STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2016-001152

THE STATE, ...RESPONDENT

v.

JULIUS ROOKS-MCBEAN, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly admitted testimony from witnesses for the State that identified Appellant as the person the victims recognized as "the New York guy" where that testimony was relevant to the eyewitness identification of Appellant as the man who committed the crimes and to the police investigation of those crimes.

STATEMENT OF THE CASE

Julius Rooks-McBean (Appellant) was indicted at the May 2010 term of the grand jury for Beaufort County for attempted armed robbery (2010-GS-07-972), assault and battery with intent to kill (2010-GS-07-973), and possession of a weapon during the commission of a violent crime (2010-GS-07-974). He was represented by Jared S. Newman of the Beaufort County Bar. Respondent (the State) was represented by Assistant Solicitors Hunter P. Swanson and Ann Fitts of the Fourteenth Circuit Solicitor's Office. On May 23-26, 2016, Appellant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Roger L. Couch to fifteen (15) years' imprisonment for attempted armed robbery, fifteen (15) years' concurrent imprisonment for assault and battery with intent to kill, and five (5) years' concurrent imprisonment for possession of a weapon during a violent crime, for an aggregate sentence of fifteen (15) years' imprisonment. (Indictments & Sentencing Sheets; Tr.p.423-p.424). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

In her opening statement, the solicitor briefly described the brutal and violent crime Appellant committed against Jay Patel (Victim) and Tony Brown (Brown) on December 23, 2009. Victim owned and operated the Island Plaza, a convenience store on Saint Helena Island in Beaufort County, and Brown was his employee. As Victim and Brown were doing the last bit of work before closing for the night, a man entered the store armed with a gun. He pointed the gun at Victim and demanded money but when Victim did not immediately comply with the demand the man shot Victim in the right side of the chest and fled. The solicitor explained that both Victim and Brown subsequently picked Appellant out of a photo lineup and identified him as the man who shot Victim while attempting to rob the store. (Tr.p.163-p.165).

Pretrial Motions

At the start of trial, the judge noted the case had been tried once before but had ended in a mistrial. (Tr.p.8-p.9). Following jury qualification, jury selection, and brief preliminary jury instructions, the trial court commenced a hearing on a number of pretrial motions. (Tr.p.10-p.43). First, the solicitor asked the trial court to hold a Neil v. Biggers[1] hearing regarding the admissibility of the eyewitness identifications made by Victim and Brown. Appellant advised he was not requesting a Neil v. Biggers hearing because he was not going to challenge the admissibility of the identifications and instead would "cross-examine the devil of [them] at trial." (Tr.p.43-p.45).

Later, the parties engaged in a discussion about whether Appellant would be allowed to cross-examine police officers on fingerprint and DNA evidence gathered by the State during the investigation. The State characterized Appellant's request as an attempt to introduce evidence of

[1] 409 U.S. 188 (1972).

third-party guilt, and Appellant characterized it merely as an attempt to attack the police investigation and the overall strength of the State's case. (Tr.p.63-p.91). Specifically in regard to DNA evidence, Appellant noted the State intended to link him to a particular car they believed was the getaway car in the robbery, and that the police discovered a black knit cap in that car with DNA matching a third party with the same physical build as Appellant. The solicitor responded that the State's position was not that the vehicle in question was used in the robbery, but that, for purposes of the police investigation, the employees at the convenience store initially identified Appellant as someone who had been to the store multiple times in that car, and was referred to by store employees as "the New York guy." (Tr.p.79-p.-p.82). After hearing additional arguments, the trial court took Appellant's request under advisement. (Tr.p.90-p.91).

After discussions about other unrelated pretrial motions, the solicitor advised the trial court the State intended to introduce evidence of Appellant's flight. During arguments on whether to allow such evidence, the solicitor described the initial police efforts to identify and track down Appellant at the residence of a man named David Moon. (Tr.p.101-p.106). She engaged in the following colloquy with the trial judge:

> The Court: All right. So, investigators visited his residence the night of the incident?
>
> Solicitor Swanson: David Moon's residence the night of the incident and that's - - -
>
> The Court: Is that where he lived, at David Moon's residence?
>
> Solicitor Swanson: That is who we have him - - yes, that's the residence we have him living at. Now, again, this is all kind of – David Moon wouldn't cooperate. Ashley Gadson wouldn't cooperate. So these are not people I can put on the stand.
>
> The Court: Oh, I'm - - but to answer my question - - -
>
> Solicitor Swanson: Yes, sir.

