IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Appellate Case No. 2021-001275

The Honorable Robert Bonds, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Tiesh Rhue……Appellant.

# FINAL BRIEF OF APPELLANT

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## STATEMENT OF THE CASE

Tiesh Rhue was indicted in July 2017 for murder, obstruction of justice, desecration of human remains, and two counts of criminal conspiracy. She proceeded to a jury trial before the Honorable Robert J. Bonds October 11–15 and 18–20, 2021. She was ultimately convicted of murder and obstruction of justice and sentenced to thirty-seven years' imprisonment. Tiesh filed a timely notice of appeal October 28, 2021.

## STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). "[T]the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958). An abuse of that discretion occurs where the trial court's conclusions are based on unsupported factual conclusions or controlled by an error of law. *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

## ARGUMENT

### FACTUAL BACKGROUND

On March 9, 2017, Alex Harrison, Sr. reported to the Georgetown Police Department that his son, Alex Harrison, Jr. (Victim), was missing. R. 621. Although he was unable to provide details, Brittani Green, the mother of Victim's children, also went to the police station the same day to report him missing. R. 625, 622, 726. Green informed the police that Victim was married to a Tiesh Rhue (Tiesh) and investigators went to her house on 1015 Highmarket Street (the Rhue residence) to speak with her, but were told she was at work by her father, Alexander Rhue, Sr. (Rhue Sr.) and brother, Alexander Rhue, Jr. (Rhue Jr.). R. 627–28, 1310. Officers spoke with Tiesh at the Georgetown Steel Mill, where she worked. R. 628. Tiesh informed them she and Victim had a fight the night of February 25 around 10:00 p.m. when she returned home from work because he was on the phone with a paramour. R. 629. She told them he then retrieved some items and left; she had not seen him or heard from him since that night. R 629. Officers spoke with Victim's employer and learned he had not been to work since the 25th. R. 630.

Rosario Grate, Victim's paramour, also came to the police department and indicated she had last seen him the night of the February 25 when she dropped him off at his dad's house around 9:00 p.m. R. 632. Grate also told them Tiesh had used Victim's phone to call her around 11:00 p.m. R. 632–33.

On March 10, officers returned to the steel mill and asked if Tiesh would voluntarily come to the station, and she agreed to go and speak with them. R. 636; State's Ex. 21. Tiesh again explained that when she got home, she found Victim and Grate texting and Tiesh called back Grate with Victim's phone. State's Ex. 21. Victim then got some of things and left. State's Ex. 21. She stated she and Victim had been "off and on" and Victim was not living with her full time. State's

Ex. 21. This was not the first time he had walked off in anger and not contacted her for a stretch of time, which is why she never reported him missing. State's Ex. 21. Tiesh explained after he left, she never left the house after that, but took a shot of tequila and went in her son's room to sleep with him. State's Ex. 21. When officers asked to search her phone and a deoxyribonucleic acid (DNA) swab, she voluntarily consented to both. State's Ex. 21.

Officers returned to the Rhue residence later that day with a search warrant to look for "proof that he lived there" and they found documents in a bedroom drawer addressed to Victim at that address and his medication. R. 649–51. They knew he was moving around and staying in different places. R. 1318. While searching the room for documents, officers lifted up a rug and blanket on the floor and saw carpet padding where the carpet had been cut away. R. 655, 1324. They performed a presumptive blood test on the carpet, which reacted positive. R. 655, 1325. Officers then obtained a second search warrant and cut out the carpet padding down to the subfloor, which was discolored. R. 1331. The subfloor also had positive reaction for blood. R. 1333. They also took sheets and fabric from the mattress. R. 1345. Officers took Tiesh to the station again on March 11 for another interview and went the Rhue residence afterward to interview Rhue Sr. R. 666, 1349; State's Ex. 27. That same day, Perry Collins called 911 to report a body in the Black River near his house. R. 855. The body was determined to be Victim based on his tattoo. R. 694. The body showed significant decay and what appeared to be animal activity; his wrists and ankles were bound by speaker wire. R. 694, 1354. Tiesh was arrested that day. R. 705.

Officers returned to the Rhue Residence March 14 and executed their third search warrant to search for speaker wire, sharp object, or other evidence related to his murder. R. 694. The search included the residence as well as vehicles. R. 698. Officers did not find any wire matching the ones wrapped around Victim's feet and hands. R. 1410. Although they collected a box cutter

and knives, they had a negative reaction to the presumptive blood test. R. 1357–58. Officers did not uncover any blood or other evidence in the vehicles they processed. R. 1359–60, 1411.

