STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Lexington County

Honorable G. Thomas Cooper, Circuit Court Judge

Opinion No. 5611 (S.C. Ct. App. Filed 1/4/2019)

2013-GS-32-0890;0891;1132

THE STATE,

RESPONDENT,

V.

JAMES BUBBA PATTERSON,

PETITIONER

APPELLATE CASE NO 2019-000465

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 21, 2019.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in failing to find that the trial judge erred in admitting testimony that Petitioner's DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database?

2. Did the Court of Appeals err in failing to find that the trial judge erred in admitting testimony that Petitioner's DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act?

STATEMENT OF THE CASE

In April of 2013, the Lexington County Grand Jury indicted Petitioner, James Bubba Patterson, for grand larceny, armed robbery and possession of a weapon during the commission of a violent crime, indictments #2013-GS-32-0890, 0891, 0892. On December 4, 2015, Petitioner appeared before the Honorable Frank R. Addy, Jr. for a competency hearing as well as a motion by the State to obtain additional DNA samples. Robert M. Madsen represented Petitioner at the hearing. Suzanne Mayes was the prosecutor. Judge Addy found Petitioner competent to stand trial and ordered additional DNA samples.

On April 11, 2016, Petitioner proceeded to jury trial before the Honorable G. Thomas Cooper. Robert M. Madsen and David Michael Mauldin represented Petitioner at trial. Suzanne Mayes and Lester McGill Bell, Jr. prosecuted the case. The jury returned verdicts of guilty as charged. Judge Cooper sentenced Petitioner to twenty (20) years in prison for armed robbery, ten (10) years concurrent for grand larceny and five (5) years concurrent for the weapons charge. A timely notice of intent to appeal was served on April 15, 2016, and the direct appeal perfected. On January 4, 2019, after hearing arguments on October 3, 2018, the South Carolina Court of Appeals affirmed the convictions and sentences. State v. Patterson, 425 S.C. 500, 823 S.E.2d 217 (Ct.App. 2019). A timely petition for rehearing was filed and then denied on February 21, 2019. This petition for writ of certiorari follows.

ARGUMENTS

1. **The Court of Appeals erred in failing to find that the trial judge erred in admitting testimony that Petitioner's DNA was contained in the DNA database when the State failed to authenticate and establish the chain of custody for the DNA sample contained in the database.**

The jury found Petitioner guilty of the armed robbery of the K&M Jewelry store on May 9, 2012. Petitioner became a suspect in the robbery after his DNA was matched to DNA found on a black fedora hat left at the scene and worn by the robber during the armed robbery, as seen on video surveillance tape from the store. At trial the State attempted to introduce testimony from witness Rhonda Fields from the South Carolina Law Enforcement Division [SLED] in regard to matching DNA found on the hat to Petitioner's DNA contained in the Combined DNA Index System [CODIS]. (R. pp. 337-344). Petitioner objected to the testimony based on three separate grounds: 1.) Lieutenant David McClure of SLED, not Agent Fields, searched CODIS and made the match but the State did not plan to call Lieutenant McClure because he retired from SLED[1] (R. p. 338, lines 9-25); 2.) the State failed to establish the proper chain of custody for the DNA sample found in CODIS (R. p. 339, lines 13-15); and 3.) the testimony improperly indicated that Petitioner had a prior record (R. p. 338, lines 10-16).

The State proffered the testimony of Agent Fields. (R. pp. 342-344). Although Lieutenant McClure conducted the CODIS search, Agent Fields testified, "I'm familiar with the procedures. I don't have the documentation with me, but I believe I was involved in the review process because I worked in the DNA database unit at the time this letter was generated, so there were a couple of us assigned to the database and depending on who would have been on rotation for review I could have been involved in the review. But, again, I don't have that information on

[1] The State did not argue that Lieutenant McClure was unavailable.

the stand with me." (R. p. 344, lines 1-8). The State decided to call Agent Fields as a witness later in the trial, presumably so she could verify that she was involved in the review of Lieutenant McClure's match. (R. p. 344, lines 11-12).