The Court: - - - the night of the incident, an investigator went to the home where he lived asking about this fellow, the defendant?

Solicitor Swanson: Yes, sir, Corporal Capps, the responding officer, checked the system, Cisco, for David Moon's residence, who lives at 44 Peppermint Lane on Saint Helena. That is where they went. They confirmed with his mother that the guy from New York had been living there, driving a Lexus with New York tags. They attempted to make contact with David Moon and were met with negative results.

The Court: So they're asking about the guy from New York?

Solicitor Swanson: And that was on December 23rd.

The Court: Okay.

(Tr.p.105, line 2-p.106, line 7) (emphasis added).

The following day, the trial court reconvened to rule on all of the pretrial motions. (Tr.p.110). In denying Appellant's request to introduce evidence about the black knit cap, the trial court ruled in part:

> Now, as to the evidence of the DNA on the cap, I have a real problem with this situation in, in that the evidence of the defendant's connection to this vehicle so far has all been before the incident occurred. He was seen at a traffic stop in that car. Apparently there are employees at this location who will identify him as being associated with that car when he came on the premises prior to the incident.
>
> There is no evidence, however, that the perpetrators, when they left the scene, left in that car, that that car, in any way, was a participant in the event. There is no evidence as to even the defendant's association with that car after the event since apparently he left shortly thereafter. The police tried to locate him that night, and thereafter, were unable to locate him in South Carolina, and apparently found him some two months later in New York. February sometime I believe is when he was located in New York.

(Tr.p.115, lines 2-18) (emphasis added).

After the trial court ruled on most of the pretrial motions, the solicitor advised the judge that although Appellant had already waived arguments on the admissibility of the eyewitness identifications made by Victim and Brown, the State was also planning to elicit testimony about a photo lineup that was shown to Vic Patel (Patel), Victim's son. The solicitor explained Patel was not an eyewitness to the crime but that he was shown the lineup in the course of the police investigation and asked if he could identify the individual known as "the New York guy," who had been to store several times prior to the incident. Appellant initially objected on grounds that he had not been provided a copy of this photo lineup in response to his discovery requests; however, the solicitor noted it was the same lineup shown to eyewitness Brown, and that Patel's identification of "the New York guy" from that photo array was specifically described in of Investigator Brian Baird's report, which was part of discovery. Appellant then objected on grounds of double jeopardy, complaining this was evidence the State did not introduce in the first trial. He also objected on grounds that admitting the testimony "would be confusing, unduly prejudicial to a jury to have a third person, who did not witness the event, kind of finger this guy here . . . ." (Tr.p.128-p.131). Appellant argued:

> But now you're bringing somebody in that's gonna say hey, I seen this dude before. Yeah, that's the dude I've seen before. How, how - - I mean that's just adding another layer of identification and Vic Patel, and the State will tell you, was no where near the crime scene and did not witness the crime, and I just think it, it's a spurious piling on of an identification from somebody that didn't witness the crime.

(Tr.p.131, lines 1-8). The trial court deferred ruling on the admissibility of the testimony and asked the solicitor to proffer it at a later time to give Appellant the ability to cross-examine the witness before making a decision. (Tr.p.131-p.132). After wrapping up pretrial matters, the jury was sworn and the case proceeded to trial. (Tt.p.132-p.148).

Trial

The trial court gave preliminary jury instructions and the parties gave opening statements. (R.p.148-p.169). As explained in more detail above, the State's opening included a brief description of the attempted armed robbery of the Island Plaza on the night of December 23, 2009, which resulted in Victim getting shot in the chest. The solicitor also explained that both Victim and Brown picked Appellant out of a photo lineup and identified him as the man who shot Victim while attempting to rob the store. (Tr.p.163-p.165). Next, Appellant presented his theory of defense, which consisted of the claim that the police rushed to "instantly" develop him as a suspect and then used a technique known as "framing" to influence Victim and Brown to pick his photograph from the lineup to support their suspicions. He argued the police came up with a "symbolic assailant" based on the surveillance video from the store and that because he generally fit the physical characteristics of this assailant and had been in the store before, he must be the person who committed the crimes. Appellant challenged the validity of the eyewitness identifications claiming police procedures can often be tainted or suggestive, and he challenged the overall police investigation claiming it was incomplete. He argued that all of these things constitute reasonable doubt. (Tr.p.165-p.169).

