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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Honorable Robert Bonds, Circuit Court Judge

Appellate Case No. 2021-0001275

THE STATE, ...RESPONDENT,

v.

TIESH RHUE, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in failing to suppress the evidence obtained pursuant to the invalid search warrants.

2. Whether the trial court erred in admitting unfairly prejudicial autopsy photographs.

3. Whether the trial court erred in denying the directed verdict motions.

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly found probable cause for the third search warrant and rightly admitted all evidence collected from the first two warrants because of inevitable discovery when the victim was an official missing person under South Carolina law who was last seen at the marital home, who was then found two weeks later deceased, bound, and floating in a river.

2. Whether the trial court properly analyzed and admitted autopsy photos under Rules 401 and 403, SCRE, that corroborated the evidence, established a framework by which the jury could understand the evidence and help them determine whether the State had met every element of murder, obstruction of justice, and desecration of a body, and help them determine when, who, and how the victim died, as cause of death was unknown.

3. Whether the trial court properly denied the motion for a directed verdict motion on murder and obstruction of justice when the State provided substantial circumstantial evidence which, viewed together and in the light most favorable to the State, more than established the existence of evidence to send the case to the jury.

STATEMENT OF THE CASE

As of December 1, 2022, 1,160 people were officially listed as missing persons in this state.[1] According to SLED's Fusion Center, between 750 and 850 persons are reported missing each month.[2] An average of 664,776 people go missing each year in the United States at large, and 4,400 unidentified bodies are recovered each year. 1,000 of those bodies remain unidentified after one year. *Id*. The Fourth Amendment only prohibits *unreasonable* searches and seizures after a showing of probable cause. Is it reasonable for law enforcement to have no avenue by which to search for evidence when a body, killed by homicide, has yet to appear? For them to have no avenue by which to search for evidence to prevent an impending homicide?

In missing persons cases, a neutral and detached magistrate has the job of balancing an individual's Article 1, Section 10 right to privacy and their Fourth Amendment right to be free from unreasonable searches with the community and the missing person's right to have law enforcement conduct search, rescue, or recovery efforts. As in all Fourth Amendment cases, the totality of the circumstances should be considered. Here, law enforcement acted reasonably in searching for the victim, Leon Harrison, Jr., by obtaining three separate search warrants and a myriad of other consents to search. He had a right to be looked for. This case should be affirmed.

Appellant Tiesh Rhue was indicted along with her father and brother at the July 2017 Georgetown County Grand Jury for the murder of Leon Harrison, Jr., obstruction of justice, desecration of human remains, and two counts of criminal conspiracy. 2017-GS-22-0870, -0872,

[1] https://namus.nij.ojp.gov/ (National Missing and Unidentified Persons System.); *See generally* https://www.fbi.gov/services/cjis/ncic.

[2] SLED's Fusion Center, sled.sc.gov/fusion, Missing Persons Line: 800-322-4453.

-0875, -0882, -0883. Her case was prosecuted by Deputy Solicitor Alicia Richardson and Assistant Solicitor Elizabeth Smith. Appellant was represented by William "Josh" Edgeworth, Esq., her co-defendant Alexander Rhue, Jr. was represented by Gregory Voight, and Alexander Rhue, Sr. was represented by Ronald Hazzard, Esq. Tr. 1.

The Honorable Robert J. Bonds held the first round of pre-trial motions on September 24, 2021, and the second on October 11, 2021 after he received memorandums for and against the defense's motion to suppress. The State argued all three warrants were proper, but that the third one was particularly valid because of inevitable discovery. They argued *State v. Fletcher*, *State v. Sullivan*, and *State v. Dupree*[3] to show the evidence recovered from all three searches should be admitted at trial. Sept. 17, 2021 Tr. 1-60.

Two more rounds of pre-trial motions were held on October 11, 2021, (Search Warrant argument: Tr. 20-21), and October 12, 2021. (Search Warrant argument: Tr. 403-406). The solicitor brought up the autopsy photographs' admissibility, but the court declined to address the issue right then. Judge Bonds excluded the first two search warrants executed on **** Highmarket Street – Appellant's and the victim's marital home – via a written Order but ruled the third one cured the issues with the first two, and all the evidence obtained was admissible at trial. Judge Bonds denied the defense's motion to suppress evidence because of inevitable discovery. *Id*., Tr, 251, Tr. 404-405, Tr. 640-650; Written Order denying Motion to Suppress.

Appellant proceeded to trial by jury on the murder, desecration, and obstruction charges from October 11-15 and October 18-20, 2021. The State rested on October 19th, and all three defendants moved for a directed verdict. Judge Bonds denied the directed verdict motions for

[3]*State v. Fletcher*, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005) (*rev'd on other grounds by State v. Fletcher*, 379 S.C. 17, 664 S.E.2d 480 (2008); *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976); *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003).

murder and obstruction of justice for all three defendants citing *State v. Mealor*, 425 S.C. 625, 825 S.E.2d 53 (2019). He ruled there was substantial testimony when viewed in the light most favorable to the State to allow the case to go to the jury. However, he directed a verdict of acquittal for desecration of human remains for all three defendants. Tr. 1, Tr. 1631-1636, Tr. 1650, Tr. 1653-1656.

Appellant and her co-defendant Alexander Rhue, Jr. were found guilty of murder and obstruction of justice. The State *nolle prossed* the conspiracy charges and the trial court granted Appellant's directed verdict motion for the desecration charge. Appellant and Alexander Rhue, Jr. were both sentenced by the Honorable Robert J. Bonds to thirty-seven years' imprisonment for murder and eight concurrent years for the obstruction charge. Alexander Rhue, Sr., was found guilty of obstruction of justice only. Appellant timely filed a notice of intent to appeal her convictions and sentence and subsequently submitted a Brief in support of her Appeal. This Brief of Respondent follows. Tr. 1411, Tr. 1653, Tr. 1826-1827, Tr. 1856-1858.

STATEMENT OF FACTS

Appellant Tiesh Rhue named her husband "Hopefully" in her phone. She was tired of him having a girlfriend on the side (and paying for his child support) and wanted to reconcile with him. However, after inviting him to take a romantic bath with her on the evening of February 25, 2017, she arrived at their marital home to find him talking on the phone with his girlfriend. Thirty-two-year-old Leon Harrison, Jr., ("victim"; "JR") was killed in his master bedroom fifteen minutes from Pawley's Island by his wife and her brother in the early morning hours of February 26th. His wife never reported him missing. Law enforcement only got involved after the victim's father reported him missing two weeks after he was last seen.[4]

December 31, 2016 – *New Year's Eve*

Leon Harrison ("JR") and his girlfriend, Rosario Grate, were at the Riverview Club when Appellant and her brother Alex Rhue, Jr., showed up. Even though Appellant knew about JR and Rosario's one-year relationship, harsh words were exchanged. Tr. 674-675, Tr. 683-684.

February 13, 2017 – *Appellant's phone to "Hopefully"* (Tr. 1585-1588)

2:21 PM – I've dedicated my heart to you and you know I have done completely everything in my power to love you the way you want to be loved, but I see that you think I'm a whore and you hate me because I've never played no one in your face, but there's so much – so many bitches you played in my face. I'm crazy because from the moment I married you I've been in love with you, and being crazy in love makes you be extremely insane. I would never hurt you ever again, but you're breaking me down daily all cause you can't choose me and only me.

- **2:51 PM** – I want you and only you and now that you know that you choose now to play with my heart.

[4] Tr. 446, Tr. 779, Tr. 1582, Tr. 1585-1586, Tr. 1590.

- **2:54 PM –** I know you can respond so please text me back. I'm not a whore or a li[a]r, I'm just a woman in love with her husband.
- **2:56 PM from "Hopefully"** – You sometimes act a little too crazy and I don't have time.
- **2:57 PM to "Hopefully" –** Read all my messages, you know I'm crazy in love with you.
- **2:59 PM –** I want my marriage with you to work, but you have to want me too and only me flaws and all.
- **3:04 PM –** Hello.[5]
- **4:43 PM from Hopefully** - Tie, sh** is not right, we just need help or something, but this hands-on thing I can't do neither. The accusing it got me want to say eff it for real.

