. p. 50; pp. 446-447; pp. 513-514; p. 519).

of the charged offenses. (R. pp. 181-183). Following those remarks, defense counsel indicated he had a matter that needed to be brought to the trial judge's attention, and the judge conducted a bench conference with the parties. (R. p. 185). Defense counsel then objected to the trial judge's use of "search for the truth" language on the basis it could potentially shift the State's burden of proof.⁸ (R. p. 243). However, the trial judge overruled the objection and indicated he did not believe his remarks shifted the burden of proof. (R. p. 244).

Thereafter, during trial, Mancine testified about the harrowing details of the armed robbery along with his concerted efforts to stop the perpetrator of the crime, positively identified Appellant in the courtroom as the robber, and indicated he was certain of his identification of the robber. (R. pp. 195-222). Additionally, Jennifer Hubbard, a resident of West Columbia, recounted she was at a bus stop near the jewelry store on the afternoon of the incident, observed a man wearing a suit park a light-colored van in a parking lot nearby, watched the man walk in the direction of the jewelry store with a bag, and then saw the man run back to the van a few minutes later before an armed individual ran up and fired gunshots at the man's van as it sped away from the area.⁹ (R. pp. 264-280). Likewise, evidence was presented establishing Appellant purchased a light-colored van a few years before the incident, that van was repainted and had its rear hatch replaced at some point thereafter, and the van was never reclaimed after it was taken to an impound lot subsequent to the robbery. (R. pp. 359-361; pp. 392-396; pp. 398-402; pp. 404-408; pp. 413-417; p. 425; pp. 427-428). Furthermore, the officers and other law enforcement personnel involved in the investigation into the armed robbery testified about the

⁸ Although defense counsel objected directly after the trial judge presented his preliminary remarks to the jury, defense counsel's objection to those remarks was not formally placed on the record until after the first witness testified during trial. (R. p. 243).

⁹ Similar to the description of the robber provided by Mancine, Hubbard described the man she observed get into and out of the van around the time of the robbery as an approximately forty-year-old man who was roughly 5'5" to 5'6" tall and weighed between 180 and 200 pounds. (R. pp. 267-268; p. 283).

details of their investigation and Appellant's eventual arrest for the commission of the crime. (R. pp. 245-256; pp. 258-260; 289-336; pp. 346-389; pp. 388-390; pp. 420-437; pp. 475-485).

Notably, during Captain Wade's testimony, the officer informed the jury – without objection – he received notice from SLED and its DNA database that identified Appellant as a suspect in the armed robbery. (R. p. 350).

Beyond that testimony and evidence, testimony was presented establishing DNA samples were collected from the hat recovered at the scene of the crime and from Appellant following his arrest.¹⁰ (R. pp. 446-447; pp. 493-497). Additionally, Boehm, who was qualified as an expert in DNA analysis and statistical calculation, confirmed she developed a DNA profile from the hat and entered it into SLED's DNA database, which she stated contained profiles from "known individuals" as well as from evidence collected at crime scenes. (R. pp. 511-513). She further confirmed she later developed a DNA profile from the sample of Appellant's DNA and compared it to the DNA profile she developed from the hat. (R. pp. 513-514; p. 519). After conducting that comparison, Boehm testified she conclusively determined Appellant's DNA profile, which she indicated was unique to him, matched the DNA profile developed from the hat.¹¹ (R. p. 507; p. 519). Regarding the strength of that match, Boehm indicated the probability of randomly selecting an unrelated individual with a matching DNA profile was a one-in-730-quintillion chance. (R. p. 519).

Moreover, during the course of trial, the solicitor called Rhonda Fields, a SLED employee who worked in the agency's DNA database unit, to the witness stand, and defense

¹⁰ Testimony was also presented during trial establishing a complete chain of custody in regard to the hat, the evidentiary swab collected from the hat, and the DNA swab collected from Appellant. (R. pp. 292-293; pp. 446-447; pp. 468-471; pp. 473-474; pp. 493-497; pp. 509-511; pp. 513-516).

¹¹ During her testimony, Boehm explained DNA profiles consist of a series of numeric codes representing loci and alleles, which are developed into charts and compared to one another to check for a match. (R. pp. 522-527).

counsel immediately raised an objection to her testimony. (R. pp. 337-338). In support of that objection, defense counsel indicated – outside of the presence of the jury – SLED had received a “CODIS hit” in Appellant’s case, noted Lieutenant David McClure from SLED alerted Captain Wade of the “hit” as opposed to Fields, contended a reference to the DNA database match would inappropriately confirm to the jury the existence of Appellant’s prior record in light of the reason DNA profiles were included in the DNA database, and asserted there was no chain of custody regarding the DNA profiles entered into the database.¹² (R. pp. 338-339). In response, Fields confirmed she intended to testify in Lieutenant McClure’s place in light of his retirement, and the solicitor contended the testimony related to the DNA database match was probative and necessary to explain to the jury how law enforcement was able to identify Appellant as a suspect in the armed robbery, which the jury would have had no way of knowing without testimony related to the match made by SLED, while confirming she would not seek admission of the letter from SLED confirming the DNA database match during the trial. (R. pp. 338-341). After hearing the contentions of the parties, the trial judge asserted:

The collection of DNA materials that form the database, I agree that it’s taken from a thousand different places and it may not always be – and I’m not certain of this fact, it may not always be indicative of a prior criminal record. It may be. It may be, but, as I said, I’m not certain of that, but that’s the primary source of the DNA that’s in the databank. But unless you can show me some case law that says they can’t use it, I’m gonna allow it.

(R. p. 340). Defense counsel then again contended the evidence was inadmissible based on a chain of custody problem while alleging Fields had no personal knowledge in regard to the DNA match in Appellant’s case. (R. pp. 340-341). At that point, the trial judge directed the solicitor to proffer Fields’s testimony. (R. p. 342).

¹² During sentencing proceedings, the solicitor recounted the details of Appellant’s substantial prior criminal record, which spanned roughly thirty years and contained numerous felony convictions. (R. pp. 609-611).

During the proffer, Fields confirmed Captain Wade was notified Appellant's DNA profile was determined to match the DNA profile developed from the hat recovered at the scene of the robbery following a search involving the SLED DNA database. (R. pp. 342-343). Additionally, Fields confirmed Lieutenant McClure conducted the search of the database after Boehm entered the profile developed from the hat. (R. p. 343). Fields further confirmed she might have been involved in reviewing the match once it was made, but she was not certain at that time. (R. p. 344). Based on that testimony, the trial judge advised Fields she needed to get all the relevant information related to the case, and the solicitor indicated the matter needed to be reserved for a later time. (R. p. 344).

As the trial continued forward, the solicitor again proffered the testimony of Fields. (R. p. 532). During the second proffer, Fields testified the DNA profile developed from the hat was entered into SLED's DNA database by Boehm for a search. (R. p. 533). After that, Fields stated she personally reanalyzed the data received as a result of that search for confirmation purposes, which she noted was the process followed in every database search, and personally confirmed both Appellant's DNA profile from the database matched the DNA profile developed from the hat and the fingerprint associated with Appellant's DNA profile, which had been assigned a unique identification number, had been verified to belong to Appellant. (R. pp. 533-536; pp. 540-541). Additionally, Fields noted the information collected as a result of the database search was further reviewed by another analyst before the confirmation of the match was sent to Captain Wade. (R. p. 537). Furthermore, Fields conceded she did not have all the chain of custody information for the DNA profiles included in the DNA database. (R. p. 538; p. 540). However, she stated the profiles in the DNA database were usually collected at the time an individual was arrested for or convicted of a crime, and she indicated SLED had a tracking

system that showed when a sample was collected for the database and sometimes who actually collected the sample.¹³ (R. pp. 538-539).

At the conclusion of the proffer, defense counsel reiterated his objection to the proffered testimony and argued it should be excluded because it was allegedly irrelevant, unduly prejudicial, violative of due process based on a lack of authentication and a sufficient chain of custody, inadmissible as evidence of a prior bad act, inadmissible as improper impeachment evidence, cumulative, and inadmissible without the testimony of Lieutenant McClure. (R. pp. 541-542). In rebuttal, the solicitor contended the evidence was admissible and necessary to show how Appellant was identified as a suspect in the armed robbery, which could not be shown without that particular link in the investigation. (R. p. 542). After considering the arguments of counsel, the trial judge overruled defense counsel's objections and ruled Fields could testify before the jury in the limited manner proposed by the solicitor. (R. p. 542). Following that ruling, Fields testified before the jury and noted – over objection – the DNA profile developed from the hat found at the crime scene was entered into SLED's DNA database, which led to Appellant being developed as a suspect in the robbery. (R. pp. 543-546).

Thereafter, at the conclusion of the evidentiary phase of trial, the parties rested their cases and presented their closing arguments to the jury. (R. p. 547; pp. 556-585). During the prosecution's closing argument, the solicitor noted to the jury Appellant was only identified as a suspect in the jewelry store robbery after a DNA profile developed from the robber's hat was entered into SLED's DNA database, which led to the inclusion of Appellant's photograph in the photographic lineup, Mancine's subsequent identification of Appellant as the armed robber, and the discovery Appellant's DNA profile conclusively matched the DNA profile developed from

¹³ Although she disclosed it during the second proffer, Fields did not reveal to the jury DNA samples collected for the DNA database were usually collected at the time of arrest or conviction. (R. pp. 538-539; pp. 543-547).

the evidence collected at the scene of the crime. (R. pp. 563-564; pp. 568-569). Conversely, during the defense's closing argument, defense counsel characterized the investigation into the armed robbery as "incomplete, inept, and inaccurate," contended the flaws with the investigation meant Appellant's case was "drenched" in reasonable doubt, and called the jurors' attention to evidence that had not been presented, including testimony from Mancine's mother and the other victims present during the armed robbery aside from Mancine. (R. p. 570; pp. 571-572; p. 574).

Following the parties' closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 585-598). In instructing the jury on the law, the trial judge thoroughly defined reasonable doubt and specifically explained Appellant was not required to prove his innocence, Appellant was presumed to be innocent, Appellant could only be convicted based upon evidence proving his guilt beyond a reasonable doubt, and the State had the sole burden of proving Appellant's guilt for each and every element of the charged crimes beyond a reasonable doubt.¹⁴ (R. pp. 588-590; p. 593).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 606). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of twenty years. (R. pp. 614-615).

¹⁴ At the conclusion of his jury charge, the trial judge presented a supplemental instruction to the jury to clarify Appellant had pled not guilty to the charged crimes and again reiterated the State had the burden of proving Appellant's guilt beyond a reasonable doubt at that time. (R. p. 600).

ARGUMENT

I.

The trial judge properly admitted evidence related to a search of SLED's DNA database because the State properly authenticated that evidence by establishing it was what it was purported to be in multiple ways and because the high probative value of that evidence, which was essential to explain to the jury how Appellant was identified as a suspect in the armed robbery of the jewelry store and which did not constitute improper character evidence, was not substantially outweighed by its potential for undue prejudice. However, even assuming the trial judge somehow erred by admitting the evidence related to the DNA database search, any error was entirely harmless in light of that evidence's minimal potential to cause any undue prejudice to Appellant, the cumulative nature of that evidence in relation to other unobjected-to and unchallenged evidence, and the other overwhelming evidence of Appellant's guilt presented during trial.

Appellant contends the trial judge committed reversible error by admitting evidence related to the search of SLED's DNA database that resulted in the discovery Appellant's DNA profile matched the DNA profile developed from the robber's hat. In support of that contention, Appellant maintains the DNA database evidence should not have been admitted because the State failed to sufficiently authenticate that evidence and establish a complete chain of custody in regard to that evidence. Furthermore, Appellant maintains the DNA database evidence should not have been admitted because it constituted improper character evidence and was more prejudicial than probative. Initially, contrary to Appellant's contention, the evidence presented during trial was sufficient to establish the evidence was what it was purported to be – evidence of a match to Appellant's DNA profile – in several different ways, which was all that was required in order to authenticate the evidence and render it otherwise admissible. Likewise, the evidence related to the DNA database search was highly relevant in Appellant's case, was essential towards establishing how Appellant was identified as a suspect in the armed robbery of the jewelry store, did not constitute improper character evidence in light of the limited manner in which it was introduced, and was far more probative than it was improperly prejudicial. Under

those circumstances, the trial judge committed no error in admitting the DNA database evidence. However, even assuming the trial judge somehow erred in admitting that evidence, any error was entirely harmless in light of that evidence's minimal potential to cause any undue prejudice to Appellant, the cumulative nature of that evidence in relation to other unobjected-to and unchallenged evidence, and the other overwhelming evidence of Appellant's guilt presented during trial. Accordingly, Appellant's convictions should be affirmed.

STANDARD OF REVIEW

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give "great deference" to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). Moreover, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ANALYSIS

A. Authentication of the Evidence Related to the DNA Database Search

In general, evidence must be authenticated before it can be admitted. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). In order for evidence to be authenticated, the party offering the evidence must establish the evidence is what it is claimed to be. Id.; see Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”). That requirement can be satisfied in numerous ways, including through the presentation of the testimony of a witness with knowledge the matter is what it is purported to be, through proof of internal patterns or other distinctive characteristics, through proof a document was recorded or filed in a public office as authorized by law, through proof a purported public record or statement is from the office where such items are kept, and through testimony regarding a comparison with an authenticated specimen by an expert witness or the trier of fact. Rule 901(b), SCRE. Significantly, direct proof is **not** required in order to authenticate a particular piece of evidence, and, instead, evidence can be authenticated through indirect or circumstantial evidence. Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 576-577, 201 S.E.2d 372, 376 (1973). Once the threshold requirement of authentication has been met, the evidence can then properly be admitted during trial if it is otherwise admissible. State v. Rich, 293 S.C. 172, 173, 359 S.E.2d 281, 282 (1987).

Relatedly, requirements in regard to establishing a chain of custody for evidence are “but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.” United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir. 1982). “The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to

be.” State v. Hatcher, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); see Howard-Arias, 679 F.2d at 366 (“The purpose of this threshold requirement is to establish that the item to be introduced, i.e., marijuana, is what it purports to be, i.e., marijuana seized from the ‘Don Frank.’ ”).

Critically, “[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” Hatcher, 392 S.C. at 94, 708 S.E.2d at 754. As a result, when it is necessary to establish a chain of custody, proof of such a chain of custody need not eliminate all possibility of tampering and must demonstrate only as far as practicable who handled a particular piece of evidence from the time it was collected to the time it was ultimately analyzed. Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957); see generally State v. Sweeney, 443 So. 2d 522, 528 (La. 1983) (“To admit demonstrative evidence at trial, the law requires that the object be identified. The identification can be visual, that is, by testimony at the trial that the object exhibited is the one related to the case. It can also be identified by chain of custody, that is, by establishing the custody of the object from the time it was seized to the time it was offered in evidence. The law does not require that the evidence as to custody eliminate all possibilities that the object has been altered. For admission, it suffices if the custodial evidence establishes that it is more probable than not that the object is the one connected with the case. A preponderance of the evidence is sufficient.” (citations omitted)).

Notably, in State v. Anderson, 386 S.C. 120, 122-123, 687 S.E.2d 35, 36 (2009), our Supreme Court considered an authentication-based challenge to the admission of a ten-print fingerprint card that was maintained in the Automated Fingerprint Identification System (“AFIS”). In that case, evidence was presented establishing latent prints collected from a crime scene were entered into AFIS, which ultimately resulted in a match to a known fingerprint

associated with an identifying number that had been assigned to Anderson. Id. at 123, 687 S.E.2d at 36. Additionally, evidence was presented establishing a person's fingerprints are rolled onto a ten-print fingerprint card after arrest, are retained on file by both SLED and the FBI, and are assigned identification numbers. Id. Furthermore, evidence was presented establishing the ten-print card associated with Anderson's identification number originated from a law enforcement agency on a specific date, ten-print cards are maintained by SLED and entered into the AFIS system, and every fingerprint is unique. Id. at 124, 687 S.E.2d at 37. Despite that testimony, Anderson maintained his ten-print card had not sufficiently been authenticated in light of the fact no testimony had been presented to establish the identity of the person who originally collected his fingerprints, the trial judge admitted the fingerprint evidence over Anderson's objection, and Anderson ultimately appealed his case to our Supreme Court after he was convicted. Id. at 124-125, 687 S.E.2d at 37. On appeal, the Supreme Court concluded the ten-print fingerprint card had been authenticated during trial in multiple ways. Id. at 128, 687 S.E.2d at 39. Initially, the Supreme Court determined the ten-print card was authenticated through the testimony establishing it was taken at a correctional facility on a specific date, submitted to SLED, maintained in the condition in which it arrived, and was stored in AFIS. Id. Likewise, pursuant to Rule 901, SCRE, the Supreme Court found the ten-print card was also authenticated through testimony "regarding the distinctive characteristics of the ten-print card[.]" Id. at 129, 687 S.E.2d at 39-40. Additionally, based on the testimony establishing fingerprints were taken when individuals are arrested, maintained by SLED, and stored in AFIS, the Supreme Court determined the ten-print card was authenticated as a public report or record. Id. at 130-131, 687 S.E.2d at 40. Furthermore, the Supreme Court found the ten-print card was authenticated through the testimony regarding the process involved in collecting the fingerprints and

maintaining an accurate record of them in AFIS. Id. at 131, 687 S.E.2d at 41. Finally, the Supreme Court determined the ten-print card was authenticated in a general way through the expert testimony presented regarding the method and technology used to match Anderson's print to the print collected from the crime scene. Id. at 131-132, 687 S.E.2d at 41. In light of the numerous ways in which the ten-print card had been authenticated in Anderson's case, the Supreme Court concluded the trial judge committed no error in admitting the ten-print card into evidence during trial. Id. at 132-133, 687 S.E.2d at 41.

In the case sub judice, the DNA database evidence was authenticated through the testimony establishing the DNA profile developed from the robber's hat matched both the DNA profile attributed to Appellant in the DNA database and the DNA profile developed from Appellant's DNA. Critically, in light of the testimony establishing every person's DNA profile is unique, the fact the robber's DNA profile, which was developed from evidence with a complete chain of custody, matched the DNA profile developed from Appellant after his arrest, which unquestionably was Appellant's DNA profile as it was also developed from evidence with a complete chain of custody, and also matched the DNA profile attributed to Appellant in the DNA database established the DNA profile from the database was, in fact, Appellant's in light of its unique characteristics and its comparison to an authenticated DNA profile known to belong to Appellant. See Rule 901(b)(3), SCRE (instructing evidence can be authenticated through comparison with an authenticated specimen); Rule 901(b)(4), SCRE (instructing evidence can be authenticated through proof of distinctive characteristics); see also Anderson, 386 S.C. at 130, 687 S.E.2d at 39-40 (finding testimony regarding the distinctive characteristics of a ten-print fingerprint card was sufficient to support a finding the evidence was properly authenticated); cf. Williams v. Illinois, 567 U.S. 50, __ (2012) ("[T]he fact that the Cellmark profile matched

Williams – the very man whom the victim identified in a lineup and at trial as her attacker – was itself striking confirmation that the same that Cellmark tested was the sample taken from the victim’s vaginal swabs.”).

Likewise, the DNA database evidence was authenticated through the testimony establishing DNA profiles developed from different sources, including individuals who were arrested, were kept and stored by SLED. Critically, in light of that testimony, Appellant’s DNA profile, which had been assigned a unique identifying number and stored in the DNA database along with Appellant’s fingerprint, constituted a public record or report, which was evidence of sufficient authentication for admissibility under our rules of evidence.¹⁵ See Rule 901(b)(7), SCRE (instructing evidence can be authenticated through proof about public records); see also Anderson, 386 S.C. at 130-131, 687 S.E.2d at 40 (finding a ten-print fingerprint card stored in AFIS was authenticated as a public record or report based on testimony establishing fingerprints were collected from every person arrested in the state and maintained in a database by SLED); see generally S.C. Code Ann. § 23-3-610 (“There is established in the South Carolina Law Enforcement Division (SLED) the State Deoxyribonucleic Acid (DNA) Identification Record Database (State DNA Database). The State Law Enforcement Division shall develop DNA profiles on samples for law enforcement purposes and for humanitarian and nonlaw enforcement purposes, as provided for in Section 23-3-640(B).”).

Furthermore, the DNA database evidence was authenticated through the presentation of testimony both describing the process and system related to SLED’s DNA database and showing that particular process and system produced accurate results. Specifically, testimony was

¹⁵ Notably, for a particular item to be considered a public record or report pursuant to Rule 901(b)(7), SCRE, it is only necessary “that the document be produced and maintained in a public office[.]” and the fact the document is not actually available to the general public does not prevent authentication under that rule in any way. Anderson, 386 S.C. at 130, n. 10, 687 S.E.2d at 40.

presented establishing SLED's DNA database contained DNA profiles that had been assigned unique identification numbers associated with particular individuals, the identities of the individuals associated with DNA profiles stored in its database were verified through fingerprint analysis, and the DNA database could be searched to find profiles that matched DNA profiles entered into the database. Moreover, testimony was presented establishing the search of the DNA database conducted in Appellant's case resulted in a match to a DNA profile associated with Appellant and Appellant's fingerprint, and the accuracy of the system and process used to discover that match was confirmed through the fact a new DNA profile was subsequently taken from Appellant and again determined to be a match for the evidence submitted into the database. See Rule 901(b)(9), SCRE (instructing evidence can be authenticated through proof "describing a process or system and showing that it produces an accurate result"); cf. Anderson, 386 S.C. at 131, 687 S.E.2d at 41 ("The State in this case presented evidence regarding: when and where Anderson's fingerprints were taken; how they were submitted to SLED; the process implemented by law enforcement for taking the fingerprints; and how an accurate record of them was maintained in AFIS. We hold this testimony satisfied the authentication requirement of Rule 901.").

In light of the wide variety of ways the DNA database evidence was authenticated in Appellant's case, both the trial judge and the jury could reasonably and reliably conclude the DNA profile attributed to Appellant in the DNA database was, in fact, exactly what it was purported to be – Appellant's DNA profile – even without evidence establishing a perfect or complete chain of custody. See Howard-Arias, 679 F.2d at 366 (recognizing the underlying purpose behind chain of custody and authentication requirements is simply to establish a particular item of evidence is what it is purported to be); see also Winburn, 261 S.C. at 576-577,

201 S.E.2d at 376 (instructing evidence can be authenticated by indirect or circumstantial evidence). Therefore, under the particular circumstances of Appellant's case, the trial judge – just like the trial judge in Anderson – committed no error in admitting the challenged evidence. See Kelley, 319 S.C. at 176, 460 S.E.2d at 370 (recognizing trial judges have wide latitude in ruling on the admissibility of evidence and instructing trial judge's evidentiary rulings will not be disturbed on appeal absent a showing of a prejudicial abuse of discretion); see also Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 (“The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be.”). Appellant's convictions should be affirmed.

B. Admissibility of the Evidence Related to the DNA Database Search

All relevant evidence is admissible, and only relevant evidence should be admitted at trial. Douglas, 369 S.C. at 430, 632 S.E.2d at 848; see Rule 402, SCORE (“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. Evidence which is not relevant is not admissible.”). “Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.” State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCORE (“‘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.’”). Importantly, if evidence could assist the jury in arriving at the truth of an issue, it is considered to be relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

In particular, courts in South Carolina and throughout the country have repeatedly recognized evidence related to and explaining the investigative steps taken during the course of a criminal investigation can be relevant and admissible during a criminal trial. See State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (finding evidence related to out-of-court statements to be admissible where it was not offered for the truth of those statements and, instead, was only offered to explain why an investigative step was undertaken); State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) (“Evidence explaining why law enforcement is in a particular area has been held to be relevant information for the jury to consider.”); State v. Kirby, 325 S.C. 390, 395, 481 S.E.2d 150, 152 (Ct. App. 1996) (“[W]e have held testimony concerning why an investigation or surveillance was undertaken was admissible.”); State v. Johnson, 318 S.C. 194, 197, 456 S.E.2d 442, 444 (Ct. App. 1995) (holding testimony indicating a particular area was a “high drug traffic area” to be relevant and admissible “to explain the presence of the police and the reason for the initiation of their undercover operation at that location”); see also United States v. Love, 767 F.2d 1052, 1063 (4th Cir. 1985) (finding evidence related to out-of-court information that led law enforcement officers to undertake particular actions to be admissible where it “was offered not for its truth but only to explain why the officers and agents made the preparations that they did in anticipation of the appellants’ arrest”); Herieia v. State, 297 Ga. App. 872, 874-875, 678 S.E.2d 548, 551 (Ga. Ct. App. 2009) (concluding an officer’s testimony regarding information he received from dispatch to have been properly admitted where it was not offered to establish the truth of the matter asserted but, instead, was offered to explain the officer’s conduct in investigating Herieia); People v. Johnson, 114 Ill. 2d 170, 194, 499 N.E.2d 1355, 1365 (Ill. 1986) (“The consequential steps in the investigation of a crime are relevant when necessary and important to a full explanation of the State’s case to the

trier of fact.”); People v. Byrd, 43 Ill. App. 3d 735, 742, 357 N.E.2d 174, 179 (Ill. Ct. App. 1976) (“Informing the triers of fact of consequential steps in the investigation of a crime is normal procedure and is important to the full presentation of the State’s case.”); Eastwood v. State, 984 N.E.2d 637, 642 (Ind. Ct. App. 2012) (finding evidence to be relevant where it explained how a law enforcement investigation came to focus on Eastwood as a suspect instead of some other individual, to show what investigative steps were undertaken, and to explain why an officer engaged in interactions with Eastwood). Similarly, courts throughout the country have found testimony establishing a particular defendant was identified as a suspect through a search of the Combined DNA Index System (“CODIS”) database to be relevant in criminal cases. See People v. Harland, 251 P.3d 515, 517-518 (Colo. Ct. App. 2010) (finding evidence establishing Harland was identified as a suspect following a search of a DNA database containing his DNA profile was relevant and properly admitted during trial); People v. Jackson, 232 Ill. 2d 246, 266-267, 903 N.E.2d 388, 398-399 (Ill. 2009) (concluding the trial judge did not abuse his discretion by permitting limited testimony regarding a DNA database search to be presented); State v. McMillian, 295 S.W.2d 537, 541 (Mo. Ct. App. 2009) (finding evidence establishing McMillian was identified as a suspect following a search of a DNA database containing his DNA profile was properly admitted during trial).

However, even if relevant, evidence must be excluded from trial if its probative value is **substantially outweighed** by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); see Rule 403, 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”). Probative value is the measure of the

importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case while unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014); see State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000); see also Old Chief v. United States, 519 U.S. 172, 181 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). Critically, the determination of the probative value of evidence relative to its potential prejudicial effect must be based on the entire record and the result generally hinges on the facts of each particular case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Furthermore, evidence of prior bad acts is generally not admissible to prove a defendant's guilt for the charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006); see Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). Such evidence is generally not admissible "because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts." State v. Hough, 319 S.C. 104, 107, 459 S.E.2d 863, 865 (Ct. App. 1995). Significantly though, "evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.'" Wiles, 383 S.C. at 158, 679 S.E.2d at 176 (quoting State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

In the case at bar, evidence related to the fact Appellant was identified as a suspect in the armed robbery after a search of SLED's DNA database revealed Appellant's DNA profile matched the robber's DNA profile was highly relevant and entirely necessary to explain to the jury how and why Appellant – as opposed to some other individual – was singled out as a suspect in the investigation, included in the photographic lineup shown to Mancine, and ultimately arrested and charged for the criminal acts he committed in connection to the robbery. See McMillian, 295 S.W.2d at 540 (“In cases where a ‘hit’ or match is made, the State needs to be able to explain how a particular individual became a suspect, especially where . . . a considerable period of time has passed since the offense.”); see also Harland, 251 P.3d at 517 (finding evidence related to DNA database searches to be relevant because “it explained how [Harland] became a suspect after scores of leads had not panned out over several months, an important point because (1) absent the explanation, the jury would be left to speculate as to how [Harland] became a suspect, and (2) [Harland]’s defense was mistaken identity”). Significantly, without that evidence, the State’s case would have had a substantial gap in the chain of events that led to Appellant’s arrest, and the jury would have been forced to decide Appellant’s guilt with no logical explanation for how or why the investigation came to focus on him, which could have potentially led to a finding of reasonable doubt that could not otherwise rightfully be found with access to the probative evidence filling that gap and which could have been readily exploited by defense counsel.¹⁶ See Byrd, 43 Ill. App. 3d at 742, 357 N.E.2d at 179 (“The State must be permitted to make some explanation why a previously unidentified defendant was arrested and shown to the victim of a crime. If this were not permitted defense counsel could

¹⁶ Notably, demonstrating the high likelihood defense counsel would have relied on any gap in the investigation left by the evidence presented when arguing to the jury the State had failed to meet its burden of proof, defense counsel in Appellant’s case focused his remarks in his closing argument on the evidence the jury did not hear while contending testimony from the witnesses to the robbery that was not offered during trial would likely have been detrimental to the State’s case since it was not introduced. (R. pp. 573-574).

play upon it in argument, asking why the defendant – of all the men in the world – was on trial, insinuating that the accused was arrested without reason.”); see also Old Chief, 519 U.S. at 188-189 (“[B]eyond the power of conventional evidence to support allegations and give life to the moral underpinnings of law’s claims, there lies the need for evidence in all its particularity to satisfy the jurors’ expectations about what proper proof should be. . . . People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story’s truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best.”). As a result, the evidence related to the DNA database search was highly probative to Appellant’s case. See Jackson, 232 Ill. 2d at 267, 903 N.E.2d at 399 (“[W]ithout Boicken’s brief testimony as to how [Jackson] was first identified, so that the buccal swab could be obtained, the jury would have been left with a large time gap and no explanation as to how authorities were able to identify defendant and charge him with the murder six years after it occurred. These circumstances, therefore, weigh in favor of allowing the testimony at issue into evidence.”).

Moreover, based on the fact the jury was presented with only limited information in regard to the DNA database search that simply conveyed Appellant was identified as a suspect after Appellant’s DNA profile was determined to match the DNA profile developed from the robber’s hat, the admission of that evidence was not unduly or improperly prejudicial to Appellant.¹⁷ See Scales v. State, 310 Ga. App. 48, 52, 712 S.E.2d 555, 561 (Ga. Ct. App. 2011)

¹⁷ Importantly, the evidence related to the DNA database search was limited to the extent the letter regarding the match discovered as a result of the search was not admitted into evidence during Appellant’s trial as was found to be improper by our Supreme Court in an earlier decision. See State v. Hill, 409 S.C. 50, 57-58, 760 S.E.2d 802, 806 (2014) (finding the trial judge erred by admitting a letter regarding a DNA database match discovered as a result of a

(“[E]vidence of a matching DNA profile in a government database does not, in and of itself, constitute impermissible character evidence when no reference is made as to why the matching sample was collected or stored and when no reference is made linking the defendant’s DNA profile to other criminal activity.”); see also McMillian, 295 S.W.2d at 540 (“[T]he mere fact that McMillian’s DNA profile was present in a statewide database did not constitute an improper reference to other, uncharged crimes.”). Significantly, that is true because the jury was presented with no evidence suggesting Appellant’s DNA profile was in the database based on a prior conviction or arrest, and neither the solicitor nor anyone else ever asked the jury to draw such a negative inference from that evidence at any point during Appellant’s trial. See Harland, 251 P.3d at 517-518 (“Agent Arndt’s testimony [regarding DNA database searches] did not create any significant danger of unfair prejudice. Agent Arndt only mentioned the databases briefly, and did not testify as to how [Harland]’s DNA profile came to be in the second database. No evidence was presented as to how any individual’s DNA profile might come to be in either DNA database, and no evidence was presented that [Harland] had previously engaged in any criminal activity. We therefore reject [Harland]’s assertion that Agent Arndt’s testimony mentioning the DNA databases necessarily led the jury to speculate that [Harland] had prior criminal convictions. Under the circumstances here, any inference of such prejudice is itself speculative.”); Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009) (rejecting Atteberry’s claim the jury could have inferred he had previously been convicted of a crime from evidence his DNA profile was contained in a national database as “nothing more than speculation” in light of the fact the evidence presented did not suggest only convicted offenders’ profiles were included in that database). Similarly, as SLED’s DNA database contains DNA

search of SLED’s DNA database but concluding the trial judge’s error was entirely harmless under the circumstances).

profile's from a wide variety of sources, it is highly unlikely the jury would have drawn any adverse inference from the limited evidence presented during Appellant's trial in regard to the DNA database search.¹⁸ See Jackson, 232 Ill. 2d at 271-272, 903 N.E.2d at 401-402 ("[J]ust as the AFIS database also contains fingerprints of government employees and police officers, the Combined DNA Index System (CODIS) database contains several different indexes, not all of which are criminally based. The CODIS database includes the Forensic Index, containing DNA profiles from crime scene evidence; the Offender Index, containing DNA profiles of individuals convicted of felonies; the Missing Person Index, containing DNA records from individuals that have been reported missing; the Relatives of Missing Person Index, consisting of DNA records from the biological relatives of individuals reported missing; and the Unidentified Human (Remains) Index, containing DNA records from recovered living persons, e.g., children and others who cannot or will not identify themselves, and recovered dead persons whose identities are not known. . . . In addition to the indexes listed above, the jurors, in the light of their own observations and experiences in life, could also infer that defendant's DNA profile might be contained in a state database for medical reasons, such as transplant recipients, blood donors or for genetic-testing purposes. Thus, contrary to defendant's contention, the conclusion that the use of the term CODIS in popular crime dramas to refer to the means of identifying suspects from a DNA database, without other information, argument or evidence that the singular source of the DNA was convicted criminals, is completely unwarranted."); see also Whatley v. State, 146 So. 3d 437, 466 (Ala. Crim. App. 2010) (holding "testimony of the mere existence of a defendant's DNA profile in the CODIS database does not 'per se' imply the existence of a

¹⁸ Demonstrating the low likelihood the evidence related to the DNA database search would have been invariably viewed as evidence of Appellant's prior criminal record by the jury, even the experienced trial judge involved in Appellant's case did not believe the fact Appellant's DNA profile was included in the database necessarily meant Appellant had previously been arrested or convicted. (R. p. 340).

criminal history”). As a result, the potential for undue prejudice that could have resulted from the evidence related to the DNA database search was very minimal and did not substantially outweigh the evidence’s high probative value. See United States v. Jenkins, 887 A.2d 1013, 1025, n. 2 (D.C. Cir. 2005) (“[C]onveying to the jury that the defendant was first identified through a search of an offender database has not been deemed so substantially prejudicial as to outweigh the probative value of such evidence.”).

Because the evidence related to the DNA database search was highly probative in Appellant’s case and that probative value was not substantially outweighed by the danger of unfair prejudice, the trial judge’s decision to admit that evidence in the limited manner necessary to explain to the jury how Appellant was identified as a suspect in the jewelry store robbery did not constitute a prejudicial abuse of discretion. See Wiles, 383 S.C. at 158, 679 S.E.2d at 176 (“[E]ven where the evidence is shown to be relevant, if its probative value **is substantially outweighed by the danger of unfair prejudice**, the evidence must be excluded.” (emphasis added)); see also Scales, 310 Ga. App. at 52, 712 S.E.2d at 561-562 (“Given that the trial court’s order was properly and narrowly tailored to exclude any impermissible character evidence, the trial court did not abuse its discretion in admitting information concerning CODIS and Scales’ matching DNA profile for the limited, relevant purpose of explaining ‘why this fourteen year old case is now being prosecuted and how the investigation came to focus on the Defendant.’ ”); Jackson, 232 Ill. 2d at 269, 903 N.E.2d at 400 (“By limiting the testimony to the sole fact that an unidentified DNA sample matched [Jackson]’s sample from a database, the trial court permitted the necessary explanation of investigative facts to the jury, while precluding any reference to [Jackson]’s criminal history. We do not find this ruling to be an abuse of discretion.”); McMillian, 295 S.W.2d at 541 (“Given the State’s limited, neutral reference to the presence of

McMillian's DNA profile in the statewide DNA database, the trial court did not abuse its discretion in admitting this evidence at trial."). Under those circumstances, there is no basis to disturb the trial judge's evidentiary ruling on appeal. See Douglas, 369 S.C. at 429, 632 S.E.2d at 847-848 (instructing a trial judge's evidentiary ruling will not be reversed on appeal absent a manifest prejudicial abuse of discretion); see also State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001) ("A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." (citations omitted)), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Appellant's convictions should be affirmed.

C. Harmlessness of Any Error in the Admission of the Evidence Related to the DNA Database Search

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the

materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). Ultimately, if an error does not contribute to the verdict, that error is harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). Moreover, “[w]hen guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see United States v. Hastings, 461 U.S. 499, 509 (1983) (“[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]”).

