

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2019-000479

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S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

CARMINE JAMES MIRANDA, III,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

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II.

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STATEMENT OF THE CASE

Procedural History

In October of 2014, Petitioner Carmine James Miranda, III was arrested following an investigation into a two-vehicle collision that resulted in a fatality. In January of 2016, the Greenwood County Grand Jury indicted Miranda for one count of felony driving under the influence. On August 1, 2016, a jury trial was commenced in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Miranda as indicted. Following the verdict, the trial judge sentenced Miranda to a sixteen-year term of imprisonment and a fine of \$10,100. Miranda then timely filed and perfected an appeal.

Subsequently, on appeal, the Court of Appeals issued an unpublished opinion in which it affirmed Miranda's conviction. State v. Miranda, Op. No. 2019-UP-007 (S.C. Ct. App. filed Jan. 4, 2019). Thereafter, Miranda petitioned the Court of Appeals for rehearing, and the petition was denied. Miranda then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

In the early morning hours of October 16, 2014, Petey Miller ("Victim") was driving along Highway 34 in Greenwood, South Carolina, travelling in the direction of his parents' home when another car driven by Miranda suddenly veered into his lane of travel and struck his vehicle head-on.¹ (R. p. 56; p. 61; p. 66; pp. 75-76; pp. 118-119; pp. 135-136; p. 140; p. 143; p. 157; pp. 160-162; p. 184). As a result of the collision, Victim was trapped inside his vehicle to such an extent that emergency responders had to cut through its door to extricate him from it and sustained critical injuries that ultimately proved to be fatal. (R. p. 56; p. 73; p. 184). Meanwhile,

¹Notably, the collision was so sudden and unexpected there was no evidence of any pre-impact braking at the scene. (R. p. 162).

Miranda sustained a laceration to his scalp along with fractures to his right femur, several of his ribs, and some of his vertebral bodies. (R. p. 210; pp. 212-213).

Just after the collision occurred, Anthony Abbott, who was on his way to assist a friend experiencing car trouble, came upon the crash scene after hearing a sound and observing a cloud of smoke. (R. p. 89; p. 94; p. 117). Upon arriving at the scene, Abbott quickly checked on Victim, received no response from him, and then went check on Miranda. (R. pp. 89-90; p. 93). At that time, Miranda's feet were positioned under the steering column of his vehicle, he was leaning towards the passenger side with the top half of his body, and he was attempting to crawl in the direction of the passenger-side door. (R. pp. 89-93; pp. 96-97). Abbott then again returned to check on Victim, and Victim, who had not yet succumbed to his dire injuries, began to repeatedly ask to be let out of his vehicle, incoherently stated he had "to be," and called out for his mother. (R. p. 91; p. 93; p. 104; p. 184). Shortly after that, Abbott's cousin, Lesley Ashley, happened upon the scene, and the two of them went to pull Miranda from his vehicle because it had begun to leak oil and gasoline. (R. p. 91; p. 101; p. 114; p. 120). When they did, Miranda was still positioned with the lower half of his body on the driver side of the car. (R. p. 93; pp. 96-97; pp. 115-116).

Once Miranda had been pulled from his vehicle, Ashley, who was acquainted with him prior to that point, briefly spoke with him, and Miranda—while slurring his speech—reported he was on his way to a bar. (R. p. 101; pp. 118-119; p. 123). Ashley then asked Miranda, who reeked of alcohol, if he had been drinking, but Miranda did not respond to the question. (R. p. 117; p. 119). Shortly after that, law enforcement officers and medical personnel began arriving at the scene, and the medical personnel quickly started providing treatment to Miranda, who was on the ground next to his vehicle. (R. pp. 54-55; pp. 76-77; pp. 167-169; pp. 172-173). At that

time, Miranda smelled strongly of alcohol, was slurring his speech, was behaving in a confused and combative manner, and indicated he wished the medical personnel would let him die. (R. pp. 168-171; p. 173). Based on Miranda's injuries, the medical personnel loaded him into an ambulance, and Trooper Todd Stevenson of the South Carolina Highway Patrol checked on him before he was transported from the scene. (R. p. 174). When he did, the trooper detected a noticeable odor of alcohol emanating from Miranda. (R. p. 55). Miranda was then taken to a hospital in Greenwood. (R. p. 174; pp. 208-210).