February 16, 2017 – *Appellant to "Hopefully" her Husband*

1:14 PM – I'm was trying to be strong, but I can't no more, this is the end of me, I've parked the car and I'm taking these pills, all of them. I hope you know I've loved you so much that no one can have me. I hope I die today. Tr. 1589.

February 23, 2017

- The last day JR's father and the mother of his children, Brittani Green, ever saw him.
- JR was behind on paying child support to Green, and that angered Appellant because she was married to him, and the support came out of her tax return instead of JR's.[6]

February 25, 2017 – *The Last Time JR (the victim) Was Seen*

- **2:52 P.M. – Appellant to "Hopefully:"** Let's take a bath, light some candles, and after rub each other with some oil and then make love. He responds, "Sounds like a plan." Tr. 1590.

[5] Texts between the two continued until 4:49 P.M. that day. Tr. 1587-1589.
[6] Tr. 98, Tr. 444-445, Tr. 478, Tr. 521-522, Tr. 615, Tr. 661.

- **5:55 P.M.** – JR last seen at work at PCL Construction. Alex Rhue, Sr., who took care of the children while the victim and Appellant were at work, called him to ask him if he needed a ride, but he declined. Tr. 428-438, Tr. 529.
- **9:00 P.M.** – JR's girlfriend Rosario picked him up and dropped him off at his father's house at 15** Front Street after the two ran errands. She reported he was wearing dirty black jeans, a plain blue or black t-shirt, and work boots. Tr. 53, Tr. 531, Tr. 662, Tr. 670, Tr. 674.
- **10:19 P.M.** – Appellant worked at the steel mill until 10:00 P.M., then returned to her house. She found her husband on the back porch on the phone with the other woman, Rosario Grate, so Appellant started an argument with him. Tr. 528, Tr. 1061.
- **10:53 P.M. and 10:58 P.M.** – Appellant's phone connected to Tower 1642, Sector 2, the tower that serviced her home, at **** Highmarket Street in Georgetown, SC. Tr. 1474.
- **11:00 P.M.** – Appellant used JR's phone to call Rosario. (To JR, while on the phone): "Your little bitch, she answered the phone. Why don't you talk to her?" Appellant called Rosario by her name and told her what was on her mind. There were five outgoing calls from JR's phone to Rosario from 10:19 P.M. to 11:07 P.M. Tr. 679-681, Tr. 1061.
- **11:07 P.M.** – Appellant called Rosario back several times after the first call, but she refused to answer. Appellant left multiple voice messages, with the last outgoing call at 11:07 P.M. JR had told Rosario he would meet up with her later that night, but he never showed up. Rosario never heard from him again. Tr. 531-532, Tr. 674, Tr. 677-683, Tr. 1061.
- JR was reportedly seen in the evening hours at a Bank of America in downtown Georgetown, but a specific time was never provided to police. The bank was just around the corner from the Highmarket St. house. State's Exhibit 89 (a map of the City of Georgetown.) Tr. 1115-1119.

- **11:23 P.M. and 11:24 P.M.** – Appellant's phone called **1-800-XXX-5483**, a Western Union Netspend number, twice. She attempted to withdraw money from her and JR's account, but she was unsuccessful. The phone utilized Tower 1642. Tr. 1061-1062.
- **11:25 A.M.** – JR's phone placed an outgoing call to that same Western Union from Tower 1642. His phone also recorded a voicemail where Appellant is heard calling for her father over what sounded like an altercation in the background. Tr. 227, Tr. 1062, Tr. 1463.

February 26, 2017 [7] - *JR is Killed*

- **12:41 A.M.** – JR's phone called Alex Rhue, Sr's. Tr. 1060.
- **1:07 A.M.** – Alex Rhue, Jr. and Sr. were seen on the nearby Walmart surveillance cameras purchasing two bottles of hydrogen peroxide. The Walmart was only two miles from the Highmarket Street house. Tr. 1171-1185; State's Exhibits 101 (Disk) and 102 (Receipt).
- **1:28 A.M., 2:09 A.M., and 2:14 A.M.** – Rhue Jr.'s phone **(XXX-8145)** was in the same location from 1:28 A.M. to 2:09 A.M. utilizing Tower 2, Sector 1642: the tower servicing the crime scene. He used the phone for 74 seconds at 2:09 A.M., then it stopped connecting to the network until 2:14 A.M., when it moved from the crime scene to the northwesterly Prince Street, in the direction of the Black River. Tr. 1466-1468, Tr. 1496-1475.
- **1:52 A.M.** – JR's phone called Rhue, Sr. for 254 seconds and left a voicemail using Tower 1642. The phone went dark after 1:53 A.M. and was never turned on again.[8]
- **1:56 A.M. to 1:59 A.M.** – Rhue Sr.'s phone **(XXX-1052)** utilized Tower 1642 at 1:56 A.M., then moved to Tower 1565 at 1:59 A.M., when it stopped connecting to the network. It

[7] The cell phone records were retrieved pursuant to Google Subscriber Search Warrants (without objection) and the State's expert witness, Allen Huggins, utilized CellHawk and Geofencing technology to track the victim and the three co-defendants' patterns of life from February 25 to 26, 2017. Tr. 1418-1464.

[8] Tr. 1060, Tr. 1444, Tr. 1456-1464; State's Exhibit 115 (the voicemail),

turned back on at 8:50 A.M. and utilized Sector Two of Tower 1642 until 12:50 P.M., then returned to Sector One. Basically, Rhue, Sr. was at the crime scene that whole time.[9]

- **2:00 A.M. to 6:00 A.M.** – Appellant's phone stopped connecting from the network from 2:00 A.M. to 6:00 A.M. Tr. 1463-1468, Tr. 1473-1474.
- **3:05 AM** – Rhue, Jr. texted Meyan Thomas telling her he had a family emergency and had to rush off to D.C. on a bus to deal with some issues. "Love you, Queen. I'm sorry, I'll hit you tomorrow. Shit is real crazy right now. Love you." Tr. 785-787; State's Exhibit 42 (text).[10]
- **6:00 A.M.** – Appellant's phone came back online. Tr. 1474.
- Appellant texted the victim a few times on the 26th and 27th asking where he was. She stopped after the 27th. Tr. 1580, Tr. 1591; State's Exhibit 121 (text messages).

<u>On or About Saturday, March 4, 2017, and Monday, March 6, 2017</u>

Antwan Simmons was working with Rhue, Jr., on a roof, and heard him say, "You know JR? Well, that fucker out of here, I took that nig** for a ride." Rhue, Jr. told him JR and Appellant had gotten into an argument, so Appellant called him, and he went to handle it. She and JR had been fighting over money because child support for another woman's children was being taken out of Appellant's tax return. Simmons got people to look for JR on Monday, March 6, because JR's father told him he had not seen his son recently. Tr. 803, Tr. 806-808, Tr. 1137.

[9] Tr. 1061, Tr. 1457-1465, Tr. 1463-1465.

[10] Meyan Thomas later testified that she was <u>"torn and confused" when she found out that the victim had been missing since the time Rhue, Jr. had texted her about the "emergency."</u> "It wasn't like JR to just go missing," "then, seeing the message, I just was putting it together. I didn't understand why [Rhue, Jr,] sent it at that time of morning. And then, after this, I haven't heard from him." Tr. 788.

Wednesday, March 8, 2017

Three men were seen looking for the victim by the Black River. March 8th was Brittani Green's[11] birthday. She said it was "unusual" that JR had not called her to wish her happy birthday, because he always did. Tr. 446-447, Tr. 623, Tr. 1336.

Thursday, March 9, 2017

8:58 A.M. Mr. Harrison, Sr. met with Inv. Powell and reported his son missing at the Georgetown City Police Department. He had last seen his son on February 23rd, and it was unusual to not have seen him for two weeks. Brittani Green also reported JR missing. She had last seen him on February 23rd, and had last talked to him on Friday night, February 24th. He usually called his children every night at bedtime, and it was strange that he had not called for two weeks. She had attempted to call him over the last two weeks but did not get through.[12]

11:03 A.M. Police open an official missing persons investigation by retrieving JR's DMV information and putting him into NCIC. Officers confirm that JR was missing with his aunt, who was an employee of the Georgetown County Detention Center. Tr. 526-528, Tr. 662.