Later in the trial the State again proffered Agent Fields' testimony. (R. pp. 532-541). Agent Fields confirmed that she was involved in reviewing Lieutenant David McClure's database search. (R. p. 533, lines 13-18). Petitioner again objected to the admission of Agent Fields' testimony. (R. p. 541, line 8 – p. 542, lines 1-2). Petitioner argued that the testimony was irrelevant and even if relevant, more prejudicial than probative. Additionally, Petitioner specifically argued, "We've got argument under due process, Your Honor, that they can't authenticate or give any type of chain of custody as to this sample." (R. p. 541, lines 11-13). The State argued, "Your Honor, we do believe that we have met the criteria for admissibility pursuant to State versus Anderson[2] using the AFIS analogy." (R. p. 542, lines 4-6). The trial judge overruled Petitioner's objections. (R. p. 542, lines 17-18). Petitioner renewed the objection when Agent Fields testified before the jury. (R. p. 544, lines 5-6). Petitioner renewed all objections at the close of the trial (R. p. 556, line 23 – p. 557, lines 1-4) and renewed all objections after the jury returned a verdict. (R. p. 608, lines 20-23). The trial judge erred in admitting the testimony in reference to Petitioner's DNA contained in CODIS.

In State v. Anderson, 386 S.C. 120, 128–29, 687 S.E.2d 35, 39 (2009) (fn #8 omitted), the South Carolina Supreme Court wrote:

> In terms of initial admissibility, Rule 901(a) provides: "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. Although not exhaustive, Rule

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2 State v. Anderson, 386 S.C. 120, 122, 687 S.E.2d 35 (2009).

> 901 further provides examples of authentication or identification which conform with the requirements of the rule. Rule 901(b), SCRE.

One example of authentication provided by Rule 901(b)(3) is comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. The DNA sample found in CODIS in the present case, however, was not authenticated. Agent Fields admitted that no chain of custody existed in regard to DNA in the database. (R. p. 538, lines 1-3).

The State's reliance on State v. Anderson, id. is misplaced because, unlike the fingerprint card at issue in Anderson, the DNA sample in the present case constitutes fungible evidence more analogous to the blood sample at issue in State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992). See Anderson, fn #4. In Cribb, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992), the South Carolina Supreme Court wrote:

> While the admission of evidence is within the discretion of the trial judge, we have held that it is an abuse of discretion to admit the results of a blood alcohol test where the identity of those who sealed, labeled, and transported the blood sample is not established. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990). The evidence in the record of this case does not identify those persons who handled the blood from the time it was drawn until the time it was tested. Accordingly, we conclude that the trial judge abused his discretion in admitting the blood alcohol test.

The trial judge in the present case abused his discretion in admitting testimony in regard to Petitioner's DNA sample contained in CODIS when the State failed to authenticate the sample by establishing a proper chain of custody.

Pursuant to Anderson, the State was required to establish, at the least, when the DNA sample contained in CODIS was taken and by whom the sample was taken. "As discussed by the Court of Appeals, Rich does not establish an authentication requirement that necessitates the testimony of the actual person who took the fingerprints on the master fingerprint card. Instead, it merely requires " 'evidence as to *when and by whom* the card was made and that the prints on

the card were in fact those of this defendant.' " Anderson, 378 S.C. at 248, 662 S.E.2d at 464 (quoting *Rich*, 293 S.C. at 174, 359 S.E.2d at 282)." State v. Anderson, 386 S.C. 120, 128, 687 S.E.2d 35, 39 (2009). The State failed to establish when and by whom the DNA sample contained in CODIS was taken.

The DNA database, CODIS, is an investigative tool utilized by law enforcement. In State v. Hill, 409 S.C. 50, 57, 760 S.E.2d 802, 806 (2014), a letter from SLED to a local law enforcement agency was introduced in evidence and read:

> Dear Neil Livingston, the short tandem repeat, STRPCR DNA profile developed from item 19 was compared to the Combined [sic] DNA Index System, CODIS. This profile matches the STRPCR DNA profile developed from Bruce Antwain Hill. This information is provided for investigative purposes only. If the suspect is charged, an additional biological specimen must be submitted for court purposes. This search was conducted by Lieutenant David McClure with the South Carolina Law Enforcement Division.

As noted in the SLED letter in Hill, the DNA contained in CODIS does not meet the standard for admissibility pursuant to Rule 901, SCRE.

Once Petitioner was developed as a suspect through CODIS, the State obtained additional DNA samples from Petitioner and compared those samples to the DNA found on the fedora at the scene of the robbery. The fact that Petitioner's DNA was in the database was irrelevant. As argued by Petitioner, "And then obviously it is cumulative to the DNA that they've already submitted and for those reasons we do not believe that it is appropriate on top of the fact that you've got someone else who's done a review – or reviews what someone else has done, but if the State wanted to they could certainly have had Lieutenant McClure here." (R. p. 541, lines 19-25). Even if relevant, the testimony was far more prejudicial than probative as discussed further in issue two. The trial judge abused his discretion in admitting testimony in

regard to the unauthenticated DNA sample from CODIS when the State failed to call the witness who conducted the search and failed to establish a proper chain of custody.