At the hospital, Miranda, who was still confused and disoriented, was attended to by Dr. Scott Jones, an emergency room physician and expert in emergency medicine. (R. pp. 208-212; p. 214). As part of Miranda's treatment, Dr. Jones requested for a blood sample to be drawn and analyzed for medical diagnosis purposes. (R. pp. 210-211). Based on that request, a nurse drew a sample of Miranda's blood, sealed the sample in a vacuum-sealed tube, and sent it to the hospital's laboratory for analysis. (R. pp. 188-191; p. 207; pp. 210-211; p. 213; p. 284). Miranda's blood sample was then analyzed, and the results of the analysis established Miranda's blood alcohol concentration level was 0.208 percent. (R. p. 207; p. 213).

During the course of Miranda's treatment, Trooper Stevenson went to the hospital and again made contact with Miranda, who still smelled strongly of alcohol. (R. p. 60). At that point, Trooper Stevenson arrested Miranda for felony driving under the influence and advised him of his constitutional and implied consent rights. (R. p. 55; pp. 59-61). Trooper Stevenson then asked Miranda to submit to an investigative blood draw, but Miranda refused while claiming he was not driving at the time of the incident. (R. pp. 61-62).

In addition to Trooper Stevenson, Ashley also responded to the hospital and spoke with Miranda. (R. p. 102; pp. 117-118). During their conversation, she asked Miranda what

occurred, and Miranda acknowledged he had been driving, reported it was too late by the time he saw the lights on Victim's vehicle, and claimed he attempted to avoid the collision by swerving. (R. p. 102; pp. 118-119). However, at several other points, Miranda inconsistently indicated he was not driving at the time of the collision. (R. pp. 125-126). As their conversation continued, Ashley again asked Miranda if he had been drinking, and, this time, Miranda responded by winking and admitting he had, in fact, been drinking, which was already obvious to Ashley based on the odor of alcohol emanating from him. (R. p. 103; p. 105; p. 119).

Following those conversations, Miranda was transported to a hospital in Greenville, South Carolina, by helicopter to receive additional treatment. (R. pp. 215-216). Meanwhile, the investigation into the collision continued, and Lieutenant Bruce Brock of the South Carolina Highway Patrol employed his substantial expertise in accident reconstruction in an effort to determine what had occurred. (R. pp. 128-134). Based on his expert analysis, Lieutenant Brock concluded Miranda's vehicle left its lane of travel and struck Victim's vehicle.² (R. pp. 135-136; pp. 140-141). He further found no evidence suggesting Victim contributed to the fatal collision in any manner. (R. p. 143).

Subsequently, Miranda was indicted for felony driving under the influence, and he proceeded forward to trial. (R. p. 2; pp.285-286). During the course of trial, the law enforcement officers involved in the investigation discussed their discoveries and determinations, and Trooper Stevenson advised the jury Miranda reeked of alcohol following the collision, was slurring his speech, and refused to submit to an investigative blood draw after being informed of his implied consent rights. (R. pp. 55-68; pp. 70-84; pp. 128-164). In addition to that testimony, Abbott and Ashley testified about their experiences on the night of the

² Significantly, the analysis further established Miranda would have driven off the roadway entirely if he had not collided with Victim's vehicle. (R. p. 157).

incident, and Ashley specifically recounted Miranda smelled strongly of alcohol, was slurring his speech, and admitted to both drinking and driving that night. (R. pp. 89-98; 114-127). Likewise, the medical personnel who treated Miranda at the scene recounted he smelled of alcohol, was slurring his speech, and was confused and combative following the collision, and the nurse who drew Miranda's blood sample for medical diagnosis purposes at the hospital confirmed Miranda was emitting a "very strong" odor of alcohol when she attended to him. (R. pp. 167-174; pp. 186-181). Furthermore, the hospital records containing the results of the medical analysis of Miranda's blood sample were admitted into evidence over defense counsel's objection, and Dr. Jones explained Miranda's blood alcohol concentration level was at a level sufficient to render an inexperienced drinker effectively comatose.³ (R. pp. 184-185; p. 207; pp. 213-214).

At the conclusion of trial, the jury convicted Miranda as indicted, and the trial judge sentenced Miranda, who had several prior convictions for driving under the influence and other offenses, to a term of imprisonment of sixteen years along with a fine. (R. pp. 261-262; pp. 264-265; pp. 282-283). Miranda then timely appealed his conviction on several grounds. (App'x pp. 1-2). However, the Court of Appeals affirmed his conviction on appeal through an unpublished opinion. (App'x pp. 1-4).