Friday, March 10, 2017 – Appellant is Interviewed, and her House is Searched

A.M.: Rosario Grate reported her boyfriend missing and gave consent for law enforcement to search her cell phone. Tr. 532-533, Tr. 661; State's Exhibit 20 (consent to search); Tr. 676. Law enforcement interview Grate, Appellant, Brittani Green, Catessa Tucker, JR's employer, Rhue, Jr., and Rhue, Sr. "At the time we were interviewing everyone we could that would come and speak with us to try to find out what happened to Mr. Harrison . . . Or if anything had happened to [him]; we just wanted to try and find him, that was the idea."

[11] Brittani Green had multiple children with JR.

[12] Tr. 97-98, Tr. 480, Tr. 520-526, Tr. 615, Tr. 660-661.

Law enforcement do a press release with JR's DMV photo informing the public of JR's missing persons status. The release stated JR was last seen at **** Highmarket Street between 10:00 and 11:00 P.M. on February 25, 2017 by his wife.[13] Meyan Thomas sought out the police and told them that Rhue, Jr. and JR did not get along well; that Rhue Jr. had always had a problem with JR, wishing JR' d never married his sister. Tr. 533, Tr. 782.

Appellant's First Interview – State's Exhibit 21 (Redacted)

Investigators Powell and Morris interview Appellant about JR's disappearance at the steel mill where she worked. She told them he had come over to the house they shared the night of February 25, 2017, and admitted they'd had an argument. Appellant signed two consent forms to search her two smart phones and to take her DNA.[14] She initially said JR had his phone, but later admitted she had taken it. Law enforcement secured a search warrant for the phone records and RSCIC created a map. Tr. 1267-1268. Appellant told investigators she and JR had been "on and off," and that he had not been living with her full time. She admitted she had come home and found JR texting his paramour and admitted to calling her on JR's phone. JR left the house and she had not seen him since. She said she took a shot of tequila then went to sleep. Tr. 528.

Appellant's Second Interview – State's Exhibit 21 (Redacted CD)

Police pick Appellant up from the steel mill and drive her to the station. She came freely and voluntarily. Inv's Powell and Morris spoke with her 54 minutes. She gave written consent for the officers to search her cell phones.[15]

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[13] Tr. 99-100, Tr. 524-525, Tr. 529-530; State's Exhibit 19 (Press Release), Tr. 1216, Tr. 1329.

[14] Tr. 99-101, Tr. 104-106, Tr. 149, Tr. 527-528, Tr. 534-535, Tr. 546, Tr. 1208-1212, Tr. 1579; State's Exhibits 104 and 105 (voluntary consent forms).

[15] Tr. 107-108, Tr. 112-115, Tr. 120-121, Tr. 534-536.

First Search Warrant – *Exhibit #1, Motion to Suppress*

A.M. – Officer Anderson presented the first affidavit to Magistrate Judge O'Donnell and Inv's Powell and Morris, Lt. Walton, and Captain Pierce executed it. Their intent was to confirm where JR resided the most – Rosario's house or Appellant's – to focus their search. **** Highmarket St. was a three-bedroom house: Appellant and the victim stayed in one room, the children in another, and Rhue Jr., and Rhue, Sr. in the third room.[16]

Officers found two pill bottles, a DSS child support document, and a toll violation ticket with JR's name and address (matching his DMV record) on them. The documents were lying on the floor in the master bedroom. While in the master, officers notice a large stain on the carpet lying in plain view that "didn't look right." The room was in "disarray" with "stuff all over the place." They also noticed a rug with a flannel blanket underneath in a strange place in the room, and moved a tote, the rug, and the blanket to find a place where the carpet had been completely cut away. Tr. 549-550, Tr. 555, Tr. 1217-1218. Carpet fibers and debris were "everywhere" around the spot. Blood stains had soaked through the carpet padding into the subfloor, and a presumptive swab test confirmed the presence of blood. Officers also noticed a second area where the carpet had been cut away, and stains in the area field-tested positive for blood. A broken mirror by the closet was also observed. Officers stopped searching the house and went to apply for a second search warrant.[17]

[16] Tr. 153-155, Tr. 498, Tr. 548, Tr. 1005-1006, Tr. 1217 (looking for "proof of residency,") 1225-1226, Tr. 1257-1258; Exhibit 1, Defense Motion to Suppress.

[17] Tr. 456, Tr. 553-554, Tr. 561, Tr. 1006-1010, Tr. 1218, Tr. 1223-1224, Tr. 1229, Tr. 1232, Tr. 1236-1337; State's Exhibit 24 (thumb drive with photos of the house).

7:41 P.M. to 8:35 P.M. – Second Search Warrant: *Exhibit # 2, Motion to Suppress*

Officers obtain a second search warrant from Judge O'Donnell at 7:41 P.M and execute it at 8:35 P.M. They cut out three pieces of the stained carpet padding from both places where the carpet was missing that were positive for blood. However, the DNA was diluted from a cleaning solution,[18] so it did not initially produce a match. However, after SLED utilized an INVAC forensic vacuum, a match to the victim and another contributor came back. The probability of matching an individual that was not the victim was 1 in 3.1 octillion.

Blood found on the mattress in the room matched the victim and Appellant. Bloody bedsheets were also recovered. A blood spot was swabbed on the wall by the bedroom door, and the DNA came back to three individuals, with Appellant listed as a partial contributor. A transfer stain on the wall by the closet (near the bedroom door) that looked like blood castoff stain had Appellant and another person's DNA in it. A spot thought to be blood on the wall by the kitchen's laundry room matched Appellant and another individual. Multiple cell phones (that they later got search warrants for (unchallenged at trial) and the blanket that was laid over the largest spot where the carpet was cut away were recovered. [19]

Saturday, March 11, 2017 – JR's Body is Found

11:00 A.M. – *Appellant's Third Interview: State's Exhibit 27 (Redacted Interview)*

Investigators Powell and Morris met briefly with Appellant (who volunteered to come again) a third time in the 11:00 A.M. hour on March 11th. The purpose of the interview was to

[18] Richland County Sheriff's Office's DNA Technical Lead and Lab Director testified, "Hydrogen peroxide can destroy the DNA." Tr. 1540-1541; State's 115 (DNA Profiler Report).

[19] Tr. 562, Tr. 1532, Tr. 1538-1540, Tr. 1562, Tr. 1538.

discuss items found in her home pursuant to the search warrants. She was not in custody, was not under arrest, and was not in handcuffs.[20]

11:55 AM – *Interview with Alexander Rhue, Sr., Appellant's Father*

Investigator Powell met with Rhue, Sr. at 11:55 A.M. while he was babysitting Appellant's five children at his house.[21] A redacted version of this interview was admitted into evidence at trial. State's Exhibit 28. Rhue, Sr. told the officers that he was at **** Highmarket Street the evening of February 25, 2017, and said Appellant had arrived home around 10:00 P.M. When asked if Rhue, Jr. was there at the time, he lied and said he did not know; I did not see him. He told them he went to bed between 9:00 and 9:30P.M. in the bedroom he and Rhue, Jr. often shared, but had gotten up at to check on the house. Tr. 187-188, Tr. 575-577

12:15 P.M. – *911 Call Came in About the Victim's Body*

Perry Collins called 911 to report having seen a body floating in the Black River below his home while he was out gardening. Law enforcement from the Georgetown County Sheriff's Officer were dispatched to Colonel Cole Drive and arrived just after noon. There was a 30-foot sharp ridge above that portion of the river, so the police used a boat to recover the body, which was currently stationary against a log. The individual's pants were down around their ankles, their hands were over their head, and there was no shirt. The hands and the feet were tightly bound left over right with multiple loops of orange speaker wire, and there were deep lacerations across the right palm. Tr. 171, Tr. 594, Tr. 713, Tr. 754-755, Tr. 759-769, Tr. 771-775, Tr. 861, Tr. 1012, Tr. 1248. Tr. 1253; State's Photo 1466.

