STATE OF SOUTH CAROLINA
IN THE 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.

FINAL BRIEF OF RESPONDENT

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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,

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[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 does 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

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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, SCRE ("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, SCRE (" '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

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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 "probition 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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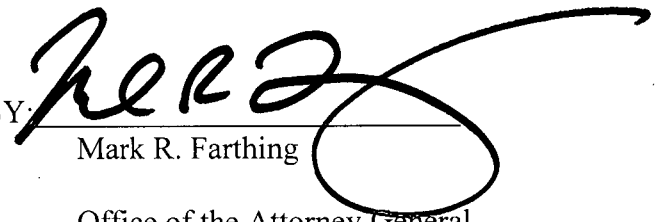
BY: 
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June 27, 2017

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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