³ Although she objected to the results of the hospital's analysis of Miranda's blood sample during trial, defense counsel—from the outset of trial—focused Miranda's defense on the contention he was not driving at the time of the collision instead of on an attempted refutation of all the different evidence that overwhelmingly established he was intoxicated at the time of the incident. (R. pp. 52-53; pp. 238-250). In fact, defense counsel directly argued to the jury "the big issue that's in dispute" was the question of whether Miranda was driving. (R. p. 250).

ARGUMENT

I.

The Court of Appeals correctly affirmed the trial judge's decision to admit into evidence the results of the hospital's analysis of Miranda's blood sample because the testimony and evidence presented during trial sufficiently established the identity of each person who was in custody of it along with what was done with it from the time it was taken until it was ultimately tested, and, since the analysis of the blood sample was conducted entirely for medical treatment purposes, the analysis results were properly admitted into evidence even assuming the chain of custody was somehow defective.

Miranda contends the Court of Appeals erred by affirming the trial judge's decision to admit the results of the hospital's analysis of his blood sample following the fatal collision. In support of that contention, Miranda maintains the chain of custody in regard to the sample was fatally defective because the State purportedly failed to identify the specific lab technician at the hospital who actually analyzed the sample. To the contrary, the chain of custody regarding the blood sample was sufficiently established through the testimony and evidence presented during trial that reasonably demonstrated the identity of each person who was in custody of Miranda's blood sample along with what was done with it from the time it was drawn for medical purposes until it was ultimately tested in the hospital's lab. However, even assuming the chain of custody had somehow been defective, the results of the blood alcohol testing conducted at the hospital solely for the purposes of medical treatment were inherently reliable and trustworthy such that the establishment of a strict chain of custody was not required. Therefore, the trial judge did not abuse his broad discretion by admitting the results of the hospital's analysis of Miranda's blood sample, and the Court of Appeals correctly affirmed the trial judge's ruling on appeal. Miranda's petition for a writ of certiorari should be denied.

Relevant Facts

During the course of trial, Shannon Rogers, a registered nurse, indicated she treated Miranda after he was brought to the hospital's emergency care center on the date of the incident,

and she confirmed she personally drew a sample of Miranda's blood solely for medical treatment purposes. (R. pp. 186-188; p. 190). After doing so, Nurse Rogers stated she sealed the sample in a new specimen tube, labeled it with Miranda's personal information along with a hospital barcode, placed it in a biohazard bag, and sent it directly to the laboratory using the hospital's Translogic system, which was described as a pneumatic tube system similar to the type of system commonly used by banks. (R. pp. 188-189).

In addition to Nurse Rogers's testimony, Christian Lomax, another hospital employee, stated he received all the blood samples, including Miranda's, that were sent to the hospital's lab on the date of the incident.⁴ (R. pp. 175-176). Upon receiving that sample, Lomax indicated he would have scanned the information contained on the unopened vacuum-sealed tube containing the sample and delivered it to its intended destination. (R. pp. 176-177). After that, Lomax indicated he would have put the sample into a centrifuge to prepare it for analysis by a technician. (R. p. 177).

Furthermore, Chris Allsep, a lab technician at the hospital, confirmed he was working in the hospital's laboratory on the date of the incident along with Christy Lazzo, the only other technician working at that time. (R. pp. 193-194). Allsep further indicated he was jointly responsible for all blood alcohol testing that occurred that night along with Lazzo, stated a sample would not have been tested if any signs of tampering were evident, and asserted signs of tampering would have been obvious based on the nature of the vacuum-sealed tube used by the hospital. (R. p. 194). Regarding the procedure associated with the testing, Allsep indicated he retrieved "all" samples from the centrifuge and placed them in the testing instrument, which was

⁴ During the course of his testimony, Lomax conceded he had no independent recollection in regard to Miranda's blood sample as he handled approximately 1,500 samples throughout the course of an average shift at the hospital. (R. p. 178).

a Vista 1500 machine. (R. pp. 194-195). He stated the machine—which he affirmed was working properly that day—would have then read the barcode on the tube, tested the sample, and produced results without any human involvement in the actual analysis itself. (R. pp. 194-196).

Beyond that testimony, Sheryl Haupfear, the records custodian at the hospital, confirmed she obtained Miranda’s medical records prior to trial. (R. pp. 184-185). She further confirmed those records were kept in the ordinary course of the hospital’s operation. (R. p. 185).