Ultimately, Tiesh, her brother, and her father were eventually charged with homicide, obstruction of justice, two counts of criminal conspiracy, and desecration. R. 397–399; Indictments. They proceeded to a joint jury trial before the Honorable Robert J. Bonds that began October 11, 2021. R. 102.

Prior to trial, defense counsel moved to exclude evidence obtained from the first three search warrants of the Rhue home, arguing the searches were made in violation of the defendants' rights under the Fourth Amendment of the United States and Article I, section 10 of the South Carolina Constitution, and the warrants further failed to comply with the warrant statute. Mot. to Suppress. The trial court conducted a pretrial hearing on September 24, 2021. R. 22. Defense counsel argued the initial search warrant lacked probable cause because it did not state any crime had been committed, and the subsequent warrants were invalid because they were based on evidence that were fruits of the poisonous tree. R. 40, 45–46. The State refused to concede the first warrant did not allege a crime but argued it "[i]mplicitly" alleged that a person was missing. R. 50. The State admitted the officers moved a container and pulled back a rug during this search for documents and discovered stained carpet padding that was exposed from where the carpet had been cut away. R. 58. After the spot field tested for positive, officers went to secure a second warrant to look for blood evidence based on this discovery. R. 58–59. Pursuant to that warrant, the officers removed sections of the carpet padding, blankets, and cut away some fabric. R. 60. The third search warrant of the home was executed after Victim's body was found. R. 62. The State argued that even if the first two warrants were invalid, the evidence was subject to inevitable

discovery because the third warrant would be valid even if reference to the tainted evidence was removed because the affidavit indicated Victim's body was found in the Black River. R. 62.

Defense counsel argued the Warrant Clause requires facts to be alleged which would connect the crime to the location specified, and there was only evidence the body was found ten miles from the Rhue residence. R. 65–66. The affidavit did not state Victim was last seen at the Rhue residence or otherwise connect it with that location independent of evidence obtained pursuant to the first two warrants. R. 67. Noting its concerns, the trial court requested the State submit a memorandum prior to ruling. R. 72. The trial court ultimately concluded both the first and second warrants lacked probable cause but found the third search warrant had sufficient independent probable case and therefore any evidence gathered pursuant to the first two warrants would have been inevitably discovered pursuant to the third warrant. R. 101.

Prior to the start of trial, the trial court held a *Jackson v. Denno*[1] hearing on the defendants' statements to law enforcement. Before Tiesh even articulated her challenge, the trial court held her longest interrogation, which was over an hour long, was predominately custodial and she was never apprised of her rights pursuant to *Miranda*.[2] R. 264, 272–73. It therefore limited the admissibility to the first twenty-two minutes. R. 274; State's Ex. 27.

At trial, the State presented testimony of Rosario Grate, who explained she and Victim had been dating a little over a year at the time of his disappearance and he had been staying with her the week prior to his disappearance. R. 771, 773. She said they were in the habit of talking almost every day and had been a good place in their relationship leading up to the night of his disappearance. R. 776, 779. On the night of February 25, 2017, Grate stated she picked Victim

[1] 378 U.S. 368 (1964).
[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

up from work and later took him to his father's house. R. 775, 779. She talked to him later that evening as well, but then received some phone calls from Tiesh on Victim's phone starting around 10 p.m. where there "was words exchanged" and then she stopped answering, assuming it was Tiesh. R. 780. Grate testified Victim had previously told her that he would meet her out later that night, but he never came, and she did not hear from him again. R. 784. Investigator Powell testified she did not report him missing for almost two weeks, on March 10, 2017. R. 632, 1971

The State also introduced testimony of Investigator Allen Morris, who worked on the case with Investigator Powell. Investigator Morris acknowledged that the Rhue residence was the only residence officers searched, and even though they knew Victim was basically living with Grate, they never sought to search her home or vehicle. R. 1420, 1433–34. He further stated that there was no search undertaken after the missing person report on March 9 and although it was later discovered that people had been looking for Victim by the Black River March 8, he was not sure about any inquiry as to that information. R. 1431, 1437.

William Pierce of the City of Georgetown Police Department also testified as to the search of the Rhue residence. He noted that the carpet padding, which had been covered by the blanket, had no foot traffic, and there were loose fibers of the carpet around area where it had been cut away. R. 1109. He testified the stain on the padding appeared to have seeped through to the subfloor. R. 1111. After the body was recovered, he went through the house with Leucocrystal violet to field test for the presence of blood. R. 1115. He found blood by the window and door jamb of the closet in the bedroom, and near the laundry room, but none in the kitchen just outside the bedroom. R. 1116, 1119.