In affirming the Court of Appeals wrote:

> In the case at bar, the DNA evidence was authenticated through the testimony establishing the DNA profile developed from the fedora matched both the DNA profile attributed to Patterson in the database and the DNA profile developed from Patterson after he was arrested. First, the State established the authenticity of the DNA profile that SLED entered into the database through the testimony of Boehm and Fields. Boehm had first-hand knowledge of the procedures that went into collecting, storing, maintaining, and testing the DNA profile, while Fields personally reviewed and verified the results of the DNA profile match. *See* Rule 901(b)(1), SCRE (allowing authentication through testimony by a witness with knowledge that a matter is what it is claimed to be). Boehm also testified regarding the distinctive characteristics of each DNA strand and the specific ID numbers assigned to the ones tested here. *See* Rule 901(b)(4), SCRE (providing evidence can be authenticated through proof of distinctive characteristics).
>
> Moreover, the identity of each person that handled the DNA sample was conclusively established, and there was no evidence presented indicating the sample was tampered with. See *State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004) ("[I]f the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive."). Minor discrepancies in the chain of custody implicates the credibility of the evidence, but does not render the evidence inadmissible. See id. at 24-25, 598 S.E.2d at 738; State v. Smith, 326 S.C. 39, 41-42, 482 S.E.2d 777, 779 (1997) (affirming admissibility of blood tests even though the arresting officer stored the blood sample in his home refrigerator prior to testing, noting that there was no evidence of tampering); State v. Kahan, 268 S.C. 240, 244, 233 S.E.2d 293, 294 (1977) (ruling the ballistics test results of a nightgown worn by the deceased and placed in the evidence locker in a plastic bag were admissible even though there was no testimony as to the care and handling of the plastic bag containing the gown during the time it was in the evidence locker). Therefore, we find the testimony of Lieutenant McClure was not necessary to establish the authenticity of the match that first identified Patterson as a suspect.
>
> Additionally, although a perfect chain of custody was not shown for the DNA evidence that was already contained in the CODIS database, we believe the authenticity of the DNA results were nevertheless established through the independent testing of Patterson's DNA profile. Boehm was qualified as an expert in DNA analysis and she testified she matched the DNA profile taken off Patterson after his arrest with the DNA profile taken off the fedora found at the

> crime scene. Both of these samples were properly authenticated at trial and are not challenged on appeal. *See* Rule 901(b)(3), SCRE (stating authentication requirement is satisfied through comparison by expert witness with specimens that have already been authenticated). Accordingly, we find no abuse of discretion and affirm as to this issue.

State v. Patterson, 425 S.C. 500, 507–09, 823 S.E.2d 217, 221–22 (Ct. App. 2019). The Court of Appeals erred.

The DNA sample found in CODIS was not authenticated by the fact that there was testimony that it matched the fedora and a known sample from Petitioner. The State did not establish the identity of each person who handled the DNA sample from CODIS. The State did not establish who took the DNA sample contained in CODIS, who sealed, labeled and transported the sample for testing or even who did the initial testing. Neither Agent Fields nor Agent McClure could authenticate the DNA sample found in CODIS. Agent Boehm testified at trial that she compared a swab from the black fedora hat found at the scene to a known buccal swab taken from Petitioner after his arrest. (R. pp. 509-526). She did not testify that she compared the profile already contained in CODIS. The DNA profile in CODIS was not authenticated pursuant to Rule 901(b)(3). The Court of Appeals erred in failing to find that the trial judge erred in admitting the testimony in reference to Petitioner's unauthenticated DNA contained in CODIS.

2. **The Court of Appeals erred in failing to find that the trial judge erred in admitting testimony that Petitioner's DNA was contained in the DNA database because the testimony constituted improper evidence of a prior bad act.**

In addition to objecting to Agent Fields' testimony in regard to Petitioner's DNA contained in CODIS because the sample was not authenticated and lacked a proper chain of custody, Petitioner also objected to the testimony based on the fact that it constituted improper evidence of a prior bad act. (R. p. 338, lines 10-16). Petitioner argued, "The solicitor has indicated that they are not going to refer to CODIS, but call it a database. Your Honor, my DNA is not in a database, yours or Solicitor Mayes, so I think referring to that is going to basically be a comment on the fact of saying his DNA has been placed in there and that he has a prior record and I don't think that is appropriate." (R. p. 338, lines 10-16). After the second proffer Petitioner specifically argued, "We believe it's an attempt basically by the State under 404(b) to show a bad act. This is a law enforcement agency, SLED, and their database that's collected DNA samples. Additionally, kind of in conjunction with 404(b), it kind of goes along with 609, evidence of prior crime, so we don't believe it should come in there." (R. p. 541, lines 13-19).