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[20] Tr. 156-159, 165-166, Tr. 564-573, Tr. 586-587, Tr. 591-592, Tr. 1208-1209, Tr. 1248

[21] This interview was recorded on a body camera, but the trial court did not allow the jury to see it. State's Exhibits 4 and 28. He only allowed witnesses to testify about what happened during the tape. Tr. 611.

The body was in an advanced stage of decomposition with discoloring and degloving of skin. A smaller wound was found on the left side of the ribcage, with a larger wound on the right side of the abdomen that looked like "bite marks or stab marks or animal activity". The body was taken to a forensic pathologist immediately after it was retrieved, and an autopsy was done. The body was identified as Leon Harrison, Jr., by a distinctive tattoo on his body, and the cause of death was homicidal violence. Law enforcement checked around the bank and the Riverview Club and the Brown's Ferry Bridge (Dunbar Bridge) for other evidence but found none. Tr. 443, Tr. 774-777, Tr. 873, Tr. 887, Tr. 1249.

March 14, 2017 – The House is Searched Again

Interview with Alexander Rhue, Jr., Appellant's Brother – State's Exhibit 97 (Redacted DVD)

Investigator Powell met with Rhue, Jr., at Rhue Sr.'s home on Palm Street as other law enforcement were serving the third search warrant at **** Highmarket Street. He admitted he had not told law enforcement the truth about not leaving the house the night of the 25th to the morning of the 26th the first time he spoke with them. He gave law enforcement a buccal swab for his DNA. Tr. 187, Tr. 197-199, Tr. 250, Tr. 598-599, Tr. 1114; State's Exhibit 10

Third Search Warrant – *Executed Four Days After the First Two*

12:02 P.M. to 1:17 P.M. – Three days after the body was found and four days after executing the first two warrants, law enforcement secured a third search warrant from Judge O'Donnell and executed it at the Highmarket St. house at 1:17 P.M. In it, they particularly described the items to be searched for: speaker wire, sharp objects, and any other evidence related to JR's murder. They knew the body was Leon Harrison, Jr. when they searched the home, because they explicitly said in the affidavit that he had been identified by a tattoo. Officers searched multiple vehicles and the home. No evidence was found in the vehicles, but officers took more photographs and seized

a backpack with a myriad of speakers, wires, and cables along with a box cutter, and a steak knife, from the home. Tr. 176, Tr. 498, Tr. 551, 593-597, Tr. 1013-1014, Tr. 1252-1262, Tr. 1335; Photos 754, 761, 769, 828, 915 on State's Exhibit 39 (Flash drive); Pp. 10-11, p. 40, p. 46 Memo in Opposition to the Motion to Suppress.

An area beside the window in the master bedroom tested positive for blood, and a stain thought to be blood on a door jamb of the closet (right behind the first place the carpet was cut away) was swabbed. It was consistent with a cast-off stain.[22] A toothbrush of the victim was also collected for DNA purposes. The DNA on it matched the standard JR's father gave to establish a familial match. Tr. 486, Tr. 1014-1015, Tr. 1264-1265.

Interview with Alexander Rhue, Sr. – State's Exhibit 30 (Exhibit 29 was voided: Tr. 601-602)

Rhue, Sr. pulled up to **** Highmarket Street as officers were serving the second search warrant. Officers asked him about the fight Appellant had gotten into and where the scratches on her body had come from. Tr. 197, Information he relayed to officers was deemed inadmissible at trial. Tr. 197, Tr. 250, Tr. 598-602, Tr. 612-614.

March 22 or 23, 2017

Appellant's Fifth Interview – State's 107 (Redacted Interview)

Investigator Powell interviewed Appellant for the last time on March 11, 2017, when she came to the station to retrieve her cell phones. She was not being interrogated or held against her will, and she was free to leave at any time, and the interview lasted approximately twenty-two. When they confronted her with the fact that the body had been found, she changed her story

[22] Expert testimony defined a cast-off stain as "a blood stain that results from some sort of force being applied to a blood source or an object that contains blood. The force causes blood drops to fly off the surface and possibly land on another." Tr. 1016; Photos 829, 835, 842, 847, 894 on State's Exhibit 39 (Flash drive of photos.)

about what she was doing that night. Her fourth interview on March 13, 2022 did not procure relevant evidence. Tr. 199-200, Tr. 208-212, Tr. 223-231, Tr. 1107-1109, Tr. 1296-1297.

March 29 to May 11, 2018

Investigators retrieved the Walmart surveillance footage and identified an individual matching Rhue, Sr. on the tape, buying two bottles of hydrogen peroxide with a man who looked like Rhue, Jr., at 1:00A.M. on February 26th. Rhue, Sr. was arrested on March 30th and charged with obstruction of justice. Tr. 625-626. Investigators interviewed Rhue, Sr. again on April 2, 2017, after he initiated contact, and he admitted he had lied to law enforcement previously the first time they spoke with him about not leaving his house that night and about not knowing what his son was doing or where he was that night. They spoke to him again on April 6, 2017, where he again admitted he lied about not leaving his house that night. Tr. 246, Tr. 256-261; Tr. 581, Tr. 587-598; Tr. 616-617, Tr. 1182, Tr. 1268-1270; State's Exhibit 9 (recorded interview.)[23]

Law enforcement interview Appellant's five children at their schools on April 25, 2017, arrest Rhue Jr. on May 5, 2017, charge Rhue, Sr. with murder and the rest of the indictments on May 10, 2017, and arrest Appellant for all her indictments on May 11, 2917. Tr. 627, Tr. 1138.

Post-Arrest

A man approached law enforcement and wrote a statement that Rhue, Jr. told him he was in jail for a murder case, and that law enforcement had "nothing on him" because they had dumped the "man with tattoos on his arms' body". He spent time with Rhue, Jr. in the J. Reuben Long detention center in Horry County, which is where he heard Rhue, Jr. confess to JR's killing. He came forward because it was "the right thing to do." Tr. 930-934; State's Exhibit 77 (statement).

[23] This tape of this interview was excluded at trial. Tr. 258.

STANDARD OF REVIEW

"[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." *State v. Frasier*, 437 S.C. 625, 633-634, 897 S.E.2d 762, 766 (2022) (adopting a new standard of review distinct from the clear error standard from the *State v. Morris*, 441 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) era).

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The Court is bound by the trial court's factual findings unless they are clearly erroneous." *Id*. "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. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014).

ARGUMENT

I. The trial court properly found probable cause in the third search warrant's affidavit and rightly admitted evidence from the first two warrants because of inevitable discovery. The victim was last seen at his marital home two weeks before his body was found bound by the hands and feet floating in a river. A neutral and detached magistrate properly allowed officers to search the home when the date of death matched the date of disappearance.

Appellant argues the trial court erred by finding probable cause in the third search warrant, and in failing to suppress the evidence recovered from all three search warrants after he found it would have been inevitably discovered anyway. The State disagrees and submits Appellant's argument is without merit. The victim was last seen in his marital home two weeks before he was found floating in the Black River, murdered, with his hands and feet bound. Those are specific, articulable facts given to a magistrate, who rightly issued warrants to search.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures . . . and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." U.S. Const. amend. IV; *see also* S.C. Const. art. I § 10 (emphasis added). The provision is intended to protect reasonable expectations of privacy. *See generally Katz v. United States*, 389 U.S. 347 (1967).

"In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures" along with a protection against *unreasonable* invasions of privacy. *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10 (1971) ("warrants shall . . . particularly describe the place to be searched, the person or thing to be seized, and the information to be obtained.") "The laws of search and seizure are aimed at protecting a basic American right: the right to be left alone." Magistrate's Bench Book, § 4(a), *Search Warrants*. Appellate courts have "sought to

guard our state citizens' constitutional right to privacy *but* still give credence to the government's interest in conducting legitimate searches." *State v. Counts*, 413 S.C. 153, 170, 776 S.E.2d 59, 69 (2015) (emphasis added.)