Dr. Gray Amick, who had worked as the DNA Technical Lead and Lab Director for Richland County Sheriff's Department, testified as to his analysis in the case. He tested some

carpet padding and bed sheets from the Rhue residence and compared them to Victim's DNA. The sheets presumptively tested positive for blood, which appeared to be from an unknown female. R. 1630–32. Dr. Amick tested three carpet padding samples. R. 1632. The DNA result from the first cutting was too weak for match purposes and the second was inconclusive for match purposes. R. 1633. The third cutting produced a weak DNA sample but had enough information for Dr. Amick to conclude the DNA was not a match to Victim. R. 1636. Dr. Amick then combined the samples from all three cuttings and determined the DNA was a mixture, as opposed to a single source and he excluded Victim as a contributor. R. 1638. Dr. Amick also tested the cuttings by using a "forensic vacuum" and determined he could not exclude Victim from that sample. R. 1639.

Forensic scientist Sara Goodman of the South Carolina Law Enforcement Division also testified as to her analysis of samples taken from the Rhue residence including cuttings from the carpet padding, mattress, and swabs from around the house. DNA from the carpet padding matched Victim and the cuttings from the mattress contained a DNA mixture, and Victim and Tiesh were possible contributors to that mixture. R. 1663. The samples from the walls had similarly varied results: DNA from the wall by the window was a mixture of at least three individuals including Tiesh, DNA from the wall by the closet matched Victim, DNA from wall by the laundry room was negative for blood but was a DNA mixture of which Tiesh was a major contributor. R. 1670–72.

Two individuals testified that Rhue, Jr. had confessed to committing the murder to him. Antwan Simmons stated Rhue, Jr. asked if he could ride with him on his drive to Conway and then "out of nowhere" Rhue, Jr. said he "took [Victim] for a ride," which Simmons took to mean "taking someone out, killing them." R. 807. Austin Kight testified he met Rhue, Jr. in the J. Rueben Long

Detention Center, who, after about thirty minutes of knowing him, stated he was there on a murder charge but they did not have any evidence on him. R. 1032.

The State put forth various witnesses discussing cellphone usage. Angela Gardner of the Regional Organized Crime Information Center testified as to her analysis mapping of the cellphone usages of the defendants and Victim the last evening he was seen. She stated all of Tiesh's calls were made or received in the sector of the tower within the vicinity of the Rhue residence. R. 1168–69. Allen Huggins of the Conway Police Department testified that his analysis of the cell phone data from the defendants and Victim indicated that in the early morning of February 26: Victim's phone stopped connecting to the network around 1:53 a.m.; Rhue Sr.'s phone stopped connecting to the network around 1:59 a.m. until 8:40 a.m.; Rhue Jr.'s phone stopped connecting to the network between roughly 2:09 a.m. and 2:45 a.m.; and Tiesh's phone stopped connecting to the network between 2:00 a.m. and 5:00 a.m. R. 1564, 1565–66, 1568–71, 1574. Officer Barry Powers testified as to Tiesh's cell phone records in regard to her communication with Victim, who was listed as "Hopefully" on her phone. Officer Powers talked through a month of texts, mostly reflecting how they had an open relationship with the issues that might accompany that, but they still enjoyed each other. R. 1974– 2021; 1686–1691. After Victim's disappearance on the evening of February 25, Tiesh texted him four more times over the next two days asking where he was and why he did not respond. R. 2021; 1692.

The State also offered testimony from the forensic pathologist who performed the autopsy, Dr. Cynthia Schandl. Prior to her testimony, the trial court conducted a hearing on the admissibility of photographs taken during the autopsy. The defendants objected on the grounds that they were not relevant and only intended to enflame the passions of the jury. R. 824. Specifically, counsel argued that the cause of death was unknown, and who or what caused the

defects present on the body were similarly unknown, therefore the pathologist did not need the exhibits. R. 824. Furthermore, the defendants argued that multiple pictures of the bindings from various angles were not relevant because no argument or suggestion was made that Victim bound himself. R. 837, 840. The State argued that because the "cause of death is in contention" and defendants were charged with desecration, the damage to the body was relevant. R. 822. The trial court excluded several duplicative photographs, but ruled the remaining photographs, multiple pictures of the bindings as well as photographs of the body on the autopsy table, were relevant to show "the sad reality of the situation" and were admissible under *State v. Collins*.[3] R. 847.