In Appellant’s case, even assuming the trial judge somehow erred by permitting the introduction of the evidence related to the search of the DNA database, any error that could have resulted from the admission of that evidence was entirely harmless for a variety of different reasons. Initially, any error was entirely harmless because Fields’s testimony establishing the DNA database search resulted in the discovery Appellant’s DNA profile matched the DNA profile developed from the robber’s hat was merely cumulative to the unobjected-to testimony of Investigator Wade, who informed the jury without objection he received notice from SLED and its DNA database that identified Appellant as a suspect in the robbery of the jewelry store. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (“Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence.”). Likewise, to the extent the challenged evidence established Appellant’s DNA profile matched the DNA profile developed from the hat, that evidence was merely cumulative to the other evidence presented during trial that established the exact same thing, which consisted of Boehm’s testimony regarding the analysis she conducted with the DNA sample collected from

Appellant following his arrest that took place after the search of the DNA database. See State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) (“[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence.”). Additionally, any error resulting from the admission of the evidence regarding the DNA database search was entirely harmless because that testimony resulted in no improper or undue prejudice to Appellant in light of the fact it was highly relevant and probative and, at worst, only constituted a vague and brief reference to Appellant’s prior criminal activity. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding no prejudice resulted from the admission of testimony establishing law enforcement already had Council’s fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer’s vague references to prior crimes in the jury’s presence did not warrant the granting of a mistrial), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676 (1961) (finding a witness’s testimony Robinson told him he was on the way to the “probation office” did not create an inference Robinson had been convicted of another crime), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); Thompson, 352 S.C. at 561, 575 S.E.2d at 82 (“[A] vague reference to a defendant’s prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes.”). Finally, any error resulting from the admission of the DNA database evidence was entirely harmless in light of the other unrebutted and overwhelming evidence of guilt presented during trial, which included the other DNA evidence that is not being challenged on appeal, the eyewitness identification evidence establishing Mancine identified Appellant as the robber both in a photographic lineup and in the courtroom, the evidence

establishing Appellant's physical characteristics closely matched the physical characteristics of the robber, and the evidence linking Appellant to the particular van suspected to have been used by the robber. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt that was presented during trial); see also State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("[U]ndisputed testimony is more conclusive than testimony which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence."). Under those circumstances, any error that resulted from the admission of the evidence related to the DNA database search was entirely harmless and could have had no impact on the outcome of Appellant's case. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); Pagan, 369 S.C. at 212, 631 S.E.2d at 267 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."). Appellant's convictions should be affirmed.

II.

The trial judge's preliminary remarks, which included "search for the truth" language, did not shift the burden of proof or create a reasonable likelihood the jury would decide Appellant's case in an unconstitutional manner, and any harm that could have resulted from the trial judge's use of "search for the truth" language in his preliminary remarks was subsequently cured by the trial judge's jury instructions, which properly and thoroughly charged the jury on the applicable law, instructed the jury the State had the burden of proving Appellant's guilt beyond a reasonable doubt, and explained to the jury Appellant had no responsibility of any kind to prove his own innocence.

Appellant contends the trial judge committed reversible error by including language regarding "a search for the truth" in his preliminary remarks to the jury. In support of that contention, Appellant appears to maintain those remarks impermissibly shifted the burden of proof for his trial. To the contrary, the trial judge's preliminary remarks did not unconstitutionally shift the burden of proof or create a reasonable likelihood the jury would apply those remarks in an unconstitutional manner later on during trial despite the fact those remarks included "search for the truth" language. Moreover, even if those preliminary remarks somehow could have misled the jury in Appellant's case, any potential prejudice caused by those remarks was subsequently cured by the trial judge's thorough and accurate instructions to the jury, which specifically explained to the jury the State had the burden of proving Appellant's guilt beyond a reasonable doubt and Appellant had no duty whatsoever to prove his own innocence. As a result, the trial judge's use of language regarding "a search for the truth" did not constitute reversible error, and his instructions as a whole properly and correctly conveyed the applicable law to the jury. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In reviewing a trial judge's jury instructions for error on appeal, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C.

396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant’s due process rights have been violated.”); see also Cupp v. Naughten, 414 U.S. 141, 146-147 (1973) (“[A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.”).

The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood the jury applied the charge in an unconstitutional manner. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, “[a] trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.” State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”).

ANALYSIS

The central function of the trial process in both criminal and civil cases is to discover the truth. See State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) (“A trial is a search for the truth[.]”); see also Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating “the central function of [a] trial . . . is to discover the truth”); see generally Carella v. California, 491 U.S. 263, 265 (1989) (explaining burden-relieving jury instructions “subvert the presumption of innocence accorded to accused persons and also invade the truth-finding task assigned solely to juries in criminal cases” (emphasis added)); Gardner v. Florida, 403 U.S. 349, 360 (1977) (“[T]he debate between adversaries is often essential to the truth-seeking function of trials[.]” (emphasis added)); State v. Kim, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (N.C. 1986) (“The jury

is the lie detector in the courtroom and is the only proper entity to perform the ultimate function of every trial – determination of the truth.”). As part of the truth-seeking process, the State is constitutionally required to prove a criminal defendant’s guilt for every element of a criminal offense beyond a reasonable doubt while a defendant is ordinarily not required to prove anything at all. In re Winship, 397 U.S. 358, 364 (1970); see Burr v. Florida, 474 U.S. 879, 880 (1985) (“[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the ‘reasonable doubt’ standard[.]” (emphasis added)); see also State v. Brewer, 411 S.C. 401, 408, 768 S.E.2d 656, 659 (2015) (reiterating a criminal defendant has no duty to prove his or her own innocence); see generally State v. Attardo, 263 S.C. 546, 552, 211 S.E.2d 868, 871 (1975) (recognizing the burden may be on the defendant to establish a defense to a criminal charge only in limited circumstances).

Importantly though, despite the fact a trial is a search for the truth, our Supreme Court has cautioned trial judges to avoid using language that instructs the jury to “seek the truth” due to the risk such language could **potentially** shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000); see also Small v. Pioneer Mach., Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997) (“A trial epitomizes a search for the truth.”); see generally Butler v. McKellar, 494 U.S. 407, 411, (1990) (“When . . . the accused then freely waives any constitutional right to counsel and provides voluntary statements of an incriminating nature, there is no justification for undermining **the search for the truth** by suppressing those statements.” (emphasis added)). Furthermore, our Supreme Court has instructed trial judges should not instruct jurors their verdicts “would represent truth and justice for the parties” due to the risk such language could distract them from their core functions. State v. Daniels, 401 S.C. 251, 258, 737 S.E.2d 473, 477

(2012) (Toal, C.J., concurring for the majority). However, our Supreme Court has specifically declined to hold any mention of “the truth” to a jury automatically constitutes reversible error or is *per se* unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 (“Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of ‘the truth’ in jury charges is unconstitutional.”); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included “seeking the truth” language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the case sub judice, the trial judge presented preliminary remarks at the outset of trial that included “search for the truth” language in an effort to explain the trial process and its importance to the jury. Significantly, after presenting those remarks to the jury, the trial judge further explained to the jurors the State had the burden of proving Appellant’s guilt beyond a reasonable doubt, instructed the jurors it was their duty during the trial to determine whether the State met its burden of proof, indicated Appellant did not have a duty to prove anything during trial, and noted Appellant was presumed innocent. See generally Moore v. State, 283 Ga. 151, 155, 656 S.E.2d 796, 801 (Ga. 2008) (“[T]he pattern charge’s mention of jurors ‘seeking the truth’ does not . . . dilute or cause confusion over the State’s burden of proof and the role of the jury by suggesting that the jurors embark on ‘their own intuitive search for the truth.’ In criminal cases, the factfinder does have the task of seeking the truth. But, the jury is to determine the truth in view of the evidence, considered in light of the court’s instructions. The court’s instructions properly focused the jurors on their consideration of the evidence presented at trial.” (citations omitted)). Thereafter, at the conclusion of trial several days later, the trial judge fully

and accurately instructed the jury on the applicable law through his jury charge, explained to the jury Appellant was presumed to be innocent, **repeatedly** indicated the State had the burden of proving Appellant's guilt beyond a reasonable doubt, and thoroughly defined reasonable doubt for the jury.¹⁹ See Victor v. Nebraska, 511 U.S. 1, 5 (1994) ("The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, . . . the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof. Rather, taken as a whole, the instructions must correctly convey the concept of reasonable doubt to the jury." (citations, internal quotations, and brackets omitted)). Moreover, at no point in his final jury instructions did the trial judge repeat his earlier remarks in regard to "a search for the truth," suggest to the jurors they had a duty to "search for the truth" before arriving at a verdict, or encourage the jurors to attempt to find some reasonable explanation for Appellant's innocence. See State v. Raffaldt, 318 S.C. 110, 115-116, 456 S.E.2d 390, 393 (1995) (finding an instruction directing the jury to "seek some reasonable explanation other than the guilt of the accused" was erroneously burden-shifting but determining any error with that instruction was harmless because the jury

¹⁹ Specifically, in defining reasonable doubt, the trial judge instructed: "Well, what is reasonable doubt in the law? Reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to do something. I'll repeat that. A reasonable doubt in the law is the kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving [Appellant] guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told it's only necessary to prove that a fact is more likely true than not true, such as by the greater weight of the evidence or the preponderance of the evidence, but in criminal cases the State's burden of proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now there are very few things in this world we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are firmly convicted that [Appellant] is guilty of the crime charged, you must find him guilty. On the other hand, if you think there's a real possibility that [Appellant] is not guilty, you must give him the benefit of the doubt and find him not guilty." (R. pp. 589-590).

charge as a whole properly explained the State had the burden of establishing Raffaldt's guilt beyond a reasonable doubt).

Under those circumstances, the trial judge's jury instructions – when viewed as a whole as required – were sufficient to ensure the jury properly decided Appellant's case as they were substantially correct, accurately covered the applicable law, thoroughly identified and explained the State's burden of proving Appellant's guilt beyond a reasonable doubt, and made clear Appellant had no duty of any kind to prove his own innocence. See Ezell, 321 S.C. at 425, 468 S.E.2d at 681 (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) (“Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error.”). Therefore, although the trial judge included language in his preliminary remarks to the jury regarding “a search for the truth,” which ultimately is the central function of all trials, there is no reasonable likelihood the inclusion of that language shifted the burden of proof to Appellant or prevented the jury from properly deciding Appellant's case when considered in the context of all the instructions the trial judge presented to the jury during trial.²⁰ See Aleksey, 343 S.C. at 28-29, 538 S.E.2d at 252-253 (“There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses. The remarks were prefaced by a full instruction on

²⁰ Recently, in State v. Beaty, Op. No. 27693 (S.C. Sup.Ct. filed Dec. 29, 2016) (Shearouse Adv. Sheet No. 1 at 13), our Supreme Court considered the propriety of preliminary remarks that included “search for the truth” language, reiterated such language should be avoided, and found no reversible error occurred in Beaty's case. Notably though, our Supreme Court subsequently granted both the State's and Beaty's petitions for rehearing, which means the decision in Beaty is not yet final as of the time of the filing of this brief. Appellate Records for State v. Michael Vernon Beaty, Jr., South Carolina Appellate Court Public Index, <http://ctrack.sccourts.org/public/caseView.do?csIID=59167>.

reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof."); see also Portuondo, 529 U.S. at 73 (acknowledging the "central function" of a criminal trial is to discover the truth); see generally Victor, 511 U.S. at 16 ("We do not think it reasonably likely that the jury understood the words 'moral certainty' either as suggesting a standard of proof lower than due process requires or as allowing conviction on factors other than the government's proof."). Accordingly, the trial judge's manner of instructing the jury resulted in no actual prejudice to Appellant.²¹ See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Appellant's convictions should be affirmed.

²¹ Moreover, any error that possibly could have resulted from the trial judge's manner of instructing the jury was entirely harmless in light of the overwhelming evidence of Appellant's guilt presented during trial, which included the DNA evidence establishing Appellant's DNA was on the robber's hat, the eyewitness identification evidence establishing Mancine identified Appellant as the robber both in and out of the courtroom, the evidence establishing Appellant and the robber shared the same physical characteristics, and the evidence linking Appellant to the van believed to have been used in the robbery. See Gathers, 295 S.C. at 480-481, 369 S.E.2d at 143 (concluding an error was harmless based on the overwhelming evidence of guilt presented during trial); see also Rose v. Clark, 478 U.S. 570, 579-580 (1986) (holding an error involving an improper burden-shifting jury instruction can nonetheless be harmless beyond a reasonable doubt).

CONCLUSION

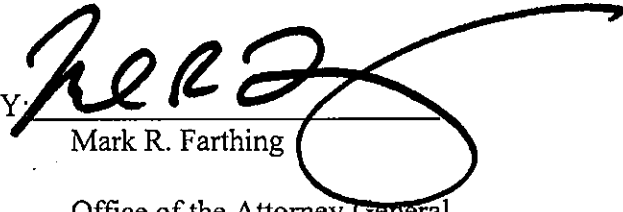
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 27, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 27 2017

SC Court of Appeals

Appeal from Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2016-000863

THE STATE,

Respondent,

vs.

JAMES BUBBA PATTERSON,

Appellant.

CERTIFICATE OF COUNSEL

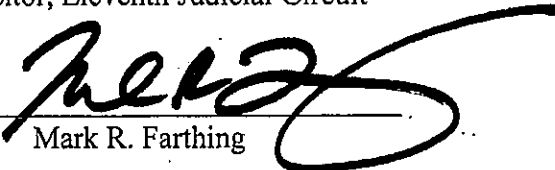
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

June 27, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Bubba Patterson, Appellant.

Appellate Case No. 2016-000863

Appeal From Lexington County
G. Thomas Cooper, Jr., Circuit Court Judge.

Opinion No. 5611
Heard October 3, 2018 – Filed January 4, 2019

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Samuel R. Hubbard, III, of
Lexington, for Respondent.

LOCKEMY, C.J.: James Patterson appeals his convictions of armed robbery, grand larceny, and possession of a weapon during the commission of a violent crime, arguing the trial court erred in (1) admitting DNA evidence that was not authenticated through proper chain of custody testimony, (2) admitting DNA evidence that constituted improper evidence of a prior bad act, and (3) indicating to the jury during opening statements that a trial was "a search for the truth." We affirm.

FACTS

On the afternoon of May 9, 2012, law enforcement responded to a reported armed robbery at the K&M Jewelry Store in West Columbia. According to witnesses, a man wearing a dark suit, sunglasses, and a dark fedora entered the store and pointed a handgun at the manager, Frank Mancine. The man then proceeded to gather various items of jewelry before Mancine pulled out a concealed pistol and attempted to shoot him. Mancine's gun jammed, and the man ran outside, where his hat fell to the sidewalk. Mancine followed the man to a nearby parking lot and watched him climb into the driver's seat of a light-colored van. As the van sped away, Mancine again fired his pistol, this time hitting the van's rear hatch window.

Following an initial investigation, the West Columbia Police Department (WCPD) transported the fedora found at the crime scene to the South Carolina Law Enforcement Division (SLED) for forensic analysis. SLED subsequently collected a DNA sample from the fedora; from this sample SLED developed a DNA profile that it then entered into CODIS¹, a national DNA database for law enforcement. Based on an existing DNA profile within the CODIS system, the search identified James Patterson as matching the DNA sample taken off the hat.

SLED notified the WCPD, who then created a photographic lineup containing pictures of Patterson and four other individuals. An investigator presented the lineup to Mancine and another witness; Mancine identified Patterson as the man from the jewelry store, although the other witness could not. Later that day, the WCPD obtained a search warrant for Patterson's vehicle, which they had located in the impound lot of a towing company. The vehicle matched the description of the van seen fleeing the jewelry store, and appeared to have a newly replaced rear hatch window as well as a puncture in its interior.

Patterson was subsequently arrested in connection with the armed robbery. Following his arrest, investigators collected a separate DNA sample directly from Patterson, which they tested and matched with the DNA profile taken off the fedora found at the crime scene. Based on the match, the State indicted Patterson for armed robbery, grand larceny, and possession of a weapon during the commission of a violent crime.

At the start of Patterson's trial, the trial court made the following preliminary comment to the jury:

¹ CODIS is an acronym for the FBI's "Combined DNA Index System."

It's a fundamental part of our democracy *in a search for the truth* in an effort to make sure that justice is done between the parties before the court. *Searching for the truth* and making sure that justice is done is often a slow, deliberate and repetitive process, the opposite of what you might have seen on television or in the movies or read in books. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what many have called the greatest justice system ever created.

The attorneys appearing before you are advocates for the parties they represent, but first and foremost they are officers of this court, sworn to uphold the integrity and fairness of our judicial system and to help you *in a search for the truth*.

(emphasis added). Patterson objected, arguing these remarks were prejudicial in that they impermissibly shifted the burden of proof away from the State. The trial court overruled the objection.

During trial, the State presented testimony from an eye witness who confirmed seeing a man matching Patterson's description enter and leave the jewelry store. Mancine also testified regarding his recollection of the events, which was corroborated by surveillance footage from the store's internal camera. In addition, the State introduced testimony regarding Patterson's purchase of the van, the subsequent replacement of the rear hatch window, and the puncture in the van's interior. Finally, the State sought to introduce testimony regarding the DNA evidence that matched Patterson to the fedora, including testimony regarding the DNA database search.

First, the State presented evidence establishing DNA samples were collected from the fedora recovered at the scene and also from Patterson following his arrest.² Maryann Boehm was qualified as an expert witness in the fields of DNA analysis and statistical calculations. Boehm discussed the unique nature of DNA and the process for extracting, preserving, and using it for identification. She explained

² Patterson does not contest that the State established a complete chain of custody for the fedora or the DNA sample taken directly off Paterson.

she developed a DNA profile for the suspect after taking a buccal swab of the inside of the fedora then locating and extracting a DNA sample. Boehm said she tested the DNA profile from the buccal swab of the hat against a DNA sample taken directly off Patterson following his arrest, resulting in an identification.³ The buccal swab was marked and identified at trial with its assigned ID number: L12-06246.

The State then attempted to call SLED Agent Rhonda Fields to testify as to the identification of Patterson through the DNA database search; however, Patterson objected on the basis that Lieutenant David McClure, not Agent Fields, had conducted the database search that matched Patterson to the DNA from the fedora.⁴ Patterson also argued the State had not established the chain of custody for the DNA profile that was already contained in the DNA database. The trial court allowed the State to proffer the testimony outside the presence of the jury prior to ruling on its admissibility.

During the proffer, Agent Fields testified she was employed in the DNA database unit at SLED and was involved in reviewing the information from the database search that identified Patterson. Agent Fields explained that once a match is identified, SLED goes through a "confirmation process" to "ensure that the original analysis was performed properly and that the same results are generated upon reanalysis." Agent Fields stated each individual DNA profile is given a separate ID number, Patterson's being SC00499452. Furthermore, each DNA match is given an identification number attributed to the search, which for Patterson's match was SA0000077927.

Agent Fields testified she personally reanalyzed the data after Lieutenant McClure conducted his search, and she confirmed the DNA match with Patterson's profile in the database. Agent Fields conceded, however, that she did not have the complete chain of custody for the DNA sample already in the DNA database. But in explaining how the DNA database gathers information, Agent Fields proffered for the trial court outside the jury's presence that the DNA sample was usually taken at the time an individual was arrested and that SLED has a tracking system that shows when a sample was collected for the database. Following the proffer, the

³ Boehm testified the probability of randomly selecting an unrelated person with a matching DNA profile was a one-in-730-quintillion chance.

⁴ Lieutenant McClure retired from SLED prior to trial.

trial court found the State had sufficiently authenticated the DNA sample and that Agent Fields could testify regarding the DNA database search.

In addition, Patterson objected to the DNA database testimony on the grounds it constituted evidence of a prior bad act under Rule 404(b), SCRE. Specifically, Patterson argued the evidence implied he had a prior record because that would be the only reason his DNA would be in a database in the first place.⁵ The trial court overruled the objection, finding the inclusion of DNA in a database was not indicative of a prior record as DNA can be collected for a variety of reasons and from various sources.

At the conclusion of the trial, the jury convicted Patterson as indicted. The trial court sentenced Patterson to an aggregate term of twenty years' imprisonment. This appeal followed.

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

LAW/ANALYSIS

I. DNA Chain of Custody and Authentication

Patterson argues the trial court erred in admitting testimony that his DNA was contained in a DNA database because the State failed to authenticate and establish the chain of custody for the DNA samples used in the match. We disagree.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. That requirement can be satisfied in a number of ways, including through testimony by a witness with knowledge "that a matter is what it is claimed to be"; comparison by an expert witness "with specimens which have been authenticated"; by evidence of

⁵ Patterson has an extensive criminal record, although no evidence of his prior convictions were admitted at trial.

"[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Rule 901(b)(1), (3), (4), SCRE. "The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be." *State v. Hatcher*, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011).

In the case at bar, the DNA evidence was authenticated through the testimony establishing the DNA profile developed from the fedora matched both the DNA profile attributed to Patterson in the database and the DNA profile developed from Patterson after he was arrested. First, the State established the authenticity of the DNA profile that SLED entered into the database through the testimony of Boehm and Fields. Boehm had first-hand knowledge of the procedures that went into collecting, storing, maintaining, and testing the DNA profile, while Fields personally reviewed and verified the results of the DNA profile match. *See* Rule 901(b)(1), SCRE (allowing authentication through testimony by a witness with knowledge that a matter is what it is claimed to be). Boehm also testified regarding the distinctive characteristics of each DNA strand and the specific ID numbers assigned to the ones tested here. *See* Rule 901(b)(4), SCRE (providing evidence can be authenticated through proof of distinctive characteristics).

Moreover, the identity of each person that handled the DNA sample was conclusively established, and there was no evidence presented indicating the sample was tampered with. *See State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004) ("[I]f the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive."). Minor discrepancies in the chain of custody implicates the credibility of the evidence, but does not render the evidence inadmissible. *See id.* at 24-25, 598 S.E.2d at 738; *State v. Smith*, 326 S.C. 39, 41-42, 482 S.E.2d 777, 779 (1997) (affirming admissibility of blood tests even though the arresting officer stored the blood sample in his home refrigerator prior to testing, noting that there was no evidence of tampering); *State v. Kahan*, 268 S.C. 240, 244, 233 S.E.2d 293, 294 (1977) (ruling the ballistics test results of a nightgown worn by the deceased and placed in the evidence locker in a plastic bag were admissible even though there was no testimony as to the care and handling of the plastic bag containing the gown during the time it was in the evidence locker). Therefore, we find the testimony of Lieutenant McClure was not necessary to establish the authenticity of the match that first identified Patterson as a suspect.

Additionally, although a perfect chain of custody was not shown for the DNA evidence that was already contained in the CODIS database, we believe the authenticity of the DNA results were nevertheless established through the independent testing of Patterson's DNA profile. Boehm was qualified as an expert in DNA analysis and she testified she matched the DNA profile taken off Patterson after his arrest with the DNA profile taken off the fedora found at the crime scene. Both of these samples were properly authenticated at trial and are not challenged on appeal. *See* Rule 901(b)(3), SCRE (stating authentication requirement is satisfied through comparison by expert witness with specimens that have already been authenticated). Accordingly, we find no abuse of discretion and affirm as to this issue.

II. Evidence of a Prior Bad Act

Next, Patterson argues the trial court erred in admitting testimony regarding the DNA database search because it implied Patterson had a prior criminal record in violation of Rule 404(b), SCRE. *See Pagan*, 369 S.C. at 211, 631 S.E.2d at 267 (stating under Rule 404(b), "[e]vidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged"). Relying on our supreme court's decision in *State v. Hill*, 409 S.C. 50, 760 S.E.2d 802 (2014), Patterson asserts the State's reference to the database was highly prejudicial and outweighed any probative value. We disagree.

In *State v. Hill*, the court held that the admission of a law enforcement letter in which references were made to the CODIS database, while irrelevant and inadmissible, was not reversible error. 409 S.C. at 58, 760 S.E.2d at 806. The court noted that the publication of the letter—which referred to Hill as a "suspect" and stated that if he was charged, "an additional biological specimen must be submitted for court purposes"—could "have created an inference in a juror's mind that [Hill] had a criminal record." *Id.* at 57-58, 760 S.E.2d at 806. The court held, however, that its admission did not amount to reversible error due to it being cumulative to the other evidence of the CODIS database admitted without objection, and furthermore, the State did not attempt to admit evidence as to why Hill's DNA was in the database in the first place. *Id.*

We believe the trial court did not err in admitting the testimony regarding the database search. Initially, we believe the case at hand differs from the error in *Hill* because (1) the State did not place a letter into evidence; (2) the reference to the database did not contemporaneously refer to Patterson as a "suspect"; and (3) the State did not mention the type of database that the match came from. Here, the

State's witnesses referred to the database as "the database" or "our database," rather than the "CODIS database." The State did not attempt to solicit testimony regarding the purpose of the database, nor did it bring up Patterson's prior record. Moreover, although SLED is a law enforcement agency, given the prevalence in which personal data is shared with public and private agencies for various purposes, e.g., military records and private commercial enterprises, we do not believe the testimony necessarily implied Patterson had a criminal record. *See* S.C. Code Ann. § 23-3-610 (2007) (instructing SLED to "develop DNA profiles on samples for law enforcement purposes and for humanitarian and non[-]law enforcement purposes").

Furthermore, we believe the reference to the database was relevant and highly probative because it explained a critical step in the investigation. Specifically, the database testimony explained how Patterson came to be identified as a suspect in the first place. Without the testimony, the jury would have been left to speculate as to the means law enforcement used to initially place Patterson at the crime scene. *See State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) ("Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears."). Additionally, based on the fact the jury was presented with only limited information regarding the DNA database search, and given that Patterson's DNA was independently matched with the DNA found on the fedora, we believe any prejudice to Patterson was minimal. *See State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("[E]ven where the evidence is shown to be relevant, if its probative value is *substantially outweighed* by the danger of unfair prejudice, the evidence must be excluded." (emphasis added)); *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (noting that an inadvertent vague reference to defendant's prior record will not amount to prejudicial error). Accordingly, we do not believe the trial court abused its discretion in admitting the DNA database testimony.

III. Trial Court's Opening Statement

Finally, Patterson argues the trial court's opening remarks to the jury regarding the trial being a "search for the truth" were prejudicial in that they impermissibly shifted the burden of proof away from the State. We agree the trial court erred; however, we find the remarks do not constitute reversible error under the facts of this case.

Our supreme court has consistently cautioned against using language that suggests the object of a trial is to find "the truth." *See State v. Beaty*, 423 S.C. 26, 34, 813

S.E.2d 502, 506 (2018) ("These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice."); *State v. Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (holding while it was improper for the trial court to charge the jury "that a criminal jury's duty is to return a verdict that is 'just' or 'fair' to all parties," the issue was unpreserved); *State v. Aleksey*, 343 S.C. 20, 28 n.2, 538 S.E.2d 248, 252 n.2 (2000) ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998) (noting jury instructions on reasonable doubt which charge the jury to "seek the truth" are disfavored because they "[run] the risk of unconstitutionally shifting the burden of proof to a defendant"). Accordingly, we believe the trial court erred in making such statements in its comments to the jury, and we take the opportunity to reiterate our supreme court's instructions that trial courts should "avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt." *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506.

Nevertheless, we do not believe the error warrants reversal. *See State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (providing appellate courts will not set aside convictions due to insubstantial errors not affecting the result). First, the trial court's improper comments came at the beginning of trial rather than during the charge on the State's burden of proof at the end, which, we believe, is when such a statement would have the most prejudicial effect. *See Daniels*, 401 S.C. at 256, 737 S.E.2d at 475 ("Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt."). Furthermore, notwithstanding the improper comments, we note the trial court gave an accurate definition of reasonable doubt later during its opening statement and again in the jury charge. *See Aleksey*, 343 S.C. at 27, 538 S.E.2d at 251 ("[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error."). Additionally, the trial court gave a supplemental instruction following the jury charge that further emphasized the State's burden of proof. Finally, in light of the overwhelming evidence against Patterson, we believe the error did not contribute to the verdict. *See Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (finding error in jury charge was harmless beyond a reasonable doubt when it did not contribute to the verdict obtained). Accordingly,

our review of the record reveals no prejudice sufficient to warrant overturning Patterson's conviction.

CONCLUSION

Based on the foregoing, we find no error in the admission of the DNA evidence at trial and further find the trial court's statements to the jury, while error, did not contribute to the jury's verdict. Therefore, Patterson's conviction and sentence are

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

OCT 03 2020

FORM 5

STATE OF SOUTH CAROLINA

BRCI
MAILROOM

IN THE COURT OF COMMON PLEAS

County of LEXINGTON

JAMES Bubba PATTERSON
Full name and prison number (if any) of Applicant

2020CP3203490

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

FILED
2020 OCT 14 PM 3:10
S.A. M. COMER
CLERK OF COURT
LEXINGTON SC

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INST. - 4460
BROAD RIVER RD; COLUMBIA, S.C. - 29210
2. Name and location of Court which imposed sentence LEXINGTON COUNTY
GENERAL SESSIONS COURT; LEXINGTON, S.C. 29072
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-GS-3201132

(b) 2013-GS-320091(c) 2013-GS-320090

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 16, 2016 — 20 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appealsii. S.C. Court of Appeals - Rehearingiii. S.C. Supreme Court - Dept of Corrections

(b) the result in each such Court to which you appealed:

i. RECEIVED - Court of Appealsii. DENIED - Rehearing - Court of Appeals

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. TATSON, 823 S.E.2d 217 (Cl. App. 2019)

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

729
LIVED

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BRCI
MAILROOM

Memorandum of Law

2020CP3203490

FILED

2020 OCT 14 PM 2:11

LISA MCCOY
CLERK OF COURT
LEXINGTON, KY

(TO) State Conversely the court
on which you base your Allegations
you are being held in Cust
diplomacy:

(A) The Applicant asserts
he was denied effective assistance
of Counsel by Trial Counsel at
trial. In violation of the Sixth
Amendment of the United States
Constitution.

(B) The Applicant asserts
that he was denied effective
assistance of Appellate Counsel in
violation of the Sixth (6th) Ame
nment of the United States Con
stitution.

(C) The Applicant asserts
that he was denied his Confront
Rights and Due Process Rights.
Violation of the Sixth (6th) Ame

(2.)

~~Fourteenth~~ Amendments of the
United States Constitution.

(1.) The Applicants' Process Rights were violated under the Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution. When the State is allowed to willfully violate Rule #6, of S.C.F. Criminal, the Rule for Chemical Analysis and Chain of Custody.

(2.) The Applicants' Process Rights were violated under the Fifth (5th) and Fourteenth (14th) Amendments. When the Trial Court abused its discretion by allowing the State to attack to "Evidence" that was not submitted into Evidence.

(11.) State consistently and in the same order the facts which support each of the 920

(3.)

Set out in (10).

(A.) In Strickland
Washington, 466 U.S. 668, 104 S. Ct
2052 (1984), An Applicant must show
that Counsel's performance was
deficient, requiring showing that
Counsel made errors so serious
that Counsel was not functioning
as the "counsel" guaranteed defendant
by the Sixth (6th) Amendment. Second
defendant must show that the de-
ficient performance prejudiced the
defence by showing that Coun.
Errors were so serious as to de-
prive defendant of a fair trial

The Applicant was
charged with Armed Robbery of the
KIM Jewelry Store, on May 9, 2010
in West Columbia. It is Alled
by Detective Bruce Wicks, of the
West Columbia Police Department, that
A suspect fleeing the scene of

(4.)

Robbery had lost the "hat" he was wearing. It was found outside of the store on the side walk and been collected and sent to "SLI" for DNA analysis. The State Law Enforcement Division through DNA swabs and DNA samples. On November 12, 2012, sent a letter to Detective Bruce W. [unclear] of the West Columbia Police Department. Indicated a match from the DNA profile taken from the "hat" came from the Applicant.

The Applicant was allegedly identified through a photo lineup made up by SLI consisting of six (6) mug-shot photos.

" [unclear] Counsel was ineffective for not "Objecting" to the use of mug-shot photos being used. Nor did he request to view the video surveillance tape of the date (November 15, 2012) photo lineup was shown to the vic

(5.)

Frank MARCINE. Applicant Asserts that Trial Counsel's Refusal to Obey and Request the photo-line-up. Surveil video tape. Subjected him to prejudice and caused Trial Counsel's Refusal to feel way below professional no because the use of Mug-Shot photo is not reversible error... SEE E.g. State v. Tate, 341 S.E.2d 380. And State v. Lewson, 817 S.E.2d 509 (2011).

(B.) The Applicant As he was denied Effective Assistance of Appellate Counsel. In violation of the Sixth (6th) Amendment of the United States Constitution.

Trial Counsel adequately presented several issues for Appellate Review, that called for reversal and Remand for a New Trial. However, Appellate Counsel only is "ONE" Argument on direct appeal and Appellate Counsel's Argument are

(6.)

Research was "Deficient" and fell below the professional norms under Strickland v. Washington, Supra. At the Counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of Sixth (6th) Amendment rights which make Adversary process itself presumptively unreliable. No specific showing of prejudice was required see e.g. United States v. Cronin, 104 2039, and Davis v. Alaska, 415 U.S. 94 S.Ct. 1105.

The Applicant asserts he was deprived of the right effective assistance of Counsel on Appeal guaranteed by the Due Process Clause of the Fourteenth Amendment see e.g. Evitts v. Lucas, 105 S.Ct. 930. Appellate Counsel... never challenged or addressed the Comp To Stand Trial Hearing, on December 2014, by Dr. Tress. Nor did he address the later hearing by Judge Ady, December 2015. Both issues were

Preserved for Appeal and should I
 been raised on direct Appeal, But
 the Competence and Blair Hearst
 violated his Due Process and Fair
 Protection Rights under the Fifth
 and Fourteenth (14th) Amendments of
 the United States Constitution !!

Appellate Counsel did
 not address the Applicant's Confession
 and Rights Violations that Trial
 Counsel "Objected" to and was
 preserved for Appeal. Which
 clearly violated Applicant's rights
 under the Sixth (6th) and Fourteenth
 (14th) Amendments of the United States
 Constitution. Trial Counsel
 Objected to the Chain of Custody
 the State was allowed to willfully
 violate Rule #6, of South Carolina
 Rules of Criminal Procedure, the
 Rule for Chemical Analysis and
 Chain of Custody. This violated
 the Applicant's Due Process Rights
 under the Fifth (5th) and Fourteenth
 (14th) Amendments of the United States

(8.)

~~Constitutional. See e.g. Crawford~~
~~Washington, 541 U.S. 36, 59, 124 S.Ct~~
~~1354; And Bulcoming v. New Mex~~
~~564 U.S. 647, 131 S.Ct. 2705. In~~
~~Case Bulcoming v. New Mexico, Supra~~
the Confrontation Clause does not permit
the prosecution to introduce a foreign
laboratory report containing a testimo-
nial certification, made for the purpose of proving
a particular fact, through the testimony
of a scientist who did not sign the
certification or perform or observe the
test reported in the certification. U.S.
Const. Amend. 6 !!!

The accused's right in
the Confrontation Clause is to be confronted
with the analyst, who made a testimonial
certification for the purpose of proving
a particular fact, unless the analyst
is unavailable at trial, and the accused
has an opportunity, prior to trial, to cross-examine
that particular scientist. U.S.C.A. Const.
Amend. 6 !!!

In California v. Lar
399 U.S. 149, the Constitution Pro-

(9.)

Every Person Accused of a Crime
 the right to Confront his Accus-
 and 6. That promise was given
 in the Applicant's trial when the
 State never made Detective Chuck
 Branlet, of the West Columbia
 Police Department available for
 the Applicant to cross-examine
 him prior to IN regards to the
 Search Warrant. At trial the
 State used Captain Joseph D.
 of the Richland County Sheriff's
 Department to testify as to what
 Detective Chuck Branlet (who had
 passed away) would have said. In
 regards to Crawford v. Washington
 541 U.S. 36, 59, 124 S. Ct. 1354; and
 Bullock v. New Mexico, 564 U.S.
 647, 131 S. Ct. 2705. . . . The Applicant
 Confrontation Rights under the
 Sixth (6th) Amendment of the
 United States Constitution were
 violated. However, Appellate Counsel
 totally ignored the Confrontation
 Rights "Violations" that were clear

(10.)