Normally, the Fourth Amendment requires law enforcement to have a warrant to conduct a search. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). It must be issued by a "neutral and detached" judicial officer, who is:

> [i]nterposed . . . between the citizen and the police. This was not done to shield criminals nor make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.

McDonald v. United States, 335 U.S. 451, 455-456 (1948) (emphasis added).

Warrant and Warrant Affidavit Requirements

All search warrants issued in South Carolina must be filled out on a form prescribed by the Attorney General's Office. S.C. Code § 17-13-160 (1985). Once the magistrate receives the form, he or she must determine if there is probable cause to believe that "particularly-described seizable evidence is presently located at the particularly-described location." Magistrate's Bench Book, § b(1), *Search With a Warrant*; *State v. Tench*, 353 S.C. 531, 579 S.E.2d 314 (2003). The magistrate first places the officer under oath, reminds the officer that the penalty for perjury attaches to the statements in the affidavit, then makes a probable cause determination. *Id*.; *State v. Weston*, 329 S.C. 287, 94 S.E.2d 801 (1997); S.C. Code § 17-13-140 (2003).

The search warrant and the warrant affidavit must contain sufficient underlying facts and information for a probable cause determination. *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003). The affidavit must "particularly describe the place to be searched and the objects to be seized." U.S. Const. amend IV; S.C. Const. art. 1, § 10; S.C. Code Ann. § 17-13-

140 (2003). General, "exploratory rummaging" in a person's belongings is *not* authorized under our constitutions. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). However, "[t]his particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized . . . as the circumstances and nature of activity under investigation permit." *State v. Sullivan*, 281 S.C. 522, 524, 316 S.E.2d 404, 406 (1984); *State v. Malloy*, 409 N.W.2d 707, 708 (Iowa Ct. App. 1987) (approving a warrant authorizing the seizure of "evidence of instrumentalities which would substantiate abuse.") Sometimes, "requiring a more detailed description would unreasonably thwart an investigation." *Fletcher*, 363 S.C. at 254.

The search must be limited in scope to only those items specified in the warrant.[24] "Affidavits are not meticulously drawn by lawyers but are normally drafted by non-lawyers in the haste of a criminal investigation and should therefore be viewed in a common sense and realistic fashion." *Fletcher*, 363 S.C. at 251, 609 S.E.2d at 587-588; *State v. Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (1976). The written affidavits must be judged by the facts presented, and *not* on the particular words used. *Id*.

Probable Cause

As reasonableness determined through a totality of the circumstances analysis is the crux of the inquiry here, a search is reasonable if there was probable cause to believe the search would produce evidence of a crime or contraband. *Illinois v. Gates*, 462 U.S. 213 (1983). What, then, is probable cause? A statement of facts "which would lead a man of ordinary care and prudence to believe that the object to be sought is presently located at the designated place." Magistrate's

[24] An exception is once officers are inside a home, any item in plain view with a readily apparent incriminating nature is fair game for them to use to further an investigation. *State v. Wright*, 391 S.C. 436, 446, 706 S.E.2d 324, 328-329 (2011); *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993); *State v. Culbreath*, 300 S.C. 232, 387 S.E.2d 255 (1990); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

Bench Book, § b (2), *Probable Cause Requirement*. The officer must reasonably believe evidence of a crime will be found, and the belief must stem from recent observations considering all circumstances or evidence. *State v. Baker*, 251 S.C. 108, 160 S.E.2d 556 (1968). There is no hearsay prohibition for officers attempting to establish probable cause. *Sullivan*, 267 S.C. 610, 615-616, 230 S.E.2d at 623-624; *Draper v. United States*, 358 U.S. 307 (1959). Magistrates are only concerned with probabilities, not certainties. *Id*.

The magistrate then makes a practical, common-sense decision after reviewing the totality of the circumstances set forth in the affidavit and all other information available to them at that time about whether there is "a fair probability that evidence of a crime will be found in a particular place." *State v. Williams*, 297 S.C. 404, 377 S.E.2d 308 (1989); *State v. Crane*, 296 S.C. 336, 372 S.E.2d 587 (1988). The totality of the circumstances test is based upon "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160 (1949). If the officer gave a magistrate specific and articulable facts that there was a fair probability that evidence of a crime might be found at a named location, the warrant should be issued and the citizen's right to privacy must yield to the interest of the state to protect its citizens. Evidence collected should be admitted.[25]

[25] The *Mapp v. Ohio*, 367 U.S. 643 (1961), exclusionary rule is not in the South Carolina Constitution. If items are seized with a faulty warrant, but officers acted in good faith, the evidence should still be admitted at trial subject to the Rules of Evidence. *United States v. Leon*, 468 U.S. 897, 924 (1984).

Suppression is therefore only appropriate when: **(a)** the judge was misled by information in an affidavit; **(b)** the judge wholly abandoned his judicial role so that no well-trained officer would rely on the warrant; **(c)** the affidavit was so lacking in probable cause that belief in its truth was entirely unreasonable; or **(d)** the warrant was so deficient on its face (failing absolutely to particularize the place to be searched or things to be seized) that the police officers executing the warrant could not reasonably presume it to be valid. *Id*. at 923.

As long as a magistrate had a substantial basis for concluding a search would uncover evidence of wrongdoing by the totality of the circumstances, appellate courts should uphold it. *State v. Dupree*, 354 S.C. 676, 683-684, 583 S.E.2d 437, 441 (Ct. App. 2003); *State v. 192 Coin-Operated Video Game Machs*., 38 S.C. 176, 525 S.E.2d 872 (2000); *State v. Jones*, 342 S.C. 121, 536 S.E.2d 675 (2000). "Appellate courts should give great deference to a magistrate's determination of probable cause." *State v. Driggers*, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (Ct. App. 1996). "[S]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." *State v. Bennett*, 256 S.C. 234, 241, 182 S.E.2d 291, 241 (1971); *United States v. Ventresca*, 380 U.S. 102 (1965) (holding that affidavits for search warrants must be tested and interpreted in a commonsense and realistic fashion).

Inevitable Discovery

Even if something went wrong with the warrant process, evidence may be admitted at trial if the prosecution can establish by a preponderance of the evidence that the information obtained by ill-advised means ultimately or inevitably would have been discovered by lawful means. *State v. Stewart*, 435 S.C. 405, 414, 867 S.E.2d 33, 37 (Ct. App. 2021); *State v. Moore*, 429 S.C. 465, 839 S.E.2d 882 (2020); *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019); *Nix v. Williams*, 467 U.S. 431, 443-444 (1984). At that point, any deterrent effect on law enforcement would have "so little basis" that withholding relevant evidence to deter future violations would not outweigh the "enormous societal cost of excluding truth . . . in the administration of justice." *Nix*, 47 U.S. at 445.

This Case

Judge Bonds found the first and second search warrants lacked probable cause, but found the third one was a valid search warrant under the Fourth Amendment and Article 1, Section 10 of the South Carolina Constitution. *See* Judge's Written Order. When addressing the third warrant, Judge Bonds said:

> The third search warrant of the Rhue home did have sufficient probable cause independent from the prior warrants. The third search warrant was served after the victim's body was found wrapped in wire, and the warrant sought several things in the home including wire similar to the kind found on the victim, blood, hair, DNA, weapons, and clothing.
>
> Any evidence discovered during the execution of the first and second warrants would have been inevitably discovered during the search under the third search warrant. Therefore, the evidence discovered during the searches should not be suppressed.

Written Order, p. 3.

He found the third warrant had probable cause independent from the prior warrants. *Id*.

Respondents maintain that Judge Bonds erred in finding the first and second search warrant lacked probable cause under the totality of the circumstances, especially considering the special circumstance of a missing persons case. The affidavits met the requirements of S.C. Code Ann. § 17-13-140.[26] However, Respondents choose to not belabor the point, as all of the evidence properly came in, regardless, under Judge Bond's correct ruling as to the third search warrant. The text of the first and second search warrants can be found in Exhibits 1 and 2 of the Defense's Motion to Suppress.