Dr. Schandl testified that when she examined the body, it was in a moderate state of decomposition and there were defects on the right and left sides of the torso and thighs suggestive of animal predation. R. 975. She testified there was no bullet found within the body and the bones were all intact, but there was speaker wire tightly bound around the ankles and wrists in intricate knots. R. 975–76. She described one photo "right sort of on his middle you can see there's a fairly large defect in his stomach wall and peeking through are some intestines there." R. 978: State's Ex. 60.

She further discussed that there was no evidence of hemorrhage or stroke of blood in the brain. R. 982. She testified that suffocation or drowning could only be proved by the surrounding circumstances so she could not say he drowned. R. 990. "And so from all of these -- that's why I keep calling them defects rather than stab wounds, or lacerations, you know, something more specific. These are defects, because I don't know whether they happened before he died or after he died." R. 991. She testified that "many of these defects to the body may well have been from predation from the creatures that were in the environment." R. 991.

[3] 409 S.C. 524, 763 S.E.2d 22 (2014).

At the close of the State's evidence, the defendants moved for directed verdict on all charges.[4] Tiesh argued that the evidence was entirely speculative and inconclusive. The State put forth no evidence of how or where Victim died. R. 1740. No testimony was offered as to when the blood samples from the house were deposited. R. 1741. The evidence is that Tiesh was at or around her home throughout the night and Victim was found miles away. R. 1641–42. She had been forthcoming with her answers, and voluntarily gave her phone for search as well as her DNA. R. 1743. The State argued the missing carpet and blood samples were evidence he died in the home and the fact that his phone deactivated while still in the area suggested when he died. R. 1743. The trial court denied the motion as to Rhue Jr. on the murder charge, but delayed ruling on the remaining directed verdict motions until the following day. R. 1751.

The trial court granted directed verdict as to the desecration of the body charges, finding that the time of death was unknown and there was no evidence as to whether he was dead after the speaker wire was wrapped around his wrists and ankles or when he was placed in the river. R. 1755. The trial court further questioned whether it would even be desecration of a body if it was thrown in a river and there is just not any evidence as relates to him being touched after he was deceased. R. 1755. However, the trial court denied the directed verdict motions as to the murder charges against Tiesh and her father and the obstruction charges as to all three. R. 1676.

All three defendants declined to testify in their own defense, and the defendants rested. R. 1776. After roughly five hours of deliberation, the jury returned a verdict finding Rhue Sr. not guilty of murder but finding Tiesh and Rhue Jr. guilty of murder and all three guilty of obstruction of justice. R. 1928. Tiesh was sentenced to thirty-seven years' incarceration for the murder charge

[4] The conspiracy charges were nolle prosequied for a "hand of one is the hand of all" jury charge p.1411:4–8

and eight years' incarceration for the obstruction charge to be served concurrently. R. 1959. This appeal followed.

## ANALYSIS

When a close community is confronted with the tragedy of murder, there is naturally a desire to immediately find someone to blame, perhaps someone from off. Yet those are the very moments when refusing to yield the protections of the law must remain a constant focus. Law enforcement failed to act with that clarity and the incautious nature of the investigation became magnified during Tiesh's prosecution. Likely to the detriment of ever uncovering the truth. Officers targeted Tiesh from the start and pursued her and her family exclusively, and mostly through improper means. The very basic safeguards of our constitution were abandoned: her home was searched—repeatedly—without proper warrants, and she was subjected to a custodial interview without being informed of her rights.

Attempting to save the case, the State leaned into the visceral reaction of the jury as the target of the prosecution. The strategy was not gilding the lily but substituting sensationalism for proof. Knowing it had no evidence to present on a desecration charge, the State paraded that notion before the jury and relied on it to allow in evidence what would appeal to the sensitivities and passions of the jury. The trial court very carefully excluded much of the inflammatory and gratuitous evidence the State attempted to include but stopped short of entirely gutting its case. Yet when the safeguards of the law are trounced there is no hope for preventing subsequent abridgement unless the gravity of those missteps are given light with unwavering reproval of the judiciary. Curtailments of our rights under the auspices of good intentions leads directly to the tyranny emboldened by the premise that the ends justify the means. It may be agreed that every homicide deserves the justice of identifying the guilty soul, but that is not just any soul. Though

law enforcement "engaged in the often competitive enterprise of ferreting out crime[5]" may wish to cut corners, the law prescribes that justice for a victim can only be achieved through gathering sufficient evidence obtained through a legal investigation. That did not happen here. Not all convictions deserve defending and Tiesh asks that her convictions pursuant to this pockmarked investigation and prosecution be reversed.