RESERVED FOR APPEAL. ALSO, THERE
WERE SEVERAL OTHER CONFIDENTIAL
RIGHTS VIOLATIONS THAT TRIAL COUNSEL
RESERVED IN REGARDS TO DNA
ANALYSIS, ETC. THAT APPELLATE COURT
WANTED TO ADDRESS. THEREFORE VIOLATE
APPELLATE RIGHTS TO EFFECTIVE
ASSISTANCE OF COUNSEL. SEE E.G.
STICKLAND v. WASHINGTON, SUPREME

(C.) THE APPELLANT ASSEIR
THE "STATE" WILLFULLY VIOLATED HIS
CONFRONTATION RIGHTS SEVERAL TIMES
AT HIS TRIAL. THEREFORE, VIOLATE
HIS SIXTH (6th) AMENDMENT RIGHTS
AND DUE PROCESS RIGHTS UNDER
THE FOURTEENTH (14th) AMENDMENT
OF THE UNITED STATES CONSTITUTION

ON CROSS EXAMINATION
TRIAL ATTORNEY MR. MADSEN, SEE TRIAL
TRANSCRIPT P. 417, LINE 3 - THRU - 11.
WITNESS CAPTAIN JOSEPH ODOM, OF THE
RICHLAND COUNTY SHERIFF'S
DEPARTMENT IN RICHLAND COUNTY, SOUTH CAROLINA

(11)

that the Deceased Investigator
 Chuck Bramlet, processed everything
 and took all of the photos, etc.
 the Van in question the Search
 Warrant was for it. Eagle Due To

However, the State never
 Investigator Chuck Bramlet available
 for the Applicant James Bubba Little
 to confront or question in regards
 the pictures that were taken in
 the Van. The Applicant asserts
 his Confrontation Rights under the
 Sixth (6th) Amendment of the United
 States Constitution were violated.
Crawford v. Washington, 541 U.S. 3
 59, 124 S. Ct. 1354; Bullcoming v.
New Mexico, 564 U.S. 167, 131 S.
 2705. And in California v. Green, 3
 U.S. 149, the Constitution promise
 every accused person of a crime
 the right to confront his accuser.
 The State also allowed Ms. Jenna
 Aycock, forensic technician for the
 Evidence Control Department...

(12.)

~~testify what Ms. Nikki Perry
Hickes and Ms. Doris Jarbozo
did with Evidence without the
Applicant confronting them. See
first transcript pages 450 and 451 !!
The Applicant's Sixth (6)
Amendment rights under the
Constitution Cases and a New
trial is warranted under the
United States Constitution !!~~

(1) The Applicant's
Due Process Rights were violated
under both the Fifth (5th) and
fourteenth (14th) Amendments of the
United States Constitution. When
the State was allowed to violate
Rule #6 to S.C.R. Crim. P.,
the Rule for Chemical Analysis
and failed to establish a
complete Chain of Custody.

(1) Investigator Tami
Sullivan, of the West Columbia
Police Department. On page 274; lines
three-25: ... Admits that he is the

PERSON that on May 9, 2012, ~~after~~
~~pulling~~ ON PROTECTED EVIDENCE.
 He picked the "hat" up off the
 ground and put it into a locked
 vault in his vehicle. He logged it
 into the West Columbia Evidence
 Repository. Whereas the "hat" was
 later transported by ~~Investigator~~
~~JAMES SULLIVAN~~, to the State Law
 Enforcement Division (SLED) for
 further processing.

(2.) There is no time
 frame in regards to how long
 the "hat" was kept in the West
 Columbia Evidence Repository. No
 is there any mention of anyone
 at SLED, signing for the evidence
 when it was dropped off. No
 date or time it was dropped
 off. This is a clear violation of
 Rule #6, SEC. 12.01, (B) ~~Requirement of~~
 Sworn Statement... which reads
 part -- "for the purpose of establishing
 a chain of physical custody or control
 of evidence entered under part A

(14.)

This Rule, a Certified or Sworn Statement signed by each successive person having custody of the evidence. Customary Signatures ... ARIZ. RE
QUERIES SLE 19. State v. Chisolm,
(S.C. App. 2003) 255 S.C. 175, 584 S.1
2d 401, 12th HEARING DENIED, CERTIORARI
DENIED. CRIMINAL LAW 404.30.11.

(3.) On page 428, of the
 Applicant's Trial Transcript, Detective
 Marie McLean, of the West Columbia
 Police Department, Under oath
 testifies that at a Court Hearing on
 December 14, 2015, she took two
 (2) Buccal DNA Swabs ... One on
 the left and right cheeks of the
 Applicant. However, she states that
 after labeling it with the date
 and time ... the swabs were placed
 into a bag that she sealed and
 initialed and took to SLE-1. There's
 no mention as to who she left
 the swabs with at SLE-1; who
 signed for them; or how long they
 remained at SLE-1. Handwritten: Hand...

(15.)

NO TIME FRAME GIVEN AND NO NOTED
 SLEI OFFICIALS SIGNATURES. AGAIN
 SEE State v. Chesole, Supra, AND
CRIMINAL LAW 404.30, III

(E) The Applicant's Due
 Process Rights were violated under
 the Fifth (5th) and Fourteenth (14th)
 Amendments of the United States
 Constitution. When the Trial Court
 abused its discretion by allowing
 the State to Allude to evidence
 that was not admitted into Evidence
 this was done several times
 in the presence of the jury and
 calls for a reversal of trial and
 conviction !!!

The Applicant asserts
 that his trial was unconstitutional
 and the State willfully violated his
 Due Process Rights under the United
 States Constitution. Trial Counsel
 never "Objected" to this Misdeed
 of Justice that results to a reversal

(11e.)

OF CONVICTION AND A NEW TRIAL. THE STATE'S SOLICITORS IN THIS CASE MS LAURA SUZANNE MAJES AND MR. LEST McBEIL BELL, ALLUDED TO EVIDENCE NOT ADMITTED INTO EVIDENCE. BEFORE THE TRIAL BEGAN, IN THE OPENING STATEMENTS, BY MR. BELL, SEE P. 168 of TRIAL TRANSCRIPT. ALSO, IN MS MAJES CLOSING ARGUMENTS ON P. 539 AND 540 OF TRIAL TRANSCRIPT. THE GUN OWNED BY MR. FRANK MANCINI, A JEWELER A KEM JEWELRY, THAT WAS ROBBED ON MAY 9, 2012, WAS NEVER ADMITTED INTO EVIDENCE. NOR WAS THE WHITE 1995 WHITE PLYMOUTH VOYAGER VAN, ADMITTED INTO EVIDENCE AT THE APPLICANT'S TRIAL

IN UNITED STATES v. Madh
156 F.3d 1280 — (1.) PROSECUTOR'S IMPROPER CLOSING ARGUMENTS (A.) IN CLOSING ARGUMENT COUNSEL MAY NOT REQUIRE TO OR REPLY UP EVIDENCE, UNLESS THE TRIAL COURT HAS ADMITTED IT. SEE E.G. UNITED STATES v. Small, 74 F.3d 1276, 1280; UNITED STATES v. Bond, 54 F.3d 818, 811. THE REASON

(17.)

ARE OBVIOUS; THE PRACTICE DISREGARD
 INDEED VIOLATES THE RULES GOVERNING
 THE ADMISSION OF EVIDENCE. TYPICALLY
 THE ATTORNEY'S STATEMENTS AMOUNT
 TO BLATANT LIES ABOUT MATTERS NOT
 IN THE RECORD. THE TRANSGRESSING
 ATTORNEY MAKES HIMSELF AN UNSWORN
 WITNESS, AND WHEN IT IS THE
 PROSECUTOR WHO GOES OUTSIDE THE
 RECORD THE EFFECT IS TO DEPRIVE
 THE DEFENDANT OF HIS RIGHT TO CROSS
 EXAMINE THE WITNESSES AGAINST
 HIM." ALSO SEE DONNELLY v. DECHRISTO
 416 U.S. 637, 645, 94 S.Ct. 1868; BIRCH
v. ABRAHAMSON, 507 U.S. 619, 639, 113 S.Ct.
 1710; SULLIVAN v. LOUISIANA, 508 U.S. 25
 113 S.Ct. 2078.

Also, in U.S. v. MADDIX,
 156 F.3d 1280. "THE STATE MUST
 USE THE 'ORIGINAL EVIDENCE' AT TRIAL
 AND NO PICTURE OF THE EVIDENCE CAN BE
 ACCEPTED." THE COURT ALLOWED WITNESSES
 TO TESTIFY IN THE ~~PRESENCE~~ PRESENCE OF
 THE TRIAL JURY. 11.11.1995 D.M.M.

(18.)

VOYAGER VAN, that was on the lot
 off the Eagle One towing, located at
 10019 Broad River Road, Irmo, S.C.
 29603. The Court could have allowed
 the jury to personally go view the
 van at the Eagle One towing. The
 State elected to publish illegitimate
 into evidence. Also, allowed State
 witnesses to testify about the van
 in which U.S. v. Maddox, supra,
 and the following cases states the
 original evidence must be admitted
 into evidence. See e.g. United
States v. Baylor, 2019 WL 3533529,
 Aug. 2, 2019; United States v. Meade
 867 F.3d 1305, 1321, Aug. 18, 2017;
United States v. Borden, 848 F.3d
 1044, 1060, Feb. 21, 2017; United
States v. McGill, 815 F.3d 846, 919
 March 1, 2016. Also, see exhibits on
 the trial transcript and the following
 witnesses testimony — Captain Bruce
 Wade, p. 336 & 337; Mr. Brendon Penning
 Deputy Sheriff, p. 374; Anthony Kenner
 p. 385. Mr. Penning p. 381

(19)

And Captain Joseph Odom p. 403 & 40

The State Excluded
 Testimony from the Alleged Victim
 Mr. Frank Mancini And Alleged
 to his gun that was NEVER
 admitted into evidence. See p.
 of trial transcript however, the
 State unduly and unfairly prejudiced
 the Applicant in the presence of
 the jury. Therefore, violating his
 Due Process Rights under the
 Fifth (5th) and Fourteenth (14th)
 Amendments of the United States
 Constitution. The gun was not
 physically brought to trial nor
 admitted properly into evidence.
 And under United States v.
Maddox, Supra, is a REVERSAL
 And New trial.

Wherefore, the Applicant
 asserts that this PCR Application poses
 questions of law and facts which
 require a hearing and argument.

(20,)

that an Attorney be appointed to
 Represent him under South
 Carolina Rules of Civil Procedure
 71.1(d); And Whitehead v. State
Supra !!!

James D. Patterson 10-5-2020

Subscribed to + subscribed before
 me this 9th day of October, 2020
 M. Maggett, notary public
 my commission expires : 7-27-2024

FILED

2020 OCT 14 PM 3:11
 LISA M. COMER
 CLERK OF COURT
 LEXINGTON SC

(b) _____
(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____
(b) SEE Attached Memorandum
(c) Due Date

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____
(b) _____
(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:
i. _____
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. _____
ii. _____
iii. _____

iv. _____

(c) the disposition thereof: _____

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: _____

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

"No"

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not

previously been presented:

- (a) 1st PCR Application
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
(b) your trial, if any? YES
(c) your sentencing? YES
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. _____

ii. _____

iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. _____

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James B. Patterson 10-5-2020

SWORN to and subscribed before me this 9th day of October, 2020.

H. Meszeth (L.S.)
Notary Public

My Commission Expires: 7-27-2026

2020CP3203490

750

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James B. Patton 10-5-2020
Applicant

SWORN or affirmed to and subscribed before me this
9th day of October, 2020.

A. Y. Mease
Notary Public

My Commission Expires: 7-27-2022

FILED
2020 OCT 14 PM 3:11
LISA H. COMER
CLERK OF COURT
LEXINGTON SC

2020CP3203490

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
James Bubba Patterson, SCDC #217543,	)	Case No. 2020-CP-32-3490
Applicant,	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

In response to the post-conviction relief (PCR) action commenced by James Bubba Patterson (Applicant) on October 14, 2020, the State makes this return:¹

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on November 16, 2012, following an investigation an armed robbery that occurred several months earlier at a jewelry store in West Columbia. During its April 2013 term, the Lexington County Grand Jury indicted Applicant for armed robbery (2013-GS-32-0891); grand larceny (2013-GS-32-0890); and possession of a weapon during the commission of a violent crime (2013-GS-32-

¹ The State's return was originally due on January 19, 2021. However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, the State respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

1132).

On April 11, 2013, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr. Chief Public Defender Robert M. Madsen and Assistant Public Defender David M. Mauldin represented Applicant. Deputy Solicitor Suzanne Mayes and Lester McGill Bell, Jr., prosecuted the case. At the conclusion of the multi-day trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to concurrent terms of twenty years' imprisonment for armed robbery, ten years for grand larceny, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue[s]:

- I. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?
- II. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?
- III. In his preliminary comments, did the trial judge err by indicating to the jury that a trial was a search for die truth?

Following briefing and oral argument, the Court affirmed Applicant's convictions and sentences in a published opinion issued January 4, 2019. *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019). Applicant's subsequent petition for rehearing and petition for writ of certiorari were denied. The case was remitted back to the circuit court on June 28, 2019. Applicant commenced this PCR action on October 14, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
 - a. "Trial counsel was ineffective for not 'objecting' to the use of mug-shot photos used[sic]. Nor did he request to view the video surveillance tape of the date November 15, 2021, photo lineup shown to the vic Frank Mancine."
2. Ineffective assistance of appellate counsel
 - a. "Trial counsel adequately preserved several issues for appellate review that called for reversal and remand for a new trial. However, appellate counsel only raised 'DNA' argument on direct appeal and appellate counsel's argument and research was 'deficient' and fell below the professional norms under Strickland v. Washington."
 - b. "Appellate counsel never challenged or addressed the comp to stand trial hearing on December 3, 2014, by Dr. Tross; nor did he address the Blair hearing by Judge Addy [in] December 2015. Both issues were preserved for appeal and should have been raised on direct appeal."
 - c. "Appellate counsel did not address the Applicant's confrontation rights violations that trial counsel 'objected' and were preserved for appeal. Trial counsel objected to the chain of custody the State was allowed to willfully violated[sic] Rule #6 of the South Carolina Rules of Criminal Procedure, the rule for chemical analysis and chain of custody. The confrontation clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made for the purposes of proving a particular fact through the in-court testimony of a scientist who did not sign the laboratory or perform or observe test lab reported in the certification."
 - d. "The constitution provides every person accused of a crime the right to confront his accusers. That promise was broken in the Applicant's trial when the Sate never made Officer Chuck Bramlet of the West Columbia Police Department available or Applicant to cross-examine him pretrial in regards to the search warrant. At trial, the State used Captain Joseph Odom of the

Richland County Sheriff's Department to testify as to what Officer Chuck Bramlet (who had passed away) would have said. However, appellate counsel totally ignored the confrontation rights 'violations' that were clearly preserved. Also, there were several other confrontation rights violations that trial counsel preserved in regards to DNA analysis, etc."

3. Due process violation
 - a. "On cross-examination, trial attorney Mr. Madsen, see Trial transcript p. 417; line 3 through 11. Captain Joseph Odom of the Richland County Sheriff's Department states that the deceased investigator Chuck Bramlet processed everything and took all of the photos of the van in question. However, the State never made Investigator Chuck Bramlet available for Applicant to confront or question in regards to the pictures that were taken of the van."
 - b. "The State also allowed Ms. Jennifer Aycock, forensic technician for SLED's evidence control department testify what Ms. Nikki Perry Hughes and Ms. Doris Yarborough did with evidence without the Applicant confronting them."
4. "The Applicant's due process rights were violated . . . when the State was allowed to willfully violated[sic] Rule #6 S.C.R.CrimP., the rule for chemical analysis and failed to establish a complete chain of custody."
 - a. "Investigator James Sullivan of the West Columbia Police Department on page 274; admits that he is the person that on May 9, 2012, after putting on protective equipment, he picked the 'hat' up off the ground and put it into a locked vault in his vehicle. He logged this into the West Columbia Evidence Repository. Whereas the 'hat' was later transported by Investigator James Sullivan to the State Law Enforcement Division (SLED) for further testing."
 - b. "There is no time frame in regards to how long the 'hat' was left in the West Columbia's Evidence Repository. Nor is there any mention of anyone at SLED signing for the evidence when it was dropped off; no date or time it was dropped off. This is a clear violation of Rule #6, S.C.R.CrimP (B) Certified or sworn statement . . ."
 - c. On page 428 of the Applicant's trial transcript, Detective Paige McGraw of the West Columbia Police Department. Under oath testifies that at the Court hearing on December 14, 2015, she took two (2) buccal DNA swabs. One of the left and right cheeks of the

Applicant. However, she states that after labeling it with date and time the swabs were placed in a bag that she sealed and initialed and took to SLED. There's no mention as to who she left the swabs with at SLED; who signed for them; or how long they remained at SLED because there is no time frame given and no SLED officials signatures."

5. Abuse of discretion

- a. "[T]he trial court abused its discretion by allowing the State to allude to evidence that was not admitted into evidence. This was done several times in the presence of the jury and calls for reversal of trial and conviction."
- b. "Trial counsel never 'objected' to this miscarriage of justice that results in a reversal of conviction and new trial. The State's solicitors in this case Ms. Suzanne Mayes and Mr. Lester McGill Bell alluded to evidence not admitted into evidence. Before the trial began in opening statements by Mr. Bell, see p. 168 of trial transcript. Also, in Ms. Mayes closing arguments on p. 539 and 540 of trial transcript. The gun owned by Mr. Frank Mancine, a jeweler at K & M jewelry, that was robbed on May 9, 2012, was never admitted into evidence. Nor was the white 1995 Plymouth Voyager van admitted into evidence at the Applicant's trial. . . This practice disregard[sic] indeed violates the rules governing the admission of evidence."
- c. "The Court allowed witnesses in the presence of jury two photos of the White 1995 Plymouth Voyager van that was on the lot of the Eagle One Towing. . . The Court could have allowed the jury to personally go view the van at Eagle One Towing. Instead elected to publish illegal photos into evidence. Also, allowed State's witnesses to testify about the van . . ."
- d. "Also see excerpts[sic] of the trial transcript and the following witnesses[sic] testimony – Captain Bruce Wade, p. 336 and 337. Mr. Brendon Pennington, Deputy Sheriff, p. 374. Anthony Kennedy p. 385. Ms. Clarissa DuBard on 394 and Captain Joseph Odom p. 403 and 40."

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the

trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. MOTION TO DISMISS

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Because this application is procedurally barred, the State requests this Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court*, (S.C. Sup. Ct. Order filed Oct. 6, 2008); Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). In making its return in support of the motion for summary judgment, the State would respectfully show this court:

Statute of Limitations

This action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). Specifically, the Act requires as follows:

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A)–(C).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See also *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Section 17-27-45(A) provides that an applicant must file his application within one year after the entry of a judgment of conviction. In this case, Applicant was convicted on April 11, 2016, and the remittitur from his direct appeal was issued on June 28, 2019. This application was filed on October 14, 2020—several months after the requisite filing period expired.

Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

IV. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

V. CONCLUSION

WHEREFORE, having made its return, the State moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

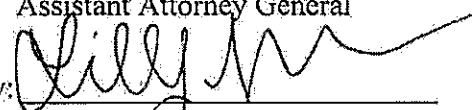
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 16, 2021

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

James Bubba Patterson, #217543,

Case No. 2020-CP-32-3490

Applicant,

v.

CERTIFICATE OF SERVICE BY MAILING

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Bubba Patterson, #217543
Broad River Corr. Inst. (MUA-0127-A)
4460 Broad River Road
Columbia, South Carolina 29210

DATED this the 16th day of June, 2021.

Wannaan Brando

Hannah Bradham
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

James Bubba Patterson, SCDC #217543,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-32-3490

CONDITIONAL ORDER OF DISMISSAL

FILED
2021 JUL 21 AM 9:14

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by James Bubba Patterson (Applicant) on October 14, 2020. The State made its return on June 16, 2021, requesting the action be summarily dismissed.¹

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on November 16, 2012, following an investigation an armed robbery that occurred several months earlier at a jewelry store in West Columbia. During its April 2013 term, the Lexington County Grand Jury indicted Applicant for armed robbery (2013-GS-32-0891); grand larceny (2013-GS-

¹ The State's return was originally due on January 19, 2021. However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request accept its return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

32-0890); and possession of a weapon during the commission of a violent crime (2013-GS-32-1132).

On April 11, 2013, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr. Chief Public Defender Robert M. Madsen and Assistant Public Defender David M. Mauldin represented Applicant. Deputy Solicitor Suzanne Mayes and Lester McGill Bell, Jr., prosecuted the case. At the conclusion of the multi-day trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to concurrent terms of twenty years' imprisonment for armed robbery, ten years for grand larceny, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue[s]:

- WMC
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- I. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?
 - II. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?
 - III. In his preliminary comments, did the trial judge err by indicating to the jury that a trial was a search for the truth?

Following briefing and oral argument, the Court affirmed Applicant's convictions and sentences in a published opinion issued January 4, 2019. *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019). Applicant's subsequent petition for rehearing and petition for writ of certiorari were denied. The case was remitted back to the circuit court on June 28, 2019. Applicant commenced this PCR action on October 14, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
 - a. "Trial counsel was ineffective for not 'objecting' to the use of mug-shot photos used[sic]. Nor did he request to view the video surveillance tape of the date November 15, 2021, photo lineup shown to the vic Frank Mancine."
2. Ineffective assistance of appellate counsel
 - a. "Trial counsel adequately preserved several issues for appellate review that called for reversal and remand for a new trial. However, appellate counsel only raised 'DNA' argument on direct appeal and appellate counsel's argument and research was 'deficient' and fell below the professional norms under Strickland v. Washington."
 - b. "Appellate counsel never challenged or addressed the comp to stand trial hearing on December 3, 2014, by Dr. Tross; nor did he address the Blair hearing by Judge Addy [in] December 2015. Both issues were preserved for appeal and should have been raised on direct appeal."
 - c. "Appellate counsel did not address the Applicant's confrontation rights violations that trial counsel 'objected' and were preserved for appeal. Trial counsel objected to the chain of custody the State was allowed to willfully violated[sic] Rule #6 of the South Carolina Rules of Criminal Procedure, the rule for chemical analysis and chain of custody. The confrontation clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made for the purposes of proving a particular fact through the in-court testimony of a scientist who did not sign the laboratory or perform or observe test lab reported in the certification."
 - d. "The constitution provides every person accused of a crime the right to confront his accusers. That promise was broken in the Applicant's trial when the Sate never made Officer Chuck Bramlet of the West Columbia Police Department available or Applicant to cross-examine him pretrial in regards to the search warrant. At trial, the State used Captain Joseph Odom of the

WPH
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Richland County Sheriff's Department to testify as to what Officer Chuck Bramlet (who had passed away) would have said. However, appellate counsel totally ignored the confrontation rights 'violations' that were clearly preserved. Also, there were several other confrontation rights violations that trial counsel preserved in regards to DNA analysis, etc."

3. Due process violation

- a. "On cross-examination, trial attorney Mr. Madsen, see Trial transcript p. 417; line 3 through 11. Captain Joseph Odom of the Richland County Sheriff's Department states that the deceased investigator Chuck Bramlet processed everything and took all of the photos of the van in question. However, the State never made Investigator Chuck Bramlet available for Applicant to confront or question in regards to the pictures that were taken of the van."
- b. "The State also allowed Ms. Jennifer Aycock, forensic technician for SLED's evidence control department testify what Ms. Nikki Perry Hughes and Ms. Doris Yarborough did with evidence without the Applicant confronting them."

4. "The Applicant's due process rights were violated . . . when the State was allowed to willfully violated[sic] Rule #6 S.C.R.CrimP., the rule for chemical analysis and failed to establish a complete chain of custody."

- a. "Investigator James Sullivan of the West Columbia Police Department on page 274; admits that he is the person that on May 9, 2012, after putting on protective equipment, he picked the 'hat' up off the ground and put it into a locked vault in his vehicle. He logged this into the West Columbia Evidence Repository. Whereas the 'hat' was later transported by Investigator James Sullivan to the State Law Enforcement Division (SLED) for further testing."
- b. "There is no time frame in regards to how long the 'hat' was left in the West Columbia's Evidence Repository. Nor is there any mention of anyone at SLED signing for the evidence when it was dropped off; no date or time it was dropped off. This is a clear violation of Rule #6, S.C.R.CrimP (B) Certified or sworn statement . . ."
- c. On page 428 of the Applicant's trial transcript, Detective Paige McGraw of the West Columbia Police Department. Under oath testifies that at the Court hearing on December 14, 2015, she took two (2) buccal DNA swabs. One of the left and right cheeks of the

Applicant. However, she states that after labeling it with date and time the swabs were placed in a bag that she sealed and initialed and took to SLED. There's no mention as to who she left the swabs with at SLED; who signed for them; or how long they remained at SLED because there is no time frame given and no SLED officials signatures."

5. Abuse of discretion

- a. "[T]he trial court abused its discretion by allowing the State to allude to evidence that was not admitted into evidence. This was done several times in the presence of the jury and calls for reversal of trial and conviction."
- b. "Trial counsel never 'objected' to this miscarriage of justice that results in a reversal of conviction and new trial. The State's solicitors in this case Ms. Suzanne Mayes and Mr. Lester McGill Bell alluded to evidence not admitted into evidence. Before the trial began in opening statements by Mr. Bell, see p. 168 of trial transcript. Also, in Ms. Mayes closing arguments on p. 539 and 540 of trial transcript. The gun owned by Mr. Frank Mancine, a jeweler at K & M jewelry, that as robbed on May 9, 2012, was never admitted into evidence. Nor was the white 1995 Plymouth Voyager van admitted into evidence at the Applicant's trial. . . This practice disregard[sic] indeed violates the rules governing the admission of evidence."
- c. "The Court allowed witnesses in the presence of jury two photos of the White 1995 Plymouth Voyager van that was on the lot of the Eagle One Towing. . . The Court could have allowed the jury to personally go view the van at Eagle One Towing. Instead elected to publish illegal photos into evidence. Also, allowed State's witnesses to testify about the van . . ."
- d. "Also see excerpts[sic] of the trial transcript and the following witnesses[sic] testimony -- Captain Bruce Wade, p. 336 and 337. Mr. Brendon Pennington, Deputy Sheriff, p. 374. Anthony Kennedy p. 385. Ms. Clarissa DuBard on 394 and Captain Joseph Odom p. 403 and 40."

WAL
#5

Before this Court are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and

complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

Because there is no genuine issue of material fact which would necessitate an evidentiary hearing, this Court hereby informs the parties of its intent to dismiss the application as procedurally barred. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *See also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a prima facie showing he is entitled to relief before the court will hold an evidentiary hearing). Pursuant to section 17-27-70 and -80 of the South Carolina Code, this Court makes the following findings of facts and conclusions of law based upon the pleadings, records submitted by both parties, and the applicable law:

Statute of Limitations

This action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). Specifically, the Act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state

court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A)–(C).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Section 17-27-45(A) provides that an applicant must file his application within one year after the entry of a judgment of conviction. In this case, Applicant was convicted on April 11, 2016, and the remittitur from his direct appeal was issued on June 28, 2019. This application was filed on October 14, 2020—several months after the requisite filing period expired.

Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling

has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim). ~~USE~~ *APPLICANT MAY ADDRESS IN HIS RESPONSE WHETHER AND TO WHAT EXTENT ANY ISSUES RELATED TO COVID-19 MAY HAVE PREVENTED HIM FROM MEETING THE STATUTE OF LIMITATIONS.* IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Lexington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lillian L. Meadows
Post-Conviction Relief Division – 11th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Lexington County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 15th day of July, 2021.

William P. Keesley
WILLIAM P. KEESLEY
Chief Administrative Judge
Eleventh Judicial Circuit

Edgefield, South Carolina

FILED

STATE OF SOUTH CAROLINA)
 2021 DEC 10 PM 12:18) THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)

LISA M. COMER
 CLERK OF COURT
 LEXINGTON, SC

JAMES BUBBA PATTERSON, 217543,)

Petitioner,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

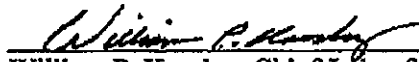
ORDER THAT THE CONDITIONAL
 ORDER OF DISMISSAL NOT BE
 MADE FINAL AND
 DIRECTING APPOINTMENT
 OF COUNSEL

Case Number: 2020CP3203490

On July 15, 2021, an order was issued granting the State's request for a conditional order of dismissal based on the statute of limitations. The court included in the order that the petitioner could address any issues related to the COVID-19 emergency. A response was filed by the petitioner objecting to dismissal and reciting some matters related to a lockdown due to COVID. The conditional order of dismissal is not made final and the application is to be allowed to proceed at this stage, with counsel to be appointed for the applicant. Nothing contained herein constitutes a ruling on whether the case might ultimately be dismissed on any ground, including the statute of limitations. Counsel should examine whether any applicable tolling exists.

AND IT IS SO ORDERED.

November 30, 2021


 William P. Keesley, Chief Judge for
 Administrative Purposes

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
James Patterson, #217543)
Applicant,)
v.)
State of South Carolina.)

2022 SEP 27 AM 8:15
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2020-CP-03490

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on October 14, 2020, to add the following allegations:

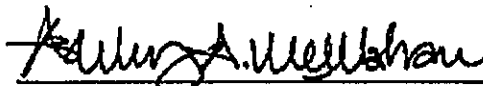
1. **The statute of limitations should be equitably tolled.** – The Applicant is entitled to equitable tolling of the statute of limitations because his ability to request documents and mailing of documents was hampered by the covid virus. He was prevented from timely filing due to circumstances beyond his control. See Mose v. State, 420 SC 500 (2017).

The covid-19 shut down began sometime in March 2020. Applicant asserts that he was unable to access the necessary materials etc. in order to timely file his PCR application.

The statute of limitations should be equitably tolled when circumstances prevent an Applicant from making a timely filing when they are beyond the Applicant's control and unavoidable despite his due diligence. Ferguson v. State, 382 SC 615, 618 (2009.)

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

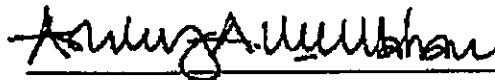
September 23, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian L. Meadows
Assistant Attorney General
LillyMeadows@scag.gov

This 23rd Day of September, 2022.



ASHLEY A. MCMAHAN

Attorney for Applicant

1 State of South Carolina) Court of Common Pleas
2 County of Lexington) Eleventh Judicial Circuit
3
4 James B. Patterson,) Transcript of Record
5 Applicant,)
6 vs.) 2020-CP-32-3490
7 State of South Carolina,)
8 Defendant.)
9

10 October 10, 2022
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable George M. McFaddin, Jr., Judge
14

15 A P P E A R A N C E S:

16 Ashley A. McMahan, Esquire
17 On behalf of the Applicant/Plaintiff

18 Lillian L. Meadows, Esquire
19 On behalf of the State of South Carolina

20 REPORTED BY:
21 Stacy S. Johnson, RPR
22 Circuit Court Reporter
23
24
25

I N D E XWITNESSPAGE

James B. Patterson

Direct Examination by Ms. McMahan

11

Cross-Examination by Ms. Meadows

19

Redirect Examination by Ms. McMahan

22

Recross Examination by Ms. Meadows

23

Joseph Stines

Direct Examination by Ms. McMahan

24

Cross-Examination by Ms. Meadows

29

Redirect Examination by Ms. McMahan

30

Certificate of Reporter

41

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held October 10,
2 2022, beginning at 9:50 AM.)

3 THE COURT: All right.

4 MS. MEADOWS: Thank you, Your Honor. May it
5 please the Court?

6 This matter is James Patterson versus the State
7 of South Carolina. Docket No. 2020-CP-32-3490. In
8 April 2013, the Lexington County Grand Jury indicted
9 Mr. Patterson for armed robbery, grand larceny and
10 possession of a weapon during the commission of a
11 violent crime. Then Chief Public Defender Rob Madsen
12 and Assistant Public Defender David Mauldin
13 represented him on these charges. Chief Solicitor
14 Suzanne Mayes and Assistant Gil Bell prosecuted the
15 case.

16 On April 11, 2013, he proceeded to a jury trial
17 before Judge G. Thomas Cooper. At the conclusion of a
18 multi-day trial, he was convicted as indicted. Judge
19 Cooper sentenced Mr. Patterson to concurrent terms of
20 twenty years for armed robbery, ten years for grand
21 larceny and five years for possession of a weapon
22 during the commission of a violent crime.

23 Mr. Patterson's convictions were affirmed by the
24 Court of Appeals by an opinion issue January 4, 2019.
25 The remittitur was issued on June 8, 2019, and on

1 October 14, 2020, Mr. Patterson filed an application
2 for post-conviction relief.

3 On June 16, 2021, the State filed its return
4 and motion to dismiss the action as untimely and
5 submitted a proposed conditional order of dismissal
6 to Judge Keesley, the chief administrative judge.
7 Judge Keesley signed the conditional order of
8 dismissal on July 15, 2021, but added a provision
9 that Mr. Patterson may address in his response to the
10 COD whether and to what extent any issues related to
11 COVID-19 may have prevented him from meeting the
12 statute of limitations.

13 Mr. Patterson filed a response on August 6, 2021,
14 stating that he had not filed his application on time
15 because the institution was on lockdown since 2018
16 and he did not have access to the law library, and on
17 September 9, 2021 I sent a letter to Judge Keesley
18 with Mr. Patterson's response asking how he wished
19 to proceed. The judge instructed the Clerk of Court
20 to appoint counsel and have a hearing on whether the
21 statute of limitations should be tolled pursuant to
22 Mose v. State.

23 THE COURT: All right, ma'am.

24 MS. McMAHAN: Yes, Your Honor. At this time we
25 would call Mr. Patterson -- call Mr. Patterson to the

1 stand.

2 THE COURT: All right.

3 MS. MEADOWS: Judge, would you like us to kind of
4 argue the motion first or to take testimony?

5 THE COURT: Well, let's just argue it first and
6 then we'll hear that, okay?

7 MS. MEADOWS: Okay. Just briefly, Judge, the PCR
8 Act states that an application must be filed within
9 one year after the remittitur is issued following a
10 direct appeal. Here the remittitur was issued on
11 June 28, 2019. The PCR application was filed on
12 October 14, 2020, and so it was filed approximately a
13 year and four months after the remittitur issued or
14 four months after the statute of limitation expired.

15 And in Mose v. State, our Supreme Court reversed
16 the PCR Court's dismissal of Mr. Mose's untimely
17 application finding the statute of limitations should
18 be equitably tolled because his application was
19 untimely filed due to circumstances out of his control
20 and Mr. Mose argued that although the Clerk of Court
21 had stamped his application as filed three days after
22 the statute of limitations ended, he complied with the
23 one-year statute of limitations because he delivered
24 the application to prison authorities for mailing
25 within one year of the date of his conviction.

1 And in Mose the Supreme Court expressly --
2 quote, expressly declined to adopt a rule, which
3 is considered the prison mailbox rule, that
4 automatically deems a PCR application filed on the
5 date the Applicant claims it was delivered to prison
6 authorities and instead if the PCR applicant relies
7 on the defense of equitable tolling in response to a
8 motion to dismiss, the Applicant must substantiate
9 that the correct and complete application was
10 delivered to prison authorities prior to the
11 expiration of the date of the statute of limitations
12 and that any delay in the Clerk of Court's receipt of
13 the application and to do the processing and if the
14 PCR judge determines the Applicant has proven it is a
15 valid defense, then the statute of limitations should
16 be tolled until it was delivered and received by the
17 Clerk of Court.

18 And it also states that when a PCR applicant
19 raises the doctrine of equitable tolling as a defense
20 the judge should make a fact-specific determination of
21 whether equitable tolling is justified and it states
22 that as part of this determination, the judge consider
23 any possibly -- any reasonably verifiable evidence
24 of the date the document was purportedly in the
25 possession of prison authorities for purposes of

1 mailing.

2 In this case, Mr. Patterson signed and dated his
3 application October 5, 2020, stamped by the Broad
4 River mailroom on October 7, 2020, and this is
5 still well over three months after the statute of
6 limitations expired. So it's our position that this
7 application is four months after the statute of
8 limitations has expired.

9 And the Court also said in Mose that tolling of
10 the statute of limitations in situations where an
11 Applicant demonstrates failure to file for PCR was
12 due to no fault of his own does not create an
13 exception by which incarcerated litigants may avoid
14 time restrictions. It also states that -- that the
15 equitable tolling of the statute of limitations should
16 be sparingly and only when the interest of justice
17 compels its use.

18 And so, again, it's the State's position that
19 this application was -- he had a year and four months
20 to file it and it was still four years past the
21 statute of limitations.

22 THE COURT: Thank you.

23 And you.

24 MS. McMAHAN: Yes, Your Honor. I -- obviously I
25 do have some witnesses that can testify to our issue,

1 but obviously our stance is that his failure to file
2 timely is due to no fault of his own. Obviously in
3 the sparingly context, we were in the middle of a
4 pandemic, which is something that I don't believe
5 anybody alive right now had ever experienced in their
6 lifetime, and we ourselves were on lockdown, but not
7 only we were on lockdown, but SCDC was on lockdown as
8 well.

9 Mr. Patterson has been housed in Broad River
10 Correctional the whole time. Well, since at least
11 2016, right?

12 THE APPLICANT: Right.

13 MS. McMAHAN: And so at that time, you know, if
14 -- if you just do a quick search, and, Your Honor, I'm
15 asking you to do this under Rule 201, which is, you
16 know, judicial notice. Sorry. I lost my train of
17 thought.

18 But if you just do a quick search for Broad River
19 Correctional and 2019 riots or fights or death, you'll
20 find at least three articles. One from May of 2019
21 has said there was a raid at Broad River for drugs and
22 cell phones. That was on WIS. You'll find another
23 one from June 2019 that a corrections officer was
24 stabbed, and that was during the time that obviously
25 Mr. Patterson's statute of limitations was beginning.