Following the presentation of that testimony, the solicitor sought to introduce the portion of Miranda’s hospital records containing the results of the blood alcohol testing that was performed during the course of his medical treatment, and defense counsel objected. (R. pp. 187-188; pp. 196-197; pp. 210-211). In support of that objection, defense counsel raised several contentions, including the State had failed to establish a sufficient chain of custody to make the results “trustworthy” in light of the fact Allsep was not certain whether he or Lazzo actually conducted the analysis of the sample. (R. pp. 199-200; pp. 203-204). In rebuttal, the solicitor asserted the chain of custody was sufficiently established as far as practicable and any defects with it went to the weight of the evidence as opposed to its admissibility. (R. p. 204).

After considering the matter, the trial judge found the chain of custody was “pretty tight” based on the testimony presented and denied the motion to suppress. (R. pp. 201-202; p. 206). The results of the hospital’s blood alcohol testing were then admitted into evidence over objection, and Miranda was ultimately convicted of the indicted offense at the conclusion of trial. (R. p. 207; pp. 213-214; pp. 261-262).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court

gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) (“The appellate court reviews a trial judge’s ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court.”). Significantly, 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. 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); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge’s evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

Analysis

“The ‘chain of custody’ rule is 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.’ ”). Notably, “[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.

When a party seeks the admission during trial of fungible evidence—such as drugs or a blood sample—that was analyzed for prosecution or litigation purposes, a complete chain of custody must typically be established as far as practicable. State v. Governor, 362 S.C. 609, 612, 608 S.E.2d 474, 475 (Ct. App. 2005); see Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 (“The State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable.”); see also Ex parte Dep’t of Health & Env’tl. Control, 350 S.C. 243, 250, 565 S.E.2d 293, 297 (2002) (“Medical records are admitted routinely as business records. The trustworthiness of medical records is presumed, based on the fact that the test is relied on for diagnosis and treatment. DHEC cites opinions from several other jurisdictions that have admitted laboratory test results as business records, including blood tests, based on the same rationale: if it is sufficiently trustworthy to be relied upon for medical treatment, it is sufficiently trustworthy to be admitted as a business record. We find this rationale persuasive and hold Doe’s HIV tests admissible as business records.” (citations omitted)). However, the proof of the chain of custody need *not* exclude every possibility of tampering. State v. Smith, 326 S.C. 39, 41, 482 S.E.2d 777, 778 (1997); see State v. Rogers, 361 S.C. 178, 187, 603 S.E.2d 910, 915 (Ct. App. 2004) (“South Carolina law does not require testimony as to the exclusion of any possibility of tampering.”). Instead, in order to satisfy the requirements for establishing the chain of custody, the evidence and testimony presented during trial must simply not leave to conjecture who was in possession of the fungible item and what was done with it between its seizure and analysis. State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995).

Significantly, “if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.” State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-206 (2007); see State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (“[W]e have found evidence inadmissible *only* where there is a missing link in the chain of possession because the identity of those who handled the blood was not established at least as far as practicable.” (emphasis added)). Moreover, “where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.” Carter, 344 S.C. at 424, 544 S.E.2d at 837.

In State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989), this Court was confronted with a challenge to the sufficiency of a chain of custody in regard to the results of a blood test conducted for investigative purposes in a felony driving under the influence case. In that case, Williams was found pinned inside his vehicle at the scene of a two-vehicle collision that resulted in the death of one individual along with severe injuries to several others. Id. at 291-292, 376 S.E.2d at 773. Based on his injuries, Williams, who reeked of alcohol and was acting belligerently, was transported to a hospital, a sample of his blood was drawn at the request of police, and testing of that sample revealed Williams had a blood alcohol concentration level of 0.177 percent. Id. at 292, 376 S.E.2d at 774. During trial, testimony was presented from the nurse who transported Williams’s blood sample to the laboratory for analysis, and another nurse who actually drew the blood sample was identified through the hospital’s internal chain of custody form. Id. at 293, 376 S.E.2d at 774. However, the nurse who drew the blood sample did *not* testify during trial. Id. Based on that fact, Williams challenged the admission of the blood test results, but the trial judge overruled the objection and admitted the evidence. Id.