## I. The Trial Court Erred in Failing to Suppress the Evidence Obtained Pursuant to the invalid search warrants.

### A. All three search warrants lacked probable cause.

Although the trial court properly held that the first two search warrants lacked probable cause and the evidence should be suppressed, it erred in ultimately concluding the third search warrant was valid and therefore any evidence found pursuant to the invalid search warrants would be inevitably discovered. When removing the reference to the evidence illegally recovered, the affidavit accompanying the third search warrant was insufficient to demonstrate probable cause to search the Rhue residence.

"On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error." *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014). "However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010).

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. The South Carolina Constitution similarly recognizes this right and further protects

[5] *Johnson v. United States*, 333 U.S. 10, 14 (1948).

citizens from unreasonable invasions of privacy. S.C. Const. art. I, § 10. Pursuant to state statute, a warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant." S.C. Code Ann. § 17-13-140. "A search warrant may issue only upon a finding of probable cause." *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). "A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014). "Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. '[H]is action cannot be a mere ratification of the bare conclusions of others.'" *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (alteration in original) (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)). "The principal theory of the warrant clause is that unjustified and arbitrary searches and seizures are prohibited." *State v. Hall*, 293 S.C. 331, 332, 360 S.E.2d 323, 324 (1987).

From its inception, this investigation took troubling liberties with liberty. The first search warrant was devoid of any allegation of a crime, because it was not a criminal investigation. Sworn March 10, the warrant requests "bank records, legal documents, identifications, passports, debit/credit cards, phone records, vehicle information, insurance paperwork, travel documents, or anything that can aid in investigators in ascertaining the whereabouts of Leon Harrison, Jr." R. 8–11. From here, officers proceeding under the initial invalid search warrant *exceeded* the scope of that warrant by moving a container and blanket in an area near the closet and discovering stained carpet padding that field tested positive for the presence of blood. At this point, officers sought a second search warrant to gather more evidence based on the illegally obtained evidence. R. 13–16. When the body was then recovered ten miles away in the river, officers obtained the third

search warrant, relying heavily on the illegally obtained evidence from the initial warrants as the impetus for believing any evidence in connection with Victim's death might be found at the Rhue residence. R. 18–21.

The trial court concluded that the third warrant had sufficient probable cause independent of reference to the evidence obtained through the illegal search warrants. This holding was in error. The affidavit without the tainted evidence leaves only:

DESCRIPTION OF PROPERTY SOUGHT

> All areas of the beforementioned property of places located at 1015 Highmarket St. in search of any speaker wire consistent with 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, and all trace DNA evidence, clothing to include black work jeans, black or blue work T-shirt, work boots.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMESIS

> On Saturday 2/25/2017, the victim Leon Harrison Jr. went missing from his residence of 1015 Highmarket St. in the City limits of Georgetown. On Saturday 3/11/2017, a victim was found near Colonel Cole Dr., in Georgetown County, in the Black River. The victim remains were decomposed, but the body was identified as Harrison due to a tattoo on his inner left forearm. A search is being request for the before mentioned items that could develop leads in this case.

R. 20; 89–90. Without an explanation for *why* officers believe that the property sought would be found at the location specified, the warrant lacks probable cause and is invalid. *State v. York*, 250 S.C. 30, 35, 156 S.E.2d 326, 328 (1967) ("The judicial officer was not enlightened as to the facts and circumstances which engendered the sheriff's belief that illegal drugs would be found on Hattie York's premises. Without such facts, he could not form a responsible judgment as to the existence of probable cause."). The Rhue residence is ten miles from Colonel Cole Drive. The only connection is that it is alleged to be his residence (even though officers knew he was not staying there) and that alone does not create "a fair probability that contraband or evidence of a crime will

be found" there. This would mean the home of any murder victim is open for searches and seizures, simply by virtue of the death of an inhabitant. Probable cause may not be a high bar, but it "is by no means a toothless standard." *State v. Warner*, 436 S.C. 395, 872 S.E.2d 638, 642 (2022). The third warrant was therefore defective, and the search was violative of Tiesh's federal and state constitutional rights.

**B. The exclusionary rule is appropriate in this case.**

Because those searchers were conducted in violation of Tiesh's constitutional rights, all evidence obtained should all have been excluded and no exception applies.

"Evidence seized in violation of the Fourth Amendment must be excluded from trial." *State v. Freiburger*, 366 S.C. 125, 131, 620 S.E.2d 737, 740 (2005). "The purpose of the exclusionary rule is to deter law enforcement officers from committing Fourth Amendment violations." *State v. Moore*, 429 S.C. 465, 478, 839 S.E.2d 882, 889 (2020). An exception to the exclusionary rule is where the officers act with a "'reasonable good-faith belief" that their conduct is lawful." *Davis v. United States*, 564 U.S. 229, 238 (2011) (quoting *United States v. Leon*, 468 U.S. 897, 909).