[26] S.C. Code § 17-13-140: "Any magistrate . . . may issue a search warrant to search for and seize **(1)** stolen or embezzled property; **(2)** property, the possession of which is unlawful; **(3)** property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; **(4)** property constituting evidence of crime or tending to show that a particular person committed a criminal offense" and **(5)** drug evidence.

The Third Search Warrant

At issue here is the text of the third search warrant. Exhibit # 3, Motion to Suppress.

Description of Property Sought:

> All areas of the before mentioned property or places located at **** Highmarket Street in search of any speaker wire consistent with crime scene photos taken by the Georgetown County Sheriff's Office, which shows the victim was bound around his wrist and ankles with speaker wire. Also any knives, edged cutting tools/weapons, blood, hairs, fibers, any and all trace DNA evidence, clothing to include black work jeans, black or blue work T-shirts, work boots.

Affiant's Belief that the Property to be Sought is on the Subject Premises:

> On Saturday 2/25/2017, the victim, Leon Harrison, Jr. went missing from his residence of **** Highmarket Street in the City limits of Georgetown. On Friday, 3/10/2017, at **** Highmarket St. whilst conducting a search warrant of the premises for evidence that could aid in locating the victim, Harrison, a foreign stain was found on a portion of the carpet padding, where the portion of the carpet had been cut away, at the opening to the victim's closet, covered by a flannel blanket that was covered by an area rug.
>
> This stain on the carpet padding was tested with a presumptive blood testing kit and did test positive for blood. A search warrant was obtain[ed] and executed for the furtherance of developing the blood evidence and any evidence that could further the investigation. On Saturday 3/11/2017, a body was found near Colonel Cole Dr., in Georgetown County, in the Black River. The victim's remains were decomposed, but the body was identified as Harrison due to a tattoo on his inner left forearm. A search is being requested for the before mentioned items that could develop leads in this case.
>
> Exhibit 3, Motion to Suppress.

There is more than enough probable cause in that affidavit to justify the search. Courts may not do surgery and exhaustively pick apart a warrant affidavit on appeal; they only must decide if there was a sufficient basis for probable cause. Respondents, again, do not concede that the first two warrants lacked probable cause. However, for argument's sake, if the language that referenced the first two warrants was removed from the language of the third, probable cause remains:[27]

[27] *See State v. Spears*, 393 S.C. 466, 483-483, 713 S.E.2d 324, 332-333 (Ct. App. 2011) (admitting evidence because of the inevitable discovery doctrine because the remaining portion

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Just the fact that the victim was last seen at **** Highmarket Street on approximately the day his body was dumped in the river (according to the level of decomposition), and the fact that his hands and feet were bound – indicating a crime – was enough to develop probable cause. Those are specific, articulable facts that the officers gave the magistrate to demonstrate why they thought the Highmarket Street residence would contain evidence of a crime under S.C. Code § 17-13-140.

In *State v. Spears*, this Court admitted a weapon into evidence in an armed robbery, kidnapping, and unlawful weapon case even though it was collected after officers searched based on a co-defendant's improperly coerced consent. *Spears*, 393 S.C. at 482-484, 713 S.E.2d at 332-

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of the search warrant – after references to an invalid consent to search were removed – still gave rise to probable cause.); *State v. Davis*, 371 S.C. 412, 639 S.E.2d 457 (2006).

333. The weapon was admitted because the warrant affidavit still contained a substantial basis for probable cause to search. This Court found the prosecution also established the weapon would have been inevitably discovered at the suspect's home by lawful means anyway, and thus, it was admissible for two separate reasons. *Id*. Removing the language about consent, the affidavit read:

> An armed robbery occurred at Bell's Bait and Tackle Shop in Elloree, South Carolina, and a suspect, Phillip Spears, was positively identified by a store clerk from a six-photo line-up compiled by SLED. Information was received by officers from the Calhoun County Sheriff's Office that suspect sometimes stayed at 140 Charlotte Circle in the City of Orangeburg, so officers responded to that location.
>
> Upon arriving at 140 Charlotte Circle, a second suspect, Titus Bantan, was located and had also been positively identified from a six-photo line-up compiled by SLED as one of the armed robbery suspects.

Spears, 393 S.C. at 483-484, 713 S.E.2d at 333.

The only reason for police to search 140 Charlotte Circle was that Spears "sometimes stayed there." What is the difference between that home and this one, where the victim definitely resided and was definitely last seen? Also consider *State v. Davis*, where this Court found the trial court improperly granted the motion to suppress even though law enforcement had included a false statement in the warrant affidavit. 371 S.C. 412, 415, 639 S.E.2d 457, 458-459 (2006). This Court removed the offending language from the affidavit and found it still had probable cause because the "sequence of events was still logical from an investigative standpoint." *Id*. at 417, 639 S.E.2d at 460. In fact, this Court did not let a criminal go free "because the constable [] blundered." – Judge Cardozo, *State v. Defore*, 242 N.Y. 13, 150 N.E. 585 (Ct. App. N.Y. 1976).

The officers in this case specifically articulated (with particularized language) what items they sought, which included blood, DNA, fibers, and all the evidence collected from the search pursuant to the second search warrant. It is not a stretch to say that blood, DNA, fibers, etc. might be found in the place the victim was last seen (even without knowledge that yes, in fact,

incriminating blood, DNA, fibers, etc. *did* exist in the place he was last seen,) because the victim was very obviously murdered. Blood, DNA, fibers, etc. are all standard protocol evidence to be collected after a crime has been discovered and an investigation has begun. What better place to begin an investigation than where the person was last seen?

Appellant argues law enforcement trampled all over her liberties in this case, and that now, the home of every murder victim will be open season for law enforcement. This is simply not true. This was not a case like any other. This was a missing persons case. Leon Harrison, Jr. had been officially declared a missing person in South Carolina under S.C. Code § 23-3-120 (2009). Law enforcement have, necessarily, special powers to investigate missing persons cases for obvious reasons, still subject to the totality of the circumstances balancing tests as mentioned above. *See, e.g.*, S.C. Code 23-3-220 to 250 (1985); *see* pp. 15 and 17 of the Final Report of the Committee the Make a Study of the South Carolina Constitution of 1895 (1969) (adding the Art. I, § 10 protection against unreasonable invasions of privacy *alongside* a provision allowing for warrants so officers could protect the health, safety, and welfare of citizens.) The magistrate rightly found probable cause here in all three warrants after soberly performing that balancing test.

As an aside as it may not be directly applicable here, law enforcement sometimes secure warrants to search for missing persons at the place they were last seen *because* they might have harmed themselves. Death by suicide, assisted or not, is a crime in South Carolina. *See* S.C. Code § 16-3-1090 (1998); *State v. Levelle*, 34 S.C. 120, 13 S.E. 319 (1891) (overruled on other grounds by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019)) (finding suicide is an unlawful and felonious act). People only go missing because of the actions of others or of themselves. Law enforcement, in the interests of the community, the family of the person, and, indeed, the person, are tasked with finding out which one. Needs of officers in a missing persons investigation (where

a crime may not yet be directly apparent) must be weighed against the Fourth Amendment and privacy rights of citizens by neutral magistrates, and warrants must issue upon probable cause.

To add to the legality and admissibility of the evidence here, the investigators testified that the property was in exactly the same condition when they executed the third warrant as it was *four days earlier* when they executed the first two warrants. Oct. 1, 2021 Affidavit by Inv. Morris, Memo in Opp. Exhibit. No repairs had been made. The carpet was still missing. The subfloor still had the blood stains. The walls had not been cleaned. *Id*. Therefore, all of the evidence recovered after the second warrant was executed would have still been there, ready to be collected, and it would have been collected after officers executed the third warrant.

To secure an affirmance here, Respondents must only prove by a preponderance of the evidence that the information collected by (not conceded) unlawful means ultimately or inevitably would have been discovered by *lawful* means; and that has been done. The trial court, therefore, properly found the third search warrant had probable cause, because the magistrate made a practical, commonsense determination when reviewing and affidavit issuing the warrant(s). The court also properly admitted all of the evidence recovered prior to its execution because of inevitable discovery. Reviewing the trial court's factual findings for any evidentiary support but reviewing its legal conclusions de novo, this Court should affirm.