1 And then, again, later in August of 2019 that there
2 was a deadly fight at Broad River Correctional, an
3 inmate was actually killed, and there was -- based on
4 that article, it was also a WIS article, I believe,
5 there was another inmate that was killed prior to that
6 article even being written.

7 So, you know, just based on that it's obvious
8 that Broad River was on some form of lockdown for
9 almost all of 2019 and then 2020 begins and they're on
10 lockdown for quarantine.

11 Like I said, I do have witnesses available to
12 that and we're ready to have them present their
13 testimony.

14 THE COURT: Anything from the State?

15 MS. MEADOWS: Nothing else, Your Honor. I would
16 just point out that as Ms. McMahan stated in her
17 amended application, the COVID-19 lockdown began in
18 March of 2020. So prior to that there may have been,
19 I guess, some issues that the institution was on
20 lockdown, but the COVID would only account for about
21 six or seven months of that time period.

22 THE COURT: Yeah, I remember being in Camden that
23 day when we got shut down. Told to finish the trial
24 and shut it down.

25 MS. McMAHAN: I was in Laurens.

1 THE COURT: So we'll take some testimony.

2 MS. McMAHAN: Okay. Your Honor, at this time the
3 Applicant calls Mr. Patterson.

4 And, Judge, if you wouldn't mind swearing him in
5 or Madam Clerk.

6 THE COURT: Madam Clerk, will you?

7 THE CLERK: Yes, sir.

8 (Whereupon, James B. Patterson was duly sworn by
9 the Clerk of Court.)

10 THE CLERK: Thank you. You can be seated.

11 MS. McMAHAN: Would you state your name for the
12 record?

13 THE WITNESS: James B. Patterson.

14 THE COURT: All right. Can the State hear him
15 through the mask?

16 MS. MEADOWS: I can't.

17 THE COURT: You can?

18 MS. MEADOWS: I cannot.

19 THE COURT: Cannot.

20 All right. So pull it down for us, please.

21 MS. McMAHAN: Can you pull it down just little
22 bit more. There you go.

23 THE WITNESS: James B. Patterson.

24 MS. McMAHAN: Is that better?

25 MS. MEADOWS: Yes.

1 JAMES B. PATTERSON,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY McMAHAN:

5 Q. And did you file this PCR application?

6 A. Yes, I did.

7 Q. Okay. And so tell the Court today what kind of
8 difficulty you had trying to file it. Were you on
9 lockdown most of this time, from June 2019 to June 2020?

10 A. Well, across the state Bryan Stirling, the director,
11 said he's short of correctional officers. They have
12 commercials on TV. You have probably seen it. You've
13 probably heard about --

14 MS. MEADOWS: Judge, it is --

15 THE COURT: Wait a minute. Hold on.

16 MS. MEADOWS: It's -- it's very muffled.

17 THE COURT: I can't -- I cannot -- I can't even
18 hear you, sir.

19 THE WITNESS: I'll take it off completely.

20 THE COURT: And slow down a little bit, all
21 right?

22 THE WITNESS: All right.

23 As Bryan Stirling stated, he's short of
24 correctional officers and the commercials you may
25 see on TV or hear on the radio, it's just what people

1 hear, but in actuality being in prison he's really
2 short. 242 inmates per building. You have one
3 officer trying to control one building. Any time an
4 incident takes place, you are set back. And we have
5 numerous and numerous occasions. Even found a meth
6 lab at Broad River on TV. Even had -- the Richland
7 County sheriff had to pull outside security with a
8 spotlight to keep the guys from going out and coming
9 back with contraband. They even found tunnels at
10 Broad River Correctional Institution, which is a
11 threat to security. There are times when prisoners be
12 behind the doors and it be hours before they could get
13 any help.

14 BY MS. McMAHAN:

15 Q. Okay. So how -- how did that -- so we've established
16 that Broad River is -- has had many issues, right?

17 A. It was hard. It was hard. We had SLED come there
18 numerous times and even had the FBI there numerous times.

19 Q. And this was during June 2019?

20 A. All the way up until a month ago give or take because
21 we got transferred and they're saying -- I heard from an
22 officer just now who works there he said they're doing a
23 little better than they were when we were there.

24 Q. Okay. So you were housed in Broad River as we
25 established. Were you in a different unit or anything or

1 the same unit the whole time?

2 A. No, I was in two units. The first unit I was in was
3 Moultrie unit. I was the clerk for the LT -- for three
4 LT's and I also worked with the palliative care helping
5 disabled prisoners.

6 Q. So for those of us who don't know, what does LT stand
7 for?

8 A. He's a lieutenant of the unit. Some call them unit
9 managers.

10 Q. What was your job with the LT's?

11 A. Carry paperwork, go to the commissary, pick up
12 supplies, you know, stuff like that.

13 Q. And then the palliative care, was that in Moultrie or
14 was that somewhere else?

15 A. Yeah, I would help backup the palliative care workers
16 pushing the inmates to dialysis, medical, upfront to
17 operations, kitchen, canteen.

18 Q. So these were mostly the older or sicker folks?

19 A. Well, you know, younger people, too. Just people that
20 were sick.

21 Q. Yeah. So you were obviously at Broad River. You'd
22 been at Broad River prior to your conviction for this
23 charge, right?

24 A. No, not on the yard. Never.

25 Q. Well, you had -- you've been to SCDC before, haven't

1 you?

2 A. Right. Yes.

3 Q. And you were in Broad River all of 2019 and into 2020?

4 A. Correct.

5 Q. Okay. So just focussing on 2019 into 2020, so in
6 2019 when, you know, the officer was stabbed and they were
7 raiding the cells and all that kind of stuff, how would you
8 request access to the law library?

9 A. You have to talk to the officers and they'll get you a
10 request and, like I said, they're short of officers so they
11 might -- you might give them a request and they might put
12 it in their pocket and they may forget because something
13 takes over precedence of that because the call was for
14 security. So it's not really so much their fault because
15 the officers here now can attest to how they're being
16 overworked, you know.

17 Q. So, well, let's back up. You said you would send a --
18 give a request to the officer. Was that written on a piece
19 of paper?

20 A. Right.

21 Q. Was it a special form or was it just anything?

22 A. No, it was a form.

23 Q. Okay. So you would give the officer the form?

24 A. Correct.

25 Q. Okay. And so how many times did you request to go to

1 the law library that was ignored or just not addressed?

2 A. What happened was they cut it back and they say okay,
3 five people can only go to the law library, but we don't
4 have anybody at the law library for you guys to go in,
5 so you're gonna have to wait because they were short of
6 people.

7 Q. Okay. So only five people can be in the law library
8 at a time, but it was only open during certain times
9 because they were short staffed?

10 A. Right, but if there's not an officer available you're
11 not going. If anything happens prior to you on your way,
12 they say security, you have to leave.

13 Q. So it was only open when there were officers available
14 to take you there?

15 A. (Nods head.) With the mail house I have to request on
16 the kiosk with the associate warden stating -- pertaining
17 to why, you know.

18 Q. Uh-huh. So let's talk -- you brought up the kiosk.
19 So when did the kiosk come into play? When could you start
20 requesting things on the kiosk?

21 A. After the riot at Lee County, we received ours, the
22 last in the state, probably around '22, you know, year '22.

23 Q. Okay. So that wasn't even available during 2019?

24 A. No.

25 Q. Okay. And I know that some people have -- I want to

1 say iPads, but tablets?

2 A. That's what I'm talking about, yeah.

3 Q. But you didn't get that until way after?

4 A. Right.

5 Q. Okay. And so if you got to the law library to get
6 your PCR application, you get it done, but in this
7 situation were you even able to gain access to the law
8 library prior to June 2020?

9 A. On and off because, you know, when you work certain
10 jobs in SCDC they get sometimes a privilege, an officer
11 will look out for you, you know. They was like okay, since
12 you work here, we'll allow you to go through, but a lot of
13 times that got shutdowns because they're short of security.

14 Q. So you said you were able to go. What -- how many
15 times do you think you were able to go to the law library?

16 A. I probably been to the law library about six or seven
17 times since I've been in Road River.

18 Q. Okay. But like in 2019, how many times?

19 A. Two times.

20 Q. Maybe like between 2019 and 2020?

21 A. Two times.

22 Q. Okay. Two times. And then -- so let's say you go to
23 the law library and you've got your PCR application. How
24 do you request to get the notary to sign it?

25 A. Well, once you go through all of that, you've got to

1 go back to your unit and you have to wait on your -- on
2 your dorm date to go to the mailroom. If you've got a
3 court order and you can get someone to listen to you and if
4 the yard is not having any problems, you'll be able to go,
5 but most of the time you have to wait for your unit day.

6 Q. So you said each unit goes to the mailroom on one
7 particular day?

8 A. Correct.

9 Q. And how often does a unit go to the mailroom? Was it
10 once a week, is it once --

11 A. Once a week.

12 Q. Okay. Is that where the notary is?

13 A. Right.

14 Q. Is the notary always there?

15 A. Not most of the time because, see, they're short of
16 people. Whenever the mail people come in, they be backed
17 in because they're coming in off of the Corona virus and
18 there's a lot of backed up traffic. We just started
19 getting a lot of stuff, so. A lot of legal mail she's been
20 doing her best, I can say that, because she was taking it
21 to all of the units.

22 Q. Okay. So she was trying to get legal mail to you
23 guys, to the units?

24 A. To the best of her ability.

25 Q. And is she also the notary?

1 A. Right.

2 Q. Okay. So if you go to the mailroom and she's not
3 there because she's passing out stuff at the other units,
4 you wouldn't be able to use her?

5 A. No, she'll get to you eventually.

6 Q. Okay. So when you asked for a notary how long did
7 that take you to get the notary?

8 A. I got a notary done a few times and I was real lucky
9 because when I was coming out of the mailroom, they allowed
10 to me to go up there -- or coming out of the law library
11 they allowed me to go up there.

12 Q. Okay. So then -- but then obviously you have to go
13 back to the mailroom to mail your PCR application?

14 A. Well, whenever the yard is clear and they allow you,
15 you can.

16 Q. Okay. So how do you get copies of the application?

17 A. Through the mailroom.

18 Q. Okay. So you have to be able to get back to the
19 mailroom --

20 A. Correct.

21 Q. -- on your day?

22 A. Correct.

23 Q. And hope that you can get copies and a notary?

24 A. Correct.

25 Q. Okay. If she's not too busy?

1 A. Well, you just have to stand in line.

2 Q. Okay.

3 A. If nothing happens on the yard, you know.

4 Q. But if something's happening on the yard, they just --
5 everybody has to go back?

6 A. Everybody goes. Everybody.

7 Q. So how many times have you waited in line for
8 something like that and you had to go back?

9 A. I can't even remember. I know it's been over several
10 times.

11 Q. So -- so there's -- are there months where you've been
12 waiting in line for the mailroom and then, you know -- like
13 where you mail -- you actually get your mail once a month
14 because of something happening on the yard?

15 A. Well, I don't have everything written down, but I know
16 that Mr. Gaskin, Mr. Porter, Mr. Fleming, his attorney had
17 to file paperwork on them behind all of this. I don't know
18 about anybody else besides those guys because we're on the
19 same side.

20 Q. Okay.

21 MS. McMAHAN: Answer any questions Ms. Meadows
22 may have for you, okay?

23 THE WITNESS: Uh-huh.

24 CROSS-EXAMINATION

25 BY MS. MEADOWS:

1 Q. Just briefly, Mr. Patterson. So you said you went to
2 the -- you'd been to the law library a couple of times. Do
3 you remember was that two times total in 2019 and 2020 or
4 do you remember when those -- around when those times were
5 that you were able to go?

6 A. I got it written down in my thing over there.

7 MS. McMAHAN: (Hanging.)

8 A. I went -- I went twice in 2019.

9 Q. Okay. Do you have the date or the month?

10 A. No, not written down.

11 Q. Okay. What about 2020?

12 A. I went -- on 2020, just before that, no, none at all.

13 Q. Okay. So when was the first time you were able to
14 physically obtain a copy of the PCR application that you
15 filed? Just the form that's in the library.

16 A. Okay. Well, the first PCR was sent to me by my
17 attorney and I had to learn what a PCR was and I did all
18 of that by myself.

19 Q. Okay. When did your attorney send you a PCR
20 application?

21 A. I think the first one was back in 2016 and then got
22 another in 2017.

23 Q. But those are -- are those for your old -- different
24 charges or for these charges?

25 A. For these charges here.

1 Q. Okay. So he -- so he went ahead and sent it to you
2 while the appeal was pending?

3 A. Right, in a package.

4 Q. Okay. And so is that -- did you use one of the copies
5 he filed you -- he gave you to file it?

6 A. Yes, I did.

7 Q. Okay. So those times you were in the library, you
8 were just researching PCR and kind of figuring out what it
9 was?

10 A. Correct.

11 Q. Okay. And then when you filed your application, were
12 you able to complete it and then go to the mailroom and
13 mail it off the same day or --

14 A. No.

15 Q. Do you -- do you know about how long it took between
16 the time you finished and you were finally able to get it
17 notarized and mailed off? Do you know about how long that
18 took?

19 A. It took quite a while. I mean, because remember we
20 keep going on lockdown and trying to remember with lockdown
21 is kind of hard.

22 Q. Okay. So that may be a couple of months more than
23 that, a couple of weeks?

24 A. I wouldn't put it no more than probably about three
25 weeks give or take.

1 Q. Okay.

2 MS. MEADOWS: All right. Nothing further.

3 THE COURT: Redirect?

4 MS. McMAHAN: Yes, Your Honor. Just briefly.

5 REDIRECT EXAMINATION

6 BY MS. McMAHAN:

7 Q. So the three weeks, was that from the day that you
8 requested it and you were finally allowed to go to the
9 mailroom?

10 A. Right. See, any time --

11 Q. But you had requested it before then?

12 A. Right. Most of the time everybody -- see, what's
13 happening here is that -- I understand what everybody's
14 saying, but it doesn't work that way in SCDC because we're
15 short of staff and you have to -- you have to take every
16 moment as it comes. You know, nobody can say well, you're
17 guaranteed this. You're not.

18 Q. So you were requesting access to the law library.
19 When you would ask it, did they ever ask you if you had a
20 pending court deadline?

21 A. Right, but security overrides everything.

22 Q. Okay. But you -- you know, how -- did you have
23 anything that said you have one year to file a PCR that
24 you could have shown them?

25 A. I studied that and found that later on. When I got

1 a tablet, I went to the Westlaw and found out about PCR's
2 and going through the regulations.

3 Q. That was after you had already mailed in this one?

4 A. Correct.

5 Q. Okay.

6 MS. McMAHAN: I have nothing further, Your Honor.

7 THE COURT: Ms. Meadows.

8 MS. MEADOWS: Just briefly.

9 RECROSS EXAMINATION

10 BY MS. MEADOWS:

11 Q. So when your attorney mailed you these applications,
12 he didn't tell you that you had a year or anything like
13 that?

14 A. None at all.

15 Q. Okay.

16 MS. MEADOWS: Nothing further, Judge.

17 MS. McMAHAN: I have no further questions.

18 THE COURT: You may step down.

19 (Witness excused.)

20 MS. McMAHAN: Judge, at this time the Applicant
21 calls Joseph Steins.

22 (Whereupon, Joseph Steins was duly sworn by the
23 Clerk of Court.)

24 THE CLERK: Please be seated on the witness
25 stand.

1 JOSEPH STEINS,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. McMAHAN:

5 Q. Would you state your name for the record, please?

6 A. I'm Joseph Stines.

7 Q. And where do you work?

8 A. South Carolina Department of Corrections.

9 Q. And besides the Clemson lanyard you have on, we're
10 glad to have you here today, but how long have you worked
11 at SCDC?

12 A. A little over five years.

13 Q. Okay. And what -- what do you do there?

14 A. Director of special projects in the deputy director of
15 operations office.

16 Q. And so operations, is that -- do you deal with knowing
17 when lockdowns are and quarantines and all that kind of
18 stuff?

19 A. Somewhat, yes.

20 Q. Okay. Are you familiar also with your policies
21 regarding the law library?

22 A. Yes.

23 Q. Okay. So we're talking about the period between
24 June 2019 and June 2020, specifically to Mr. Patterson.
25 Do you have any idea how often during that time period

1 Broad River was on lockdown or quarantine?

2 A. I would say beginning in March of 2020 when really
3 COVID kicked off through probably June or July there was
4 quite a number of quarantines.

5 Q. Uh-huh.

6 A. You know, they would -- so if an inmate got -- tested
7 positive, we would remove them from the unit and they would
8 be quarantined for fourteen days.

9 Q. So prior to that there were obviously some issues at
10 Broad River, wouldn't you say?

11 A. Well, there were -- as far as the records that I
12 looked at, there were like four security lockdowns and
13 one was a day, one was a week, a couple of days and then
14 another week.

15 Q. Okay. And those were probably the issues that I
16 referenced earlier?

17 A. I'm unaware. I just know the timeframes.

18 Q. Okay. And so -- and when were those timeframes
19 exactly?

20 A. February 20th to February 21st of 2020. March 22nd --
21 I mean, I'm sorry, May 22nd to May 29th of 2020, June 5th
22 to June 8, 2020, and then June 22nd to June 29th of 2020.

23 Q. Okay. And then on and off for quarantines if they had
24 to quarantine for fourteen days?

25 A. Certainly, yes.

1 Q. Okay. And so what is SCDC's policy for requesting
2 access to the law library?

3 A. Normally they would have a schedule when the library's
4 open. If someone needs to utilize the law library, they
5 submit a paper request to staff or they can use a kiosk and
6 submit an automated request to staff, and now -- I guess
7 now today they can utilize a tablet to do the same thing.

8 Q. So -- well, describe the kiosk to me.

9 A. The kiosk is just a little machine that's like a --
10 it's got a little computer screen and they can access that.

11 Q. Like something I would use if I was going to get on an
12 airplane and try to get my boarding pass?

13 A. Yes.

14 Q. Okay. And then is that like outside in the general
15 area where they all hang out or where is that?

16 A. It would be in the dayroom, yes.

17 Q. Okay. But prior to the kiosk, you would have to send
18 a paper form?

19 A. A paper request, yes.

20 Q. Through the correctional officers or --

21 A. They could give it to the correctional officers or
22 they could give it to one of the staff that came around.

23 Q. Okay. And so you heard Mr. Patterson testify about
24 the law library and the hours and stuff. Are the hours
25 reduced at the law library right now because of staffing

1 or do you have any idea?

2 A. I don't know.

3 Q. Okay. And your policies about access to the law
4 library, say that there happens to be a pending court
5 deadline, how is that typically shown to SCDC?

6 A. If you look at -- for a court deadline, I mean,
7 normally the paperwork would have a court deadline on
8 it and that's what most staff will look at.

9 Q. So they'll look at a piece of paper that the Court
10 has written or something that says you need to reply by
11 whatever date?

12 A. Right.

13 Q. And a pending court deadline is actually not defined
14 anywhere in your policies; is that correct?

15 A. It is not.

16 Q. Okay. And are the corrections officers trained in any
17 way to understand that a PCR won't have a written piece of
18 paper that says the court deadline? That it will just --
19 that you have to wait for your remitter or your sentencing
20 sheet to come to be able to show that?

21 A. I don't believe so, no.

22 Q. So if I was Mr. Patterson and I was like hey, I need
23 to file my PCR within a year, I've got to get it done,
24 would they -- I mean, they're not trained to know what that
25 means, right?

1 A. No. I mean, the policy does state that if they don't
2 know they call general counsel's office and staff.

3 Q. Are you aware of anything -- I know you're not in the
4 general counsel's office, but --

5 A. No, I'm not aware.

6 Q. So -- so unless Mr. Patterson specifically had a piece
7 of paper that said you need to file your PCR application
8 by this date, the likelihood of him being able to show that
9 he had a pending court deadline or actually a statute of
10 limitations deadline in this situation, would be pretty
11 low, right?

12 A. I would say, yes.

13 Q. Okay. Do you know what year the kiosks were put into
14 the general areas?

15 A. I don't.

16 Q. And then the tablets at Broad River were not until
17 this year, right?

18 A. Tablets at Broad River were -- probably were this
19 year. They were not there during the timeframe that
20 Mr. Patterson was there. I did not see any during the
21 June 2019 and June 2020. There were no tablet usage on
22 the report back then.

23 Q. Okay. And the tablets, they give them access to
24 Westlaw and some of the law library materials?

25 A. It does, yeah, to Westlaw.

1 Q. But would that allow them access to like print out a
2 form and be able to mail it?

3 A. No. They would still have to do the automatic request
4 to staff to request that information, but that would be on
5 -- that would have been on the tablet, so.

6 Q. Okay.

7 MS. McMAHAN: Answer any questions Ms. Meadows
8 may have.

9 THE COURT: Ms. Meadows.

10 MS. MEADOWS: Just briefly.

11 CROSS-EXAMINATION

12 BY MS. MEADOWS:

13 Q. So the lockdowns you mentioned, I believe there were
14 four, they didn't last months at a time, right? It was
15 just a few days?

16 A. Correct.

17 Q. Okay. And then I know you've talked about the access
18 to the -- to the law library during lockdown. What was
19 the access like to the mailroom?

20 A. Well, the mailroom -- according to policy, the
21 mailroom supervisor during a lockdown should go to the
22 units to retrieve legal mail or to drop off legal mail.

23 Q. Okay. So during these lockdowns he or she would come
24 by to the units like once a week or something?

25 A. Per policy, yes.

1 Q. Okay. Per policy.

2 All right. And then when it wasn't a lockdown,
3 what was the -- is it easier to access the law
4 library? Do they just have to walk up there or what's
5 the procedure for that?

6 A. They do normally, like Mr. Patterson said, a unit
7 would go to the library -- I mean, to the mailroom on a
8 certain day unless they had some paperwork to go and they
9 could talk to one of the staff to get it up there.

10 MS. MEADOWS: Okay. Nothing further.

11 THE COURT: Redirect.

12 MS. McMAHAN: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. McMAHAN:

15 Q. The policy I'm referencing is GA-01.03. That's the
16 inmate access to courts; is that correct?

17 A. Yes.

18 Q. And that's the one that's found on SCDC's website?

19 A. Yes.

20 Q. Okay. And it's available for anybody in the world
21 to read?

22 A. Yes.

23 Q. Okay. So you said the mailroom would go to the
24 units and drop of mail per policy. Would that include --
25 so if the mailroom sent the notary, would she be able to

1 notarize stuff while she's dropping stuff off? Would she
2 go individually to these people or just dropping it off at
3 the unit? Or he.

4 A. That I don't know.

5 Q. Okay. And if you still need to get copies made so
6 you could mail out your information during this time that
7 the mail's getting dropped off at the units, how would you
8 request that? The same way?

9 A. The same way. I mean, if you saw the postal person
10 there you could ask them to ask a staff member, submit a
11 request to staff.

12 Q. Okay. Does it cost anything for them to use the
13 copier?

14 A. Yes, it did. They have certain -- I don't know what
15 the rate is, but they do charge them -- their account.

16 Q. So just out of curiosity, if somebody doesn't have any
17 money in their account?

18 A. They -- they're considered -- I forget the term.

19 Q. In forma pauperis?

20 A. No, indigent.

21 Q. Okay.

22 A. And SCDC pays for it.

23 Q. Okay. So the same thing for like envelopes and stuff,
24 they've got to buy envelopes?

25 A. Yes, if they have money. If they're considered

1 indigent, they get some stamped envelopes.

2 Q. Like per month or --

3 A. Yes.

4 Q. Okay. And then they just wait until the next month
5 when they can get some more?

6 A. Yes.

7 Q. Okay. Does everything at SCDC happen to policy all
8 the time?

9 A. It should.

10 Q. Okay. Is there staffing issues right now at SCDC?

11 A. Staff? We are not fully staffed, no.

12 Q. Okay. How long has SCDC not been fully staffed; do
13 you know?

14 A. They haven't been fully staffed since I've been there.

15 Q. So for at least five years?

16 A. Yes.

17 MS. McMAHAN: One moment, Your Honor.

18 THE COURT: Yes, ma'am.

19 BY MS. McMAHAN:

20 Q. If there's security issues within a unit, will that
21 delay access to a request to like the law library or
22 mailroom or anything like that?

23 A. I'm trying to understand your question. If there --

24 Q. So you were saying earlier -- you were saying earlier
25 that they would request either by form, a paper form, or

1 the kiosk that came a little later and the tablets now,
2 access to these things like the law library and all that
3 jazz?

4 A. Right.

5 Q. What's the average amount of time it would take from
6 the moment they hand a piece of paper to a corrections
7 officer to be able to get into the law library; do you
8 know?

9 A. I don't.

10 Q. And, of course, that's assuming if the corrections
11 officer actually takes it to where it's supposed to go.
12 So where would -- if I was a corrections officer getting a
13 piece of paper back then, where do I take that request to?
14 Like a lieutenant or somebody or --

15 A. A lieutenant or shift supervisor.

16 Q. Okay. And then they -- they do what? Like I guess --

17 A. Probably also drop it in the mailbox.

18 Q. So there's like an internal mailbox?

19 A. Yes.

20 Q. Okay. And so how often were those checked; do you
21 know?

22 A. They should be checked once a week.

23 Q. Okay. So if I put it in seven days before the next
24 check-in, it's gonna be sitting there for like a week?

25 A. (Nods head.)

1 Q. So it's all about sort of, I guess, timing of when
2 it's checked?

3 A. Yes.

4 Q. The boxes are checked once a week. So -- okay. And
5 then how long should -- you don't know how long it would
6 take once that lieutenant or shift supervisor got that
7 request to be able to fulfill it?

8 A. I don't. Yeah, I don't know.

9 Q. And if there's any security issues on that unit,
10 whatever unit the person is in, like if something happened
11 on the yard and there's some security issues, would that
12 prevent someone from being able to go to the law library
13 or the mailroom?

14 A. Yes. I mean, if there was a security lockdown.

15 Q. Okay. And is there a difference -- what types of
16 lockdowns are there?

17 A. I mean, you have security lockdowns and then we have
18 quarantines.

19 Q. Those are the two main ones?

20 A. Isolations.

21 Q. Okay. So isolation, the whole unit is on isolation?

22 A. Well, isolation is they're COVID positive inmates.

23 Q. Okay. So there --

24 A. Quarantines are somebody in the unit may have been
25 positive, they removed them from the unit and quarantined

1 the unit.

2 Q. The rest?

3 A. Yes.

4 Q. Okay. I got you.

5 MS. McMAHAN: I have no further questions, Your
6 Honor, unless Ms. Meadows has any.

7 THE COURT: Ms. Meadows?

8 MS. MEADOWS: Nothing further from the State.

9 THE COURT: You may step down, sir.

10 MS. McMAHAN: Can Mr. Stines be excused?

11 THE COURT: Yes. Yes ma'am.

12 (Witness excused.)

13 THE COURT: Is that okay with you, Ms. Meadows?

14 MS. MEADOWS: Yes.

15 MS. McMAHAN: Judge, I think based on the
16 evidence that we presented that it was almost -- it
17 was incredibly difficult, if not almost impossible,
18 for Mr. Patterson to be able to file this within a
19 certain time period as prescribed by law. Especially,
20 as I said, judicial notice of all the issues that had
21 been going on at Broad River through 2019, the fact
22 that, you know, there was an inmate killed or there
23 was a corrections officer hurt. You've heard the
24 requests about getting into the law library, about how
25 much time that can possibly taken. Just even trying

1 to get the request in, it could be at least a week
2 before your request is even seen. The fact that there
3 is no definition of pending court deadline within
4 SCDC's own policy, so there's no way to present
5 somebody with a document to tell them look, I have to
6 file my PCR within a year, you know, and obviously
7 corrections officers weren't trained on any of that to
8 know oh, someone's requesting the law library because
9 they need to get in their one-year statute of
10 limitations. You know, the likelihood that they
11 didn't believe him is pretty good.

12 So with all that taken into consideration and all
13 of our testimony, we would request that the State's
14 motion be denied.

15 THE COURT: Ms. Meadows.

16 MS. MEADOWS: Just briefly, Your Honor.

17 Like Mr. Stines testified, the lockdowns -- I
18 mean, I'm, you know, not disagreeing with Ms. McMahan
19 that there were these, you know, stabbings and all
20 these things that led to lockdowns, but Mr. Stines
21 testified that -- I mean, none of them lasted over
22 seven days and I believe he mentioned four.

23 And also Mr. Patterson testified that his lawyer
24 did give him the application in 2016 or 2017 and
25 although he didn't get the remittitur until 2019,

1 he additionally had a year after that to file his
2 application. So, you know -- and he did say he did
3 go to the law library at least twice.

4 So it is still the State's position that this
5 should be -- this action should be dismissed as
6 untimely.

7 THE COURT: Go ahead.

8 MS. McMAHAN: Can I just briefly reply?

9 Your Honor, Mr. Stines did also testify though
10 that based on security incidents within a unit, it
11 could cause delays to access the law library. And
12 regardless of when he got the actual piece of paper,
13 there's still a section on the piece of paper that
14 says state clearly your issues for your PCR
15 application and if you're Mr. Patterson, and not me,
16 I would know instantly to put ineffective assistance
17 of counsel and all that. The only way to find that
18 out is through access to the law library.

19 THE COURT: What was the date of the remittitur?

20 MS. McMAHAN: June 8, 2010 -- I mean, 2020.

21 MS. MEADOWS: The remittitur?

22 THE COURT: I thought it was '19.

23 MS. MEADOWS: It was June --

24 MS. McMAHAN: I'm sorry, 2019.

25 So obviously he still probably didn't get that

1 remittitur until few days later at least.

2 MS. MEADOWS: And, Judge, I have a packet I could
3 pass up to you with the record.

4 THE COURT: Okay. So the remittitur was issued
5 June 28, 2019, probably received a week later maybe?

6 MS. McMAHAN: I would say at least a week later
7 based on some of the incidents that were happening at
8 Broad River and based on Mr. Stines's testimony that
9 they were having to bring them to the unit.

10 THE COURT: And he completed his PCR application
11 October 5, 2020?

12 MS. McMAHAN: Well, it was filed.

13 THE COURT: Filed.

14 MS. McMAHAN: So once he's completed it, then
15 he has to go request access to the mailroom, to the
16 notary, to get it out into the mail, and even when
17 it's in the mail it may take a while for it just to
18 get out from SCDC.

19 MS. MEADOWS: And it was -- I think he signed and
20 dated it on October 5, 2020. There's a stamp on the
21 front from Broad River from October 7, 2020, and then
22 it was clock-stamped by the Lexington County Clerk of
23 Court on October 14, 2020.

24 THE COURT: So that's 10-5-20?

25 MS. McMAHAN: Well, I think the Broad River

1 mailroom says October 9, 2020.

2 MS. MEADOWS: Oh, okay. I couldn't tell if it
3 was --

4 THE COURT: 10-5, 10-9, and then what date was
5 the clerk?

6 MS. McMAHAN: The clerk was October 14th.

7 THE COURT: And in an ideal world his time would
8 have expired sometime around July 2020?

9 MS. MEADOWS: It would be July 28, 2020 -- or I
10 think it's the 29th technically.

11 THE COURT: To you good lawyers, these notice
12 cases come up every once in a while, so I'll take this
13 under consideration so myself and my law clerk can
14 further review that law and that case.

15 MS. McMAHAN: Judge, if you want me to let you
16 know the policies again, do you need that? The
17 policies numbers I was citing.

18 THE COURT: Yes, ma'am.

19 MS. McMAHAN: It's GA-01.03.

20 THE COURT: Let me ask you this, can you make a
21 copy of the file?

22 MS. McMAHAN: Yeah.

23 THE COURT: Is that all right with you,
24 Ms. Meadows?

25 MS. MEADOWS: Sure.

1 MS. McMAHAN: You can also go on SCDC's website
2 and just type that in. GA-01.03.

3 THE COURT: She can.

4 Does that suit you? She can do that.

5 MS. McMAHAN: It's the actual if you want to --

6 THE COURT: No, no. She can pull it up.

7 All right, folks.

8 Mr. Patterson, give me a few days, sir. Thank
9 you for your patience.

10 THE APPLICANT: Thank you.

11 (Whereupon, the proceedings were concluded at
12 10:32 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 10th day of October, 2022.

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I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

January 2, 2026

/s/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

FILEDSTATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2020-CP-32-03490James Patterson, #217543,
Applicant,)**ORDER DENYING THE STATE'S
MOTION TO DISMISS**

v.)

State of South Carolina,
Respondent.)

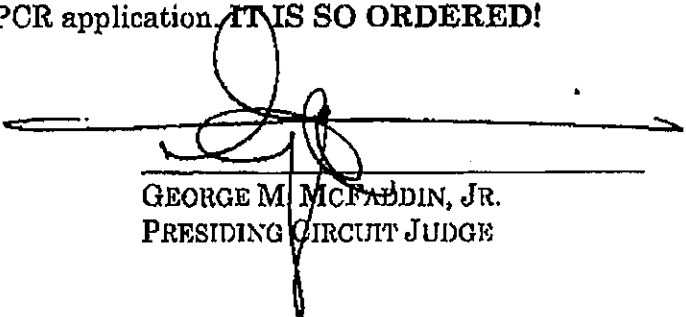
This matter comes before the Court by way of a the State's Motion to Dismiss filed on or about June 18, 2021, requesting the PCR application be dismissed for failing to comply with the statute of limitations. A Conditional Order of Dismissal was entered on July 21, 2021. On November 30, 2021, the Honorable William P. Keesley entered an order stating that the Conditional Order of Dismissal shall not be final and that a hearing should be held regarding the Applicant's claims as to why he was not able to file his PCR application within the time limits allow.

On October 9, 2022, a hearing was held on the State's motion at the Lexington County Courthouse. Present at the hearing was Ashley A. McMahan, Esquire on behalf of the Applicant and Assistant Attorney General Lillian L. Meadows on behalf of the State. Applicant testified as well as Joseph Stines from the South Carolina Department of Corrections.

Applicant testified at the hearing that he was unable to timely file his PCR application due to lack of access at the law library where the paper applications are kept. One of his institutions where he was housed also had riots break out. At that time the facility was put on lockdown and only tablet access was available; however

the PCR application is not available through the tablet. Joseph Stines testified that the Applicant's facilities were also under quarantine at least three times before the statute of limitations expired as well as noting that inmates are not allowed at the law library while in Kirkland Correctional (the initial facility all inmates are processed through) unless they can show paperwork that they have a pending court deadline to a correctional officer. Mr. Stines also noted that most correctional officers probably do not know what a PCR is or why there wouldn't be any paperwork to show a filing deadline since the statute of limitations is statutory.

Based on the Applicant's testimony as well as Mr. Stines', this Court finds that the Applicant's reasons for not being able to timely file his application are plausible. THEREFORE this Court DENIES the State's motion. The Applicant is allowed to proceed with his PCR application. **IT IS SO ORDERED!**



GEORGE M. MCFADDIN, JR.
PRESIDING CIRCUIT JUDGE

December 21, 2022

Sumter, South Carolina

Page 1 of 2

FILED

2023 DEC 13 AM 11:50

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Donald J. Zelenka
Deputy Attorney General
DZelenka@scag.gov

This 11th Day of December, 2023.


ASHLEY A. MCMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET NO. 2020-CP-32-03490

JAMES PATTERSON,
Plaintiff,
versus
STATE OF SOUTH CAROLINA,
Defendant.

H E A R I N G

PRESENT: JAMES PATTERSON
DATE: 12/18/2023
TIME: 2:42 p.m. - 3:36 p.m.
LOCATION: South Carolina Circuit Court 11
JUDGE: Perry H. Gravely
TRANSCRIBED BY: Jeanne Meldrim

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EXHIBITS

(No exhibits marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 THE COURT: All right. We'll call the case.

2 MR. ZELENKA: Your Honor, the next case is James
3 Bubba Patterson. Mr. Patterson filed an application for
4 post-convictional relief on October 14, 2020. He is
5 presently represented by Ashley McMahan. The application
6 involves a August --- excuse me, April 11, 2016 jury
7 trial before G Thomas Cooper, for the crimes of armed
8 robbery involving a jewelry store in West Columbia.

9 The charges were armed robbery, grand larceny,
10 possession of a weapon during a commission of a violent
11 crime.

12 He was convicted in that trial represented by Rob
13 Mattson, assistant public defender; David (background
14 noise). The matter was prosecuted by Deputy Solicitor
15 Suzanne Mays (phonetic) and Lester McGill Bell.

16 After the conviction, he was sentenced by Judge
17 Cooper to twenty years imprisonment for armed robbery;
18 ten years for grand larceny; five years for possession of
19 a weapon during commission of a violent crime.

20 Well, the matter went up on direct appeal, and it
21 was denied by the Court of Appeals in a decision issued
22 in 2019. Filed a petition for rehearing and it was
23 remitted back.

24 In his application he makes an allegation of
25 ineffective assistance of trial counsel. In the original

Direct exam Patterson

1 application related for not objecting to the
2 (unintelligible), he raised claims of ineffective
3 assistance of Appellate counsel.

4 I spoke with counsel earlier last week and she
5 indicated to me they're not pursuing the ineffective
6 assistance of Appellate counsel issue.