No good faith exception can be entertained on these facts. Any belief, however earnest, that law enforcement's conduct was lawful, is objectively unreasonable. That a crime occurred, and specific evidence of a crime may be found at a specified location forms the basic framework of a probable cause inquiry and our state's warrant statute. These basic details were absent.

The law recognizing the constitutional prohibition on searches attendant to generalized suspicion is rather unequivocal and the evil of permitting general warrants was itself a motivator for the American Revolution—with James Otis denouncing general warrants in 1761 as "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental

principles of law, that ever was found in an English law book, because they placed the liberty of every man in the hands of every petty officer." *Stanford v. State of Tex.*, 379 U.S. 476, 481 (1965) (internal quotation marks omitted); *see Riley v. California*, 573 U.S. 373, 403 (2014) ("Our cases have recognized that the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself."). Specificity and knowledge of a crime in demonstrating probable cause for a search are not new concepts.

Officers were also aware of the confines of our warrant statute, which allows the issuance of a warrant for, inter alia, "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" and "property constituting *evidence of crime* or tending to show that *a particular person committed a criminal offense*." S.C. Code Ann. § 17-13-140 (emphasis added); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983) ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability *that contraband or evidence of a crime will be found* in a particular place." (emphasis added)). The issuance of a warrant, then, presupposes that some crime has occurred. Therefore, the failure to mention any criminal activity renders the affidavit facially defective. *State v. Gibbs*, No. 2017-001846, 2020 WL 4814266, at *5 (S.C. Ct. App. Aug. 19, 2020), *cert. denied* (June 7, 2022) ("Affidavits that fail to set forth facts as to why police believe a suspect committed a particular offense are defective.").

Law enforcement openly acknowledged that during the execution of the first and second search warrants, this was a missing person case, not a homicide. R. 715, 1194, 1312, 1429; 10, 14. Although in the suppression hearing the trial court poses the question to the State of what crime was alleged in the warrants, the solicitor hedges and explains that because this was a missing person (which is not a crime) there was nothing else for officers to do. R. 52–53 ("And a missing person is a very unusual situation. I think it's very fact specific. What else were they supposed to do? Wait until they know he's dead, or wait until they know he's been kidnapped. . . . .What other mechanism do they have?"). Even the affidavit of the Municipal Court Judge indicated the warrants were not based on a belief that evidence of specific crime may be found in the location specified, but on the general notion that "something was wrong about a person missing for approximately two (2) weeks." R. 96. A good faith exception cannot be appropriate where the rationale is simply that otherwise the investigation would have been too hard, or that somethings seems wrong when the law so clearly demands more. Even the suggestions that first warrant was based on some well-intentioned search for helpful information is specious. At this point, investigators had spoken with Gates and Tiesh and knew Victim was not living at home but spent most his time with Gates (whose home and car were never searched), so the fact his mail still went to the Rhue residence seems hardly of interest in determining his whereabouts. As for the third search warrant, assuming it suggests a homicide has occurred, officers could not believe their conduct was lawful in executing the warrant because they based their reliance on evidence illegally obtained. Because the officers did not objectively act in good faith, the exception should not apply, and all evidence obtained pursuant to the search warrants should have been excluded.

## II. The Trial Court Erred in Admitting Unfairly Prejudicial Autopsy Photos

Over the objection of the defendants, the trial court admitted numerous graphic autopsy photographs into evidence.[6] In so doing, it failed to properly consider the unfair prejudice that resulted from their admission and weigh that against any relevance or probative value. The photographs served merely to inflame the passions and prejudices of the jury. They therefore should have been excluded.

Rule 403 provides that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." In determining the probative value of evidence the Court "considers the importance of the evidence and the significance of the issues to which the evidence relates." *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370–71 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991)). This Court reviews a trial court's ruling on the relevance, materiality, and admissibility of photographs under and abuse of discretion standard. *State v. Torres*, 390 S.C. 618, 622–23, 703 S.E.2d 226, 228 (2010).