The State then began calling witnesses to testify about their involvement in the case. EMS worker A.J. Drake was dispatched to the scene where he treated Victim's life-threatening gunshot wound and then transported him to the hospital. (Tr.p.170-p.175). Beaufort County Sheriff's Deputy Chris Capps was the first officer to respond to the report of an armed robbery at the Island Plaza. Brown opened the door and told him Victim had been shot, so Capps asked EMS to respond. He then took several photos of the crime scene. Capps identified those photos as well as the store surveillance video and they were admitted into evidence and published to the

jury. He then described his attempts to gather evidence at the scene including dusting the door for fingerprints. Capps testified only one usable fingerprint was found on the door and it was identified as belonging to Dominick Lesesne, a Saint Helena resident he had known since Lesesne was a kid. He said Lesesne was a regular customer of the Island Plaza whom, like Appellant, is well over six feet tall. (Tr.p.175-p.189). On cross-examination Capps acknowledged the person in the video was wearing a black knit cap. He also acknowledged there was no forensic evidence linking Appellant to the crime. (Tr.p.189-p.196). On redirect, Capps testified the man in the surveillance video was not Lesesne. Finally, on re-cross he admitted he was not able to identify the assailant on the video as Appellant. (Tr.p.196-p.198).

Next, the State called Jay Patel, the Victim, to the stand. He described the attempted armed robbery of his store on the night of December 23, 2009, and how he was shot during the attempt. Victim testified the assailant had been in the store many times before, explaining he came in four or five times every day for two or three months before the crime. He described picking Appellant out of a photo lineup the police showed him on January 5, 2000. Victim testified he immediately identified Appellant's photo and was one hundred percent sure Appellant is the man who shot him. He then made an in-court identification of Appellant. Victim then testified he knows Dominick Lesesne and that Lesesne is not the man who shot him. (Tr.p.200-p.209; p.215).

The State then called Tony Brown to the stand. Brown testified he had been an employee at the Island Plaza for twenty-four years and that it was a busy store with a lot of repeat customers. On the night of December 23rd he was cleaning the floors and talking on his phone when a man came into the store, demanded money, and shot Victim. Brown testified the man had been in the store before and he specifically remembered the man from an incident in

November when he came in and made a commotion. Brown described picking Appellant out of a photo lineup shown to him by Detective Brian Baird after the incident. He testified Baird did not indicate whom he should pick out, but that his recognition of Appellant in the photo was "instant." Brown testified he was one hundred percent certain Appellant is the shooter and then made an in-court identification. Brown further testified he knows Dominick Lesesne personally and that Lesesne was not the shooter that night. (Tr.p.216-p.223; p.226-p.228; p.230-p.231).

"The New York Guy"

At the conclusion of Brown's testimony, the solicitor asked the trial court if it was a good time to proffer testimony from Vic Patel and Investigator Baird in regard to the investigative identification of Appellant as "the New York guy." The judge granted the request and the State called Baird to the stand. (Tr.p.235-p.236). Baird explained that as part of his investigation of the crimes, he met with Patel on December 26, 2009, at the Island Plaza. He brought the photo lineup that had been prepared for showing to Victim and Brown, and presented it to Patel. The solicitor asked Baird the purpose of showing the lineup to Patel and Baird explained:

> At that point he had informed me that he could identify an individual who was a suspect in the shooting. He said he could tell me if that was the person that everybody was calling the guy from New York. There were people that had contacted the store, after the shooting, and advised them that there was information that these two guys had come down from New York were the ones that were involved in the shooting, and that he could look at the lineup and tell me if that was one of the guys from New York.

(Tr.p.237, line 24-p.238, line 8). Baird went on to testify Patel said he knew the guy was from New York due to constant contact over the previous couple of weeks when the guy frequently came in and out of the store. He said Patel told him he had even made a note of the car they were driving and the license plate because he had a funny feeling about him. Baird testified he showed the lineup to Patel and Patel identified the photo of Appellant as the man from New

York. (Tr.p.236-p.240). On cross-examination Baird explained that he showed the lineup to Brown first and Brown made a positive identification of Appellant as the shooter before he separately showed the lineup to Patel. (Tr.p.240). Next, the State proffered testimony from Patel. He explained that Victim, who is his dad, owns the Island Plaza. Patel testified he had contact with Investigator Baird when Baird came to the store to ask if he could identify "the guy from New York" from a six-pack photo lineup. Patel picked the photograph of Appellant as the guy from New York. (Tr.p.244-p.246).