7 The raise of due process violation that are raised,
8 and we would assert that those matters can't be
9 freestanding claims for relief under the circumstances of
10 post-conviction relief and abuse of discretion.

11 She's filed a couple of application for
12 post-conviction relief. The first one is addressing our
13 initial position that Mr. Patterson was beyond the
14 statute of limitations. But they filed --- she filed a
15 filed a second application saying ineffective assistance
16 of counsel. This was filed December 11, 2023. Failure
17 to adequately cross-examine the witnesses as to the
18 identification of the witnesses didn't testify; for
19 identifying the applicant and failed to object to the
20 testimony of the Investigator Wade when they informed the
21 jury about the notice from SLED of the applicant's DNA
22 and CODIS database which he asserts was prejudicial.

23 THE COURT: All right. Ma'am, I believe I'm glad to
24 hear from you.

25 MS. MCMAHAN: Judge at this time the applicant calls

Direct exam Patterson

1 Mr. Patterson.

2 THE COURT: All right. Mr. Patterson, if you'll
3 come forward and be sworn.

4 MS. MCMAHAN: And while he's doing that, Judge, just
5 as for the first amended application, we had a hearing
6 back in last October where Judge McFaddin ruled that the
7 statute of limitations should be told. You should have
8 that order in front of you.

9 THE COURT: Yes. (Unintelligible) review that.

10 (Witness sworn)

11 JAMES PATTERSON, HAVING BEEN DULY SWORN, TESTIFIED
12 AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MCMAHAN:

15 Q. Mr. Patterson, did you file this application?

16 A. Yes, I did.

17 Q. And is this your application?

18 A. Yes, it is.

19 Q. Do you need to hold on to that to look at it?

20 A. Yes, I do.

21 Q. Okay. Who was your attorney you had?

22 A. Mr. Mauldin.

23 Q. And did you have Mr. Mattson --- Robert Mattson too?

24 A. Uh-huh.

25 Q. Would you repeat your response; yes or no?

Direct exam Patterson

1 A. Yes.

2 Q. When were you initially arrested on this charge, do you
3 remember?

4 A. November of 2012.

5 Q. And were you in jail the whole time? You went out on
6 bond?

7 A. Yeah, I was in.

8 Q. You didn't have a bond at all?

9 A. No bond.

10 Q. Did you ever have any bond hearings?

11 A. One.

12 Q. And it was denied at that hearing?

13 A. Yes.

14 Q. And how many times would you say that that Mr. Mattson
15 and them came out to see you at the jail?

16 A. Approximately maybe three or four times.

17 Q. What did you guys talk about?

18 A. He (unintelligible) the case and he was
19 investigating it. And then I didn't see him for while,
20 probably --- I could say it was over a span of that
21 length of time I might see him once every nine or
22 twelve months, give or take.

23 Q. And you said he was --- told you he was investigating it?

24 A. Yes.

25 Q. What --- what did he tell you he was investigating?

Direct exam Patterson

1 A. He was following up. He said, if I'm not mistaken,
2 what actually happened in the case. You know, I don't
3 know the laws or the procedures, but that's what he was
4 doing.

5 Q. And did he go over the evidence and everything with you?

6 A. During the trial, I heard made mention of what I was
7 being charged with and --- what else did he said? He
8 said this is the --- what you're going to be charged with
9 the armed robbery and he went on into the case.

10 Q. What do you mean by that?

11 A. He start --- you know, how they open up like we
12 doing now, and he started the trial. And, you know, like
13 I said, I don't know anything about the law. I only
14 learn --- looked at this stuff in prison and reading on
15 the manuscript that I had. And you know, I was --- I'm
16 totally lost when it comes to a lot of things. So I was
17 only doing --- this out. And this is what I was able to
18 grasp. So he was a weight above my head.

19 Q. Okay. So in your application, what was the first issue
20 that you was raising?

21 A. I was raising the --- the ineffective counsel based
22 on coming to meet with me, explain it to me in a way
23 where I can comprehend what was going on.

24 And prior to coming to the Court to the initial
25 trial of our certain things was said and evidence was

Direct exam Patterson

1 allowed to come in which is a violation when I start to
2 learn about what is 5th, 6th Amendments, and the 14th
3 Amendment and stuff like that which I only know to the
4 surface. I don't really know it know it.

5 Q. Okay. Well, you said based on him not meeting with you
6 and not explaining it to you at a level you can understand?

7 A. Right.

8 Q. Did that happen throughout the trial, that things were
9 happening that you didn't necessarily understand?

10 A. I mean to be honest, you all talk over my head,
11 because I don't know all these terms. Like I spoke to
12 you once before, you know, I don't know the law language.

13 Q. Was that being explained to do you during the trial?

14 A. Not to where I can comprehend.

15 Q. Okay. And so what else did you guys talk about when he
16 came to meet with you?

17 A. Well, he was basically telling me every time he
18 would come in about the solicitors not talking about no
19 deals, and he says something else. Like I said, it had
20 been years ago. For me to try to remember back, but ---

21 Q. Had you ever told your attorneys that you wanted to plead
22 guilty to this?

23 A. Never. Because he said there was no such thing as
24 a --- a plea bargain since he wasn't taking to pleas,
25 what was the solicitor was.

Direct exam Patterson

1 Q. So they told you that the solicitor wouldn't take a plea
2 deal on it?

3 A. Right.

4 Q. So is the --- number one in your application in front of
5 you, what's your (inaudible)? This is number
6 (unintelligible). Right here. (Unintelligible)?

7 A. Right here. It says appellant asserts that he was
8 denied effective assistance of counsel by the trial
9 counselor at the trial in the violation of the 6th
10 Amendment.

11 (Simultaneous speaking)

12 Q. Okay. And I think we talked about that. Because they
13 weren't explaining everything to you, right?

14 A. Right.

15 Q. And then B is --- this is both 6th amendment?

16 A. Uh-huh.

17 Q. Okay. And then your due process right; so how did your
18 attorneys violate your due process right?

19 A. Well, prior to when evidence was being newly
20 discovered came in, at the --- at the spur of the moment,
21 and ---

22 Q. Do you mean "spur of the moment," it was coming in at the
23 trial?

24 A. Right.

25 Q. Just --- and you had never --- you had never heard about

Direct exam Patterson

1 that ---

2 (Simultaneous speaking)

3 A. Never. And it was newly --- and it was allowed to
4 come in. Also, Investigator Wade's testimony and how he
5 presented himself, and how he handled the case.

6 Q. And how was that?

7 A. It went into lengthy discussion about how him
8 obtaining supposedly the evidence, and how he held the
9 evidence for a period of time, and how he transacted the
10 evidence to the SLED department.

11 Q. Transported it, you mean? Like ---

12 A. Yes.

13 Q. --- it there?

14 A. They all have stuff like that which he did --- it
15 changed so many different hands, it's the manuscript.

16 Q. Uh-huh.

17 A. So I had to learn, you know, what that meant about
18 the 14th Amendment about ---

19 Q. So it's the chain of custody ---

20 A. Right.

21 Q. --- that wasn't adequate?

22 A. Right.

23 Q. So you were saying Mr. Mattson didn't adequately object
24 to that chain of custody and that violated your due process,
25 right?

Direct exam Patterson

1 A. Pretty much.

2 Q. And then on D, you talk about Rule 6 and the 5th
3 Amendment right to remain silent; how did --- what did your
4 attorneys do to violate that?

5 A. Well, once again, when this was brought up, a number
6 of other things, it was --- it wasn't never spoken on, it
7 was just gone over.

8 Q. You mean, it was just sort of presented at trial and
9 nobody objected to it or anything?

10 A. Right.

11 Q. And --- and by Rule 6, you mean the chain --- the
12 chemical analysis, the ---

13 A. Right.

14 Q. Are you specifically talking about the DNA chain, or are
15 you talking about (background noise)?

16 A. Well, it was that and other things as well too. One
17 of the things that stood out mostly other than that was
18 when the lady from the --- the DMV department, when she
19 presented her evidence, there was stuff in there from the
20 mug shots and stuff like that. Documents that I had to
21 show otherwise, but that's getting into the case. None
22 of that was presented.

23 Q. You had (unintelligible)?

24 A. Yeah, pretty much. A lot of stuff.

25 Q. Okay. And your attorneys never presented any of that?

Direct exam Patterson

1 A. None of that.

2 Q. Did you show them to them or talk to them about ---

3 A. No, it was in the van. It was in my work truck that
4 I kept talking about. Also the video. I wanted to see
5 the video line up in right to confrontation. I didn't
6 receive that, just only the mug shot thrown together.

7 Q. So the "line up," you mean like the --- the lineup
8 that --- of the different pictures that she showed you ---

9 A. Right.

10 (Simultaneous speaking)

11 A. Right.

12 Q. Okay. And then the video of what --- of --- of the
13 alleged incident?

14 A. Right.

15 Q. All right. And then ---

16 A. There's a lot of legal terms that I just can't put
17 in the legal terms words, but ---

18 Q. Okay. We're doing that now?

19 A. It wasn't where, you know, when you --- say that you
20 have a video --- okay, could have used the video then you
21 start saying lineups. He never said anything about
22 identifying me or nothing you get into the transcript,
23 just getting into the nature of the case. Which I feel
24 that if you'd have looked at the video, that's firsthand
25 in looking at some photograph that you done just got

Direct exam Patterson

1 (unintelligible) saying stuff about the DNA. And that's
2 what, you know ---

3 Q. And then you're saying that the trial court abused its
4 discretion when it let in some evidence that was not ---
5 let --- let the State allude to some evidence that was not
6 actually put into evidence. Do you mean in the State's
7 opening statement they talk about some things that weren't put
8 in evidence?

9 A. Yeah.

10 Q. Okay. And did your attorneys object to that?

11 A. Not to my knowledge of it.

12 Q. What --- what's next on the list that you wanted to talk
13 about?

14 A. Okay. (Unintelligible) asserted that the counsel
15 (unintelligible) for a lineup (unintelligible) videotape.
16 This is what I was asking for. And this (unintelligible)
17 the trial counsel action and the (unintelligible)
18 (background noise) reversible error. See
19 (unintelligible) State versus Teal (phonetic) 341 SC ---

20 Q. So your --- back again to your attorneys didn't object to
21 any of those (unintelligible), the lineup (unintelligible) or
22 anything like that? Okay.

23 A. That's what I read off the transcript.

24 Q. Okay. (Unintelligible) that's the argument in here so I
25 was --- I'm going to --- I'm just trying to skip through and

Direct exam Patterson

1 find the fact sheet. (Unintelligible) so we can talk about
2 that.

3 Were there --- at times where your counsel didn't object
4 to (unintelligible) and preserve things for appeal?

5 A. He did object --- once he objected and the judge
6 said, motion denied. I believe that was with Pool
7 (phonetic) versus the State of New Mexico.

8 Q. Okay. Just on page 8 of your memo.

9 A. Right.

10 Q. Uh-huh.

11 A. At no time --- when the judge had made a statement
12 when the --- the jury went in the back, he said something
13 I can't remember. The words is in the transcript.

14 Q. Uh-huh.

15 A. And that was about it.

16 Q. And what was the issue with the analyst, the DNA analyst?
17 Was that because the original one who analyzed it wasn't
18 available?

19 A. Well, that and actual way it was gathered and
20 transferred and --- and how tests was done.

21 (Unintelligible) I don't remember any of the details ---

22 Q. Uh-huh.

23 A. --- but it's in the transcript. So ---

24 Q. So did everybody in the (unintelligible) saying that
25 everybody in the chain on the DNA did not testify? So the

Direct exam Patterson

1 chain wasn't adequate?

2 A. Right.

3 Q. Okay.

4 A. Not only that, the way they handled it when they
5 first received what they say is evidence on how they
6 processed it.

7 Q. Uh-huh. What was the issue with the search warrant?

8 A. Well, that --- I didn't get the chance to go into
9 that too good.

10 Q. Okay.

11 A. I just --- like I said, from what I read off the
12 transcript and what I was learning reading from this book
13 (unintelligible) ---

14 Q. Okay. And that's when you were writing all your memos
15 down?

16 A. Right.

17 Q. Okay. So outside this memo, is there anything else
18 specific you want Judge Gravely to know about your --- your
19 attorneys and your --- and your trial, your PCR and all that?

20 A. What I've gathered and from the arguments that was
21 raised, I didn't see it as --- as --- as --- once I
22 started comprehending a little of the law, him allowing
23 them to go to forward with a lot of this that I've
24 read --- like I said, I don't know so much of how to
25 cross-examine ---

Direct exam Patterson

1 Q. Uh-huh.

2 A. You know, you go in the law books and you learn all
3 these different phrases, because that's --- that's ---
4 yeah, beyond ---

5 Q. When you said he allowed him to go forward, who is "he"?

6 A. A lot of --- well, when Mr. Wade was making his
7 statements and --- and things like that to the Court ---

8 Q. About the --- about the CODIS database and all that?

9 A. Yeah, the CODIS date. And he also was taking about
10 the identity and all that type of stuff like that.
11 It's --- if you read the --- the transcript, you could
12 see within there everybody giving different descriptions
13 and things of this nature here. You know, and they only
14 came down to one.

15 Q. Do you feel like your attorneys weren't effective when it
16 came to address all these multiple different identities?

17 A. Right. One person said I was 200-and-something
18 pounds, but then they got me listed at checking in at the
19 county (unintelligible) as 100-and --- I think he said
20 140 pounds. So I mean, it's just --- I'm still learning,
21 you know, and I'm ---

22 Q. Yeah.

23 A. I'm a long way off the mark.

24 Q. So the issue with the CODIS database, was there --- was
25 that because Mr. Wade testified as to how people get into

Direct exam Patterson

1 CODIS?

2 A. Right. Well, how he collected and then how he ---

3 Q. Okay. What else do you want the Court to know about your
4 PCR?

5 A. That's basically about it, because I won't know
6 anything until they just tell me and I'll go back and try
7 to read on it. You know, because I don't --- see, I
8 don't know knowledge of none of those things.

9 Q. Okay. But you --- you have written a memo that you
10 attached to your application?

11 A. Uh-huh.

12 MS. MCMAHAN: Okay. Answer any questions ---

13 (Simultaneous speaking)

14 THE COURT: Now, before --- I --- that's some fancy
15 writing you got on that memo. Now, did you do --- did
16 you write that or did you get somebody to write that?

17 THE WITNESS: No, we didn't --- the law library was
18 shut down for a long time, so I wrote it out with
19 (unintelligible) another guy wrote it out.

20 THE COURT: That looks like some fancy writing right
21 there.

22 THE WITNESS: Got a good handwriting.

23 THE COURT: (Unintelligible).

24 THE WITNESS: I was hoping it was legible.

25 THE COURT: No, it is. It looks fancy. All right.

1 MR. ZELENKA: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ZELENKA:

4 Q. Mr. Patterson, I've just got a few questions. When you
5 met with Mr. Madsen, what did he tell him occurred on that
6 day?

7 A. Well, first and foremost, when he knew I was
8 arrested when he was appointed to me, I told him I didn't
9 commit the crime.

10 And then we waited on the evidence. And then months
11 down the road, if I'm not mistaken, then he comes back.
12 Then months and months, and months again, he comes back.
13 But like I said, it's probably been about three or four
14 times. What he --- what he said to me was they waited on
15 the evidence, what the State have to present if I'm not
16 mistaken.

17 Q. And --- and once the --- the State got the evidence and
18 gave it to Mr. Madsen; did he meet with you?

19 A. Well, not right then. I can say. That's probably
20 been like the following year or so down. I don't have
21 all the dates and nothing like that. But I know it's ---
22 it's not like if you have an attorney, he comes, you
23 know, once (unintelligible) contact him. You --- you
24 can't call in the county jail like that, because they
25 don't pick up the phone.

Cross-exam Patterson

1 Q. But did you have an understand as to the --- the evidence
2 the State was going to present?

3 A. What was said to me was we have --- the State have a
4 hat, and he's --- and they's talking about the DNA. And
5 then from there they went into the case.

6 Q. All right. And the --- and do you recall where the State
7 was saying the hat was found?

8 A. Yes, it was in the report. It was saying somewhere
9 on the property.

10 Q. Somewhere on the property of the jewelry store?

11 A. Yeah, they said somewhere around the property. And
12 they also made statements of my vehicle, they gave like
13 different descriptions of my vehicle. You know, things
14 of that nature there. One said one color, one said
15 another color. (Unintelligible). One lady said that the
16 guy who she seen coming out was 200-and-something-odd
17 pounds. You know, and Mr. (Unintelligible) he never
18 described me or nothing, you know, until later on one ---
19 when the DNA is pulled it came in a photo lineup. But he
20 never looked on the --- on the video to say that's the
21 guy. You know.

22 Q. Okay.

23 A. I'm not --- like I said ---

24 (Simultaneous speaking)

25 Q. The owner did identify you in the lineup?

1 A. Yeah, if you --- if you read the --- the transcript,
2 you can see how he came to that decision, because prior
3 to that when they came to him several times and had it,
4 he didn't do. And all of a sudden he can --- he can do.
5 And his mother was standing there closer they said than
6 he was and she couldn't identify the guy.

7 Q. Okay. And you're talking about the bystander across the
8 street?

9 A. No, I'm talking about it's --- in the thing it said
10 that his mother was inside the place with him.

11 Q. Right. And --- and that came out at trial?

12 A. Right. She said no. So I don't know how, you know,
13 two people are standing here like you're all there you're
14 looking at me, one say yeah, another says no. I don't
15 know. I don't know. I mean ---

16 Q. Okay. And there was a woman across the street that saw
17 you or somebody leaving and saw the owner of the store
18 shooting at the vehicle, correct?

19 A. And that's the lady who said the guy she seen was
20 200-and-something-odd pounds. When they got me booked
21 they weighing 140. So who did she see? And she --- she
22 gave different views of the vehicle --- different colors.
23 I'm --- I'm --- I mean ---

24 Q. How --- how often did you meet with Mr. Madsen before the
25 trial started?

Cross-exam Patterson

1 A. I probably seen Mr. Madsen --- he could probably
2 tell you better than me. I think I probably seen him
3 about two or three times.

4 Q. Okay. So before you went to trial, you were aware that
5 there was some lineup information that Mr. Madsen had
6 identified you in a six-photograph lineup, you were aware of,
7 weren't you?

8 A. No, I got aware of that when I got to court.

9 Q. You didn't know that you had been identified in a lineup?

10 A. When I got to Court.

11 Q. Okay. And what other evidence did the State have on you
12 that you thought you were going to have to (unintelligible)?

13 A. Repeat that again?

14 Q. I know it's a confusing question. What did you know
15 about the State's case before you began the trial?

16 A. Well, what I knew was he said I was charged with
17 armed robbery. The State was charging me with armed
18 robbery. Said prior --- he said something about evidence
19 was found on the property and that's where --- that's
20 what I knew.

21 Q. And you knew your D --- DNA consistent with you was found
22 on the hat?

23 A. That came out in trial.

24 Q. All right. Was it your hat?

25 A. Probably so.

1 Q. Okay. Why was your hat on the property?

2 A. I don't know about my hat being on no property. But
3 I explained my attorney a week prior to that, coming from
4 the dry cleaners I had a bunch of clothes in the car.
5 And they knocked my window out, but I --- you know, it's
6 my fault for having my stuff in the car. So I didn't do
7 nothing, just replace the window (unintelligible) another
8 window in it. You know, and that was that.

9 Q. Okay. You didn't testify at trial, did you?

10 A. No, I did not testify.

11 Q. Why didn't you testify at trial?

12 A. He told me not to testify. My attorney said, don't
13 testify.

14 Q. Okay. Did he give you any indication why don't testify?

15 A. He just said, don't testify.

16 MR. ZELENKA: Okay. No further questions.

17 THE COURT: All right. Any redirect?

18 MS. MCMAHAN: No, Your Honor.

19 THE COURT: All right. Thank you. You may step
20 down.

21 (Unintelligible).

22 MS. MCMAHAN: The applicant rests, Your Honor.

23 THE COURT: All right. (Background noise) State?

24 MR. ZELENKA: Just turned and Mr. Madsen's not
25 there.

Direct exam Madsen

1 THE COURT: All right.

2 MR. ZELENKA: He will be my next witness.

3 THE COURT: Okay. (Unintelligible) make sure ---
4 maybe he's in the hallway.

5 (Witness sworn)

6 ROBERT MADSEN, HAVING BEEN DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. ZELENKA:

10 Q. Mr. Madsen, state your name for the record, please.

11 A. Robert Madsen.

12 Q. How are you currently employed?

13 A. I am retired.

14 Q. And has part of your practice been criminal defense?

15 A. Yes, sir.

16 Q. At some point in time were you the public defender over
17 Lexington County?

18 A. I was. (Unintelligible) Lexington (unintelligible).

19 Q. How long have you been practicing law?

20 A. 20 --- since '96.

21 Q. Okay.

22 A. So ---

23 Q. As part of that practice, did you come to represent Mr.
24 James Bubba Patterson?

25 A. Yes, sir.

Direct exam Madsen

1 Q. And how did that occur?

2 A. Our office was appointed --- it appears he was ---
3 looking back through the notes, he was arrested
4 November 16th of 2012, so I don't know if he had said he
5 was going to hire a private attorney, but it looks like
6 our office was appointed to him on January 3rd. And I
7 saw him for the first time on January 17th.

8 Q. Okay. Briefly describe the State's theory against Mr.
9 Patterson as you understood it.

10 A. He was a jewelry store robbery where an individual
11 had come into the jewelry store wearing a suit, a hat,
12 and sunglasses. There were, I believe, four people
13 inside of the jewelry store. The owner --- I think it
14 was his mother or his wife, and then two people there
15 just to buy jewelry.

16 There ended up --- the individual had stolen --- or
17 had taken --- pulled out a gun, taken some jewelry, had
18 run out. The actual owner shot a gun at the individual
19 as they ran out. That person dropped their hat on the
20 way out, went around got in a --- either light gray or
21 white car. The jewelry store owner shot out the back
22 window of that car as it left.

23 And then a little bit later after that, Mr.
24 Patterson had reported it being stolen a couple of days
25 later. Law enforcement over in Richland got behind the

Direct exam Madsen

1 van, a fellow by the name of Kenneth Bates (phonetic) got
2 caught jumping out of the car and they were able to track
3 the car back to being owned by Mr. Patterson.

4 Q. Okay. And in your meetings with Mr. --- Mr. Patterson,
5 did you advise him of the nature of the State's case against
6 him?

7 A. I did.

8 Q. And did he provide a defense to you?

9 A. He provided a couple of different defenses at times.

10 Q. Okay. What did he provide?

11 A. So the first one was a little bit unusual when my
12 screener went out to go see him initially. He had told
13 her that he was dealing with the ATF on charges and
14 preferred to speak with them first. That this was not a
15 robbery, but an inside insurance scam and that's all he
16 cared to say.

17 When I went and saw him the first time on
18 January 17th, we did not talk about the facts at that
19 point in time I simply went over his constitutional
20 rights, all his legal rights, the S --- or SVP because of
21 the kidnapping, the registry, what the minimum, maximum
22 for --- and the strikes, and then got background
23 information on him.

24 On the 31st, I received discovery and ---

25 Q. 31st of what month?

Direct exam Madsen

1 A. The 31st of January ---

2 Q. Okay.

3 A. --- of 2013. And then I went out and met with him
4 and went over the discovery with him on March 5th of
5 2013. And he did not want a copy of the discovery, I
6 generally would always give the clients a copy if
7 they --- wanted it, but I specifically have in my notes
8 that he did not want a copy of the discovery.

9 Q. Okay. Did that discovery at that time include DNA
10 results?

11 A. Not at that time.

12 Q. Okay. How did --- where along the process ---

13 A. So at some point in time we received additional
14 discovery that ended up being a CODIS hit. And that
15 might have been in the initial discovery, I don't
16 remember. But I know at some point in time there was a
17 Schmerber hearing where the State wanted to verify the
18 results from the CODIS. From DNA, there were a hat and
19 two cigarette butts that I believe were supposed to be
20 near the getaway van. And so we had a Schmerber hearing
21 at some point in time.

22 Q. Okay. And as a result of the Schmerber, you were able to
23 get samples from your client?

24 A. Yes.

25 Q. And what was the result of the --- those samples?

Direct exam Madsen

1 A. Off the hat, it was one in something like a trillion
2 or sextillion, some gigantic number. One of the
3 cigarette butts I believe he was excluded on, and the
4 other cigarette butt did not have any DNA.

5 Q. Okay. And after you advised your client about that, what
6 was his reaction?

7 A. Well, like I said, initially it was an inside job
8 and we did the investigation on that, including, you
9 know, myself going to SCDC talking about witnesses about
10 that. And I mean, he just --- he --- you know, always
11 said that it wasn't a robbery at that point in time.

12 Q. Okay. Did that version ever change?

13 A. It did.

14 Q. And what did it change to?

15 A. He had mentioned an alibi, and --- but that was not
16 until according to my notes, May 28th of 2015.

17 But like I said, prior to that, his version was that
18 this was an inside insurance job, it was a little bit
19 strange, because he had indicated that it was an inside
20 insurance job run by the Koreans and Muslims through
21 Richland.

22 And --- and like I said, he gave --- I'd hired an
23 investigator to investigate that, and he had given that
24 investigator a name, but it was a relatively common name
25 and that investigator could not track that down.

Direct exam Madsen

1 Later, he had mentioned a name by the name of
2 Stafford Ray, who I believe at that point in time was in
3 the Lexington detention center. My investigator tried to
4 get the okay from Mr. Ray's attorney to talk, and that
5 attorney refused to let us talk.

6 Eventually, Mr. Ray's case was disposed of and I
7 actually went SCDC and spoke with Mr. Ray who said he had
8 no idea what Mr. Patterson was talking about.

9 Q. Okay.

10 A. And I will tell you, kind of based it --- it ---
11 it --- that defense seemed kind of weird and wild. And
12 so based on that, I got Mr. Patterson evaluated.

13 Q. And what was the result of the evaluation?

14 A. Initially, he came back not competent but likely to
15 restore. They followed up with that and said that he had
16 been restored competency. I took the additional step of
17 hiring Thomas Mark and having a private evaluation. He
18 concurred with the State as far as Mr. Patterson was
19 competent.

20 And like I said, I --- I never had any trouble
21 commuting --- communicating with Mr. Patterson, he --- he
22 responded appropriately. He would ask questions, would
23 tell me things.

24 But like I said, the --- his defense at that point
25 in time just seemed kind of out there. And so I was just

Direct exam Madsen

1 kind of trying to check all boxes and seeing if there
2 might be a --- a mental health defense.

3 Q. Did you seek to determine with Dr. Martin
4 (unintelligible) is a possibility?

5 A. Generally, when I do that, I --- I --- just about
6 every time, I would to competency and McNaughton.

7 Q. Okay. And what information did Dr. Martin give you about
8 (unintelligible)?

9 A. He just --- he concurred with the State ---

10 Q. Okay.

11 A. --- that he was not insane and that he was
12 competent.

13 Q. And that was --- that he knew the difference between
14 right and wrong and could conform his conduct to the
15 requirements of law?

16 A. Yes, sir. (Unintelligible).

17 Q. With that information, what did you do next as far as
18 potential defenses for the trial?

19 A. Well, like I said, at --- I had hired an
20 investigator, we kind of went down a number of rabbit
21 holes with people on this inside insurance kind of scam
22 that Mr. Mancini was, you know, getting money for that
23 that nothing was ever stolen and that in --- or May 28th
24 of 2015, in one of my meetings, he changed what he had
25 said and said that he had an alibi defense and he went

Direct exam Madsen

1 there. And in fact in my notes, I even have that the
2 client drastically changed his story from the beginning
3 and now denies doing it.

4 Q. Okay. And what was his alibi?

5 A. I don't specifically recall, but I believe it was
6 that he was in North Carolina. But he could not give me
7 anyone that could substantiate that alibi and we didn't
8 have any way to affirmatively show that that was the
9 case, other than potentially him testifying.

10 And --- and he and I had talked. He had a pretty
11 significant record, you know, that I advised him as ---
12 as far as potential impeachment. And he had never
13 indicated to me even though we had talked about it that
14 he was going to testify. And so that did not make that
15 potential alibi any type of viable defense.

16 Q. Okay. So as you prepared for trial --- and at the time
17 of trial you also were assisted by David Mauldin?

18 A. I --- yes, I believe Mr. Mauldin just sat with me as
19 a second pair of eyes and ears.

20 Q. Okay. And what was his role as second chair?

21 A. Like I said, just to --- you know, sometimes when
22 you're in trial, your mind's thinking ahead, and so he
23 was there just kind of taking notes, pointing out
24 anything that he thought maybe I needed to explore or
25 missed.

Direct exam Madsen

1 Q. In your review of the State's evidence, did you learn of
2 the chain of custody of the items particularly the hat and the
3 cigarettes to determine if it was a good chain or whether the
4 chain was broken?

5 A. I think that there was some problems. I don't
6 recall, but I believe maybe one of the pieces of the
7 chain, Chuck Gramlet, had died. And then obviously, I
8 explored that on cross-examination pretty thoroughly from
9 what I recall.

10 Q. Uh-huh. Well, did you move to exclude as a result of
11 that? Do you recall?

12 A. I believe I did, but I --- it's been eight years.

13 Q. Okay. Anything about the photo lineups that you recall?

14 A. You know, I will tell you there --- so there was a
15 photo lineup in there and it --- I can't recall if they
16 were color photos or black and white. But I didn't
17 specifically see anything, you know, objectionable about
18 that. I do believe we probably had a Neil versus Biggers
19 in regard to Mr. Mancini.

20 Q. Related to the CODIS, when it came out at trial, what
21 steps did you take, if any, related to that testimony?

22 A. I believe initially I objected and obviously, you
23 know, wanted to mute any mention of --- of CODIS. I
24 believe in the transcript it was kind of sanitized to a
25 certain extent and just said SLED database. I --- I ---

Direct exam Madsen

1 I don't recall, but I'm pretty sure I would have objected
2 to that, but I don't think I was successful initially
3 with that.

4 Q. Okay. Do you recall that rather than using a CODIS or
5 thing like --- things like that they decide to use the word,
6 "database"?

7 A. Like I said, kind of sanitizing it.

8 Q. Right. And was there a --- a --- a notification from
9 State law enforcement division that became an issue, the
10 paperwork that was trying to be sanitized as to how this
11 information came along; do you recall?

12 A. I do not.

13 Q. Okay. Let me --- it will be page 31.

14 A. Do you have it? I ---

15 Q. (Unintelligible).

16 A. I don't have the transcript.

17 Q. (Unintelligible).

18 A. What? Just ---

19 Q. Just right there in one of the transcript
20 (unintelligible)?

21 THE COURT: 331, the transcript, or the packet, or
22 what?

23 MR. ZELENKA: So 350, the record on appeal. 331
24 (unintelligible).

25 THE COURT: Okay. Show it to him.

Direct exam Madsen

1 BY MR. ZELENKA:

2 Q. Does that refresh your recollection?

3 A. Yes, sir.

4 Q. And at that point in the trial, there was a question as
5 to the type of ways the (unintelligible) for the SLED database
6 (unintelligible) (background noise). (Unintelligible) 12,
7 2012, in that notification, suggested that the suspect had
8 (unintelligible)?

9 A. Correct.

10 Q. You didn't object specifically to that at that point ---

11 A. I did not.

12 Q. Do you recall why or why not you didn't?

13 A. I do not.

14 Q. Okay. In the testimony there were some people that
15 liked --- well, the victim's mother who was at the scene who
16 were unable to identify the individuals who had robbed the
17 store; do you recall that?

18 A. I do.

19 Q. Do you recall what position he tried to take on the
20 examination about that?

21 A. I don't believe all of them testified.

22 Specifically, I don't think the mother testified. And if
23 I recall, I believe I pointed that out and used that for
24 my closing examination that they were relying basically
25 on one person. Like I said, there was a boyfriend and

Direct exam Madsen

1 girlfriend in the store. I don't remember if both of
2 them testified or maybe just the male. But as Mr.
3 Patterson said, there were some discrepancies and I
4 believe I brought those out in cross-examination.

5 MR. ZELENKA: The Court's indulgence
6 (unintelligible).

7 BY MR. ZELENKA:

8 Q. As you got to trial, did your client's version change?

9 A. Like I said, he changed in May to an --- to the
10 alibi ---

11 Q. Okay.

12 A. --- from the insurance scam that now he didn't know
13 anything about it.

14 Q. Okay. So at the time of trial, his version to you the
15 position was alibi?

16 A. Yes, sir.

17 Q. Okay. Did you advise him of his right to testify?

18 A. Yes, sir. It would have been one of the first
19 things in my first meeting I would have gone over that
20 with him.

21 Q. Okay. And what was the result of that discussion?

22 A. He did not want to testify.

23 Q. Okay. Was that also based on your advice?

24 A. Yes.

25 Q. And why was it your advice to have him not testify in his

Direct exam Madsen

1 defense in the case?

2 A. With us representing him for a number of years, I
3 did not think that he would end up being a credible
4 witness given the kind of nature of what we had talked
5 about previously, and kind of vacillating with different
6 events as additionally he had a pretty significant prior
7 criminal record. And I worried that those --- you know,
8 some of those convictions might come in and would further
9 denigrate his credibility.

10 Q. Okay.

11 A. And --- and like I said, he never had any --- never
12 had a desire to testify. I mean I --- that's one of the
13 first things I go over, and then obviously during trial
14 when we got to that point we would have talked about
15 that, because that's always his decision.

16 Q. Okay. During the trial, were you surprised by any of the
17 State's evidence that was presented?

18 A. The only thing that I was surprised about is at some
19 point in time there was a --- when the getaway car was
20 later found, there was an individual that had gotten out
21 and the officer testified that he identified Mr.
22 Patterson as the driver. And I will tell you, you know,
23 in reading over it, I can see in the --- in the report
24 where that comes from, but I missed it. At that point in
25 time I would have asked for a Neil versus Biggers,

1 because in my opinion it would have essentially been kind
2 of like a show up. He says, hey, you know, this van was
3 there and I went back and looked at (unintelligible)
4 photograph and the owner of it was the one that was
5 driving. I --- I did not catch that on the front end.
6 Looking back at it on hindsight, I can see where it would
7 be ambiguous, but I normally would have asked for any
8 (unintelligible) Biggers, tried to get that
9 identification suppressed.

10 Q. You usually do suppressions on (unintelligible) officer
11 identifications?

12 A. If it's somewhere where they didn't know someone,
13 like this and he's looking at a --- a photograph off of
14 DMV, so basically something that I would think would, you
15 know, was just a one-person, I would.

16 Q. Okay. Let me show you transcript pages 373 to 379, and
17 ask if that's the testimony (inaudible)?

18 A. Yes. Yeah, I ---

19 (Simultaneous speaking)

20 A. -- reviewed that last night.

21 Q. --- transcript page.

22 A. Yes. And I cross-examined him, I believe on the
23 potential as far as, you know, just seeing it being out
24 of the car and when did you, you know, make this
25 identification.

Cross-exam Madsen

1 Q. Okay. So other than (unintelligible) in hindsight,
2 (unintelligible) Biggers hearing, you tried to bring that
3 information out on cross-examination?

4 A. I did.

5 MR. ZELENKA: No further questions.

6 THE COURT: Redirect?

7 MS. MCMAHAN: Just briefly.

8 CROSS-EXAMINATION

9 BY MS. MCMAHAN:

10 Q. Was there any follow-up on the van being potentially
11 stolen?

12 A. He had reported it stolen, and I believe either
13 through my own investigation or through the discovery
14 provided by the State, I had received --- I believe
15 (inaudible) --- where he had called a couple of days
16 later say it had been stolen.

17 Q. And you said there was initially --- or not initially,
18 you said another thing he brought up with him being in North
19 Carolina, did he give you the names of any hotels or anything
20 he stayed at?

21 A. No.

22 Q. Did he tell you approximately where he was in North
23 Carolina?

24 A. It was --- I don't recall if he did, I just remember
25 that there was nothing --- you know, because that ---

1 that was questions that I would ask: Hey, where were
2 you? How can I somehow substantiate this? And it was
3 just extremely vague. So there was nothing that I could
4 follow up with, no people that he was with, innkeepers,
5 or even where he was staying.

6 Q. Were there any plea offers in this case?

7 A. There was.

8 Q. What were they?

9 A. It was an --- a --- I believe it was to dismiss
10 something, but ultimately, it was going to be an armed
11 robbery straight up. And it might have been the dismiss
12 the kidnapping. I've got some e-mails in the file if you
13 want to to pull. But it was a --- and I --- I went over
14 that with him. In fact, I've got in my notes ---

15 Q. Did he ---

16 A. --- that I met with him on 9/4 of '13 to go over
17 their plea offer. But essentially, it wouldn't have
18 reduced, he still would have had a ten-year minimum,
19 30-year maximum, and he rejected that.

