STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2019-000465

THE STATE,

Respondent,

vs.

JAMES BUBBA PATTERSON,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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The Court of Appeals correctly found the trial judge did not err by admitting 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 Patterson 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.

STATEMENT OF THE CASE

Procedural History

In November of 2012, Petitioner 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 Patterson 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 Patterson as indicted. Following the verdict, the trial judge sentenced Patterson 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. Patterson then timely filed and perfected an appeal.

On appeal, the Court of Appeals issued a published opinion in which it unanimously affirmed Patterson's convictions. State v. Patterson, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019). Thereafter, Patterson petitioned the Court of Appeals for rehearing, and the petition was denied. Patterson then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the afternoon of May 9, 2012, a man wearing a dark-colored suit, a dark-colored fedora, and sunglasses robbed K & M Jewelry, a jewelry store located in West Columbia, South Carolina, at gunpoint and stole approximately $29,000 worth of the store's gold necklaces and bracelets. (R. p. 82; p. 89; p. 95; pp. 100-102; pp. 195-197; p. 203; p. 209; pp. 220-221; p. 247). Once he had the jewelry, the fedora-adorned robber began to exit the store, and, at that point,

Frank Mancine, who was the store's manager, retrieved his own pistol and fired a shot at the robber. (R. p. 100; p. 118; p. 197; p. 203; p. 209; 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). The robber then fled to an older light-colored van parked nearby while dropping his fedora along the way, and Mancine shot out the van's rear window as the robber "violently" sped away. (R. p. 69; pp. 121-123; p. 204; p. 209; pp. 211-213; 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. (R. p. 214; p. 254). Additionally, Sergeant Fair briefly spoke with Mancine's mother and 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, 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. (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. (R. p. 504; p. 506; pp. 509-513; p. 533). Based on that submission, 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 Patterson's connection to the robbery, Captain Wade obtained a photographic lineup from SLED that contained Patterson'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. (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 Patterson'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 Patterson'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.[1] (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

[1] Patterson'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.[2] (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, Patterson 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, Patterson was forty-nine years old, was 5'5" tall, and weighed 140 pounds. (R. pp. 389-390). Following Patterson's arrest, Captain Wade met with Patterson and advised him of his rights, and Patterson signed a waiver form indicating he relinquished those rights. (R. pp. 78-79). Captain Wade then advised Patterson he wanted to speak with him about a robbery of a jewelry store located in West Columbia. (R. p. 80). In response, Patterson, 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 Patterson his DNA had been collected from a hat recovered at the scene of the crime, and Patterson 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). Patterson then invoked his rights, and Captain Wade terminated the interview. (R. p. 80; p. 86).

Thereafter, officers collected a sample of Patterson's DNA, and it was transported to SLED for analysis.[3] (R. p. 36; pp. 446-447; p. 471). Upon receiving Patterson's DNA sample, Boehm developed a DNA profile for Patterson and compared that profile to the profile that had

[2] When Patterson 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).

[3] Initially, Patterson's DNA sample was collected in 2013 by a detective who subsequently died before Patterson could be brought to trial. (R. p. 36). As a result, a new sample of Patterson's DNA was collected in December of 2015, and a new analysis of that DNA sample was conducted prior to trial. (R. p. 50; pp. 446-447; pp. 513-514; p. 519).

previously been developed from the hat found at the scene of the robbery. (R. p. 519). After conducting that analysis, Boehm concluded Patterson's unique DNA profile conclusively matched the DNA profile found on the robber's hat. (R. p. 519).

Subsequently, Patterson 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). 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 Patterson 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. (R. pp. 264-280). Likewise, evidence was presented establishing Patterson purchased a light-colored van a few years before the incident, that van was repainted and had its rear hatch replaced at some point thereafter, and the van was never reclaimed after it was taken to an impound lot subsequent to the robbery. (R. pp. 359-361; pp. 392-396; pp. 398-402; pp. 404-408; pp. 413-417; p. 425; pp. 427-428). Furthermore, the officers and other law enforcement personnel involved in the investigation into the armed robbery testified about the details of their investigation and Patterson'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 Patterson 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 Patterson following his arrest.[4] (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 Patterson'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 Patterson's DNA profile, which she indicated was unique to him, matched the DNA profile developed from the hat.[5] (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 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

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[4] 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 Patterson. (R. pp. 292-293; pp. 446-447; pp. 468-471; pp. 473-474; pp. 493-497; pp. 509-511; pp. 513-516).