After the proffer, Appellant argued the testimony should be excluded because it was "legally spurious" and would be "confusing to the jury." He said it was merely background information the police used to develop their suspect and would do nothing to bolster the in-court identifications made by Victim and Brown. Appellant repeated his complaint that the testimony was "spurious" and argued this was because it made it seem like there was a third identification even though Patel could not identify the shooter at all. The solicitor responded that although those were all good points on which Appellant could cross-examine Patel, the testimony was pertinent to the law enforcement investigation and it went toward proving identity. (Tr.p.246-p.247).

The trial court noted that one of the factors typically charged to a jury in an identity case has to do with the opportunity the identifier had to become acquainted with the person they were identifying at some point in the past. In regard to the proffered testimony the court found: "I think this goes toward the identity of that person that was identified by the two eye witnesses, and so I'm going to allow the testimony." The judge went on to caution the State that Baird's testimony included some hearsay and that if there was an objection during trial to such testimony, he would not allow it. (Tr.p.247-p.248).

Based on this ruling, the State proceeded to elicit testimony from Patel. As Patel began to describe a telephone call he got from Brown shortly after the crime, Appellant objected on grounds that statements Brown made to Patel over the phone were hearsay. The jury was excused and after hearing arguments on Appellant's objection to the testimony both as hearsay and as in violation of the confrontation clause, the State proffered the testimony. Patel testified that right after his dad was shot he received a call from Brown. He asked Brown who did it and whether his dad was okay, and Brown told him the perpetrators were "the two guys from New York." (Tr.p.254-p.263). The trial court heard further arguments and ultimately ruled the contents of the phone call from Brown would be admitted under an exception to the hearsay rule. (Tr.p.264-p.265).

The jury returned and Patel resumed his testimony. He testified he received the call from Brown shortly after his dad was shot. He asked Brown if his dad was all right and who did it. Patel testified Brown said it was the two guys from New York. Patel said he knew who Brown was talking about because he pays attention to vehicles, tags, people, and their buying habits. He testified he specifically remembered a time during Heritage Days weekend when the New York guys were involved in an incident in the parking lot. He made a mental note of the make, model, and color of the car and the New York tags – all information he gave to the police after the shooting. Patel identified the photo lineup he was shown by Baird and testified he picked out photo number two as "the New York guy" by pointing at it. He acknowledged he was not present during the shooting and was simply looking at the photos because he knew the New York guy. Finally, Patel testified that Dominick Lesesne does not look like the New York guy. (Tr.p.265-p.269).

Baird then took the stand and described his involvement in the investigation of the shooting and attempted armed robbery at the Island Plaza on December 23, 2009. Baird explained that over the two or three days after the incident he developed Appellant as a suspect and had a photo lineup created to show to Victim and Brown. He first showed the lineup to Brown, who was immediately able to identify Appellant as the man who shot Victim. He then showed the lineup to Patel to ask if he could identify "the New York guy." Baird testified Patel immediately pointed to the photo of Appellant with no hesitation. (Tr.p.273-p.278; p.283). On re-cross examination, Patel acknowledged it was an absolute fact that he could not say who committed the crimes because he did not actually witness the incident. (Tr.p.284).

Continuation of Trial

Once the testimony about the New York guy was complete, the State called Jeremiah Fraser of the Beaufort County Sheriff's Department to the stand. Fraser was the primary investigator for Saint Helena and was the officer who presented the photo lineup to Victim on January 5, 2010, after Victim was released from the hospital. He testified Victim immediately identified Appellant as his assailant. Fraser further testified he is very familiar with Dominick Lesesne and he could tell for sure the person on the security video who shot Victim and attempted to rob the store was not Lesesne. (Tr.p.285-p.292; p.307-p.308). Finally, the state called nurse Kimberly Clegg to the stand. She was working in the emergency room at Beaufort Memorial Hospital in 2009 and treated Victim for a gunshot wound to his right chest. Clegg was admitted as an expert in emergency room nursing and testified Victim's injuries were potentially life-threatening. (Tr.p.311-p.317).

After the State rested, Appellant made a motion for a directed verdict and that motion was denied. The trial judge then advised Appellant of his right to testify and Appellant elected

not to testify in his defense, after which the defense rested. Following a brief charge conference, the trial broke for the day. (Tr.p.318-p.329). The next morning, the parties gave closing arguments.