20 Q. He did reject that?

21 A. Yes.

22 Q. Do you recall when you met with him? When he said it was
23 in March, about that?

24 A. As far as the plea offer?

25 Q. Yes.

Cross-exam Madsen

1 A. My notes indicate that I had met with him and he
2 rejected --- or that I went over the plea offer with him
3 on 9/4 of 2013.

4 Q. Were there any plea offers after that?

5 A. Other than that same one that substantially had the
6 armed robbery and dismissing some of the ancillary
7 charges.

8 Q. Would that plea offer have been available at the time of
9 the trial?

10 A. I --- I know that there was some follow-up e-mails,
11 but no, not at the time of trial I don't believe.

12 Q. Do you recall ever telling the defendant that the
13 solicitor was never going to give a deal and that's why he
14 didn't want to take a plea?

15 A. Not specifically, un --- unless he, you know, I
16 didn't think she was going to give a better deal, and she
17 did not. But, you know, also when I have someone who's
18 telling me that they didn't do it, really hard to plead
19 guilty to something that you didn't do, and I'm not an
20 arm twister.

21 Q. Do you recall him telling you he was in Winston-Salem
22 North Carolina?

23 A. I do not specifically remember that.

24 Q. Did he ever talk about how he went to internal affairs at
25 the police department and then --- then he was being arrested

Proceedings

1 for --- arrested for this charge?

2 A. In --- I mean, he had made things about ATF
3 initially, and then he had told me about that he was
4 working with the FBI. We were never able to substantiate
5 any of that through our --- our --- the private
6 investigator, or myself. And like I said, we talked
7 about that --- or that was his position. I mean, I met
8 with him 14 times and when he came up --- switched to the
9 alibi, that would have been in one of our last couple of
10 meetings.

11 MS. MCMAHAN: I have nothing further, Your Honor.

12 THE COURT: Redirect?

13 MR. ZELENKA: Nothing on redirect, Your Honor.

14 THE COURT: The State, call your next witness.

15 MR. ZELENKA: Your Honor, the --- the trial
16 prosecutor, Suzanne Mays, as is David Mauldin present in
17 Court. We don't intend to call either one at this time.

18 THE COURT: All right. Anything else from the
19 applicant?

20 MS. MCMAHAN: Nothing, Your Honor.

21 THE COURT: All right. I'll be glad to hear from
22 y'all.

23 MS. MCMAHAN: Judge, I just --- I just ask that you
24 take a moment to read through the entire record, reflect
25 on that compared to what he's added to his memorandum on

Proceedings

1 his application, also in regards to our second amended
2 application when making a decision.

3 THE COURT: All right.

4 MR. ZELENKA: Your Honor, we rely on the record of
5 the trial in this case. I think most indications that
6 and reveals that trial counsel was well prepared for the
7 case, made appropriate objections, and that any
8 assertions or concerns that were expressed by trial
9 counsel were not of such a nature to --- to a reasonable
10 probability a cause of --- result of the proceeding to be
11 different (unintelligible).

12 It was a strong case based upon the DNA evidence
13 that was there, the identification by the --- the victim
14 in the case, the significant cumulative evidence that
15 came in surrounding the (unintelligible) involved
16 (unintelligible) victim in the case. His waiver of his
17 right to testify was reasonable under the direct
18 circumstances that he faced in this case and we submit
19 that they failed in their burden of proof.

20 THE COURT: All right. I'll --- I'll review the
21 record and I'll let you all know when I come to a
22 decision.

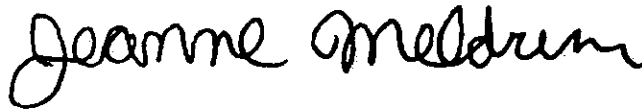
23 (PROCEEDINGS CONCLUDED AT 3:36 P.M.)
24
25

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 11 for LEXINGTON COUNTY, South Carolina, on the 18th Day of December, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 31, 2025

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J'.

Jeanne Meldrim
Transcriber

FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON) 2025 APR 14 AM 10:04) IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. CODIER
 CLERK OF COURT
 LEXINGTON, SC

James Bubba Patterson, SCDC #217543,) Case No. 2020-CP-32-3490

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before this Court by an application for post-conviction relief filed by James Bubba Patterson (Applicant) on October 14, 2020. The Respondent made a motion to dismiss as a violation of the statute of limitations on June 18, 2021. A Conditional Order of Dismissal was entered by Judge William Keesley on July 21, 2021. On September 23, 2023, appointed counsel Ashley A. McMahan, served an Amended Application asserted that the statute of limitations should be equitably tolled. Subsequently a hearing was held before Judge George McFadden on October 9, 2022. Judge McFadden entered an Order on December 21, 2022 denying the State's motion to dismiss, concluding that the Applicant was entitled to equitable tolling. On December 13, 2023, the Applicant filed a second amended application by appointed counsel Ashley A. McMahan.

On December 18, 2023, the matter was convened before this Court. The Applicant was presented and represented by his appointed counsel, Ashley A. McMahan. The Respondents was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant and his former counsel Robert Madsen. At the conclusion of the hearing, this Court took the matter under advisement. This Order of Dismissal follows.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on November 16, 2012, following an investigation for an armed robbery that occurred several months earlier at a jewelry store in West Columbia. During its April 2013 term, the Lexington County Grand Jury indicted Applicant for armed robbery (2013-GS-32-0891); grand larceny (2013-GS-32-0890); and possession of a weapon during the commission of a violent crime (2013-GS-32-1132).

On April 11, 2016, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr. Chief Public Defender Robert M. Madsen and Assistant Public Defender David M. Mauldin represented Applicant. Deputy Solicitor Suzanne Mayes and Lester McGill Bell, Jr., prosecuted the case. At the conclusion of the multi-day trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to concurrent terms of twenty years' imprisonment for armed robbery, ten years for grand larceny, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue[s]:

- I. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?
- II. Did the trial judge err in admitting testimony that [Applicant]'s DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?
- III. In his preliminary comments, did the trial judge err by indicating to the jury that a trial was a search for the truth?

Following briefing and oral argument, the Court affirmed Applicant's convictions and sentences in a published opinion issued January 4, 2019. *State v. Patterson*, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019). Applicant's subsequent petition for rehearing and petition for writ of certiorari were denied. The case was remitted back to the circuit court on June 28, 2019. Applicant commenced this PCR action on October 14, 2020.

II. CURRENT APPLICATION

In his initial *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on the following:

1. Ineffective assistance of trial counsel
 - a. "Trial counsel was ineffective for not 'objecting' to the use of mug-shot photos used[sic].
 - b. Nor did he request to view the video surveillance tape of the date (November 15, 2012) the photo lineup shown to the vic Frank Mancine."
2. Ineffective assistance of appellate counsel
 - a. "Trial counsel adequately preserved several issues for appellate review that called for reversal and remand for a new trial. However, appellate counsel only raised 'DNA' argument on direct appeal and appellate counsel's argument and research was 'deficient' and fell below the professional norms under Strickland v. Washington."
 - b. "Appellate counsel never challenged or addressed the comp to stand trial hearing on December 3, 2014, by Dr. Tross; nor did he address the Blair hearing by Judge Addy [in] December 2015. Both issues were preserved for appeal and should have been raised on direct appeal."
 - c. "Appellate counsel did not address the Applicant's confrontation rights violations that trial counsel 'objected' and were preserved for appeal. Trial counsel objected to the chain of custody the State was allowed to willfully violated[sic] Rule #6 of the South Carolina Rules of Criminal Procedure, the rule for chemical analysis and chain of custody. The confrontation clause does not permit the prosecution to introduce a forensic

laboratory report containing a testimonial certification, made for the purposes of proving a particular fact through the in-court testimony of a scientist who did not sign the laboratory or perform or observe test lab reported in the certification."

- d. "The constitution provides every person accused of a crime the right to confront his accusers. That promise was broken in the Applicant's trial when the State never made Officer Chuck Bramlet of the West Columbia Police Department available or Applicant to cross-examine him pretrial in regards to the search warrant. At trial, the State used Captain Joseph Odom of the Richland County Sheriff's Department to testify as to what Officer Chuck Bramlet (who had passed away) would have said. However, appellate counsel totally ignored the confrontation rights 'violations' that were clearly preserved. Also, there were several other confrontation rights violations that trial counsel preserved in regards to DNA analysis, etc."
3. Due process violation
 - a. "On cross-examination, trial attorney Mr. Madsen, see Trial transcript p. 417; line 3 through 11. Captain Joseph Odom of the Richland County Sheriff's Department states that the deceased investigator Chuck Bramlet processed everything and took all of the photos of the van in question. However, the State never made Investigator Chuck Bramlet available for Applicant to confront or question in regards to the pictures that were taken of the van."
 - b. "The State also allowed Ms. Jennifer Aycock, forensic technician for SLED's evidence control department testify what Ms. Nikki Perry Hughes and Ms. Doris Yarborough did with evidence without the Applicant confronting them."
4. "The Applicant's due process rights were violated . . . when the State was allowed to willfully violated[sic] Rule #6 S.C.R.CrimP., the rule for chemical analysis and failed to establish a complete chain of custody."
 - a. "Investigator James Sullivan of the West Columbia Police Department on page 274; admits that he is the person that on May 9, 2012, after putting on protective equipment, he picked the 'hat' up off the ground and put it into a locked vault in his vehicle. He logged this into the West Columbia Evidence Repository. Whereas the 'hat' was later transported by Investigator James

Sullivan to the State Law Enforcement Division (SLED) for further testing.”

- b. “There is no time frame in regards to how long the ‘hat’ was left in the West Columbia’s Evidence Repository. Nor is there any mention of anyone at SLED signing for the evidence when it was dropped off; no date or time it was dropped off. This is a clear violation of Rule #6, S.C.R.CrimP (B) Certified or sworn statement . . .”
- c. On page 428 of the Applicant’s trial transcript, Detective Paige McCraw of the West Columbia Police Department. Under oath testifies that at the Court hearing on December 14, 2015, she took two (2) buccal DNA swabs. One of the left and right cheeks of the Applicant. However, she states that after labeling it with date and time the swabs were placed in a bag that she sealed and initialed and took to SLED. There’s no mention as to who she left the swabs wit at SLED; who signed for them; or how long they remained at SLED because there is no time frame given and no SLED officials signatures.”

5. Abuse of discretion

- a. “[T]he trial court abused its discretion by allowing the State to allude to evidence that was not admitted into evidence. This was done several times in the presence of the jury and calls for reversal of trial and conviction.”
- b. “Trial counsel never ‘objected’ to this miscarriage of justice that results in a reversal of conviction and new trial. The State’s solicitors in this case Ms. Suzanne Mayes and Mr. Lester McGill Bell alluded to evidence not admitted into evidence. Before the trial began in opening statements by Mr. Bell, see p. 168 of trial transcript. Also, in Ms. Mayes closing arguments on p. 539 and 540 of trial transcript. The gun owned by Mr. Frank Mancine, a jeweler at K & M jewelry, that as robbed on May 9, 2012, was never admitted into evidence. Nor was the white 1995 Plymouth Voyager van admitted into evidence at the Applicant’s trial. . . This practice disregard[*sic*] indeed violates the rules governing the admission of evidence.”
- c. “The Court allowed witnesses in the presence of jury two photos of the White 1995 Plymouth Voyager van that was on the lot of the Eagle One Towing. . . The Court could have allowed the jury to personally go view the van at Eagle One Towing. Instead elected to

publish illegal photos into evidence. Also, allowed State's witnesses to testify about the van . . ."

- d. "Also see excerpts[sic] of the trial transcript and the following witnesses[sic] testimony – Captain Bruce Wade, p. 336 and 337. Mr. Brendon Pennington, Deputy Sheriff, p. 374. Anthony Kennedy p. 385. Ms. Clarissa DuBard on 394 and Captain Joseph Odom p. 403 and 40."

The Applicant, through appointed counsel McMahan, filed a "Second Amended Application" raising the following new allegations:

- I. Ineffective Assistance of Counsel of Robert M. Madsen and David M. Mauldin:
 - a. Failure to adequately cross-examine the witnesses as to identification when the witnesses didn't testify to identifying the Applicant;
 - b. Failure to object to the testimony of Investigator Wade when he informed the jury about the notice from SLED of the Applicant's DNA in the CODIS database, which was prejudicial to the Applicant's case because of how DNA gets into that database. See Tr.p. 331 (ROA 350)

The Applicant's counsel further indicated the following original *pro se* allegations relating to ineffective assistance of appellate counsel were being abandoned at the outset of the hearing:

Ineffective assistance of appellate counsel:

- a. *"Trial counsel adequately preserved several issues for appellate review that called for reversal and remand for a new trial. However, appellate counsel only raised 'DNA' argument on direct appeal and appellate counsel's argument and research was 'deficient' and fell below the professional norms under Strickland v. Washington."*
- b. *"Appellate counsel never challenged or addressed the comp to stand trial hearing on December 3, 2014, by Dr. Tross; nor did he address the Blair hearing by Judge Addy [in] December 2015. Both issues were preserved for appeal and should have been raised on direct appeal."*
- c. *"Appellate counsel did not address the Applicant's confrontation rights violations that trial counsel 'objected' and were preserved for appeal. Trial counsel objected to the chain of custody the State was allowed to willfully violated[sic] Rule #6 of the South Carolina Rules of Criminal Procedure, the rule for chemical analysis and chain of custody. The confrontation clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made for the purposes of proving a particular fact through the in-court testimony of a*

scientist who did not sign the laboratory or perform or observe test lab reported in the certification."

- d. *"The constitution provides every person accused of a crime the right to confront his accusers. That promise was broken in the Applicant's trial when the State never made Officer Chuck Bramlet of the West Columbia Police Department available or Applicant to cross-examine him pretrial in regards to the search warrant. At trial, the State used Captain Joseph Odom of the Richland County Sheriff's Department to testify as to what Officer Chuck Bramlet (who had passed away) would have said. However, appellate counsel totally ignored the confrontation rights 'violations' that were clearly preserved. Also, there were several other confrontation rights violations that trial counsel preserved in regards to DNA analysis, etc.*

This Court has before it the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

SUMMARY OF THE EVIDENCE

Around 2:30 p.m. on the afternoon of May 9, 2012, Frank Mancine was working at K & M Jewelry, a jewelry store located in West Columbia, South Carolina, when a man wearing a dark-colored suit, a dark-colored fedora, and sunglasses entered the store. (R. p. 82; p. 89; p. 95; pp. 100-102; pp. 195-196; p. 247). Recognizing the man from a visit to the store only two days earlier, Mancine went over to provide him with assistance, and the man asked to be shown some necklaces. (R. p. 103; pp. 114-115; p. 196; p. 198; p. 202; p. 204). Based on the man's request, Mancine unlocked several of the store's jewelry counters and began to show various items to the man while Mancine's mother, who was the store's owner, assisted two other customers nearby. (R. pp. 195-196; p. 202). As Mancine showed the man the store's merchandise, the man suddenly pulled out a pistol, pointed it at Mancine and the other people in the store, and demanded the store's jewelry. (R. p. 97; pp. 196-197; pp. 220-221). The robber then filled a bag with approximately \$29,000

worth of the store's gold necklaces and bracelets and began to exit the store. (R. p. 197; p. 203; p. 209). When he did so, Mancine retrieved his own pistol, which was concealed nearby, and fired a shot at the robber. (R. p. 118; p. 197; p. 233; p. 235). However, Mancine's gun jammed and his shot missed, and the robber was able to quickly flee from the store. (R. p. 120; pp. 203-204; p. 235). Mancine then unjammed his pistol and promptly chased after the robber. (R. p. 121; p. 204; p. 211). During the chase, he observed the robber's hat on the ground outside the store. (R. p. 69; p. 211). He then saw the robber seated in an older light-colored van parked nearby, and he shot out the rear window of the van as the robber "violently" sped away from the scene with the stolen jewelry. (R. pp. 121-123; p. 209; pp. 212-213; p. 237).

Minutes later, law enforcement officers began arriving at the jewelry store after being alerted of the armed robbery. (R. p. 245; p. 248; p. 258; pp. 289-291; pp. 346-347). Upon arriving, Sergeant Ronald Fair of the West Columbia Police Department spoke with Mancine, obtained a description of the robber, who was described as an approximately forty-year-old man that was 5'5" tall and weighed 150 pounds, and relayed that description to other officers in the area.¹ (R. p. 214; p. 254). Additionally, Sergeant Fair briefly spoke with Mancine's mother and the two customers who were inside the store at the time of the robbery. (R. p. 256; p. 371). Furthermore, officers reviewed and obtained surveillance footage from the jewelry store recorded on both the day of the robbery and two days earlier, located and collected a black fedora from the sidewalk outside of the jewelry store, and collected two fingerprints from the glass jewelry counters inside the store.² (R.

¹ Later that day, Mancine provided a slightly different description to another officer and indicated the robber was roughly 5'7" to 5'8" tall and weighed roughly 120 pounds. (R. pp. 68-69; pp. 88-89; pp. 347-348).

² Subsequent to the robbery, the two fingerprints collected from the jewelry store were analyzed by James Hickman, a latent print examiner for the Lexington County Sheriff's Office and an expert in fingerprint analysis. (R. p. 320; p. 336; pp. 475-476; pp. 478-479). After conducting

p. 81; pp. 199-200; pp. 249-253; p. 259; pp. 291-293; p. 296; pp. 309-311; p. 348). However, the officers were unable to locate the robber that day, and the jewelry taken during the incident was not recovered. (R. p. 321; p. 348).

Thereafter, on May 29, 2012, Investigator James Sullivan of the West Columbia Police Department transported the black fedora collected from the scene of the robbery to the South Carolina State Law Enforcement Division ("SLED") for analysis. (R. pp. 289-293; p. 322; pp. 468-469). A few weeks later, Betty Butler, a forensic technician at SLED, collected a DNA sample from the hat and submitted it for further analysis. (R. pp. 492-497). Subsequently, in September of 2012, Maryann Boehm, an expert DNA analyst at SLED, developed a DNA profile from the evidence collected from the hat and entered that profile into SLED's DNA database. (R. p. 504; p. 506; pp. 509-513; p. 533). Based on that submission, Applicant James Bubba Patterson was identified as a suspect in the robbery after it was determined his DNA profile, which had previously been submitted to the DNA database, matched the profile collected from the hat found at the crime scene, and that information was relayed to Captain Bruce Wade of the West Columbia Police Department. (R. p. 70; pp. 342-343; p. 346; p. 350; pp. 533-534; p. 537; pp. 543-545).

Upon learning of Applicant's connection to the robbery, Captain Wade obtained a photographic lineup from SLED that contained Applicant's photograph along with the photographs of five other similar-looking individuals and took that photographic lineup to the jewelry store on November 15, 2012. (R. pp. 72-74; p. 218; pp. 350-351; p. 354). At the jewelry store, Captain Wade showed the photographic lineup to both Mancine and Mancine's mother,³ (R.

his analysis, Hickman concluded one of the fingerprints recovered from the scene was left by Mancine's mother while the other fingerprint was not of sufficient quality to be used for comparative purposes. (R. pp. 483-485).

³ In addition to showing the photographic lineup to Mancine and Mancine's mother, Captain Wade contacted the customers who were present in the store at the time of the robbery in an

p. 72; p. 91; pp. 105-107; p. 217; pp. 353-355; pp. 369-370; p. 384). Mancine's mother was unable to select anyone from the lineup. (R. p. 91; p. 370). However, "almost immediately" after seeing the lineup, Mancine identified Applicant's photograph as an image of the individual who robbed the jewelry store. (R. p. 72; pp. 75-76; p. 90; pp. 108-109; p. 219; p. 355).

On the same day, Captain Wade tracked Applicant's vehicle to an impound lot for a towing company and went to examine the vehicle along with Captain Joseph Odom of the Richland County Sheriff's Office after a search warrant was obtained for it.⁴ (R. pp. 70-71; pp. 151-152; pp. 356-358; pp. 363-364; pp. 399-401; pp. 420-421; pp. 426-427). Upon examining the vehicle, which was an older light-colored van consistent with the van used by the robber, the officers discovered the van had been repainted and appeared to have had its rear hatch replaced with a rear hatch from a different brand of vehicle.⁵ (R. p. 71; pp. 359-361; p. 425; pp. 427-428; p. 434). Additionally, the officers discovered the van had a puncture mark to its ceiling near the rear hatch window. (R. pp. 431-432).

Based on the information Captain Wade collected during his investigation, Applicant was arrested in connection to the armed robbery on the following day. (R. p. 77; p. 364; pp. 388-389). At the time of his arrest, Applicant was forty-nine years old, was 5'5" tall, and weighed 140 pounds. (R. pp. 389-390). Following Applicant's arrest, Captain Wade met with Applicant and advised him of his rights, and Applicant signed a waiver form indicating he relinquished those

effort to have them view the lineup, but they indicated to the officer "they didn't want anything else to do with" the case and, as a result, were never actually shown the lineup. (R. p. 99; p. 371).

⁴ Applicant's vehicle had been securely held at the impound lot since May 24, 2012, and was never reclaimed. (R. p. 357; pp. 393-394; pp. 399-401).

⁵ When Applicant purchased the van in December of 2010, it had all its original parts other than its engine, which had been replaced. (R. pp. 406-408; p. 417).

rights. (R. pp. 78-79). Captain Wade then advised Applicant he wanted to speak with him about a robbery of a jewelry store located in West Columbia. (R. p. 80). In response, Applicant, a resident of Columbia, claimed he had only been to West Columbia three or four times during his lifetime and denied any involvement in the robbery. (R. p. 80; p. 85; pp. 377-378). At that point, Captain Wade alerted Applicant his DNA had been collected from a hat recovered at the scene of the crime, and Applicant responded to that information by becoming irate, cursing, ripping up the waiver form he had signed, and eating the pieces of that form. (R. p. 80; p. 85). Applicant then invoked his rights, and Captain Wade terminated the interview.⁶ (R. p. 80; p. 86).

Thereafter, officers collected a sample of Applicant's DNA, and it was transported to SLED for analysis.⁷ (R. p. 36; pp. 446-447; p. 471). Upon receiving Applicant's DNA sample, Boehm developed a DNA profile for Applicant and compared that profile to the profile that had previously been developed from the hat found at the scene of the robbery. (R. p. 519). After conducting that analysis, Boehm concluded Applicant's unique DNA profile matched the DNA profile found on the robber's hat. (R. p. 519).

During trial, Mancine testified about the harrowing details of the armed robbery along with his concerted efforts to stop the perpetrator of the crime, positively identified Applicant in the courtroom as the robber, and indicated he was certain of his identification of the robber. (R. pp. 195-222). Additionally, Jennifer Hubbard, a resident of West Columbia, recounted she was at a bus stop near the jewelry store on the afternoon of the incident, observed a man wearing a suit park

⁶ During trial, the trial judge ultimately suppressed testimony related to Applicant's post-arrest statement. (R. pp. 131-133).

⁷ Initially, Applicant's DNA sample was collected in 2013 by a detective who subsequently died before Applicant could be brought to trial. (R. p. 36). As a result, a new sample of Applicant's DNA was collected in December of 2015, and a new analysis of that DNA sample was conducted prior to trial. (R. p. 50; pp. 446-447; pp. 513-514; p. 519).

a light-colored van in a parking lot nearby, watched the man walk in the direction of the jewelry store with a bag, and then saw the man run back to the van a few minutes later before an armed individual ran up and fired gunshots at the man's van as it sped away from the area.⁸ (R. pp. 264-280). Likewise, evidence was presented establishing Applicant purchased a light-colored van a few years before the incident, that van was repainted and had its rear hatch replaced at some point thereafter, and the van was never reclaimed after it was taken to an impound lot subsequent to the robbery. (R. pp. 359-361; pp. 392-396; pp. 398-402; pp. 404-408; pp. 413-417; p. 425; pp. 427-428). Furthermore, the officers and other law enforcement personnel involved in the investigation into the armed robbery testified about the details of their investigation and Applicant's eventual arrest for the commission of the crime. (R. pp. 245-256; pp. 258-260; 289-336; pp. 346-389; pp. 388-390; pp. 420-437; pp. 475-485). Notably, during Captain Wade's testimony, the officer informed the jury – without objection – he received notice from SLED and its DNA database that identified Applicant as a suspect in the armed robbery. (R. p. 350).

Testimony was presented establishing DNA samples were collected from the hat recovered at the scene of the crime and from Applicant following his arrest.⁹ (R. pp. 446-447; pp. 493-497). Additionally, Maryann Boehm, who was qualified as an expert in DNA analysis and statistical calculation, confirmed she developed a DNA profile from the hat and entered it into SLED's DNA database, which she stated contained profiles from "known individuals" as well as from evidence

⁸ Similar to the description of the robber provided by Mancine, Hubbard described the man she observed get into and out of the van around the time of the robbery as an approximately forty-year-old man who was roughly 5'5" to 5'6" tall and weighed between 180 and 200 pounds. (R. pp. 267-268; p. 283).

⁹ Testimony was also presented during trial establishing a complete chain of custody in regard to the hat, the evidentiary swab collected from the hat, and the DNA swab collected from Applicant. (R. pp. 292-293; pp. 446-447; pp. 468-471; pp. 473-474; pp. 493-497; pp. 509-511; pp. 513-516).

collected at crime scenes. (R. pp. 511-513). She further confirmed she later developed a DNA profile from the sample of Applicant's DNA and compared it to the DNA profile she developed from the hat. (R. pp. 513-514; p. 519). After conducting that comparison, Boehm testified she conclusively determined Applicant's DNA profile, which she indicated was unique to him, matched the DNA profile developed from the hat.¹⁰ (R. p. 507; p. 519). Regarding the strength of that match, Boehm indicated the probability of randomly selecting an unrelated individual with a matching DNA profile was a one-in-730-quintillion chance. (R. p. 519).

During the course of trial, the solicitor called Rhonda Fields, a SLED employee who worked in the agency's DNA database unit, to the witness stand, and defense counsel immediately raised an objection to her testimony. (R. pp. 337-338). In support of that objection, defense counsel indicated – outside of the presence of the jury – SLED had received a “CODIS hit” in Applicant's case, noted Lieutenant David McClure from SLED alerted Captain Wade of the “hit” as opposed to Fields, contended a reference to the DNA database match would inappropriately confirm to the jury the existence of Applicant's prior record in light of the reason DNA profiles were included in the DNA database, and asserted there was no chain of custody regarding the DNA profiles entered into the database.¹¹ (R. pp. 338-339). In response, Fields confirmed she intended to testify in Lieutenant McClure's place in light of his retirement, and the solicitor contended the testimony related to the DNA database match was probative and necessary to explain to the jury how law enforcement was able to identify Applicant as a suspect in the armed robbery, which the

¹⁰ During her testimony, Boehm explained DNA profiles consist of a series of numeric codes representing loci and alleles, which are developed into charts and compared to one another to check for a match. (R. pp. 522-527).

¹¹ During sentencing proceedings, the solicitor recounted the details of Applicant's substantial prior criminal record, which spanned roughly thirty years and contained numerous felony convictions. (R. pp. 609-611).

jury would have had no way of knowing without testimony related to the match made by SLED, while confirming she would not seek admission of the letter from SLED confirming the DNA database match during the trial. (R. pp. 338-341). After hearing the contentions of the parties, the trial judge asserted:

The collection of DNA materials that form the database, I agree that it's taken from a thousand different places and it may not always be – and I'm not certain of this fact, it may not always be indicative of a prior criminal record. It may be. It may be, but, as I said, I'm not certain of that, but that's the primary source of the DNA that's in the databank. But unless you can show me some case law that says they can't use it, I'm gonna allow it.

(R. p. 340). Defense counsel then again contended the evidence was inadmissible based on a chain of custody problem while alleging Fields had no personal knowledge in regard to the DNA match in Applicant's case. (R. pp. 340-341). At that point, the trial judge directed the solicitor to proffer Fields's testimony. (R. p. 342).

During the proffer, Fields confirmed Captain Wade was notified Applicant's DNA profile was determined to match the DNA profile developed from the hat recovered at the scene of the robbery following a search involving the SLED DNA database. (R. pp. 342-343). Additionally, Fields confirmed Lieutenant McClure conducted the search of the database after Boehm entered the profile developed from the hat. (R. p. 343). Fields further confirmed she might have been involved in reviewing the match once it was made, but she was not certain at that time. (R. p. 344). Based on that testimony, the trial judge advised Fields she needed to get all the relevant information related to the case, and the solicitor indicated the matter needed to be reserved for a later time. (R. p. 344).

As the trial continued forward, the solicitor again proffered the testimony of Fields. (R. p. 532). During the second proffer, Fields testified the DNA profile developed from the hat was entered into SLED's DNA database by Boehm for a search. (R. p. 533). After that, Fields stated

she personally reanalyzed the data received as a result of that search for confirmation purposes, which she noted was the process followed in every database search, and personally confirmed both Applicant's DNA profile from the database matched the DNA profile developed from the hat and the fingerprint associated with Applicant's DNA profile, which had been assigned a unique identification number, had been verified to belong to Applicant. (R. pp. 533-536; pp. 540-541). Additionally, Fields noted the information collected as a result of the database search was further reviewed by another analyst before the confirmation of the match was sent to Captain Wade. (R. p. 537). Furthermore, Fields conceded she did not have all the chain of custody information for the DNA profiles included in the DNA database. (R. p. 538; p. 540). However, she stated the profiles in the DNA database were usually collected at the time an individual was arrested for or convicted of a crime, and she indicated SLED had a tracking system that showed when a sample was collected for the database and sometimes who actually collected the sample.¹² (R. pp. 538-539).

At the conclusion of the proffer, defense counsel reiterated his objection to the proffered testimony and argued it should be excluded because it was allegedly irrelevant, unduly prejudicial, violative of due process based on a lack of authentication and a sufficient chain of custody, inadmissible as evidence of a prior bad act, inadmissible as improper impeachment evidence, cumulative, and inadmissible without the testimony of Lieutenant McClure. (R. pp. 541-542). In rebuttal, the solicitor contended the evidence was admissible and necessary to show how Applicant was identified as a suspect in the armed robbery, which could not be shown without that particular link in the investigation. (R. p. 542). After considering the arguments of counsel, the trial judge

¹² Although she disclosed it during the second proffer, Fields did not reveal to the jury DNA samples collected for the DNA database were usually collected at the time of arrest or conviction. (R. pp. 538-539; pp. 543-547).

overruled defense counsel's objections and ruled Fields could testify before the jury in the limited manner proposed by the solicitor. (R. p. 542). Following that ruling, Fields testified before the jury and noted – over objection – the DNA profile developed from the hat found at the crime scene was entered into SLED's DNA database, which led to Applicant being developed as a suspect in the robbery. (R. pp. 543-546).

Thereafter, at the conclusion of the evidentiary phase of trial, the parties rested their cases and presented their closing arguments to the jury. (R. p. 547; pp. 556-585). During the prosecution's closing argument, the solicitor noted to the jury Applicant was only identified as a suspect in the jewelry store robbery after a DNA profile developed from the robber's hat was entered into SLED's DNA database, which led to the inclusion of Applicant's photograph in the photographic lineup, Mancine's subsequent identification of Applicant as the armed robber, and the discovery Applicant's DNA profile conclusively matched the DNA profile developed from the evidence collected at the scene of the crime. (R. pp. 563-564; pp. 568-569). Conversely, during the defense's closing argument, defense counsel characterized the investigation into the armed robbery as "incomplete, inept, and inaccurate," contended the flaws with the investigation meant Applicant's case was "drenched" in reasonable doubt, and called the jurors' attention to evidence that had not been presented, including testimony from Mancine's mother and the other victims present during the armed robbery aside from Mancine. (R. p. 570; pp. 571-572; p. 574).

Following the parties' closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 585-598). In instructing the jury on the law, the trial judge thoroughly defined reasonable doubt and specifically explained Applicant was not required to prove his innocence, Applicant was presumed to be innocent, Applicant could only be convicted based upon evidence proving his guilt beyond a reasonable doubt, and the State had the sole burden of proving

Applicant's guilt for each and every element of the charged crimes beyond a reasonable doubt.¹³ (R. pp. 588-590; p. 593).

At the conclusion of trial, the jury convicted Applicant as indicted. (R. p. 606). Following the verdict, the trial judge sentenced Applicant to an aggregate term of imprisonment of twenty years. (R. pp. 614-615).

Summary of PCR Hearing Testimony

James Bubba Patterson

During the PCR hearing, James Bubba Patterson testified that he was represented at trial by David Mauldin and Robert Madsen. He stated that he was arrested in November 2012 and remained in jail. He stated that there was one bond hearing and it was denied. He claimed that his counsel came to see him only three or four times. Counsel advised him that there was an investigation of what actually happened in his case.

The Applicant contends that there was a Sixth Amendment violation because his counsel failed to come to see him and explain the status and what is allowed in his case. He stated that he did not know the law and he needed counsel's assistance.

The Applicant stated that he never told his attorney that he would plead guilty. The Applicant asserted that there were no deals because the solicitor was not making any plea deal on his case. He claimed that there was a due process violation because there was new evidence presented at the trial that he had never heard about. He specifically referred to the testimony of Investigator Bruce Wade and he was not sure what it meant to his case.

¹³ At the conclusion of his jury charge, the trial judge presented a supplemental instruction to the jury to clarify Applicant had pled not guilty to the charged crimes and again reiterated the State had the burden of proving Applicant's guilt beyond a reasonable doubt at that time. (R. p. 600).

The Applicant claimed that the chain of custody was not adequate and was not objected to by the defense as it related to the DNA and how they processed it. He claimed that the defense should have presented evidence that would have refuted the DNA testimony.

The Applicant also claimed that counsel should have objected to the lineup as unduly suggestive which he claimed counsel did not do. The Applicant also claimed that he wanted to see the video. He claimed there was nothing said about being identified prior to the trial.

On cross-examination, the Applicant stated that he told his counsel in their first meeting that he did not commit the crime. His counsel kept telling him that they were waiting on the evidence months later when counsel finally met him again. Patterson claimed that there were different descriptions of the person who came out of the store, particular as to his weight. He also complained about the conflicting evidence about the identification and of the descriptions of the vehicle. He also claimed that before trial he only met 2 or 3 times with counsel. The Applicant claimed that he was worried that when he got to court that he would be identified. Concerning the state's case against him., he said counsel advised him that he was charged with armed robbery and that there was evidence connecting the crime to him that was found on the property. Patterson stated that this was probably about the hat. He further stated that his counsel advised him not to testify at trial.

Robert Madsen

Counsel Rob Madsen testified that he is presently retired, but was criminal defense lawyer, primarily with the Lexington Public Defenders Office. He stated he represented the Applicant after the office was appointed in January 2013. Madsen testified that he first met with Applicant on January 17, 2013. He described that this case involved the robbery of a jewelry store by a person who was wearing a suit, hat and dark glasses. Madsen stated that there were four people in the

store at the time, including the owner, his mother and his wife. Madsen described that the state's evidence indicated that the individual ended up pulling out a gun and taking some jewelry. He described that the robber dropped his hat when he left the store and that the owner shot at the truck of the robber as he escaped. Madsen indicated the Applicant subsequently reported that his truck was lost a few days later. However, Madsen said that the truck was stopped and impounded on May 24, 2012 when Kenneth Bates, the driver at that time, was arrested on separate unrelated charges.

Madsen indicated throughout his representation he received various information from his client. Madsen stated that he spoke with ATF concerning the Applicant's assertions in their defense after a discussion with Patterson. Madsen also looked at the case as a possible inside insurance scam based upon his client's representations to him.

Counsel testified that he received discovery from the state initially on January 31, 2013. He stated that he met with the Applicant on May 5, 2013 and went over that discovery with him. He stated that his client did not want a copy of the discovery to keep at that time. Madsen stated at that point of time, the discovery did not include the DNA evidence information related to the hat. He stated that there was additional discovery later after the CODIS hit. Madsen testified that he recalled that there was a hat and two cigarette butts recovered at the crime scene area. He testified that there was a Schmerber hearing related to the DNA swabs of the Applicant. He recalled that the DNA comparison number was a gigantic number as to the hat and the Applicant.

Counsel stated that an initial part of his investigation was focused on whether it was an inside insurance scam job. At another meeting with the Applicant, Patterson indicated it was an insurance scam that was run by Muslims and Koreans. Counsel stated that he looked into the Applicant's theory of involvement in an insurance scam, but in one meeting he drastically changed

his story and denied being involved in the incident. An additional alibi theory caused him to go to the South Carolina Department of Corrections to talk with potential witnesses about the scam. Later, Patterson had indicated on an alibi issue to investigate, albeit after he had claimed to counsel that he was involved in an inside job. He had an investigator attempt to locate information and corroboration of the limited information he received from Patterson. Patterson claimed an alibi defense in North Carolina, but he was unable to give Madsen anything to substantiate the assertion. Madsen also indicated that he considered an issue concerning the Applicant's competency to stand trial. Madsen hired a private consultant who concurred with the State mental health evaluator that Patterson was competent to stand trial.

Madsen pointed out that the Applicant had a significant criminal record and he advised the Applicant about the potential impeachment if he testified. He testified that he did not think that the Applicant would be a credible witness at trial.