[5] 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).

"CODIS hit" in Patterson'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 Patterson'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. (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 Patterson 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 Patterson's case. (R. pp. 340-341). At that point, the trial judge directed the solicitor to proffer Fields's testimony. (R. p. 342).

During the proffer, Fields confirmed Captain Wade was notified Patterson'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 and personally confirmed both Patterson's DNA profile from the database matched the DNA profile developed from the hat and the fingerprint associated with Patterson's DNA profile, which had been assigned a unique identification number, had been verified to belong to Patterson. (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.[6] (R. pp. 538-539).

[6] 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).

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 Patterson 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 Patterson being developed as a suspect in the robbery.[7] (R. pp. 543-546).

Subsequently, at the conclusion of trial, the jury convicted Patterson as indicted, and the trial judge sentenced him to an aggregate term of imprisonment of twenty years. (R. p. 606; pp. 614-615). Patterson then timely appealed his convictions on multiple grounds, including on the grounds the evidence related to the DNA database match was not properly authenticated, a proper chain of custody for that evidence was not established, and that evidence constituted improper evidence of prior bad acts. (App'x p. 1).

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[7] Later on during the closing arguments, the solicitor solely relied upon the evidence related to the DNA database match to explain to the jury how Patterson was identified as a suspect in the jewelry store robbery, which led to the discovery of all the evidence connecting him to the crime. (R. pp. 563-564; pp. 568-569). Meanwhile, defense counsel characterized the investigation into the armed robbery as "incomplete, inept, and inaccurate," contended the flaws with the investigation meant Patterson's case was "drenched" in reasonable doubt, and specifically called the jurors' attention to evidence that had not been presented. (R. p. 570; pp. 571-572; p. 574).

On appeal, the Court of Appeals unanimously affirmed Patterson's convictions. (App'x p. 1). In doing so, the Court of Appeals found "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." (App'x p. 6). Likewise, the Court of Appeals concluded the trial judge did not err in admitting the evidence related to the DNA database match because no evidence was presented to the jury establishing the type of database the match came from, the evidence was "relevant and highly probative because it explained a critical step in the investigation[,]" and the evidence had minimal potential for prejudice based on the limited information about the match presented coupled with the other evidence establishing Patterson's DNA profile matched the profile developed from the fedora. (App'x pp. 7-8).

ARGUMENT

The Court of Appeals correctly found the trial judge did not err by admitting 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 Patterson 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.

Patterson contends the Court of Appeals erred by affirming the trial judge's decision to admit evidence related to the search of SLED's DNA database that resulted in the discovery Patterson's DNA profile matched the DNA profile developed from the robber's hat. In support of that contention, Patterson 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, Patterson 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 Patterson'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 Patterson'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 Patterson's case, was essential towards establishing how Patterson 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 did not abuse his broad discretion by admitting the DNA database evidence, and the Court of Appeals correctly affirmed the trial judge's evidentiary ruling. Patterson's petition for a writ of certiorari should be denied.

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. Proper 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).

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 Patterson in the DNA database and the DNA profile developed from Patterson'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 Patterson after his arrest, which unquestionably was Patterson's DNA profile as it was also developed from evidence with a complete chain of custody, and *also* matched the DNA profile attributed to Patterson in the DNA database established the DNA profile from the database was, in fact, Patterson's in light of its unique characteristics and its matching nature to an authenticated DNA profile known to belong to him. 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 State v. Anderson, 386 S.C. 120, 130, 687 S.E.2d 35, 39-40 (2009) (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, 75 (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, Patterson's DNA profile, which had been assigned a unique identifying number and stored in the DNA database along with Patterson's fingerprint, constituted a public record or report, which was evidence of sufficient authentication for admissibility under our rules of evidence. 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 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 resulted in a match to a DNA profile associated with Patterson and Patterson'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 Patterson 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 Patterson's case, both the trial judge and the jury could reasonably and reliably conclude the DNA profile attributed to Patterson in the DNA database was, in fact, exactly what it was purported to be—Patterson's DNA profile—even without evidence establishing a perfect or complete chain of custody. See 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 Patterson's case, the trial judge committed no error in admitting the challenged evidence, and the Court of Appeals correctly affirmed the trial judge's ruling. 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."). Patterson's petition for a writ of certiorari should be denied.