The State was allowed to introduce nineteen photos from the autopsy into evidence, ten over the objection of the defendants. State Exs. 57–74, 76. In admitting the photographs, the trial court stated they "mirror the reality of the case" and relying on *Collins*, held "just because they're

[6] Defense counsel couches his objection in terms of a violation of due process rights, however it is clear from the State's arguments and the trial court's ruling—which both relied on *Collins*— that they understood the argument to be based on a Rule 403, SCRE analysis. Accordingly, this issue is appropriately discussed consistent with that rubric. *See State v. Bowers*, 428 S.C. 21, 29, 832 S.E.2d 623, 627 (Ct. App. 2019), *aff'd*, No. 2019-001776, 2022 WL 2336103 (S.C. Sup. Ct. June 29, 2022) ("The failure to raise specific grounds for an objection will not prevent the appellate court from addressing an issue when the record indicates that the trial court and the State understood the basis for the objection.").

gruesome, they're not inadmissible merely because they're gruesome." R. 845. However, the argument is not just that they are gruesome, but that they provide nothing of probative value to the jury to outweigh the prejudice. Many of the objected-to photos are duplicative images of the bindings; however, the State's exhibits 59 and 60, are more problematic in their depiction of Victim's entire body laid out on the autopsy table. Although the State argued that the photos would aid the testimony of the pathologist, and "cause of death and desecration [are] at issue here," R. 822, the photographs and the pathologist's testimony reveal the State has no idea what the cause of death was past "homicidal violence" and cannot prove desecration. No one argues the manner of death is not homicide, so it is of little help to have a picture along with the testimony that the cause of death was homicidal violence, with no further specification as to what actually killed him. The pathologist unequivocally states she cannot opine as to when or how the defects on the body occurred and suggests "many of these defects to the body may well have been from predation from the creatures that were in the environment." R. 991.

So the reliance on *Collins* was misplaced. That case involved the admissibility of autopsy photographs of the victim, a ten-year-old who died after suffering numerous bite marks and being partially eaten by the defendant's dogs. *State v. Collins*, 409 S.C. 524, 531, 763 S.E.2d 22, 26 (2014). The defendant had been charged with involuntary manslaughter and owning a dangerous animal that attacked and injured a human. *Id.* at 530–31, 763 S.E.2d at 25–26. In concluding the photographs were admissible, Chief Justice Beatty reasoned the photographs were relevant to the issues of whether the dogs were indeed dangerous and whether the defendant had acted with criminal negligence as required under the involuntary manslaughter statute. *Id.* at 536, 763 S.E.2d at 29 ("Since there was no one else present at the time of the event, the photos aided the jury in evaluating the testimony offered by both the State and the defendant, especially as to determining

the dangerous propensities of the dogs and whether or not Collins's conduct was criminally reckless."). He therefore concluded "[t]he evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice . . .." *Id.* at 535, 763 S.E.2d at 28. Here, the gruesome defects depicted by the photographs were inflicted by animals in the water, not by defendants and are therefore not relevant to any elements of the crime.

Where there is commonality with *Collins* is in the reproach of the majority of the Court, which concluded the photographs were inadmissible and could only serve the purpose of provoking the passions of the jury. *State v. Collins*, 409 S.C. 524, 540, 763 S.E.2d 22, 30 (2014) (Pleicones, J., dissenting) (concluding that "any minimal probative value of the admitted photographs was substantially outweighed by the danger of unfair prejudice and that their admission violated Rule 403, SCRE"); *id.*at 539, 763 S.E.2d at 30 (Kittredge, J., concurring in result) (with Hearn, J., concurring) ("The primary, if not sole, purpose of these horrific photographs was to inflame the passions of the jury. The detailed and graphic testimony of the pathologist was more than sufficient to enable the State to establish the elements of the offense. I agree with Justice Pleicones that these challenged photographs far exceed 'the outer limits of what our law permits a jury to consider.'" (quoting *Torres*, 390 S.C. at 624, 703 S.E.2d at 229)).

While perhaps germane to Dr. Schandl's process as a pathologist, repeatedly bringing back the jury's attention to the shocking state of the body had no probative value. She attributed the significant defects to of the right and left sides of torso and thighs to postmortem animal predation. R. 975. Dr. Schandl repeatedly described with detailed gore how the intestines could be seen protruding from the body in those areas, and how the areas of extreme predation were a "snack" for "critters." R. 978 ("[R]ight sort of on his middle you can see there's a fairly large defect in his

stomach wall and peeking through are some intestines there."), 979 ("[T]he deepest one is the one to the abdomen where you're seeing the abdominal contents, the intestines, out there for you to see."), 983, 990, 992. The only reason to add imagery to the pathologist's testimony was to magnify the horror the jury would experience. Again, Dr. Schandl did not and could not connect the defects to any source or time frame, instead clarifying "that's why I keep calling them defects rather than stab wounds, or lacerations, you know, something more specific. These are defects, because I don't know whether they happened before he died or after he died." R. 991. And when she did speak with detail as to how defects may have occurred, her only clear conclusions were on predation, not any violence that could be connected to the defendants.