Madsen testified that he was assisted at trial by David Mauldin. Mauldin's role was to take notes and point out matters that needed to be explored or missed. He was focused on areas related to the hats, cigarettes, chain of custody and issues with the officer who had died in the interim. Madsen recalled that he explored the critical issues on cross-examination and also moved to exclude evidence related to the search of the van and the DNA evidence.

Concerning the Applicant's complaints about photo lineups, counsel thought that these were adequately covered during the Neil v. Biggers hearing and that he thought that he would have objected and asserted to rely on the trial record. As far as the testimony from the people in the store, he did not recall at the hearing if all of them testified, but he knew the mother did not testify. Counsel thought the discrepancies were brought out on cross-examination at trial. Counsel stated

that he tried to get the identifications suppressed and emphasized that that the owner of the vehicle was not the person driving when the vehicle was stopped at a later date.

On cross-examination, Madsen testified that he learned either through discovery by the State or in their investigation that Applicant had called in a claim that the van was stolen.

As to the alibi suggestion, counsel thought the Applicant was very vague about North Carolina and did not indicate to him any hotel or specifics as to where he was staying. The Applicant also made claims to counsel about working with ATF or the FBI, but counsel was never able to substantiate them.

Counsel testified that he met with the Applicant 14 times, contrary to the Applicant's assertion of much fewer meetings. He declared the Applicant switched his theory from actual involvement in the crime to an alibi during the last meetings before trial.

Contrary to the assertion by the Applicant, the Applicant was given a plea offer at one point, according to Madsen. He went over the offer on September 4, 2013. He recalled that the offer was to plead guilty straight up to armed robbery and to dismiss kidnapping, but the Applicant rejected it. He was always facing 10 to 30 years. The State never offered a better plea offer and the Applicant rejected the same offer again prior to the trial.

General Law Related to Issues.

Ineffective Assistance of Trial Counsel, Generally

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” Strickland v. Washington, 466 U.S.

668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; *see also* Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally

competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; *see also* Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland’s deferential standard.

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an

applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. *See id.*, at 695 (Where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at

690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding").

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Cross-examination and Evidence related to the Identification of the Applicant

In his second amended application, allegation 1(a), the Applicant contends that counsel failed to adequately cross-examine the trial witnesses as to the identification of him. His apparent claim is that defense counsel did not focus his cross-examination related to the crime scene witnesses who did not identify him at the robbery or testify at trial. This Court must find that he failed in his burden of proof of showing either deficient performance or prejudice.

How the Identification was presented at trial

The record shows that an *in camera* hearing was held prior to the trial related to the identification of the Applicant by Frank Mancine. During this proceeding, Investigator Bruce Wade testified about his preparation of a line-up and that the Applicant had been linked to the incident. The line-up was prepared by SLED and the photos looked similar. Tr.p. 53-54; ROA 72-73. Mancine was told by Investigator Wade that the perpetrator may or may not be in the lineups. Tr.p. 55; ROA 74. On November 15, 2012, when shown the lineup, Mancine made an identification in less than a minute. Tr.p. 57; ROA 76. It was determined after the arrest that the Applicant was 5'5" and weighed approximately 150 pounds. Tr.p. 62; ROA 81. Investigator Wade also indicated that he had reviewed the surveillance tape of the incident from the May 9, 2012 date of the robbery and the earlier date of May 7 which showed that the Applicant had contact with

Mr. Mancine on both dates at less than two feet apart on multiple times and conversing in the videos. Tr.p. 63; ROA 82.

On cross-examination of Investigator Wade, counsel Madsen developed that they had recorded the interview with Mr. Mancine, but did not record the interview with the Applicant on November 16, 2012. Tr.p. 65; ROA 84. He stated he did not have a copy of the waiver form because Patterson tore it up destroying it and he may have eaten it as Wade recalled. Patterson claimed to them that he did not have any involvement in the robbery.

Investigator Wade described that SLED had prepared the photographic lineup. Wade stated that SLED sent one lineup set in black and white and one lineup set in color. Investigator Wade used the black and white lineup concluding that it was harder for the witness to pick one out in black and white than in color lineup. Investigator Wade described the unwritten protocol he used for photo lineups based upon his training.

That you let the victim know I've got a photo lineup to show you, it will be a series of six photos, the suspect may or may not be in this photo lineup, but if you see the person who committed this crime against you, I'd like for you to select him in the photo lineup.

Tr.p. 68; ROA 87.

Investigator Wade stated that Mr. Mancine indicated to him in the May 9, 2012 interview that the perpetrator was a black male, five-seven to five eight, early forties, and 120 pounds and wearing a hat. Tr.p. 69-70; ROA 88-89. Investigator Wade also recalled that the robber was wearing a hat and large sunglasses in the surveillance video. Investigator Wade further confirmed that in the photo the Applicant had a pencil line mustache above his lip. Tr.p. 70; ROA 89. Investigator Wade also confirmed that it took less than a minute for the identification after viewing the lineup. Tr.p. 71; ROA 90.

Investigator Wade also confirmed that he had shown the lineup to Mr. Mancine's mother who was also in the store that date. She had been waiting in a different room than Mr. Mancine was when he identified the Applicant. Investigator Wade stated that she looked at it a while but did not pick out the suspect. Tr.p. 72-73.; ROA 91-92.

On re-direct examination, the State had Investigator Wade confirm that the photographs in the lineup (State Exhibit 1) did not have a significant facial hair and facial hair had not been part of the description for the lineup. Tr.p. 77, ROA 96. The State, though Deputy Solicitor Mayes then focused her questioning with Investigator Wade about his inquiry about Mr. Mancine's mother, Tokye Mancine.

Q. Was she also present at the jewelry store on the date of the robbery, May 9, 2012?

A. That's correct.

Q. Have you had the opportunity to review the video surveillance as to her degree of interaction with the suspect?

A. Yes, ma'am. She had limited interaction with him. It was more of him dealing with Mr. Mancine.

Q. All right. When he came into the store on May 7th -- or the suspect came into the store on May 7th, who was he conversing with?

A. Mr. Mancine. I don't even recall seeing Mrs. Mancine in the store that particular day.

Q. All right. And then two days later on the date of the robbery, who was the suspect interacting with prior to pulling out the weapon?

A. Mr. Mancine.

Q. And who was it that he actually pulled out the weapon and pointed it at?

A. Mr. Mancine.

Q. All right. And then at some point is Mrs. Mancine present on the video?

A. She is.

Q. Based upon your observations, was her degree of interaction with the suspect the same or equal to that of Mr. Mancine?

A. No.

Tr.p. 78-79; ROA 97-98.

Counsel Madsen then inquired of Investigator Wade if he had shown the photographic lineup to anyone else and he declared that he had not. Tr.p. 80, ROA 99.

Next, during the *in camera* hearing, Frank Mancine testified. He described the perpetrator, his clothes, his suit and his hat. Tr.p. 82-84; ROA 101-103. Mancine also described the process of the presentation of the line-up to him. Tr.p. 88- 90; ROA 107-1089. Mancine testified it only took him a few seconds to identify the Applicant's photo. Tr.p. 90; ROA 109. He acknowledged that he was speaking to the Applicant at a distance of approximately two feet. Tr.p. 92; ROA 111.

On cross-examination, counsel Madsen developed through Mancine that on the 7th his mother was in the store with him when the Applicant first came to the store. Tr.p. 93; ROA 112. He confirmed on the first day, the Applicant was there two to three minutes. On the date of the robbery, Mancine stated that the Applicant was in the store, less than ten minutes. Mancine described two other customers in the store; Tommy and his girlfriend. Tr. p. 94-95; ROA 1134-114. He recalled that his mother was dealing with Tommy and Amanda. Tr.p. 95; ROA 114. During the robbery, Mancine recalled that his mother put the jewelry in the bag that was thrown at them after the perpetrator pulled out the gun after he showed him the gold necklaces. Tr.p. 98; ROA 117.¹⁴ Mancine described shooting his gun at the perpetrator after he fled from the store when his gun initially jammed. Mancine takes the bullets from the gun and clears it. He then leaves

¹⁴ In his testimony before the jury, Mancine indicated that the perpetrator filled up the bag himself. Tr.p. 178; ROA 197.

the store giving chase. When he sees the driver pull out, Mancine fired another round from the store and hits the back glass of the van. Tr.p. 102-104; ROA 121-123. Mancine describes on November 15, 2012 when Investigator Wade presented the lineup and confirmed that his mother was not in the same room when he did his lineup. Tr.p. 106-107. ROA 125-126.

On re-cross-examination, counsel Madsen confirmed that Mancine initially gave a description of five-five, 150, mid-forties and black. Tr.p. 109-110. ROA 128-129.

The defense urged that the identification evidence should be suppressed. Tr.p. 114-116. ROA 133-135. The trial court denied the defense request and found that it was admissible. Tr.p. 119-122. ROA 138-141.

Trial Matters Related to the Identification and Photo Line-up

A review of the trial reveals the manner that the defense handled the issues related to the identification before the jury. The testimony was similar to the *in camera* proceeding.

In the opening statement at trial, Assistant Solicitor Gill Bell discussed briefly the circumstances of the crime and the victim's initial description of the robber. Tr.p. 167-169. ROA 186-188. He stated that sometime later law enforcement reached back out to the victim with a photo lineup and the lineup had six photos of a gentlemen with similar features, how SLED put the lineup together, and that Frank Mancine, unaware that one of the six was a DNA match to the hat, selects Patterson as the man who was the robber. Tr.p. 169; ROA 188.

In the defense opening statement, counsel Madsen urges the reasonable doubt standard, urging the jury that there were no fingerprints inside the business, no jewelry was recovered of the Applicant, and no evidence that the Applicant fenced the jewelry. Tr.p. 174-175. ROA 193-194.

Frank Mancine was the initial witness before the jury. He testified similarly to his earlier testimony related to the identification and lineup. He described that on May 9, 2012, while his mother was assisting two customers, a gentleman came into his jewelry store wearing sunglasses, a dark suit, and a fedora hat. He was carrying a dry-cleaning bag. Tr.p. 177; ROA 196. He asked to see some necklaces which Mancine then showed him. However, the man eventually pulled out a pistol and a dark bag, demanding that he fill it up. Tr.p. 178-179; ROA 196-197.

Mancine stated that he did not fill up the bag. The perpetrator threw the bag at one of his customers and then recovered the bag. The perpetrator filled up most of the bag himself. Mancine described that the perpetrator leaned over the showcase and started grabbing a tray and filling it up with necklaces and bracelets. Most of the bracelets he took were made of 10 karat gold. Tr.p. 177-178; ROA 196-197.

Mancine described the fact that he had seen the same person in the store two days before. He stated the person on that date was wearing the same clothes -- the suit, sunglasses, the fedora hat and possessed the dry-cleaning bag. It was at closing time. The person indicated to Mancine that he just wanted to look around and did not buy anything and left without a problem. Tr.p. 179; ROA 198.

As the surveillance video was played to the jury of the May 9 incident, Mancine described the incident, including his face to face discussions with the person. Tr.p. 182-183; ROA 201-202. Mancine confirmed that he could see the features of the perpetrators face and could make out the features of his nose, mouth and prominent lips. Mancine noted that his mother kept coming into the frame on the video. Tr.p. 184; ROA 203. Similarly, Mancine described the earlier May 7 video when the perpetrator entered the store briefly at closing time and his ability to describe his features. Tr.p. 185-186; ROA 204-205.

Mancine noted that the counter between them was approximately 20 inches or less than two feet. Mancine noted in the video that the perpetrator was leaning in and was closer which gave him a good opportunity to see his face in his well-lit store with the sunlight. Tr.p. 188-189; ROA 207-208.

Mancine described that he pursued the perpetrator after his initial shot missed. While in pursuit, he saw the hat the individual was wearing on the ground as he ran passed it. He then saw the van that the individual had entered and Mancine shot the van's back window which shattered. Tr.p. 193-195. ROA 211-213.

When he returned to his store, he contacted law enforcement and made an initial description of the perpetrator as five-five, approximately 150 pounds, with a hat and sunglasses, and dry-cleaning bag wearing a dark suit and Black. Tr.p. 195-196; ROA 214-215.

Mancine was then shown the hat which he also identified on the video and explained why it appeared to be a different color on the video based on the lighting in the store. Tr.p. 197-198; ROA 216-217.

Mancine then described a later meeting with law enforcement again to look at a lineup at his store, referring to State Exhibit 1. Mancine described to the jury that the exhibit was the same lineup that he was shown that day with 6 individuals. He stated that the lineup was laid out on the top of the store's showcase. He stated that the officers did not hover over him or make any gestures or suggestions as to who to pick. He stated that it only took him a few seconds to select number 3 out of the lineup, which he circled and signed with his initials. He told them that he was the guy who robbed them. Tr.p. 199-200; ROA 219-220. He had no doubt that this was the perpetrator who robbed him.

Mancine described that at the time of the incident there were four individuals that Patterson pointed the gun as he was waving it around. Mancine described the pregnant female in the store was terrified, and her boyfriend was shocked and could not move. The female customer ran behind the showcase lying down to hide which Mancine confirmed was shown in the video. Tr.p. 202; ROA 221. Mancine described that he thought he felt an adrenaline rush and was shocked and not well, when the gun was pointed at him. *Id.* However, Mancine did not think it affected his ability to perceive what was happening or affect his vision or his judgment. Mancine admitted that he wore corrective lenses then and now. He then pointed out the Applicant in court as the person who robbed him without any doubt. Tr.p. 203; ROA 222.

On cross-examination, counsel Madsen got Mancine to confirm that at the earlier meeting of the perpetrator at his store on May 7, that he only saw the perpetrator for a couple of minutes and that his mother was the only other person present at the time. However, counsel Madsen pointed out that it was actually only 50 seconds according to the surveillance video. Tr.p. 204; ROA 223. Counsel pointed out that the individual came from the right of the store and that Mancine was cleaning the showcases when he entered. However, Mancine confirmed he did not see what vehicle the individual was driving initially. He was able to describe a suit-styled shirt, pants, hat and sunglasses, but did not recall any type of facial hair. Tr.p. 205-206; ROA 224-225.

As to the day of the incident, Mancine recalled he was just standing there when the individual entered the store and that his mother was assisting the other customers. Although he did not feel he could state how long the person was in the store, it was pointed out to Mancine that at a prior hearing, he had testified it was about ten minutes.¹⁵ Tr.p. 206-207; ROA 225-226. It was

¹⁵ During the in camera proceeding, Mancine testified on defense questioning that it was "about ten minutes." Tr.p. 95, l. 4; ROA 114.

then pointed out by the defense that it was only three minutes, which did not surprise Mancine. There was also a discussion about what Mancine meant when he described the sunglasses as being large. Tr.p. 207; ROA 226.

The defense further inquired about the audio statement Mancine made at his store with the Columbia Police Department with Mancine's family friend and lawyer Adrian Falgione present. Mancine indicated to defense counsel that he could not remember it when asked to confirm whether he told investigator Wade that the individual's weight was 170 pounds, five-seven or five-eight or had prominent or large lips. Tr.p. 208-209; ROA 227-228.¹⁶ He confirmed that he did not remember the weight. *Id.*

Mancine confirmed to the defense counsel that the individual pulled out the gun from his left side and held it with his left hand. He stated that he believed the bag could have been underneath the dry-cleaning bag, but his did not specifically recall. He stated that he was probably a couple of feet away when the gun came out but admitted he was too busy looking at the gun. He admitted feeling lightheaded at that time. Mancine stated the individual threw the bag at the female customer and she did not touch it. Tr.p. 210; ROA 229.

Mancine confirmed that the perpetrator leaned over the counter and grabbed the jewelry trays and he believed that his mother put the jewelry into the perpetrator's bag. Tr.p. 212; R. 231. Once the robber started to leave, Mancine confirmed that he turned around and went into the back room and grabbed his loaded gun. Mancine stated he then fired a shot at the individual as he was facing Mancine. Mancine saw him go to the right of the store running off. Tr.p. 214-215; R. 233-

¹⁶ Mancine testified on direct examination that his initial description was that the individual was five – five and approximately 150 pounds. Tr.p. 195; ROA 214. In the in camera proceeding, he testified similarly at five-five and 150 pounds. Tr.p. 103; ROA 127. However, he stated that he did not recall that he estimated that the suspect was five-seven to five -eight to Investigator Wade. *Id.* See also Tr.p. 98; ROA 117 (120 pounds).

234. Mancine said his gun jammed with the first shot. Mancine described coming out of the store and getting the gun unjammed and he saw the van was not moving. Upon seeing Mancine, the van pulled out violently and Mancine fired again, this time shattering the back window of the van. Tr.p. 216-218; R. 235-237. Mancine described that about six months later he was shown a line-up at his business by West Columbia police officers. He confirmed that this was the first time he was shown any line-ups. Tr.p. 219; R. 238.

Sgt. Ronald Fair of the West Columbia Police Department testified about his arrival at the scene within a minute of the 911 call. He spoke with Mancine and received a description of the suspect. Tr.p. 229; R. 248. On cross-examination, Sgt. Fair confirmed that he spoken with Mr. Warner and Ms. Knight, the two individuals inside the store at the time of the incident. Tr.p. 237; R. 256.

West Colombia Police Investigator Bruce Wade testified that about six months after the incident, the Applicant was developed as a suspect in the case. Investigator Wade showed the line-up which included Applicant to Mancine who identified the suspect as the perpetrator "almost immediately" in less than a minute. Tr.p. 331-336; R. 350-355.

On cross-examination of Investigator Wade, counsel Madsen developed that others at the scene were also interviewed. Tr.p. 348-350; R.p. 367-369. Investigator Wade confirmed that he was not sure that the mother of Mancine, Kim Mancine was interviewed, however, he acknowledged he later showed her the line-up. Tr.p. 350-351; R.p. 369-370. Counsel Madsen's questioning had Wade confirm that Ms. Mancine did not pick out anyone and that the line-up when his client was in the line-up. Counsel Madsen also had confirmation that Tommy Warner and

Ashley Knight were interviewed who were in the store, as well as Jennifer Hubbard¹⁷ and Norman Bradwell. Tr.p. 351; R. 370.

Madsen had Wade confirm that the line-up was not shown to anyone other than Mancine and his mother. Wade indicated that there was an attempt to show the line-up to Ashley Knight and Tommy Warner, but when Wade made contact with them they told him that they had passed that point in their life and they did not want anything else to do with it so they did not come in and see the line-up. Tr.p. 352; R. 371. Madsen had Investigator Wade confirm that line-ups were not also shown to Jennifer Hubbard, Norman Bradwell, and Kenneth Branham. Tr.p. 353, R. 372.

On re-direct, Solicitor Mayes developed that Kim or Tokye Mancine's first language was not English, but was Korean. Upon reviewing the videos of the crime on May 9th and on May 7th, it appeared that the perpetrator had more contact with Mr. Mancine than with her on the 9th and that she had no contact with him on the 7th. Tr.p. 355; R. 385. In addition, Wade confirmed when the line-up was developed six months later on November 15, 2012, customer Tommy Warner was no longer interested in continuing to participate in the investigation, which is common for crime victims and were not shown the line-ups. Tr.p. 366-367; R. 385-386.

During the closing arguments, defense counsel Madsen asserted that the state's theory in the case was "speculation, conjecture and assumption that comes from an investigation that was

¹⁷ Jennifer Hubbard testified that she was at a children's school bus stop with her child when a man parked his van near her, grabbed a plastic bag and walked toward the area where the jewelry store was. She described that later the man was seen running back to the van and then she saw another man running toward the van and that man fired a shot breaking the window of the van as it drove off. Tr.p. 245-264. She gave similar description of the man in the van as a black male, early to mid-forties, 5'5" to 5' 6" tall in a suit, white button up shirt, dress shoes, no tie between 180 to 200 pounds. Tr.p. 248-249, 261, 264. Counsel Madsen cross-examined her related to her description of the person who both left and later entered the van as to being a black male, early to mid-forties and about 180 to 200 pounds, which was what she told the police. Tr.p. 264-266; R. 283-285.

incomplete, inept and inaccurate. An incomplete, inept and inaccurate investigation.” Tr.p. 551, ll. 15-18. R.p. 570.

In addressing the identification of the Applicant, defense counsel pointed out:

Everyone's in there for the same three minutes. Mrs. Mancine is just as close as Mr. Mancine. Mr. Mancine really wants to believe, but he 's wrong. So you've got no ID by Kim Mancine. We've got fingerprints, so we know she's within arm's reach. Tommy Warner, the other fellow in that small store. You don't think that if he picks out James he's not here. No, we don't need that. How about Ashley Knight? The testimony is that the bag was thrown to her, which means she's nice and tight. It's not that far from one side over there to the other. No ID. You can never put a quantitative numerical value on reasonable doubt. Twenty-five percent of the people ID'd my client. Like I said, you can't put a numerical value on reasonable doubt, but I would assume that you, if there was a number, that twenty-five percent would be that number. That would be the gold standard of that number.

Tr.p. 554-555; R.p. 573-574. Counsel Madsen further argued that Jennifer Hubbard, the woman at the bus stop by the parked vehicle did not make an identification of the Applicant because she only focused on the victim's gun. Tr.p. 555-557, R.p. 574 -576. Counsel Madsen speculated that law enforcement did not want her to attempt a photographic identification, because they already had one from Mancine.

Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S.Ct. 2052. In addition, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed deficient performance. Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000). As the Supreme Court explained in Strickland,

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to

reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694-95 (citations omitted). Stone v. State, 419 S.C. 370, 383-84, 798 S.E.2d 561, 568 (2017).

The Applicant Failed to Prove that Counsel was Deficient in his cross-examination of the witnesses related to a failure to identify the Applicant and Prejudice under Strickland has not been shown.

This Court finds that the Applicant failed to show that counsel was deficient in the manner he questioned State witnesses about the lack of identification of the Applicant by others at the crime scene. The Strickland presumption that counsel's conduct fell within the wide range of reasonably professional assistance operates with particular force when the conduct at issue relates to counsel's conduct of cross-examination. "Decisions about 'whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature' and generally will not support an ineffective assistance claim." Dunham v. Travis, 313 F.3d 724, 732 (2d Cir.2002) (quoting United States v. Nersesian, 824 F.2d 1294, 1321 (2d Cir.1987)) (omission in original); see also Eze v. Senkowski, 321 F.3d at 132. United States v. Soto-Alvarez, 958 F.2d 473,479 (1st Cir.1992). In order for Applicant to meet the Strickland standard when claiming inadequate cross-examination, he must (1) provide "facts indicating that the cross-examination was inadequate" to show that counsel committed errors so serious as to fall below an objective standard of reasonableness, and (2) indicate "what further cross-examination might have revealed" to show that Petitioner was prejudiced by the concealment of such information. See Shraiar v.

United States, 736 F.2d 817, 818 (1st Cir.1984). Here, he has shown neither. This case presents no exception to this general rule.

Counsel's presentation on cross-examination before the jury was reasonable. As noted above, counsel Madsen presented through cross-examination of Investigator Wade the fact that Kim Mancine was unable to identify the Applicant in the line-up when it was shown to her. Tr.p. 350-351; R. 369-370. Counsel Madsen further developed through Investigator Wade that he had not shown the line-up to anyone else. This included customer Tommy Warner, customer Ashley Knight, bus stop witness Jennifer Hubbard and Norman Bradwell. Tr.p. 350-352; R. 371-372. Jennifer Hubbard testified about her description of the person she saw, but never identified the Applicant as that person. Tr.p. 264-266; R. 283-285.

Counsel used this information about the lack of identification by other scene witnesses in his closing argument. Tr.p. 554-557; R.p. 573-576. He contended that the failure of the other scene witness to either identify or be asked to identify suggested law enforcement did not want to risk undermining Mancine's favorable identification of the Applicant which created a doubt.

The Applicant has failed to show how reasonable counsel would have handled the cross-examination differently, just gives a conclusory suggestion that the examination of the witnesses who testified should have been examined differently. The Applicant's conclusory speculation is insufficient to show how reasonable and competent counsel would have acted differently related to the cross-examination. Since counsel has not been shown to be deficient under Strickland, 6th Amendment prejudice has also not been proven. Second Amended Application ground 1(a) must be dismissed.

Allegation that Counsel was ineffective in failing to object to the lineup as suggestive.

During the testimony of the Applicant during the hearing he contended that counsel was ineffective in failing to object to the line-up as suggestive. This Court must reject that claim as lacking a factual basis.

"A criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." Id.

In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Biggers, 409 U.S. at 198, 93 S.Ct. 375. Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing Biggers, 409 U.S. at 199-200, 93 S.Ct. 375).

Contrary to the Applicant's assertion, the trial court held a hearing pursuant to Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972). At the conclusion of the hearing, defense counsel Madsen argued that the line-up was suggestive, Tr.p. 114-116; R. 133-135.

Counsel argued that while all the photographs were of black males, there was difference in facial hair and the Applicant's photograph was the only one with a thin mustache and that Mancine, in his identification, had focused on the lips. Madsen contended this made the lineup suggestive. Concerning the various Biggers factors, counsel argued that the witness's brief viewing the perpetrator was for less than 5 minutes on May 7 and then less than 10 minutes on the day of the incident. Although close to the perpetrator, counsel argued that his description was extremely generic because it only described that it was a black male with a height and weight. Counsel asserted there was no indication about facial features, such as nose, lips, or other matters. As to the degree of attention, counsel pointed out the witness was excited, felt a rush, and lightheaded at the incident. As to the accuracy of the prior descript, counsel pointed out within hours after the incident, the witness gave concerning both height and weight varying in 30 pounds. *Id.* In addition, counsel questioned the accuracy of the identification when it occurred 6 months after the incident. He urged its exclusion as unduly suggestive, particularly where was evidence that he was wearing sunglasses covering a portion of his face. Tr.p. 116; R. 135.

The trial court rejected that argument that the lineup itself was unduly suggestive. Although the trial court recognized concerns about cross-racial identification, he determined that the photographs were substantially similar and particularly that two photos had similar eye structures. This was enhanced by the fact that Officer Wade confirmed that there was no indication the defendant's photograph was in the lineup. Tr.p. 119, R. 138.

The trial court then addressed the identification process by the victim. Tr.p. 120-122; R. 139-141. The court found that the opportunity to view the perpetrator was heightened because he had seen him in the store two days earlier. The court found the odd activity of him casing the store previously added to the attention of the owner when he saw the assailant came in two days

when the store was robbed. The court found that the store was well lit and allowed for a one on one identification because there was no crowd at that time, in addition to the gun being pointed at him. The court found Mancine to be credible as to his attention to the facial hair of the perpetrator. The court found that the description did not vary substantially and to be credible. In addition, Mancine's certainty in his almost immediate identification adds to the degree of certainty. As to the length of time between the incident and identification, the trial court relied upon State v. Cheeseboro, 346 S.C. 526552 S.E.2d 300 (2001) where five months was not an unduly long period of time. The trial court overruled the defense counsel objection. Tr.p. 122; R. 141.

Further, as noted above, Frank Mancine was the first witness at the trial. Contrary to the assertions of the Applicant at the hearing, defense counsel objected to the admission of the lineup, State Exhibit 1, based upon his motion *in limine*. Tr.p. 198-199; R. 217-218. The trial court overruled the motion.

This Court must deny the allegation of the Applicant at the PCR hearing. This Court finds that counsel did object to the photographic lineup as being unduly suggestive. His factual assertion lacks factual merit. Further, counsel's argument about the line-up was within the standards of competence demanded of lawyers practicing criminal law. Applicant has failed to prove either deficient performance or prejudice under Strickland. His assertion is without merit and must be denied.

Alleged Use of Mugs Shots in Lineup.

In his *pro se* application, ground one, the Applicant contended that trial counsel was ineffective in not objecting to the use of "mug shots" in the lineup. The record shows that trial counsel did not specifically assert that the photographs in the lineups were identifiable as a "mug

shot” and therefore suggestive. However, this Court must conclude that the Applicant failed in his burden of proof on that issue to show either deficient performance or prejudice.

The record shows that the photographic lineup was prepared by SLED. In addition, all the photographs appeared to have the same background images and appeared to come from the same source. Tr.p. 54-55; R. 73-74. All photographs in the lineup are from the same race. *Id.*

The introduction of a “mug-shot” of a defendant is reversible error unless: (1) the state has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication. *State v. Tate*, 288 S.C. 104, 341 S.E.2d 380 (1986); *State v. Robinson*, 274 S.C. 198, 262 S.E.2d 729 (1980); *State v. Denson*, 269 S.C. 407, 237 S.E.2d 761 (1977)¹⁸; *State v. Traylor*, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004).

In *Tate*, the State introduced a photographic lineup which included a mug shot of the Tate. 288 S.C. at 105, 341 S.E.2d at 381. Unlike the case before this Court, the mug shot included “a small board with the date 11-20-82 and the words ‘SPTBG. CO. SHERIFF’ [] hanging around [the] appellant’s neck.” *Id.* Under these circumstances, our supreme court found “the markings on

¹⁸ In *State v. Denson*, the defendant challenged the trial court’s admission of three photographs of him, arguing the photos suggested to the jury that he had a prior criminal record. 269 S.C. at 410, 237 S.E.2d at 763. Our supreme court found the State had a demonstrable need to introduce the photos because the defendant’s absence from trial made an in-court identification impossible. *Id.* at 412, 237 S.E.2d at 764. Additionally, the court found the photos did not imply that the defendant had a prior criminal record because they “were not the juxtaposed full face and profile photographic display normally associated with ‘mug shots,’ ” and although one of the photos included the words “Richland County,” the jury likely assumed the picture was taken when the defendant was arrested for his current charge. *Id.* at 412–13, 237 S.E.2d at 764. The court further noted the record did not show “the admission of the photographs in any way focused the jury’s attention on the source of the pictures.” *Id.* at 413, 237 S.E.2d at 764. Although the jury was informed that the photos came from police files, the supreme court found this testimony “only explained the source of the photographs, it did not draw particular attention to the source or implications of the photographs.” *Id.* (internal quotation marks omitted).

the photographs, particularly the date, which was almost one year prior to the trial of this case, would clearly infer to the jury that [the] appellant had a prior criminal record.” *Id.* at 106, 341 S.E.2d at 381. The court reversed and remanded for a new trial. *Id.*

In *State v. Stephens*, the appellant argued the State's use of his “mug shot” in a photographic lineup implied he had a prior criminal record. 398 S.C. 314, 321, 728 S.E.2d 68, 72 (Ct. App. 2012). The Court of Appeals disagreed with the notion that the photograph implied he had a criminal record because the photographs in the lineup showed only each person's “head and neck against a blank background.” *Id.* at 322, 728 S.E.2d at 72. The Court explained, although the photograph was a mug shot, there was nothing in the photograph to actually imply it was a mug shot, and the “photographs at issue here could have come from driver's licenses, employee identification badges, or other sources.” *Id.*; see *State v. Ford*, 334 S.C. 444, 450, 513 S.E.2d 385, 388 (Ct. App. 1999) (finding use of a mug shot in a photographic lineup was not improper character evidence because they were displayed “in such a way as to hide any indication of their origin” and no testimony “reveal[ed] the origin of the photographs”); *State v. Lawson*, 424 S.C. 51, 58–59, 817 S.E.2d 509, 512–13 (Ct. App. 2018).

The Applicant has failed in his burden of proof to show that counsel was deficient in failing to object to the particular photographs in the lineup asserting that they were mug shots. The Applicant has failed to show that there was any evidence in the photograph of the Applicant that indicated that he had a criminal background. To the contrary, the record shows that the photographs appeared to have the same background images and from the same source. The Applicant has failed to show this Court credible evidence that there was anything about the Applicant's photographs that suggested a criminal record similar to the setting in *Tate*. He has failed to show the existence of such criteria evident in the photograph that counsel Madsen and every other reasonable counsel

would have objected. Absent such a showing, this Court must find that counsel failed in the burden of proof in showing deficient performance under Strickland.

As to whether the Applicant has further shown the existence of Sixth Amendment prejudice, there is a reasonable probability that had counsel objected, the result of the proceeding would have been different. This Court must find that Applicant similarly failed. In addition to not showing the suggestion from the photograph of a prior criminal record, the record also shows that the surveillance videos reflected that the perpetrator was wearing the abandoned fedora hat at the scene, that the hat was found with the Applicant's DNA, and the located van that belonged to the Applicant had damage consistent with being shot and attempted to be disguised after being reported missing. The allegation must be denied.

CODIS Issue - Failure to object to the testimony of Investigator Wade when he informed the jury about the notice from SLED of the Applicant's DNA in the CODIS database, which was prejudicial to the Applicant's case because of how DNA gets into that database. See Tr.p . 331 (R. 350)

In the second amended application, ground 2, the Applicant complains that counsel was ineffective in failing to object to the testimony by Investigator Wade of the West Columbia Police Department in his reference to the CODIS database.¹⁹ This Court finds that Patterson failed in his burden of proof to show counsel was deficient in how he handled the relevant testimony regarding the CODIS database.

Patterson's counsel objected to the DNA database testimony on the grounds it constituted evidence of a prior bad act under Rule 404(b), SCRE. Specifically, counsel argued the evidence implied he had a prior record because that would be the only reason his DNA would be in a

¹⁹ CODIS stands for Combined DNA Information System. It is a national database shared by law enforcement offices to assist with criminal investigations.

database in the first place.²⁰ The trial court overruled the objection, finding the inclusion of DNA in a database was not indicative of a prior record as DNA can be collected for a variety of reasons and from various sources. Tr.p. 321; R. 340. Also Tr.p.523; R. 542.

In the direct appeal in this case, Patterson, through appellate counsel, raised an issue to the Court of Appeals, arguing the trial court erred in admitting testimony regarding the CODIS DNA database search because it implied Patterson had a prior criminal record in violation of Rule 404(b), SCRE. See State v. Pagan, 369 S.C. at 211, 631 S.E.2d at 267 (stating under Rule 404(b), “[e]vidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged”). Relying on our supreme court's decision in State v. Hill, 409 S.C. 50, 760 S.E.2d 802 (2014), Patterson asserts the State's reference to the database was highly prejudicial and outweighed any probative value.

In rejecting the argument, the Court of Appeals addressed it in the following manner:

In State v. Hill, the court held that the admission of a law enforcement letter in which references were made to the CODIS database, while irrelevant and inadmissible, was not reversible error. 409 S.C. at 58, 760 S.E.2d at 806. The court noted that the publication of the letter—which referred to Hill as a “suspect” and stated that if he was charged, “an additional biological specimen must be submitted for court purposes”—could “have created an inference in a juror's mind that [Hill] had a criminal record.” Id. at 57-58, 760 S.E.2d at 806. The court held, however, that its admission did not amount to reversible error due to it being cumulative to the other evidence of the CODIS database admitted without objection, and furthermore, the State did not attempt to admit evidence as to why Hill's DNA was in the database in the first place. Id.

We believe the trial court did not err in admitting the testimony regarding the database search. Initially, we believe the case at hand differs from the error in Hill because (1) the State did not place a letter into evidence; (2) the reference to the database did not contemporaneously refer to Patterson as a “suspect”; and (3) the State did not mention the type of database that the match came from. Here, the State's witnesses referred to the database as “the database” or “our database,” rather than the “CODIS database.” The State did not attempt to solicit testimony regarding

²⁰ Patterson has an extensive criminal record, although no evidence of his prior convictions were admitted at trial.

the purpose of the database, nor did it bring up Patterson's prior record. Moreover, although SLED is a law enforcement agency, given the prevalence in which personal data is shared with public and private agencies for various purposes, e.g., military records and private commercial enterprises, we do not believe the testimony necessarily implied Patterson had a criminal record. See S.C. Code Ann. § 23-3-610 (2007) (instructing SLED to "develop DNA profiles on samples for law enforcement purposes and for humanitarian and non[-]law enforcement purposes").

Furthermore, we believe the reference to the database was relevant and highly probative because it explained a critical step in the investigation. Specifically, the database testimony explained how Patterson came to be identified as a suspect in the first place. Without the testimony, the jury would have been left to speculate as to the means law enforcement used to initially place Patterson at the crime scene. See State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) ("Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears."). Additionally, based on the fact the jury was presented with only limited information regarding the DNA database search, and given that Patterson's DNA was independently matched with the DNA found on the fedora, we believe any prejudice to Patterson was minimal. See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("[E]ven where the evidence is shown to be relevant, if its probative value is substantially outweighed by the danger of unfair prejudice, the evidence must be excluded." (emphasis added)); State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (noting that an inadvertent vague reference to defendant's prior record will not amount to prejudicial error). Accordingly, we do not believe the trial court abused its discretion in admitting the DNA database testimony.

State v. Patterson, 425 S.C. 500, 509–10, 823 S.E.2d 217, 222–23 (Ct. App. 2019)(emphasis added).

The Applicant, in this PCR proceeding complains that counsel failed to object to Investigator Wade's testimony about CODIS, citing Tr. 331; R. 350. Prior to that testimony, however, the jury was advised that the fedora hat was sent to SLED for DNA analysis which was routinely done in other cases. Investigator Wade declared it normally takes months to get results back. He testified that he received notification from SLED DNA Database on November 12, 2012 that James Bubba Patterson was a suspect in the case. No objection was made to that statement. Tr.p. 331, R. p. 350.