II. The trial court properly admitted some of the autopsy photos because their probative value substantially outweighed any prejudicial effect. Other than homicidal violence, the specific cause of death was unknown. Therefore, the jury had the right and responsibility to view the photos to determine if Appellant contributed to when and how the victim died.

Appellant argues the trial court improperly admitted autopsy photos because they improperly inflamed the passions of the jury. The State disagrees and submits Appellant's argument is without merit. The photos were highly relevant and probative, as they corroborated testimony, provided a framework by which the jury could understand and analyze the evidence, and help the jury determine whether the State had met all the elements of the alleged crimes. The trial court properly conducted a 403 balancing test on the record and found the probative value outweighed any prejudicial effect. This Court should affirm.

Before Dr. Cynthia Schandl (the State's expert forensic pathologist) testified, the State moved to admit a small selection of the 100 photos she had taken at the victim's autopsy. This was a murder case with no clear cause of death, so the State argued the photos were especially relevant and important for the jury to consider. Photos of the bindings from different angles showed the condition of the body, the desecration of the body, and malice aforethought. The defense objected, arguing relevance and unfair prejudice under Rule 403, SCRE. Appellant here also contends the trial court improperly relied on *State v. Collins*[28] in admitting the photos. IBOA at 23. This is error. Tr. 709-718, Tr. 720-743, Tr. 749-751, Tr. 871-872.

The trial court, relying on *Collins*, properly allowed a small selection of the photographs in (after excluding duplicative ones), finding they were relevant to show the "sad reality of the situation" as they showed potential injuries and the bindings. They mirrored "the reality of the

[28] *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014) (upholding the admission of autopsy photos of a young boy mauled by dogs.)

case" and helped the pathologist demonstrate cause of death: homicidal violence. The trial judge gave a limiting instruction to the jury before the photos were published:

> [T]hese are some of the photographs that the Doctor took. And what I would tell you is some of these photographs may be difficult to look at. But, again, it's not something that anybody is actually going to enjoy, but as the oath that you took as jurors, this is evidence, and it's been admitted into evidence.

Tr. 716, Tr. 723, Tr. 743-746, Tr. 871, Tr. 877.

Dr. Schandl chose to use the photos to walk the jury through the way she conducted the autopsy. "I thought it better to show rather than try to explain and describe things like the binds [which are] very difficult to describe." Dr. Schandl told the jury that she found the body in a moderate state of decomposition (with the skin beginning to glove off the body) with several defects to the right and left sides of the torso, through one of which intestines peeked. She did not find any bullet holes, brain hemorrhage, or stroke, and all the bones were intact. However, speaker wire was wrapped tightly multiple times around the ankles and wrists in "intricate knots." She did not know whether the defects occurred before or after the victim died. She noticed defects to the hands: "Anytime there are defects to the hands one can suspect defensive wounds." She found no poison in the blood and the BAC was .12. Tr. 857-917.

Here, the State set out to prove Appellant was guilty of murder, desecration of human remains, and obstruction of justice. Therefore, the elements they needed to meet over the course of the trial were:

1. A killing of a person occurred as the proximate cause of human action;

2. Malice aforethought was present;[29]

[29] "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. 16-3-10 (1976).

***See* Indictment 2017-GS-22-00882** (". . . on or about February 25-26, 2-17, while acting in concert with others, [Tiesh Rhue] did willfully, feloniously, and intentionally kill the victim . . .

3. A deceased human being was willfully and knowingly destroyed, damaged, or desecrated;[30] and

4. Something was done to prevent, obstruct, impede, or hinder the administration of justice.[31]

As its case was based largely, if not entirely, on circumstantial evidence, the State had the burden and responsibility of not only proving its case beyond a reasonable doubt, but to also provide "a framework for a 'rational' and 'cumulative' assessment for guiding the jury's consideration of circumstantial evidence." *State v. Grippon*, 327 S.C. 79, 87-88, 489 S.E.2d 462, 488 (1997); *State v. Logan*, 405 S.C. 83, 94-99, 747 S.E.2d 444, 450-452 (2013) (articulating a newly clarified circumstantial evidence jury charge for the bench and the bar.) "[E]valuation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded . . ."[32] *State v. Cherry*, 361 S.C.

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with malice aforethought, either express or implied, and the victim died as the proximate result thereof on or about February 25, 2017 . . . .") The indictment was amended on October 11, 2021 to include *the manner of death: homicidal violence*. Tr. 17-20.

[30] Desecration of Human Remains: **(A)** It is unlawful for a person willfully and knowingly, and without proper legal authority to: **(1)** destroy or damage the remains of a deceased human being; . . . **(3)** desecrate human remains. S.C. Code § 16-17-600 (2010).

[31] Common Law Obstruction of Justice: "[I]t is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." *State v. Lyles-Gray*, 328 S.C. 458, 464, 492 S.E.2d 802, 805 (Ct. App. 1997); S.C. Code § 17-25-0030 (1962).

***See* Indictment 2017-GS-22-00883** ("That Tiesh Annette Rhue did in Georgetown County between February 25, 2017 and March 22, 2017, intentionally do an act which prevented, obstructed, impeded, or hindered the administration of justice, to wit: provided false statements to Law Enforcement and concealed evidence in the investigation of the Murder of Leon Harrison, Jr., in violation of the Common Law offense of Obstruction of Justice.")

[32] When considering circumstantial evidence, jurors are called on to first ask "**(1)** can I infer guilt from this circumstantial fact? And **(2)**, if so, did the State connect it to a chain of facts and circumstances indicating the existence of the larger fact of guilt or innocence?" *Logan*, 405 S.C. at 97-99, 747 S.E.2d at 451-452.

588, 603, 606 S.E.2d 475, 483 (2004). The State chose here to guide the jury through the framework of having the pathologist explain the victim's injuries and bindings with photographs – thus fulfilling its burden to rationally and logically guide the jury's consideration of the evidence.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph[s] serve[] to corroborate testimony, it is not an abuse of discretion to admit [them]." *Id*. "When balancing the danger of unfair prejudice against the probative value, the determination must be based on the entire record and will turn on the facts of each case." *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (emphasis added). "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obliged to give great deference to the trial court's judgment." *Id*.

Here, the trial court thoroughly considered each photograph and took considerable time hearing every argument of each of the three defense attorneys and the State. Yes, the photos are rather unpleasant to view. However,

> Courts must often grapple *with disturbing and unpleasant cases* but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the factfinder . . . it is the duty of courts and juries to examine the evidence in even the most unpleasant of circumstances.

State v. Collins, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (upholding the introduction of autopsy photos of a boy who was severely mauled and killed by dogs.)

> Courts and juries **cannot be too squeamish about looking at unpleasant things**, objects, or circumstances in proceedings to enforce the law and especially if the truth is on trial.

> The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.

Collins, 409 S.C. at 535; *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958).[33]

"It is well settled law that the mere fact that a photograph is gruesome is not a reason for its non-admission." *State v. Ernst*, 150 Me. 449, 114 A.2d 369, 373 (1955).

Just like in *State v. Collins*, there were no eyewitnesses to this crime. *Collins*, 409 S.C. at 531, 763 S.E.2d at 26. The State in both cases was left with a severely damaged body, deceased by homicide, and no direct evidence tying anyone to the killing, so they had to piece together what happened for the jury through photos and expert witnesses. *Id*. The *Collins* defense theory was the dogs were not malnourished or aggressive; the State countered that through the photos – showing how the boy's jugular vein was severed and how deep the many wounds were. *Id*. at 533, 763 S.E.2d at 27. Here, the State's theory was that Appellant and her two co-defendants killed, bound, and dumped the victim's body in the Black River, but a specific cause of death apart from homicidal violence was not known. Therefore, the photos presented concrete evidence that was rightly presented to the jury so they could decide whether the victim's wounds came from the hands of the Appellant or through other means, such as animal predation.