First, the solicitor described the incident, Victim's injuries, and the elements of the crimes before arguing that the real issue in the case was about identity. She said we know Appellant was the person who committed the crimes because he was identified by the two eyewitnesses to the incident, Victim and Brown. She then argued this identification was particularly strong because store employees were familiar with Appellant coming into the store on multiple occasions over the course of a month. The solicitor reminded the jury of the testimony from both Brown and Patel about the ruckus Appellant caused at the store during Heritage Days, at which point Patel took note of "the New York guy" and the car he was driving. She then said: "[Brown] also tells Vic Patel, in the phone call right after the shooting, the New York guy did it and Vic Patel knew who he was talking about. And when Investigator Baird asked Vic Patel hey, who is this New York guy you're talking about, he points out the same guy, [Appellant], the New York guy." (Tr.p.334, lines 5-10). The solicitor explained that Brown and Patel's testimony that they remembered Appellant being in the store during Heritage Days and knew him as the "New York guy" provided corroboration for the subsequent eyewitness identifications. (Tr.p.331-p.342).

Appellant responded by first arguing the State "hid" evidence from the jury by failing to elicit direct testimony from Brown that the "New York guy" committed the crimes and instead relied on Patel's testimony that Brown made this comment in the phone call from the store. He talked about "confirmation bias," the State's failure to call certain individuals as witnesses at trial, the investigative focus on a "symbolic assailant," and all the parts of the investigation that

suggest the identification was flawed. Appellant repeatedly focused on the absence of direct testimony from Brown that the crimes were committed by the New York guy, and on Patel's testimony identifying the New York guy, arguing Patel had "skin in the game" because his father was shot and had fingered Appellant simply because he remembered him being a jerk in the store a month earlier. (Tr.p.342-p.366).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, reasonable doubt, the roles of the judge and jury, direct evidence, circumstantial evidence, credibility of witnesses, the defendant's right to remain silent, criminal intent, and the elements of the crimes. (Tr.p.367-p.389). In regard to identity, the trial judge specifically charged the jury as follows:

> Now, one of the issues in this case is the issue of identification of the defendant as the person who committed the crimes that are charged, and the State has the burden of proving identity beyond a reasonable doubt. You must be satisfied, beyond a reasonable doubt, of the accuracy of the identification of the defendant before you can convict the defendant. Identification testimony is an expression of belief or an impression by a witness, and you must determine the accuracy of the identification of the defendant. You must consider the believability of each identification witness in the same way as any other witness.
>
> You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This can be affected by such factors of - - as whether - - or how long or short the time was available, how far or close the witness was, the lighting conditions, and whether the witness had a chance to see or know the person in the past. Once again, I instruct you, the burden of proof on the State extends to every element of the crime charged and that includes the burden of proving, beyond a reasonable doubt, the identity of the defendant as the person who committed the crime. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identification of the, of the defendant as the perpetrator, then you must find the defendant not guilty.

(Tr.p.378, line 22-p.379, line 21). Neither party took exception to the jury charge or verdict form. (Tr.p.392-p.393).

At the end of trial, the jury found Appellant guilty of each charge. He was sentenced to an aggregate sentence of fifteen (15) years' imprisonment. (Indictments & Sentencing Sheets; Tr.p.410-p.424). Appellant renewed his directed verdict motions, made a motion for a new trial, renewed motions made during trial, and moved to reconsider his sentence. The trial court denied the motions. (Tr.p.426-p.437).

ARGUMENT

The trial court properly admitted testimony from witnesses for the State that identified Appellant as the person the victims recognized as "the New York guy" where that testimony was relevant to the eyewitness identification of Appellant as the man who committed the crimes and to the police investigation of those crimes.

Appellant argues the trial court erred in allowing Investigator Baird and Vic Patel to testify about his identity because neither man was at the scene of the crime when it was committed. He complains their testimony was spurious, confusing, and improperly bolstered the State's case on the issue of identity. Appellant argues the testimony was not relevant to the issue of eyewitness identification other than in a spurious way, and that given the well-known problems with eyewitness identification, the admitted testimony only compounded these problems. (Brief of Appellant, p.5-p.6). On the contrary, the testimony from Patel identifying "the New York guy" corroborated and strengthened the eyewitness testimony from the victims of the crimes. The trial court properly admitted the testimony because it was relevant to both the eyewitness identification of Appellant as the person who committed the crimes and the overall police investigation of those crimes. The trial court did not abuse its broad discretion in admitting the testimony from Baird and Patel about Patel's identification, and Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests within the sound discretion of the trial judge. State v. Johnson, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015); State v. Simmons,