However, prior to that testimony, there were *in camera* proceedings . Tr. 319-325; R. 338-343. During those proceedings the following occurred:

THE COURT: All right. What's the objection?

MR. MADSEN: Judge, I object. There was a CODIS hit on this. It's my understanding that the solicitor has indicated through this witness that that's kind of what they plan to get out I've got a document to Investigator Wade signed by a Lieutenant David McClure. **The solicitor has indicated that they are not going to refer to CODIS, but call it a database.** Your Honor, my DNA is not in a database, yours or Solicitor Mayes, so I think referring to that is going to basically be a comment on the fact of saying his DNA has been placed in there and that he has a prior record and I don't think that is appropriate.

Tr.p. 319; R. 338 (emphasis added). Solicitor Mayes urged that the fact of the CODIS hit was probative on the development of Patterson as a suspect to connect the dots as opposed to a random photo put into a lineup. She stated that the SLED employee that tested the material will confirm that the SLED DNA database sent the notification to the police department that had developed Patterson as a suspect. Mayes stated that Patterson will not be referred as an offender, but as a suspect based upon the profile match from the DNA database and she will not refer to it as CODIS. Tr.p. 322; R. 341.

A review of the record reveals, as noted by the Court of Appeals, that "database" rather than CODIS was used and it was never explained to the jury how DNA samples were collected for the CODIS database. Compare Tr.p. 519-529 with Tr.p. 524-528).

Moreover, based on the fact the jury was presented with only limited information in regard to the DNA database search that simply conveyed Appellant was identified as a suspect after his Appellant's DNA profile was determined to match the DNA profile developed from the robber's

hat, the admission of that evidence was not unduly or improperly prejudicial to Appellant.²¹ See Scales v. State, 310 Ga. App. 48, 52, 712 S.E.2d 555, 561 (Ga. Ct. App. 2011) (“[E]vidence of a matching DNA profile in a government database does not, in and of itself, constitute impermissible character evidence when no reference is made as to why the matching sample was collected or stored and when no reference is made linking the defendant’s DNA profile to other criminal activity.”); see also McMillian, 295 S.W.2d at 540 (“[T]he mere fact that McMillian’s DNA profile was present in a statewide database did not constitute an improper reference to other, uncharged crimes.”). Significantly, that is true because the jury was presented with no evidence suggesting Appellant’s DNA profile was in the database based on a prior conviction or arrest, and neither the solicitor nor anyone else ever asked the jury to draw such a negative inference from that evidence at any point during Appellant’s trial. See Harland, 251 P.3d at 517-518 (“Agent Arndt’s testimony [regarding DNA database searches] did not create any significant danger of unfair prejudice. Agent Arndt only mentioned the databases briefly, and did not testify as to how [Harland]’s DNA profile came to be in the second database. No evidence was presented as to how any individual’s DNA profile might come to be in either DNA database, and no evidence was presented that [Harland] had previously engaged in any criminal activity. We therefore reject [Harland]’s assertion that Agent Arndt’s testimony mentioning the DNA databases necessarily led the jury to speculate that [Harland] had prior criminal convictions. Under the circumstances here, any

²¹ Importantly, the evidence related to the DNA database search was limited to the extent the letter regarding the match discovered as a result of the search was not admitted into evidence during Appellant’s trial as was found to be improper by our Supreme Court in an earlier decision. See State v. Hill, 409 S.C. 50, 57-58, 760 S.E.2d 802, 806 (2014) (finding the trial judge erred by admitting a letter regarding a DNA database match discovered as a result of a search of SLED’s DNA database but concluding the trial judge’s error was entirely harmless under the circumstances). Consistent with the court ruling CODIS was not referred to in front of the jury and the evidence was limited to the term “database” or “SLED DNA database.” Tr.p. 331, R.p. 350; Tr 345, R.p. 364; Tr.p. 458, R.p. 477; Tr.p. 494, R.p. 513.

inference of such prejudice is itself speculative.”); Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009) (rejecting Atteberry’s claim the jury could have inferred he had previously been convicted of a crime from evidence his DNA profile was contained in a national database as “nothing more than speculation” in light of the fact the evidence presented did not suggest only convicted offenders’ profiles were included in that database). Similarly, as SLED’s DNA database contains DNA profile’s from a wide variety of sources, it is highly unlikely the jury would have drawn any adverse inference from the limited evidence presented during Appellant’s trial in regard to the DNA database search.²² See Jackson, 232 Ill. 2d at 271-272, 903 N.E.2d at 401-402 (“[J]ust as the AFIS database also contains fingerprints of government employees and police officers, the Combined DNA Index System (CODIS) database contains several different indexes, not all of which are criminally based. The CODIS database includes the Forensic Index, containing DNA profiles from crime scene evidence; the Offender Index, containing DNA profiles of individuals convicted of felonies; the Missing Person Index, containing DNA records from individuals that have been reported missing; the Relatives of Missing Person Index, consisting of DNA records from the biological relatives of individuals reported missing; and the Unidentified Human (Remains) Index, containing DNA records from recovered living persons, e.g., children and others who cannot or will not identify themselves, and recovered dead persons whose identities are not known. . . . In addition to the indexes listed above, the jurors, in the light of their own observations and experiences in life, could also infer that defendant’s DNA profile might be contained in a state database for medical reasons, such as transplant recipients, blood donors or for genetic-testing

²² Demonstrating the low likelihood the evidence related to the DNA database search would have been invariably viewed as evidence of Appellant’s prior criminal record by the jury, even the experienced trial judge involved in Appellant’s case did not believe the fact Appellant’s DNA profile was included in the database necessarily meant Appellant had previously been arrested or convicted. (Tr. p. 321; R. p. 340).

purposes. Thus, contrary to the Applicant's contention, the conclusion that the use of the term CODIS in popular crime dramas to refer to the means of identifying suspects from a DNA database, without other information, argument or evidence that the singular source of the DNA was convicted criminals, is completely unwarranted."); see also Whatley v. State, 146 So. 3d 437, 466 (Ala. Crim. App. 2010) (holding "testimony of the mere existence of a defendant's DNA profile in the CODIS database does not '*per se*' imply the existence of a criminal history"). As a result, the potential for undue prejudice that could have resulted from the evidence related to the DNA database search was very minimal and did not substantially outweigh the evidence's high probative value. See United States v. Jenkins, 887 A.2d 1013, 1025, n. 2 (D.C. Cir. 2005) ("[C]onveying to the jury that the defendant was first identified through a search of an offender database has not been deemed so substantially prejudicial as to outweigh the probative value of such evidence.").

The ameliorating effect of the database testimony is reflected in the testimony of SLED Analyst Maryann Boehm. During her testimony, she indicated that SLED had a database which consisted of profiles of known individuals as well as profiles developed from evidence at the crime scene. Tr.p. 494; R.p. 513. She testified that if the item of evidence that she is testing is eligible to enter the database, she will put it in to see if there is a match with a known individual or crime scene. When asked if she was able to determine a match, defense counsel Madsen approached the Court for an off the record conference. . Agent Boehm then clarified that in September 2012 she was able to develop a profile that was entered into the database. She stated that following that

event, she was able to secure samples of DNA from the Applicant which had been collected from a buccal swab, State Exhibit 50. Tr.p. 495 - 498; R.p. 514 - 517.²³

In addition, SLED Agent Rhonda Fields also testified, initially in camera, about the SLED DNA Database. Tr.p. 513-521; R.p. 532-540. She identified that when subjects are placed into the SLED database that thumbprints are taken and included in the database with the DNA profile. Counsel Madsen objected to admissibility of her testimony in front of the jury under SCRE Rules 401, 402, and 403. Madsen indicated it was more prejudicial than probative. He contended that the thumbprint identification was not relevant and that there was no chain of custody shown on the sample. He further made a 404(b) and Rule 609 as improper evidence of a prior crime and was cumulative to the DNA evidence. He argued that someone else took the thumbprint and it was Lt. McClure who is not here. The State urged that under State v. Anderson, 386 S.C. 120, 128, 687 S.E.2d 35, 39 (2009) admission is similar to AFIS in analogy. Solicitor Mayes argued it was probative to establish how Patterson was initially developed as a suspect and what led Patterson to be put in the lineup. And the taking of the secondary DNA sample for the comparison. She urged this was a part of the link between the robbery and how he was developed as a suspect. She confirmed that she was not offering evidence as to who was in that database, or how people enter that database or the fact it contains convicted offenders. Tr.p. 523; R.p. 542. Judge Cooper overruled the objection, with the testimony limited as indicated. Id.

In Agent Fields's testimony before the jury, she testified that SLED had access to a DNA database. Tr.p. 524; R.p. 543. She indicated that in 2012 a DNA profile was developed from swabs and a black hat. At that point, defense counsel Madsen renewed his objection, which Judge Cooper

²³ According to the transcript, the buccal swab of the Applicant was taken on December 14, 2015 by West Columbia Detective Paige McCraw. The swabs were carried to SLED the same day. Tr.p. 425-429; R.p. 446-448. Also, Tr.p. 452-453, R.p. 471-472.

overruled. Tr.p. 525; R.p. 544. Agent Fields indicated the profile from the black hat and the suspect was entered into the SLED DNA database by Maryann Boehm and as a result a suspect was developed. Then, as a result, SLED sent a notification to the West Columbia Police Department to Investigator Bruce Wade on November 6, 2012 that the suspect was James Patterson. Tr.p. 525-526; R.p. 544-545. On cross-examination by counsel Madsen, Agent Fields confirmed that she did not send the letter, but it was sent by former SLED Agent David McClure. She further confirmed that she had found a mistake in the letter the day before (April 12, 2016).

Ineffective Assistance of Counsel Not Shown Related to CODIS or SLED DNA Database

This Court finds, on the basis the DNA evidence was that was actually presented at trial, the jury they would have understood that the DNA match evidence was developed from a buccal swab taken from the Applicant after the DNA profile had been developed off the black hat. This evidence before the jury did not indicate that Applicant's DNA was already in the SLED DNA database. It also did not indicate that he had a prior criminal history or record in the evidence presented to the jury. Rather than being deficient, counsel took reasonable steps in his earliest objections in the *in camera* proceeding to insure that the State would be limited in presenting testimony about CODIS or the Applicant's possible inclusion based upon any prior record. Further, counsel insured that the testimony before the jury would only reflect that any reference to the database would be connected to the SLED DNA database without any reference to whether Applicant's DNA was already in the database based upon a prior criminal record. Tr.p. 319-322; R.p. 338-341. (pretrial); Tr.p. 522-524; R.p. 541-542 (trial). The Applicant has failed to show to this Court any other steps that reasonable defense counsel would have done. Counsel was not deficient in failing to additionally object to the SLED DNA Database evidence presented by Agent Boehm.

Further, Sixth Amendment prejudice has not been shown since Applicant failed to show a reasonable probability that the result of the proceeding would have been different and result in a not guilty verdict had counsel addressed the CODIS database issue differently. He has not met that burden. This allegation must be denied.

Ineffective Assistance of Counsel in Allegedly Failing to Adequately Meet with Client.

This Court concludes as a matter of law that the Applicant has failed to prove deficient performance or prejudice related to Applicant's assertion at the hearing that counsel Madsen failed to meet with him sufficiently to discuss the case and his defense in preparation for the trial. This Court further finds as a fact, based upon counsel Madsen credible testimony that counsel met with the Applicant fourteen (14) times, went over the discovery with the Applicant and discussed his varying versions of his involvement and non-involvement in the case. This Court further finds that counsel retained an investigator to investigate Applicant's claims of working with the victim in an insurance scam, of working as an agent with the FBI and ATF, and pursued alleged leads for an alibi defense.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense

and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

During the PCR hearing, the Applicant testified that counsel Rob Madsen met with him only three to four times. He claimed that counsel made mention of a case investigator and that he was investigating the case in their meetings, but failed to explain what was going on in his case. Applicant complained that he did not know the law and needed counsel's assistance in understanding his case. He complained that during the trial evidence was coming in that he had not heard about. He claimed that he wanted to see the video, the lineup and the video of the alleged incident.

Counsel Madsen testified, contrary to the Applicant's version, that he met with the Applicant fourteen (14) times during his representation, beginning on January 17, 2013. Counsel acknowledged that he went over the discovery with the Applicant. Counsel testified he received the discovery from the State on January 31, 2013 and specifically reviewed the discovery with him on May 5, 2013. However, the Applicant did not want a copy of the discovery. In the May 2013 meeting, counsel had not received the DNA evidence or results yet from the State. The DNA

evidence results were received and disclosed to the Applicant at later meeting. Counsel also indicated that at one meeting he met with the Applicant and went over the plea offer made by the State to plead to armed robbery straight up and dismiss the kidnapping charge on September 4 and face 10 to 30 years. Madsen stated that the Applicant rejected the offer at that time, claiming he did not do the crime at that time. Madsen stated in his meetings with the Applicant his versions varied from his involvement being an inside job for an insurance scam, a claim that he was working with ATF and the FBI, to a later version that he had an alibi. Counsel Madsen stated Applicant advised him about the alibi, it was very vague and he had an investigator attempt to follow-up on the information Applicant gave him without success and was unable to substantiate it.

This Court finds that counsel is credible as it relates to the number of meetings they had and that he reviewed the discovery in detail with the Applicant and discussed potential defenses, theories, and ultimately an unsubstantiated alibi. This Court must conclude that the Applicant's testimony in this allegation was not credible as set forth previously.²⁴

In addition, the Applicant has failed to credibly show that there was any deficiency other than Applicant's speculation that more could have been done. "[C]riminal defense attorneys have a duty to conduct a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." 397 S.C. 226,235, 723 S.E.2d 610,615 (Ct. App. 2012), overruled on other grounds, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does

²⁴ In his initial allegation of ineffective assistance of counsel in his *pro se* application, Applicant alleged that counsel was ineffective in failing to request to view the video surveillance tape of victim Frank Mancine's viewing of the line-up on November 15, 2012. During the trial, counsel pointed out that the interview with Mancine on November 15, 2012 was recorded. Tr.p. 65; R.p. 84. The trial record reflects the video of the lineup interview of Mancine was not introduced into evidence at trial by either party. The Applicant has failed to show any deficiency of the part of counsel in failing to present the video, either in the pretrial hearing or trial before the jury.

not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

This Court concludes that the Applicant has failed to show any deficiency on the part of counsel’s investigation based on counsel Madsen’s credible testimony and a review of the trial record which supports counsel’s knowledge and preparation in the case.

Ineffective Assistance in Failing to Challenge the Chain of Custody

In his *pro se* application and during his testimony, the Applicant claimed that counsel was ineffective in failing to challenge the chain of custody presented at trial. In particular, he speculated that in the application that the chain of custody related to the hat was deficient because the trial testimony did not include “the time frame” the hat was left in the West Columbia Evidence Repository after it was logged in nor any mention in the record when it was dropped off at SLED. He further contended that the evidence related to the two buccal swabs taken from the Applicant on December 14, 2015 did not include who Detective Paige McCraw left the swabs with at SLED and how long they remained at SLED.

The record supports that counsel Madsen initially objected to the chain of custody related to the hat. Tr.p. 276-277; R.p. 295-296. However, the trial judge overruled the objection and admitted State Exhibit 9 into evidence. In that earlier testimony, Investigator James Sullivan testified that that he picked up the hat after he photographed it at the scene. Tr.p. 274; R.p. 293. He stated that he placed it in a paper bag, filled out information on the bag and then sealed it. At

that point Detective Sullivan stated he placed it in his locked vault in his vehicle that only he has access to. He testified that he transported it to the West Columbia Police Department and logged it in to the West Columbia Evidence Room. He stated later he logged it and transported the sealed bag to SLED for further processing. Tr.p. 274-275; R.p. 293-294. Detective Sullivan described how he made the bag tamper-proof and identified the hat as what he recovered at the scene. Id.

Concerning the buccal swab of the Applicant, Detective Paige McCraw testified that she took the buccal swab of the Applicant on December 14, 2015 after a court hearing and gave the swab a tracking number and sealed the items to make them tamper-proof and transported them to SLED on that day. Tr.p. 427-428; R.p. 446-447. She declared the items were solely in her possession, custody and control that day until she took them to SLED for processing. Id. The State offered the packages of the swabs for identification as State exhibits 49 and 50. Tr.p. 429; R.p. 448.

The defense made an objection to the introduction at that time which was overruled. The State cited State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013) and State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). In addition, the State had indicated that the DNA swabs taken from the hat listed Detective Wade and Investigator Otterbacher on the chain of custody sheet. The state suggested it intended at that time to indicate who they were and what they did with the evidence. The State indicated that the swabs from the hat were actually done by SLED Agent Betty Butler and after they were swabbed by Butler, Investigator Sullivan picked them up and returned them to West Columbia Police Department and that the swabs from the hat were analyzed before being returned to SLED. Tr.p. 431-34; R. 450-453.

As to the DNA swabs from the hat, her records indicated in the chain of custody sheet that the date of collection of the hat was May 9, 2012, it was initially checked into the evidence custody

system on February 5, 2013 by Investigator Sullivan and logged into the system on February 7, 2013. Tr.p. 438-439; R.p. 457-458. Her records showed the next date that item was touched was on September 20, 2013 by Investigator Wade.

SLED Evidence Technician Jennifer Aycock testified that State Exhibit 9 (Item 1 at SLED) was received by SLED Technician Doris Yarborough from Sullivan on May 29, 2012. Counsel Madsen objected to foundation under Crawford v. Washington, which the court overruled. Tr.p. 450; R. 469.

SLED Technician Aycock further testified that after it was placed on Evidence Shelf 25, it was pulled off the shelf on June 15, 2012 and provided to SLED Forensic Technician Betty Butler. Tr.p. 450; R.p. 469. State 49 (DNA swab – hat, item 1.1) was entered as 1.1 on June 19, 2012 and placed on DNA intake shelf on June 25, 2012 when it was returned to Nikki Perry Hughes. The item was subsequently taken off the shelf by SLED technician Patricia Crooks and transferred to SLED Analyst Maryann Boehm of the DNA Department. Tr.p. 451-452; R.p. 470-471.

Aycock further testified related to item 5 that it was submitted by Paige McCraw on December 14, 2015 to Aycock and she placed it in the DNA Intake shelf 86 on that date. Tr.p. 452; R.p. 471. Aycock testified the chain sheet indicated that it was retrieved by technician Jackie Davis from that shelf and transferred it to Maryann Boehm. She indicated that the notes indicated that the seal had not been broken or tampered with prior to the transfer. Tr.p. 453; R.p. 472.

Aycock confirmed that her report indicates that the hat swabs were produced from the hat by Betty Butler, not Investigator Sullivan Tr.p. 455; R.p. 474.

Betty Butler testified that she received, item 1, the fedora-hat on June 19, 2012. Tr.p. 475; R.p. 494. Butler testified that from that item she produced a swab from the hat on June 19, 2012 which she placed in a sealed envelope on that date as item 1.1. Tr.p. 476-477; R.p. 495-496. Butler

indicated that she then provided it directly to Boehm for analysis. Tr.p. 478; R.p. 497. She stated that she had completed her testing of the hat once she collected the swabs, sealed item, put her initials and lab number on the hat and box and returned it to SLED evidence control, where it could be returned to West Columbia.

Maryann Boehn testified that she received item 1.1 from Betty Butler, which were in a heat sealed pouch. Tr.p. 490-491; R.p. 509-510. It did not indicate any evidence of tampering. Boehm stated she was only one who opened the pouch with the swab. She indicated that she took custody of the swab on September 12, 2012 to perform her analysis. Tr.p. 492-493; R.p. 511-512. She completed her analysis of the swab from the hat on September 16, 2012 after comparing it to a swab taken from James Patterson. Tr.p. 497-498; R.p. 516-517. The State moved to introduce the State Exhibit 49 (DNA swab from hat) and State 50 (SNA buccal swabs). Tr.p. 498; R.p. 517. The defense renewed his earlier objections, which Judge Cooper overruled. Counsel renewed his objections on Tr.p. 529, 538, and 589; R.p. 548, 557, 608.

This Court must conclude that the Applicant has failed in his burden of proof related to the defense counsel's performance related to the chain of custody of the hat and the DNA swabs. Counsel made timely objections throughout the trial related to these items.²⁵ This court must find that he was not deficient in his performance. His allegation to the contrary must be dismissed.

²⁵ See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002))); State v. Hatcher, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011) ("Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts."); State v. Joseph, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997) ("A party offering into evidence fungible items such as drugs or blood samples must establish a chain of custody as far as practicable."); State v. Taylor, 360 S.C. 18, 22-23, 598 S.E.2d 735, 737 (Ct. App. 2004) ("Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis."); *id.* at 25, 598 S.E.2d at 738 ("[I]f the identity of each

Ineffective Assistance and Deceased Officer Chuck Bramlet.

Prior to trial West Columbia Crime Scene Investigator died on July 21, 2015. The record reveals that Bramlet was involved in the crime scene investigation in this matter. During the pretrial hearing, it was brought to the trial court's attention by the State concerning the original DNA samples from the Applicant that were taken at the initial Schmerber hearing on May 13, 2013. The State, in the pretrial hearing sought to remedy the loss of Bramlet to allow the taking of a new sample from the Applicant. The defense indicated it would object to the new DNA swabbing as a Fourth Amendment violation and indicated it would object to the use of the samples previously collected. R.p. 36-37. The trial court allowed the taking of the new samples after a hearing. Concluded the State had established probable cause to retake the sample from the Applicant. R.p. 50-51.

At the outset of the trial, the Applicant objected to the evidence seized from the search warrant because it was executed by Chuck Bramlet, the deceased officer, on November 19, 2012. Tr.p. 123. R.p. 142. The affiant on the warrant was not Bramlet, but Lt. Odom with the Richland County Sheriff's Department. This involved the search of the van pursuant to the search warrant and Bramlet's collection of items from inside the van. Tr.p. 123-124; R.p. 142-143. The defense objection was based upon "the Constitution and Section 17-13-40." The State, through Assistant Solicitor Bell, asserted that the warrant was initially drafted by Captain Wade of the West Columbia Police Department, but because the van was located at the time in Columbia, it was ultimately prepared and presented by Lt. Odom with Richland County to a Richland magistrate for

person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive,"); S.C. Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629 n.1, 614 S.E.2d 642, 646 n.1 (2005) ("Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case.").

the warrant, along with providing supplemental information. Tr.p. 125; R.p. 144. The state urged the denial of the motion to suppress because Lt. Odom was present during the entire search and available to testify and the return to the search warrant was made timely on November 26, 2012. Tr.p. 126. Captain Joseph Odom testified at the pretrial hearing consistent with the proffer. Tr.p. 127- 143; R.p. 146-162. The defense urged suppression because under their assertion, the information given the magistrate was not based upon Lt. Odom's personal knowledge but on Bramlet's personal knowledge. The defense urged that any reference to Bramlet's statements about what he retrieved would be hearsay. After taking the matter under advisement, Tr.p. 152; R.p. 171, the trial court allowed the evidence from the search to be presented. Tr.p. 156-158, R. p. 175-177.

During trial, defense counsel Madsen made an objection to the evidence of the search coming in due to the unavailability of Bramlet. Tr.p. 392-393; R.p. 411-412. During trial Captain Odom acknowledged he was at the scene and present when the photographs were taken and fairly and accurately represent the way it looked on the day they were taken. During Captain Odom's testimony, the defense renewed his objection based upon hearsay and foundation. The trial judge admitted the evidence from the search and photographs, State Exhibits 39-48, into evidence over the defense objection. Tr.p. 404-405; R.p. 423-424. On cross-examination, the defense developed through Captain Odom that Chuck Bramlet was present with him and that Bramlet took the photographs and did everything. Odom also acknowledged that he did not recall every photograph, but he did recall the majority. Tr.p. 417; R.p. 436. On re-direct, Captain Odom acknowledged that he filled out the return to the search warrant which he noted the VIN number of the vehicle that

was searched. He acknowledged that the photos were taken during the search. Tr.p. 421-422; R.p. 440-441.²⁶

This Court must conclude that counsel was not deficient in matters related to the unavailable testimony of the deceased crime scene investigator Chuck Bramlet. Counsel objected to the admission of any matters related to the search of the 1995 Plymouth Voyager van due to the deceased investigator's involvement in the preparation of the search warrant and his actions as the search was executed. Counsel renewed his objections on Tr.p. 529, 538, and 589; R.p. 548, 557, 608. The Applicant has failed to show any additional steps trial counsel could have taken to address or limit the impact of the deceased involvement in the case that any reasonable counsel would have done. His allegation to the contrary must be dismissed. This Court finds that counsel Madsen performed within the standard of competency demanded of lawyers practicing criminal law. The Applicant has failed in his burden of proof to show otherwise.

Counsel's Failure to object to alleged evidence that was not admitted into evidence – the victim's gun and the Plymouth Voyager Van.

In the *pro se* application, the Applicant alleged that counsel failed to object to portions of the opening and closing arguments of the State. He contended that the prosecutors were referring to evidence that was not admitted in the "abuse of discretion" portion of his allegations. In particular, the Applicant referred to Tr.p. 168 in the opening statement and pages 539 and 540 in

²⁶ There was also a brief reference at trial that Bramlett also advised Investigator Sullivan that the latent prints taken off the countertop at the jewelry store was of insufficient quality to submit to the database. However, it was determined that they would be retained for comparison purposes if a possible suspect was determined. Tr.p. 297, 316-317; R.p. 316, 335-336. No objection was made to this reference. However, later at trial, fingerprint expert Jim Hickman testified that two latent prints that Investigator Sullivan took from the jewelry store countertop on May 9, 2012, that latent print 1 was of insufficient quality to compare and latent print 2 did not belong to the Applicant. Tr.p. 462-464.; R.p. 481-484. It was determined that latent print 2 belonged to the mother of the owner of the store. Tr.p. 470; R.p. 489.

the closing statement of the prosecution. *Pro Se* Application, po. 16-19. He complains that the gun owned by the victim was never introduced into evidence and the White Plymouth Voyager van was not admitted into evidence. He essentially contends that had counsel objected the trial court could have allowed the jury to personally view the van at the Eagle One Towing Lot and further complains that the state was allowed to publish "illegal" photographs into evidence and allowed witnesses to testify about the van. *Pro Se* Application, p. 18. Similarly, Applicant contended that counsel should have objected to testimony from the victim, Frank Mancine about the gun which was never admitted into evidence. *Pro Se* Application, p. 19.

This Court finds that he has failed in his burden of proof to show either deficient performance or prejudice.

During the State's opening statement at page 168 (R.p. 187), Assistant Solicitor Bell made the following comment in describing the event which the Applicant challenges:

Now after he stuffs all the gold in the sack, Bubba starts retreating out of the store, but Frank isn't totally unprepared. Fearing for himself, his mother, his customers, his store, he retrieves his own firearm and fires one shot at Bubba as he's leaving, but he misses and the gun jams. He clears the jam from the firearm and the pursues Mr. Patterson out of the building and as he comes out of the building and starts running into the direction that he saw the suspect run, he runs over the top of a hat, the same kind of hat that he saw the robber with. He then crosses the corner of the building and as he gets around the corner of the building he sees the same person who just robbed him at gunpoint hurriedly pulling an older model gray van or silver van out of the parking lot and heading away from him. In that instant, he fires one more shot and strikes the rear of the vehicle shattering out the back glass. Out of the ordinary.

Tr.p. 168, l. 8-24; R.p. 187.

During the State's closing argument by Deputy Solicitor Mayes, she made the following comments about the weapon of the victim:

Again, he thought he had it all car just a block away. But the one thing that he wasn't banking on planned out was that the store owner, Frank Mancine, would respond when that weapon was pulled in his face and in the face of his customers,

and Frank Mancine responded in self-defense because he fired a shot as James Patterson fled that store, and when he fired that shot, the Defendant took off running at full speed and that's what he wasn't banking on.

Tr.p. 539, l. 12-19; R.p. 558. Deputy Solicitor Mayes further argued:

So he makes it up the block, gets in that van, the light gray van that Jennifer Hubbard saw him in, and then what happens? The back window gets shot out and the glass goes all the way into the roadway. So now we've got a van with no back window and a damaged back hatch and that, ladies and gentlemen, brings us to exactly where we are.

Tr.p. 540, l. 11-16; R.p. 559.

In State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975), the Supreme Court set forth the parameters of permissible prosecutorial argument. So long as the prosecutor stays within the record and its reasonable inferences, he may legitimately appeal to the jury to do their full duty. Id. at 92, 212 S.E.2d at 590. A solicitor has the right to state his version of the testimony and to comment on the weight to be given such testimony. State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976). A review of the closing argument is based upon the standard of "whether the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hawkins, 292 S.C. 418, 421, 357 S.E.2d 10, 12 (1987). Accord, State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). See Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986); Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974).

The appropriateness of a solicitor's closing argument is a matter left to the trial court's sound discretion. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Alternatively, even if the solicitor's comments were improper, such comments do not automatically mandate reversal if they do not result in prejudice to the defendant. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999).

This Court concludes that trial counsel was not deficient in failing to object to the opening or closing statements to the jury. In the opening statement, the State asserted that the victim of the robbery used a weapon and fired at the Applicant. The State had a sound basis for the argument in anticipation of the testimony of Frank Mancine. As noted above, Mancine specifically testified about grabbing his own weapon and firing at the robber which was also shown to the jury in the surveillance video. Tr.p. 178-179, 184-185; R.p. 197-198, 203-204. Further, Mancine testified about firing the weapon at the white van as he chased after the perpetrator which shattered the window of the van. Tr.p. 192-194; R.p. 211-213.

This Court finds that counsel was not deficient in failing to object to these comments during the State's Arguments because they were reasonable inferences based upon the testimony in the record. His assertion to the contrary is without merit.

Further, the argument that defense counsel was deficient in not seeking a jury view of the Plymouth Voyager is equally without merit because a reasonable lawyer would not have done so. The evidence presented at trial involved reasonable testimony by Lt. Odom about his own viewing of the van and photographs of the van that were determined to be admissible. Counsel was under no constitutional duty to seek a jury view of the van, assuming *arguendo* that it was still located at the same location in the same condition as described in the evidence at trial. He has failed to show ineffective assistance by either deficient performance or prejudice. It must be denied.

Allegations of Ineffective Assistance of Appellate Counsel.

In his *pro se* application, the Applicant alleged four allegations related to ineffective assistance of appellate counsel. Prior to the hearing, Applicant's PCR counsel informed the Respondent and ultimately the Court, that the Applicant was not pursuing allegations in the initial application that appellate counsel Katherine H. Hudgins of the South Carolina Office of Appellate

Defense was ineffective under the Sixth Amendment. This Court concludes that the four grounds set forth in the *pro se* applicant related to the failure to raise on appeal, including competency to stand trial and the adequacy of the Blair hearing, rights to confrontation and chains of custody related to a lab report or the results of the lab report, and issues related to the absence of witness Chuck Bramlett and the DNA analysis were abandoned prior to the hearing. The claims of ineffective assistance of appellate counsel are dismissed for lack of prosecution.

Free-Standing Due Process and Confrontation Clause claims

In his *pro se* application, the Applicant also raised a series of free standing constitutional claims including an alleged violation of Due Process. These claims as alleged related to the State not making Chuck Bramlett available, yet allowing the defense to present evidence through Captain Odom that Bramlett did everything related to the search of the vehicle, that Jennifer Aycock testified that Nikki Perry Hughes and Doris Yarborough received evidence as part of the chain of custody without having them testify, and evidence about Investigator Sullivan picked up and transported the hat from the crime scene to SLED for further testing and questioned the sufficiency of the presentation as it relates to the time frame the hat was in the custody of the West Columbia Police Department, and that the DNA swabs taken from the Applicant by Detective McCraw did not mention who she let perform the swabs and did not indicate how long they remained at SLED. This free standing constitutional must be dismissed as not cognizable in this PCR proceeding.

Trial court error does not constitute an appropriate basis for the finding of ineffective assistance of counsel, and is not a cognizable claim for post-conviction relief. See Wolfe v. State, 326 S.C. 158, 162 n.2, 485 S.E.2d 367, 369 n.2 (1997). Direct appeal issues which could have been reviewed on appeal and were not objected to at trial or during guilty plea proceeding may

only be presented to support a claim of ineffective assistance of counsel, not as a separate ground for relief. Hyman v. State, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983). See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (same).

This Court finds that these free standing constitutional claims must be dismissed because PCR is not a substitute for a direct appeal.

Claims about the Trial Court's Abuse of Discretion.

In his *pro se* application, Section E, p. 15-19, the Applicant further raised claims about "abuse of discretion." The Applicant raised claims that the trial court abused its discretion in allowing the State to comment on evidence that was not admitted to the jury, citing the State's opening statement at Tr.p. 168 and the State's closing argument at Tr.p. 539 and 540. This was addressed above in the ineffective assistance of counsel claim related to the arguments of counsel. Alternately, the ground as abuse of discretion by the trial court must be denied pursuant to Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application and vacate his conviction. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

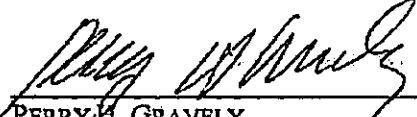
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty

(30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant is returned to the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27th day of March, 2025.


 PERRY M. GRAVELY
 Presiding Judge
 Eleventh Judicial Circuit

Greenville, South Carolina

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100337

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

Ron Brasington
Foreperson of Grand Jury
Date: 4-8-13

VERDICT

GUILTY

Kelly L. Natron
Foreperson of Petit Jury
Date: 4/14/16

DOCKET NO. 2013GS3200890

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

James Bubba Patterson

CDR #: 3421

Indictment for

Grand Larceny (value greater than
\$10,000)

§ 16-13-0030(B)(2)

DONALD V. MYERS, SOLICITOR

ATRU COPY
Lex. Co. C.C.P., G.S. & E.C.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

APR 11 2013)

INDICTMENT FOR
Grand Larceny (value greater than \$10,000)

§ 16-13-0030(B)(2)

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly, willfully and unlawfully take, steal or carry away goods, chattels, instruments or other property with the intent to permanently deprive the owner thereof, being the property of and described as: Jewelry of K & M Jewelers, such property having a value of ten thousand (\$10,000) dollars or more, in violation of §16-13-30 (B)(2) of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100330

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

Ron Brasington
Foreperson of Grand Jury
Date: 4-8-13

VERDICT

Guilty

Kelly L. Naton
Foreperson of Petit Jury
Date: 4/14/16

DOCKET NO. 2013GS3200891

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

James Bubba Patterson

CDR #: 0139

Indictment for

Armed Robbery

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

ATRUE COPY
Lex. Co. C.C.P., G.S. & E.G.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
APRIL 2013)
)

INDICTMENT FOR
Armed Robbery
§ 16-11-0330(A)

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly and willfully while armed with a pistol, or other deadly weapon deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: did while armed with a pistol or other representation of a deadly weapon, feloniously take from the person or presence of staff /employee(s) at K & M Jewelry, by means of force, threats, or intimidation, goods or monies being described as follows: jewelry, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100331

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL

Ron Brasington
Foreperson of Grand Jury

Date: 4-8-13

VERDICT

Guilty

Kelly L. Newton
Foreperson of Petit Jury

Date: 4/14/16

DOCKET NO. 2013GS3201132

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

James Bubba Patterson

CDR #: 0549

Indictment for

Possession of a weapon during a violent
crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

ATRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a weapon during a violent crime
COUNTY OF LEXINGTON	)	
	)	§ 16-23-0490

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly and willfully, and unlawfully, possess a firearm, or visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: armed robbery, such weapon described as a pistol, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

937

COUNTY OF Lexington
STATE VS.James Bubba Patterson

AKA: _____

Race: Black Sex: M Age: 53

DOB: _____

Address: _____

City, State: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Larceny / Grand Larceny, value \$1000 or moreINDICTMENT/CASE#: 2013GS3200890A/W#: 2012A3221100337Date of Offense: 5/9/2012S.C. Code § : 16-13-0030(B)(2)CDR Code #: 0479

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-13-0030(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor _____

SC Bar# _____

Defendant _____

Attorney for Defendant _____

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 1,245 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$130

Clerk of Court/ Deputy Clerk _____

Court Reporter: Beth Carrigan

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Lex. Co. Prob. Off.☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge G. R. [Signature]Judge Code: 2126Sentence Date: 4-14-16

938

(10-30)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE VS.

James Bubba Patterson

AKA:

Race: Black Sex: M Age: 53

DOB:

Address:

City, S

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS3200891

A/W#: 2012A3221100330

Date of Offense: 5/9/2012

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2126

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

A TRUE COPY

Paid to Public Defender Fund

G. M. [Signature]

4-14-16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.James Bubba Patterson

AKA:

Race: Black Sex: M Age: 53DOB: [REDACTED]Address: [REDACTED]City, St: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 1,245 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>130.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS3201132A/W#: 2012A3221100331Date of Offense: 5/9/2012S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: [Signature]Judge Code: 2126Sentence Date: 7-14-16