In State v. Hill, 409 S.C. 50, 760 S.E.2d 802 (2014), the South Carolina Supreme Court found that a letter from SLED to a local police department referencing CODIS and, by implication, Defendant's criminal record was inadmissible but found the error in that case harmless as cumulative. The Court in Hill wrote, "Petitioner contends the circuit court erred when it admitted a SLED letter into evidence because the letter implicitly referenced Petitioner's criminal record and therefore highly prejudiced Petitioner. While we agree the admission of the letter was error, we hold that this error does not warrant reversal of Petitioner's convictions." Hill 409 S.C. at 56-57, 760 S.E.2d at 806.

Agent Fields' testimony in the present case is the equivalent of the letter in Hill and inadmissible. In the present case, however, the error was not harmless. In Hill, unlike the present case, there was other evidence of Petitioner's DNA being in the CODIS database. "While we do not condone the publishing of this letter to the jury, its admission does not amount to reversible error. The evidence contained in this letter was merely cumulative to other evidence of Petitioner's DNA being in the CODIS database. Accordingly, we find that the publication of this letter was harmless in light of the other evidence which was admitted without objection." Hill 409 S.C. at 56-57, 760 S.E.2d at 806. Unlike Hill, Petitioner in the present case objected to all references to his DNA being in the CODIS database.

The reference to CODIS, by implication, improperly referenced Petitioner's prior record. The reference was prejudicial. The reference to Petitioner's DNA being contained in CODIS in the present case is distinguished from the vague reference to a fingerprint card that was found harmless in State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). Fingerprints may be on file in the Integrated Automated Fingerprint Identification System [IAFIS or AFIS] and available to law enforcement for a number of reasons other than an arrest or conviction including employee background checks, licensing and other non-criminal justice purposes where authorized. The DNA database, on the other hand, contains convicted offender DNA profiles and, in some states, arrestee profiles. There does not appear to be a civil component, as with AFIS, in the DNA databases.

While the State in the present case did not attempt to introduce the letter, as in the Hill case, and did not introduce evidence as to why Petitioner's DNA was in the database and there was no specific reference to a prior crime, the clear inference was that Petitioner had been convicted of a crime of a serious nature requiring that a DNA sample be maintained in the

database. Additionally, the State referenced the DNA database in closing argument. (R. p. 564, lines 6-8). The error in admitting the testimony that Petitioner's DNA was contained in the DNA database was not harmless in the present case.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE; see State v. Lyle, 125 S.C. 406, 415–16, 118 S.E. 803, 807 (1923) (noting the rule "universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged"). "However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b). As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE. State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895. If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b). Id. Even if prior bad act evidence falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Clasby, 385 S.C. at 155, 682 S.E.2d at 896.

As argued by Petitioner, the DNA database testimony was irrelevant in light of the fact that the State obtained additional DNA samples from Petitioner. (R. p. 541, lines 8-22). The State could simply have argued that Petitioner was developed as a suspect without regard to the DNA database. Even if relevant, the evidence does not meet an exception under Rule 404(b) and the testimony that Petitioner's DNA was in the database, inferring that he had a prior record, was

certainly more prejudicial than probative. The trial judge erred in admitting the testimony that Petitioner's DNA was in the DNA database.

In affirming the Court of Appeals wrote:

> We believe the trial court did not err in admitting the testimony regarding the database search. Initially, we believe the case at hand differs from the error in *Hill* because (1) the State did not place a letter into evidence; (2) the reference to the database did not contemporaneously refer to Patterson as a "suspect"; and (3) the State did not mention the type of database that the match came from. Here, the State's witnesses referred to the database as "the database" or "our database," rather than the "CODIS database." The State did not attempt to solicit testimony regarding the purpose of the database, nor did it bring up Patterson's prior record. Moreover, although SLED is a law enforcement agency, given the prevalence in which personal data is shared with public and private agencies for various purposes, e.g., military records and private commercial enterprises, we do not believe the testimony necessarily implied Patterson had a criminal record. *See* S.C. Code Ann. § 23-3-610 (2007) (instructing SLED to "develop DNA profiles on samples for law enforcement purposes and for humanitarian and non[-]law enforcement purposes").
>
> Furthermore, we believe the reference to the database was relevant and highly probative because it explained a critical step in the investigation. Specifically, the database testimony explained how Patterson came to be identified as a suspect in the first place. Without the testimony, the jury would have been left to speculate as to the means law enforcement used to initially place Patterson at the crime scene. See State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) ("Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears."). Additionally, based on the fact the jury was presented with only limited information regarding the DNA database search, and given that Patterson's DNA was independently matched with the DNA found on the fedora, we believe any prejudice to Patterson was minimal. See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("[E]ven where the evidence is shown to be relevant, if its probative value is *substantially outweighed* by the danger of unfair prejudice, the evidence must be excluded." (emphasis added)); State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (noting that an inadvertent vague reference to defendant's prior record will not amount to prejudicial error). Accordingly, we do not believe the trial court abused its discretion in admitting the DNA database testimony.