Furthermore, the admission of this evidence was not harmless. For an error to be deemed harmless, it must "not reasonably have affected the result of the trial." *State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). The Court must determine "whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). Given the thin, speculative nature of the evidence the State had, any evidence tending to enflame the jury cannot be said to have not contributed to the verdict. During closing, the State worked to bring the focus back to these dark photographs during closing, reminding the jury how Victim's body was "thrown away in a place where there was some evidence that predators were starting." R. 1792. Clearly, it was important to keep the jurors' minds on the decomposed, partially eaten state of the body to remind them that *someone* should be held accountable for this gruesome ending, so it might as well be the defendants.

Accordingly, the trial court erred in admitting the photographs and that error was not harmless.

## III. The Trial Court Erred in Denying Teish's Motion for Directed Verdict

Finally, even considering the erroneously admitted evidence, the State failed to put forth sufficient evidence to withstand a directed verdict on both the murder and obstruction charges and the trial court erred in denying her motion.

"[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). "[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett,* 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). A case should only be submitted to the jury "if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "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 the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013).

The trial court concluded that when piled upon itself, the evidence was sufficient to withstand a directed verdict motion. The trial court noted that in construing the evidence in the light most favorable to the State: a large amount of Victim's blood was found in the Rhue

residence, the carpet cut "looked fresh", Tiesh and Victim had a volatile relationship, and she was mad at him that night, Rhue Jr. did not get along with Victim, the last place Victim was seen or his phone was used was at the Rhue residence, Rhue Jr. and Rhue Sr. bought hydrogen peroxide at Walmart, there was testimony that Rhue Jr. admitted to the killing, and the phones of all three Rhue's appeared to have turned off around the same time. R. 1758.

Those inferences fail to amount to *substantial* circumstantial evidence to inculpate Tiesh on the murder or obstruction charges. The trial court even referred to the circumstantial evidence as "suspicion." R. 1758. Suspicion does not amount to proof. But the case was based on mere speculation. Law enforcement only investigated the Rhues, so the prosecution attempted to squeeze guilt from the pebbles of evidence gathered. Throughout the trial, it was painfully clear that the State had no idea what happened to Victim or any of the material details of the crime. There was no evidence of when or how Victim died. It was similarly unclear where Victim died and there was no evidence produced to show how his body, whether still alive or not, would have traveled from the home to the Black River.

The entire theory of the State's case is haphazard conjecture and, as relates to Tiesh, a swiftly moving target. She was both an angry spurned woman reacting to catching her husband in his infidelity and a calculating temptress who lures her husband to his death. Yet the evidence the State submitted simply does not bear out either of these propositions. Even though the trial court referenced evidence that Tiesh and Victim had a volatile relationship in denying directed verdict, it nevertheless refused to charge the jury on heat of passion because there was "there's no evidence that this was a heat of passion with any type of significant provocation" instead noting that "overwhelming evidence was that this was no big deal, it's something that they were used to and went on all the time." R. 1247, 1248. And the text messages submitted by the State between

Victim and Tiesh raises the inference that the relationship was an on-again, off-again open relationship, so the suggestion that *this* one instance of them coming back together was somehow her luring him back is not supported by the evidence. R. 1974– 2021. No evidence was adduced that Tiesh acted with the required mens rea.

And even assuming that Victim was killed at the Rhue residence (a suggestion none of the State's witnesses could verify), the State can show nothing more than that Tiesh was merely present. The thin reed the State offers to connect Tiesh to the actions of her father and brother is cell phone data that she turned off her phone. That is it. A woman was convicted of murder and sentenced to almost four decades of incarceration for turning off her phone at night as she went to bed with her child instead of putting it on silent. Tiesh was, from the start of the investigation, forthcoming. She voluntarily met with law enforcement four times and gave both her DNA and cell phone. The State wholly failed to put forth substantial circumstantial evidence that she participated in the murder of her husband or attempted to obstruct law enforcement's investigation. The trial court therefore erred in denying her motion for directed verdict and her convictions should be reversed.

## CONCLUSION

Based on the foregoing, the trial court committed reversible error in admitting evidence from the search of the Rhue residence and the unfairly prejudicial autopsy photographs. Moreover, the trial court erred in denying Tiesh's motion for directed verdict and on that basis, she asks that this Court reverse her conviction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Counsel certifies that she has provided a copy of this brief on Julianna Battenfield of the South Carolina Attorney General's Office via email on this date, February 22, 2023.

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