Subsequently, on appeal, this Court affirmed the trial judge's ruling in that regard. Id. In doing so, this Court noted "[p]roof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable." Id. With that principle in mind, this Court found the trial judge did not abuse his discretion by admitting the blood test results after determining the testimony of the nurse who transported the sample to the lab coupled with the information from the hospital form sufficiently established a chain of custody in regard to the sample even without the testimony of the nurse who actually drew it. Id.

Just like the trial judge in Williams, the trial judge in the case sub judice did not abuse his broad discretion by admitting the blood alcohol test results as a chain of custody was sufficiently established through the evidence and testimony presented that reasonably demonstrated the identity of each person who was in custody of Miranda's blood sample along with what was done with it from the time it was drawn for medical purposes until it was ultimately tested in the hospital's lab. Specifically, based on the evidence and testimony presented, the identities of the nurse who drew the sample, the technician who initially received the sample in the laboratory and prepared it for analysis, and both of the technicians working in the laboratory where the analysis was conducted by a testing instrument were shown. Beyond that, the nurse confirmed the sample was immediately sealed in a vacuum-sealed tube after it was drawn, and testimony was presented establishing the sample—which was marked with Miranda's information along with a hospital barcode—would not have been placed into the testing instrument for analysis if there were any signs of tampering evident.

In light of that evidence and testimony, every individual who handled Miranda's blood sample from the point it was seized to the point it was analyzed was sufficiently identified such that a full chain of custody was established. See Governor, 362 S.C. at 613, 608 S.E.2d at 476

(finding fungible evidence should have been admitted in light of the fact a complete chain of custody was presented and noting discrepancies in the manner in which the evidence was handled were not a proper basis for suppression); see also State v. Taylor, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct. App. 2004) (en banc) (explaining the testimony of each person in a chain of custody is not required under all circumstances so long as the identities of the individuals who handled the evidence and the manner of handling are *reasonably* demonstrated). Likewise, the testimony from the witnesses established as far as practicable the blood sample was properly sealed upon being drawn and would not have been analyzed if there were any signs of tampering prior to the testing, and nothing was presented suggesting the existence of any tampering, bad faith, or ill-motive. See Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957) (“Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.” (citation omitted)); cf. State v. Trapp, 420 S.C. 217, 233, 801 S.E.2d 742, 750 (Ct. App. 2017) (“We find this is evidence from which a juror could reasonably conclude the item was what the State purported it to be.”). Under those circumstances, the evidence presented sufficiently established the blood test results offered into evidence were exactly what they was purported to be, and there were no missing links in the chain of possession. See Hatcher, 392 S.C. at 95, 708 S.E.2d at 755 (“The ultimate goal of chain of custody requirements is simple to ensure that the item is what it is purported to be.”); see also Carter, 344 S.C. at 424, 544 S.E.2d at 837 (recognizing evidence has only been found to inadmissible based on a chain of custody issue when an actual missing link in the chain of possession existed); cf. State v. Nelson, 982 A.2d 602, 613 (R.I. 2009) (affirming the trial judge’s decision to admit the results of blood alcohol testing in a drunk driving case where testimony was presented from the nurse who drew the

blood sample and from one of the two technicians working in the hospital's laboratory who would have retrieved the sample and conducted the analysis).

However, even if the chain of custody in regard to Miranda's blood alcohol test results was somehow insufficient, testimony was presented during trial establishing those results were contained in Miranda's medical records based on testing conducted purely for medical purposes.⁵ Because the results were part of Miranda's medical records, those results were inherently trustworthy and reliable in light of the potential life-of-death nature of testing conducted for such purposes. See State v. Garlick, 545 A.2d 27, 35 (Md. 1988) (holding the inherent reliability and trustworthiness of test results conducted for medical purposes permits the admission of such results even without the introduction of the testimony of the technician who actually performed the testing); see also Thomas v. Hogan, 308 F.2d 355, 361 (4th Cir. 1962) ("There is good reason to treat a hospital record entry as trustworthy. Human life will often depend on the accuracy of the entry, and it is reasonable to presume that a hospital is staffed with personnel who competently perform their day-to-day tasks. To this extent at least, hospital records are deserving of a presumption of accuracy even more than other types of business entries." (footnote omitted)). Therefore, Miranda's inherently-trustworthy blood alcohol test results were fully admissible even assuming there was some insufficiency in regard to the chain of custody. See Jamison v. Morris, 385 S.C. 215, 227, 684 S.E.2d 168, 174 (2009) (instructing the lack of chain of custody is not determinative of the admissibility of medical records as the trustworthiness of such records is presumed, which means test results—including blood alcohol test results—done for medical treatment purposes "are admissible without a chain").