384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App. 2009). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Law / Analysis

As a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000); Rule 402, SCRE. Evidence that assists the jury in arriving at the truth of an issue is relevant and admissible unless otherwise incompetent. State v. Sweat, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004). Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In the Matter of Care and Treament of Corley, 353 S.C. 202, 205, 577 S.E.2d 451, 453 (2003); State v. King, 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002); 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."). It is not required that the inference sought should necessarily follow from the fact proved. See Sweat, 362 S.C. at 127, 606 S.E.2d at 513. Indeed, evidence is relevant if "logically relevant" to establish a material fact or element of the crime; it need not be "necessary" to the State's case in order to be admitted. Id. (citing State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990)).

The testimony elicited from Baird that he showed Patel the photo lineup to see if he could identify the "the New York guy" Brown had immediately identified as the man who attempted to

rob the store and shot Victim, and the related testimony from Patel actually identifying Appellant's photo as "the New York guy," were both of consequence to the jury's determination of Appellant's guilt or innocence at trial. The testimony had a tendency to make a determination that the eyewitness identifications by Brown and Victim were more credible than they would have been without such testimony. It also helped explain the logical chain of events in the overall police investigation as the police worked to develop suspects and verify the identity of those suspects. For these reasons, the testimony was relevant and admissible. Rule 402, SCRE; see also State v. Day, 341 S.C. 410, 422, 535 S.E.2d 431, 437 (2000) ("Evidence concerning a defendant's tattoo or nickname is not prejudicial when used to prove something at issue in a trial, such as the identification of the defendant."). The State was entitled to introduce evidence to properly bolster the eyewitness identifications made by Brown and Victim, and to explain the steps of the police investigation to the jury, particularly where Appellant's theory of defense was, in part, to attack that police investigation. Appellant's convictions should be affirmed.

To the extent Appellant's complaint can be construed as a challenge to Patel offering inadmissible lay witness opinion testimony on the ultimate issue in the case—identity—the State submits the trial judge properly admitted the witnesses' opinion testimony under Rule 701, SCRE, as it was based on his individual perceptions and was helpful to the jury in properly deciding the case. Lay witnesses are permitted to offer opinion testimony when the opinion or inference: (1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE; see State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the

determination of a fact in issue, and c) does not require special knowledge."). "[C]onclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury." State v. McClinton, 265 S.C. 171, 176-77, 217 S.E.2d 584, 586 (1975). Under Rule 704, SCRE, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."

Here, the trial judge properly admitted the testimony of both Baird and Patel in which Patel identified Appellant's photograph as "the New York guy" based on his previous interactions with Appellant. Clearly, the witnesses' testimony satisfied the requirements for lay opinion testimony under Rule 701, SCRE, as the testimony was based on Patel's own perceptions of both Appellant and the photograph in the lineup, was helpful to the jury, and was not based on any special knowledge, skill, training, or experience. By Patel's own admission, he was not present at the time the crimes were committed and could not say Appellant was the perpetrator; therefore, the testimony was not confusing or spurious. Instead, the testimony was crucial in enabling the jury to assess the credibility of Brown and Victim in properly identifying Appellant as the person who committed the crimes, which was the pivotal issue in the case. Furthermore, the testimony did not improperly invade the province of the jury in deciding the ultimate issue in the case. The witnesses merely aided the jury in properly determining whether Brown and Victim had correctly identified Appellant as the perpetrator of the crimes, enabling the jurors to accurately determine whether he was guilty of the indicted offenses. The trial judge did not abuse his discretion in admitting the testimony, and his ruling was supported by the evidence in the record. Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentence of the lower court be affirmed.

Respectfully submitted,

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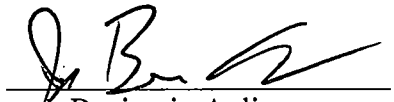
BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
July 24, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 24 2017
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2016-001152

THE STATE, ...RESPONDENT

v.

JULIUS ROOKS-MCBEAN, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Coordinator, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated July 24, 2017, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 24th day of July, 2017.

Angela Bennett
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

July 24, 2017

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Julius Rooks-McBean
Appellate Case No. 2016-001152

Dear Mr. Pachak:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services