State v. Patterson, 425 S.C. 500, 509–10, 823 S.E.2d 217, 223 (Ct. App. 2019).

The Court of Appeals erred. Agent Fields' testimony was the equivalent of the letter in Hill. The State asked Agent Fields, "As a result, was a **suspect** developed?" (R. p. 544, line 19) (emphasis added). The State asked Agent Fields to name the **suspect** and she named Petitioner. (R. p. 545, lines 5-7). While CODIS was not referenced, the database was referred to as SLED's database. Agent Boehm testified, "At SLED we have a database. This database consists of profiles from known individuals as well as profiles developed from evidence at crime scenes. If the item of evidence that I am testing is eligible to enter into this database, I will put it in, which this item was, to see if there is any match to either a known individual or to another crime scene." (R. p. 513, lines 2-8). The testimony clearly implied that Petitioner had a prior record. The testimony was irrelevant and improper.

Finally, while irrelevant and improper as evidence that Petitioner had a prior criminal record, the testimony that Petitioner's DNA was in the database was also far more prejudicial than probative. The Court of Appeals, however, wrote:

> Furthermore, we believe the reference to the database was relevant and highly probative because it explained a critical step in the investigation. Specifically, the database testimony explained how Patterson came to be identified as a suspect in the first place. Without the testimony, the jury would have been left to speculate as to the means law enforcement used to initially place Patterson at the crime scene. See State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986) ("Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears."). Additionally, based on the fact the jury was presented with only limited information regarding the DNA database search, and given that Patterson's DNA was independently matched with the DNA found on the fedora, we believe any prejudice to Patterson was minimal. *See State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("[E]ven where the evidence is shown to be relevant, if its probative value is *substantially outweighed* by the danger of unfair prejudice, the evidence must be excluded." (emphasis added)); State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (noting that an inadvertent vague reference to defendant's prior record will not amount to prejudicial error). Accordingly, we do not believe the trial court abused its discretion in admitting the DNA database testimony.

State v. Patterson, 425 S.C. 500, 510, 823 S.E.2d 217, 223 (Ct. App. 2019).

The DNA database testimony was not needed to explain how Petitioner came to be identified as a suspect. There was video surveillance of the robbery and of a person in the store a few days before the robbery. (R. p. 81, lines 7-25). The jury could easily have inferred that Petitioner was developed as a suspect based on the surveillance video without need to reference the DNA database. This is not a cold case that remained unsolved for many years where an explanation for the delay might be necessary. See Hill, 409 S.C. 50, 760 S.E.2d 802 (2014) (unsolved for four years); People v. Jackson, 232 ill. 2d 246, 903 N.E.2d 388 (Ill. 2009) (unsolved for six years); State v. McMillian, 295 S.W.3d 537 (Mo. Ct. App. 2009) (unsolved for twenty years); Scales v. State, 310 Ga. App. 48, 712 S.E.2d 555 (Ga. Ct.App. 2011) (unsolved for fourteen years).

The reference to Petitioner's DNA being contained in the database in the present case is distinguished from the vague reference to a fingerprint card that was found harmless in State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). Fingerprints may be on file in the Integrated Automated Fingerprint Identification System [IAFIS or AFIS] and available to law enforcement for a number of reasons other than an arrest or conviction including employee background checks, licensing and other non-criminal justice purposes where authorized. The DNA database, on the other hand, contains convicted offender DNA profiles and, in some states, arrestee profiles. There does not appear to be a civil component, as with AFIS, in the DNA databases. Any possible probative value is substantially outweighed by the danger of unfair prejudice. The Court of Appeals erred in failing to find that the trial judge erred in admitting irrelevant, highly prejudicial DNA databased testimony that indicated Petitioner had a prior criminal record.

CONCLUSION

Based on the above arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of March, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Honorable G. Thomas Cooper, Circuit Court Judge

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2013-GS-32-0890;0891;1132

THE STATE,

RESPONDENT,

V.

JAMES BUBBA PATTERSON,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and James Bubba Patterson, #217543, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of March, 2019.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 21st day of March, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.