⁵ Notably, in seeking a grant of certiorari, Miranda relies heavily upon this Court's decision in State v. Cribb, 310 S.C. 518, 520, 426 S.E.2d 306, 308 (1992), which—unlike Miranda's case—involved an analysis of a blood sample conducted *at the request of law enforcement for investigative purposes*.

For all those reasons, the trial judge did not abuse his broad discretion by admitting Miranda's blood alcohol test results into evidence during trial, and the Court of Appeals correctly affirmed the trial judge's ruling on appeal.⁶ See Hatcher, 392 S.C. at 94-95, 708 S.E.2d at 754-755 (recognizing inflexible rules regarding chain of custody have been abandoned in favor of a rule granting discretion, which should be exercised in light of the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it); cf. Williams, 297 S.C. at 293, 376 S.E.2d at 774 (finding no abuse of discretion in the admission of a fungible blood sample where the nurse who actually drew the blood sample did not testify but the chain of custody for the sample was sufficiently established through a form along with the testimony of another nurse). Miranda's petition for a writ of certiorari should be denied.

⁶ Significantly, even assuming the results of the hospital's analysis were somehow improperly admitted into evidence, any error was entirely harmless because—notwithstanding the fact Miranda's defense during trial was predicated on the idea he was not driving his vehicle at the time of the collision as opposed to on the idea he had not been drinking—overwhelming evidence of Miranda's intoxication on the date of the incident independent from the analysis results was presented through the testimony of different witnesses establishing he reeked of alcohol, was slurring his speech, was combative, refused to submit to an investigative analysis of his blood, and admitted to drinking on that date. See City of Columbia v. Ervin, 330 S.C. 516, 522, 500 S.E.2d 483, 786 (1998) (finding no prejudice resulted from the admission of Ervin's refusal to submit to a breathalyzer test where testimony was presented establishing Ervin was unsteady on his feet, smelled of alcohol, exhibited slurred speech, cursed and threatened police officers, and tried to kick the window of a police vehicle); see also State v. Degnan, 305 S.C. 369, 372, 409 S.E.2d 346, 348 (1991) (finding no prejudice resulted from the admission of Degnan's refusal to submit to a breathalyzer test where the other evidence presented during trial established Degnan had a strong odor of alcohol on her breath, had difficulty walking, slurred her speech, and admitted she drank five or six beers); Williams, 297 S.C. at 292-293, 376 S.E.2d at 774 (“The odor of alcohol and [Williams's] belligerent attitude indicate he was intoxicated at the time the wreck occurred.”); State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988) (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson's intoxication, which included properly-admitted breathalyzer test results and testimony Wilson admitted to drinking a half pint of Vodka).

II.

The Court of Appeals correctly affirmed Miranda's conviction for felony driving under the influence because: (1) the trial judge properly instructed the jury on the statutory permissive inference of intoxication in light of the fact Miranda's blood alcohol concentration level was demonstrated to be greater than 0.08 percent by a reliable chemical analysis of his blood; and (2) any error that hypothetically could have occurred through the trial judge's presentation of a jury instruction on the statutory permissive inference was entirely harmless in light of the evidence and testimony presented, which included overwhelming evidence of Miranda's intoxication and expert testimony on the significance of Miranda's high blood alcohol concentration level.

Miranda contends the Court of Appeals erred by affirming the trial judge's decision to instruct the jury on the statutory permissive inference of intoxication that may be drawn when an individual is shown by chemical analysis to have a blood alcohol concentration level of 0.08 percent or greater. In support of that contention, Miranda maintains the statutory permissive inference codified in Section 56-5-2950(G) of the South Carolina Code of Laws was inapplicable to his case in light of the fact his blood sample was solely drawn and analyzed for medical treatment purposes. Miranda further maintains the purported error was not harmless because it permitted the jurors to infer he was intoxicated based on his exceedingly high blood alcohol concentration following the collision. Initially, the trial judge did not err by instructing the jury on the statutory permissive inference contained in Section 56-5-2950(G) because that inference was applicable to the facts and circumstances of Miranda's case in light of the fact a chemical analysis of his blood established he had a blood alcohol concentration level in excess of 0.08 percent following the collision. However, even if the trial judge did somehow err by instructing the jury on the statutory permissive inference, any possible error was entirely harmless in light of the evidence and testimony presented during trial, which included overwhelming evidence of Miranda's intoxication and expert testimony from Miranda's treating physician indicating Miranda's blood alcohol concentration level was at such a level it would render some drinkers

virtually comatose. Accordingly, the Court of Appeals correctly affirmed Miranda's conviction on appeal. Miranda's petition for a writ of certiorari should be denied.