B. Proper Admission 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 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."); 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"); People v. Johnson, 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."); 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, e.g., 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, 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).

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."); 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."). 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."). 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 Patterson was identified as a suspect in the armed robbery after a search of SLED's DNA database revealed Patterson's DNA profile matched the robber's DNA profile was highly relevant and entirely necessary to explain to the jury how and why Patterson—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 Patterson's arrest, and the jury would have been forced to decide Patterson'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.[8] See Byrd, 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 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."). As a result, the evidence related to the DNA database search was highly probative to Patterson's case. See Jackson, 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 Patterson was identified as a suspect

[8] 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 Patterson'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).

after his 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 him.[9] See Scales v. State, 712 S.E.2d 555, 561 (Ga. Ct. App. 2011) ("[E]vidence of a matching DNA profile in a government database does not, in and of itself, constitute impermissible character evidence when no reference is made as to why the matching sample was collected or stored and when no reference is made linking the defendant's DNA profile to other criminal activity."). Significantly, that is true because the jury was presented with *no* evidence suggesting Patterson'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 Patterson's trial. See Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009) (rejecting Atteberry's claim the jury could have inferred he had previously been convicted of a crime from evidence his DNA profile was contained in a national database as "nothing more than speculation" in light of the fact the evidence presented did not suggest only convicted offenders' profiles were included in that database). Similarly, as SLED's DNA database contains DNA profile's from a wide variety of sources, it is highly unlikely the jury would have drawn any adverse inference from the limited evidence presented during Patterson's trial in regard to the DNA database search. See Jackson, 903 N.E.2d at 401-402 ("[C]ontrary 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

[9] 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 Patterson's trial as was found to be improper by this Court in an earlier decision. See State v. Hill, 409 S.C. 50, 57-58, 760 S.E.2d 802, 806 (2014) (finding the trial judge erred by admitting a letter regarding a DNA database match discovered as a result of a search of SLED's DNA database but concluding the trial judge's error was entirely harmless under the circumstances).

unwarranted."); see also Whatley v. State, 146 So. 3d 437, 466 (Ala. Crim. App. 2010) (holding "testimony of the mere existence of a defendant's DNA profile in the CODIS database does not 'per se' imply the existence of a criminal history"). As a result, the potential for undue prejudice that could have resulted from the evidence related to the DNA database search was very minimal and did not substantially outweigh the evidence's high probative value. See United States v. Jenkins, 887 A.2d 1013, 1025, n. 2 (D.C. Cir. 2005) ("[C]onveying to the jury that the defendant was first identified through a search of an offender database has not been deemed so substantially prejudicial as to outweigh the probative value of such evidence.").

Because the evidence related to the DNA database search was highly probative in Patterson'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 Patterson 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, 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.' "). Under those circumstances, there was no proper basis to disturb the trial judge's evidentiary ruling on appeal,

and the Court of Appeals correctly affirmed the trial judge's ruling.[10] 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). Patterson's petition for a writ of certiorari should be denied.

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[10] Furthermore, 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 Patterson'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 Patterson as a suspect in the robbery. 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 Patterson'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 Patterson following his arrest. 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 at worst, only constituted a vague and brief reference to Patterson'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). 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 Patterson as the robber both in a photographic lineup and in the courtroom, the evidence establishing Patterson's physical characteristics closely matched the physical characteristics of the robber, and the evidence linking Patterson 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. 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.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

BY: _____
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

March 28, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2019-000465

THE STATE,

Respondent,

vs.

JAMES BUBBA PATTERSON,

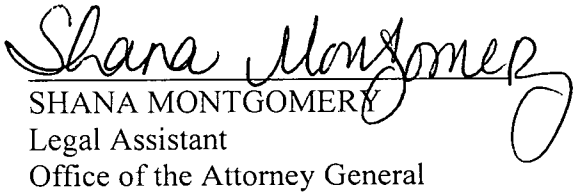
Petitioner.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Return to Petition for Writ of Certiorari on Petitioner by sending two copies of the same to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 28th day of March, 2019.



SHANA MONTGOMERY
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727