However, unlike in *Collins* where the State only had to prove a killing occurred *without* malice, here, the State had to actually prove malice. Therefore, they had every right to present photos to the jury that proved it: the photos showed Leon Harrison, Jr.'s wounds and how tightly and vigorously his hands and feet were bound. Every piece of evidence introduced at trial by the

[33] "Even the most gruesome photographs may be admissible if they tend to shed light on any issue, to corroborate testimony, or if they are essential in proving a necessary element of a case, are useful to enable a witness to testify more effectively, or enable the jury to better understand testimony." (emphasis added.)

State will be prejudicial to the defendant. However, autopsy photos are fair game if the trial court finds, on balance, that they were relevant and had more probative effect than prejudicial, as the court did here. Rules 401 and 403, SCRE.[34] Only photos that are *unfairly* prejudicial will be excluded. The victim's family, in the interests of fairness, had the right to have that evidence presented to the jury, and the jury had the right (and the responsibility) to view it and judge accordingly. Here, the photos simply mirrored the unfortunate reality of Mr. Harrison's death. This Court should affirm.

[34] 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."
Rule 403, SCRE: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."

III. The trial court properly denied the directed verdict motions for murder and obstruction of justice because there was substantial circumstantial evidence reasonably tending to prove guilt of accused when viewing all the evidence in the light most favorable to the State. As the State proved that more than "any evidence" existed, this Court should affirm.

Appellant argues the trial court erred in denying a directed verdict of acquittal for the murder and obstruction of justice charges. IBOA at 27. She argues the circumstantial evidence presented by the State was not "substantial" enough;" that the State only provided speculative and inconclusive evidence of guilt. IBOA at 28; Tr. 1639-1642. This is simply not the case.

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). The Court's review is limited to considering the existence or nonexistence of evidence, not its weight. *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478-479 (2004); *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016) (overturning the Court of Appeals because it weighed the evidence and considered whether the evidence rose beyond a mere suspicion of guilt.) A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "However, if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

The "lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *Bennett*, 415 S.C. at 236, 781 S.E.2d at 354; *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955); *State v. Phillips*, 416 S.C. 184, 193, 785 S.E.2d 448, 452 (2016). The jury's job is to consider alternative hypotheses and determine that the State proved every element of each crime alleged beyond a

reasonable doubt. *Bennett*, 415 S.C. at 236-237. The trial court, however, must only concern itself with the existence or non-existence of evidence. *Id*. The trial court MUST submit the case to the jury if, after viewing the evidence in the light most favorable to the State, it concludes there was any substantial evidence presented that reasonably tended to prove the guilt of the accused, or from which guilt might be fairly and logically deduced. *Bennett*, 415 S.C. at 237.

In *Bennett*, the Supreme Court affirmed a denial of a directed verdict motion because forensic evidence placed Bennett in the community center where the crime occurred, at the place the stolen television set was at in the room prior to the robbery, and testimony proved he had no reason to be in that room. That was it. But the Court still upheld it, finding that evidence was enough to "induce a reasonable juror to find Bennett guilty." *Bennett*, 415 S.C. at 237. Here, the list of evidence is far more lengthy and convincing:

MURDER

- ✓ A large amount of blood was found in the master bedroom shared by the victim and Appellant in multiple locations, including the mattress, bedsheets, a cast-off area by the closet, another place on the wall by the window, and two areas on the floor.
- ✓ The SLED pathologist testified the victim died of homicidal violence.
- ✓ The carpet was freshly cut away in two large areas, and blood matching the victim was soaked down into the floorboards and carpet padding.
- ✓ The pathologist testified the blood on the carpet padding was diluted, like someone attempted to clean it with a solution, which included hydrogen peroxide.
- ✓ Appellant's co-defendants bought two bottles of hydrogen peroxide at Walmart at 1:00AM right around the time the State alleged the victim was killed.
- ✓ Appellant and the victim had a volatile relationship, and evidence showed she was mad at him that night but had invited him over anyway to "reconcile their relationship."
- ✓ Both co-defendants admitted Appellant had an argument with the victim in the house the night the victim disappeared; even Appellant herself admitted starting an argument with him after finding him on the phone with his girlfriend when she arrived home.

- ✓ Testimony was presented that Alexander Rhue, Jr. confessed to both killing and dumping the victim's body to two separate individuals.

- ✓ The phones of all three co-defendants and the victim were all turned off on or about 2:00AM the morning the State alleged the victim was killed, demonstrating a collective attempt to conceal whereabouts.

- ✓ The victim was last seen (and his cell phone was last tracked) at **** Highmarket Street, the home he shared with Appellant two weeks before his body was found.

- ✓ The victim was found with his hands and feet bound by speaker wire a large wound to his abdomen (among others) two weeks later in a river a few miles from **** Highmarket Street. The level of decomposition matched that of a body that had been floating for about two weeks.

OBSTRUCTION OF JUSTICE

- ✓ Both Alexander Rhue, Jr. and Sr. admitted they lied to the police regarding where they were night the victim went missing.

- ✓ Appellant told law enforcement the victim left around 10:00 P.M. and that she had not seen him since. This was a lie.

Judge Bonds rightly found that when "piled upon itself," the evidence for murder and obstruction of justice was sufficient to withstand the directed verdict motion for both charges.[35] He cited *State v. Mealor*, 425 S.C. 625, 825 S.E.2d 53 (2019), and its affirmance of our rule that circumstantial evidence should be combined and considered with other evidence to determine if a case is sufficient to present to a jury. Tr. 1650-1659. This Court should affirm.

Circumstantial evidence is "proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." *Cherry*, 362 S.C. at 596, 606 S.E.2d at 479. It is "based on inference and not on personal knowledge or observation," Black's Law Dictionary 636 (9th ed. 2009), and establishes "collateral facts from which the main fact may be inferred." *State*

[35] Judge Bonds granted the directed verdict motions for the desecration of a body charges, finding there was no evidence as to whether the victim was dead before or after the speaker wire was wrapped or whether he was fully dead before he was placed in the river. Tr. 1654.

v. Salisbury, 343 S.C. 520, 524 n.1, 541 S.E.2d 247, 249 n.1 (2001). Circumstantial evidence, when separated out and viewed individually, may only raise a suspicion of guilt; but that is not the standard. *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013). In fact, juries and courts may not do that. *State v. Kimball*, 191 S.C. 238, 242, 4 S.E.2d 121, 122 (1939) ("it is necessary that every . . . circumstance [proved] be consistent with each other and, taken together, point conclusively to the guilt of the accused . . . .") Circumstantial evidence "gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case *must be considered together* to determine whether it is sufficient to submit to a jury." *Id*. (emphasis added.) A directed verdict is not required even when the State cannot concretely show the defendant *was at the crime scene* at the time of the crime. It just must put forth *any* evidence that a juror *could* infer guilt from, not conclusive evidence. *Id*. at 273.

Even cases based solely on circumstantial evidence may be sent to a jury – the court must only find that the evidence was substantial and that it reasonably tended to prove guilt. *Rogers*, 405 S.C. at 565, 748 S.E.2d at 271 (upholding the denial of a directed verdict when the evidence showed appellant was involved in an affair at the time the victim was killed, that appellant wanted her "out of the way," that a truck like the appellant's was seen in the neighborhood that night, and that his cell phone was in the area that night, etc.);[36] *but see Odems* (trial court should have directed a verdict for appellant because the circumstantial evidence was not substantial.) The State more than provided the trial court a substantial basis from which to conclude the jurors could find guilt. Therefore, this Court should affirm.

[36] The Solicitor argued *State v. Lollis*, 541 S.E.2d 254 (2001) and *State v. Edwards*, 379 S.E.2d 888 (1989) (*abrogated by State v. Logan*, 747 S.E.2d 444 (2013), on other grounds) in her very thorough argument for the denial of a directed verdict. Tr. 1622-1649.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed. Even if the lower court committed some type of error, the State maintains it is harmless under *State v. Wise*, 359 S.C. 14, 596 S.E.2d 475 (2004).

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