Relevant Facts

At the conclusion of the evidentiary phase of trial, the trial judge conducted a charge conference with the parties to discuss his intended jury instructions. (R. p. 221). During the charge conference, defense counsel asked the trial judge to remove an intended instruction on the inference that could be drawn from a blood alcohol concentration level of 0.08 percent or greater. (R. pp. 226-227). In support of that request, defense counsel argued the inference could only be properly charged when a blood sample was taken pursuant to South Carolina's implied consent statute. (R. p. 226). Furthermore, defense counsel maintained the appellate decision in State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992), could be read to say all the provisions of the implied consent statute were inapplicable if a blood sample was not taken pursuant to that statute. (R. pp. 226-227). In rebuttal, the solicitor argued the statutory inferences were a part of South Carolina law while the legislature had no intention for a jury not to be instructed on the inferences when a sample was not taken pursuant to the implied consent statute. (R. p. 227). Upon considering the matter, the trial judge denied defense counsel's request. (R. p. 227).

Thereafter, during his instructions to the jury, the trial judge—consistent with his earlier ruling—instructed the jurors they may infer the defendant was under the influence if his blood alcohol concentration level was 0.08 percent or higher. (R. p. 258). Regarding that permissive inference, the trial judge further explained it was simply something to be considered along with the other evidence in Miranda's case and they could give it the weight they decided it should receive. (R. p. 258). In addition to those instructions, the trial judge further charged the jury the State had the burden of proving Miranda's guilt beyond a reasonable doubt, defined reasonable

doubt for the jury, and explained Miranda was presumed innocent and was not required to prove his innocence. (R. pp. 250-260).

Following the jury instructions, defense counsel renewed her earlier objection. (R. p. 260). The case was then submitted to the jury, and the jury ultimately convicted Miranda of felony driving under the influence. (R. pp. 261-262).

Standard of Review

When reviewing an issue involving a trial judge's jury charge, an appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant’s due process rights have been violated.”). On appeal, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”). Moreover, an appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (“An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.”); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) (“[A]n

alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial.”).

Analysis

The purpose of a trial judge’s jury instructions is “to enlighten the jury and to aid it in arriving at a correct verdict.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002); see Brandt, 393 S.C. at 549, 713 S.E.2d at 603 (“The substance of the law is what must be charged to the jury, not any particular verbiage.”). Importantly, so long as the trial judge’s jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”).

In the case sub judice, Miranda’s appellate challenge to the trial judge’s jury instructions centers on the propriety of the charge on the statutory permissive inference contained in Section 56-5-2950(G). Pursuant to that particular statutory provision, a criminal defendant’s “alcohol concentration at the time of the test, as shown by chemical analysis of the person’s breath or

other body fluids, gives rise to” an inference the person was under the influence of alcohol in a prosecution for driving under the influence, felony driving under the influence, or driving with an unlawful alcohol concentration “if the alcohol concentration was at that time eight one-hundredths of one percent or more[.]” S.C. Code Ann. § 56-5-2950(G)(3).

Looking to the details of Miranda’s case, Miranda was on trial for felony driving under the influence, and his blood alcohol concentration level at the time of testing conducted shortly after the collision was 0.208 percent as shown by chemical analysis of his blood, which obviously constituted a “body fluid.” *Id.* Under such circumstances, Miranda’s blood alcohol concentration level statutorily gave rise to a permissive inference he was intoxicated based on the plain language of Section 56-5-2950(G), which, tellingly, did not contain any language limiting its applicability to chemical analyses *conducted solely pursuant to provisions of the implied consent statute.*⁷ *See State v. White*, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) (“We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. *We cannot under our power of construction supply an omission in the statute.*” (emphasis added)); *see also State v. Carrigan*, 284 S.C. 610, 617, 328 S.E.2d 119, 123 (Ct. App. 1985) (“A court may construe a statute by determining its meaning from the language

⁷ Significantly, the language contained in Section 56-5-2950(C) demonstrates the legislature was fully aware of the wording to employ when it intended to limit the applicability of a particular subsection solely to testing conducted in accordance with the implied consent statute. *See* S.C. Code Ann. § 56-5-2950(C) (“A hospital, physician, qualified technician, chemist, or registered nurse who obtains the samples or conducts the test or participates in the process of obtaining the samples or conducting the test *in accordance with this section* is not subject to a cause of action for assault, battery, or another cause” (emphasis added)); *see also Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’ ”); *cf. Nelson v. Ozmint*, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (finding the legislature’s inclusion of language allowing for early release in one statute but omitting it in another evidenced the legislature intent for a defendant convicted of the offense delineated in the statute not containing the early release language to be ineligible for early release).

used and its subject matter and purpose. However, there is a marked distinction between a court doing this and court ingrafting upon a statute something the legislature has omitted from it, which the court believes ought to have been included.”). As a result, the statutory permissive inference contained in Section 56-5-2950(G) was relevant and applicable to Miranda’s case, and the legislature could not logically have intended for that inference not to be applicable simply because an otherwise-reliable chemical analysis of Miranda’s blood was conducted at the request of a doctor providing medical treatment as opposed to at the request of a law enforcement officer involved in a criminal investigation. See Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[A] court must reject a statute’s interpretation leading to absurd results not intended by the Legislature.”). Accordingly, the trial judge did not err by accurately instructing the jury on a relevant provision of South Carolina law that was applicable to the facts and circumstances of Miranda’s case. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”).

However, assuming the trial judge somehow did err by instructing the jury on the statutory permissive inference, any error was entirely harmless in light of the evidence and testimony presented during trial. Specifically, looking to the evidence and testimony presented, numerous witnesses testified about the strong odor of alcohol emanating from Miranda following the collision, Miranda’s slurring of his speech, and Miranda’s confused and combative manner. Likewise, testimony was presented regarding Miranda’s refusal to submit to investigative testing of his blood following the crash and Miranda’s admission to both drinking and driving that night. In addition to that testimony, the testimony and evidence presented during trial established Miranda caused the crash by departing his lane of travel and striking Victim’s vehicle head-on.

Furthermore, the evidence demonstrated Miranda's blood alcohol concentration level was exceedingly high, and expert testimony was presented from his attending physician indicating Miranda's blood alcohol concentration level was sufficiently high such that it would render some individuals virtually comatose. In light of that overwhelming evidence of Miranda's intoxication and guilt, any conceivable error in the presentation of the jury instruction on the statutory permissive inference was entirely harmless beyond a reasonable doubt. See State v. Kinner, 301 S.C. 209, 210-211, 391 S.E.2d 251, 252-253 (1990) (finding any error in the trial judge's presentation of a jury instruction on the statutory permissive inference of intoxication in a felony driving under the influence case to be harmless beyond a reasonable doubt in light of the presentation of expert testimony on the effect of Kinner's blood alcohol concentration level, testimony regarding his erratic driving, and testimony noting he smelled strongly of alcohol); see also State v. Strange, 308 S.C. 256, 258, 417 S.E.2d 609, 611 (Ct. App. 1992) ("Even assuming the charge here was improper, the error was harmless beyond a reasonable doubt. The record . . . contains overwhelming evidence of Strange's guilt even apart from the breathalyzer reading to which the questioned charge related." (citations omitted)). Accordingly, even assuming the trial judge erred by instructing the jury in the manner he did, the Court of Appeals nonetheless correctly affirmed Miranda's conviction as he suffered no actual prejudice as a result of the error. See Taylor, 356 S.C. at 231, 589 S.E.2d at 2 ("To warrant reversal, a trial judge's charge must be both erroneous and prejudicial."); see also State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden is upon the appellant to satisfy [the appellate] court that there has been *prejudicial* error." (emphasis added)). Miranda's petition for a writ of certiorari should be denied.

CONCLUSION

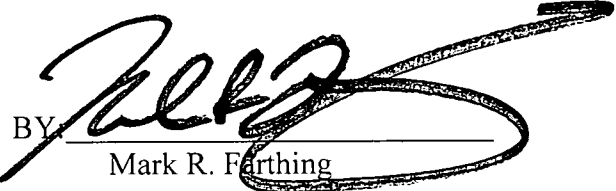
For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 6, 2019

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAY 06

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County S.C. SUPREME COURT
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2019-000479

THE STATE,

Respondent,

vs.

CARMINE JAMES MIRANDA, III,

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:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify all parties required by Rule to be served have been served.
This 6th day of May, 2019.



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